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Friday
February 20, 1987

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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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 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.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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**
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ATLANTA, GA

WHEN: March 26; at 9 am.
WHERE: L.D. 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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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

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.

Ronald Reagan

[FR Doc. 87-3698
Filed 2-18-87; 10:55 am]
Billing code 3195-01-M

Rules and Regulations

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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 26, 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 26, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

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).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.948 Navel Orange Regulation 648 is added to read as follows:

§ 907.948 Navel Orange Regulation 648.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 20, 1987, through February 26, 1987, are established as follows:

(a) District 1: 1,505,985 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: February 18, 1987.

William J. Doyle,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–3771 Filed 2–19–87; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 549]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 549 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 270,000 cartons during the period February 22–28, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 549 (§ 910.849) is effective for the period February 22–28, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 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 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

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

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.

Dated: February 18, 1987.

William J. Doyle,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–3770 Filed 2–19–87; 8:45 am]

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 G–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 G–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 GCG. 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 conular 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.

EFFECTIVE DATE: February 20, 1987.

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

public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is not formal comment period, pubic comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, International Trade Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

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:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–40 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

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

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.* as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

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 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 § 371.16 establishing that the product was not derived from a Naval Petroleum Reserve. Crude petroleum may be exported only under a validated license issued pursuant to § 371.6(d)(1).

(d) Exclusions. (1) No export prohibited by § 371.2(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".

Dated: February 17, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–3656 Filed 2–19–87; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 292 and 375

[Docket No. RM87-8-000]

Hydroelectric Applicants Seeking Benefits Under Section 210 of the Public Utility Regulatory Policies Act of 1978 for Projects Located at a New Dam or Diversion

Issued: February 13, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule.

SUMMARY: Pursuant to the Electric Consumers Protection Act of 1986, the Federal Energy Regulatory Commission is issuing an interim rule amending its regulations governing hydroelectric applicants seeking benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) for projects to be located at a new dam or diversion. The interim rule adds three new requirements for PURPA benefits, to apply after a moratorium on PURPA benefits for these projects ends, and creates four exceptions from the moratorium and from one or more of the new requirements.

DATES: Interim rule effective March 23, 1987; comments must be received on or before April 6, 1987.

ADDRESSES: Comments may be mailed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, or delivered to Room 3000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, between 8:30 a.m. and 4:30 p.m. Comments received may be inspected at the Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael A. Stosser, Margaret E. Estes, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5597.

SUPPLEMENTARY INFORMATION:

Issued February 13, 1987.

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. 824a-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 ECPA 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 ECPA 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 ECPA, 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 ECPA, operates if that applicant successfully petitions the Commission for a finding that before the enactment of ECPA 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 ECPA 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 ECPA, 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 ECPA 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 ECPA. In section 8(e) of ECPA, 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 ECPA also amends section 210 of PURPA to add a new section 210(j) which imposes three environmental conditions that license and exemption applicants for hydroelectric projects located at a new dam or diversion 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 ("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");

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[1] Section 8 of ECPA 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 ECPA.

[3] 16 U.S.C. 795(17)(A) (1982).

[4] Small Power Production and Cogeneration Facilities—Qualifying Status, 45 FR 17959 at 17966 (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 ECPA 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.

(3) The project must meet the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the FPA [6] ("fish and wildlife agency conditions requirement").

Congress recognized the potential hardship these new requirements could impose on developers that were well on the way to obtaining regulatory approval of their projects at the time ECPA was enacted. As a result, section 8 of ECPA excepts four classes of projects from one or more of the new requirements for PURPA benefits in order to alleviate potential hardship to developers that, relying on existing law, had expended substantial funds and effort in preparing license or exemption applications for projects located at a new dam or diversion with the expectation that these projects would receive PURPA benefits. Any applicant excepted from one or more of the new requirements for PURPA benefits also will be excepted from the moratorium. These exceptions are as follows:

(1) None of the three requirements applies if the project is located at a Government dam at which non-Federal hydroelectric development is permissible.

(2) None of the three requirements applies if the application was filed and accepted for filing by the Commission before October 16, 1986.

(3) Only the protected rivers requirement applies if the application was filed before October 16, 1986, and accepted for filing by the Commission between October 16, 1986 and October 16, 1989.

(4) The fish and wildlife agency conditions requirement will not apply to an applicant whose application was filed on or after October 16, 1986 if the Commission finds that, before October 16, 1986, the applicant committed substantial monetary resources to the development of the project and to the diligent and timely completion of all filing requirements of the Commission.

The first three exceptions are self-implementing, while the fourth is only available if the Commission 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 may, 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.[8] 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 292.203(a) (1986), all small power production facilities can qualify for PURPA benefits if they meet certain requirements.[9] ECPA 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.

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[6] 16 U.S.C. 823a(c) (1982). 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 exemption—

(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 appropriate to insure 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 3(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 include conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations received pursuant 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 could make 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 exemption 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), the Commission will rule on that second petition instead of dismissing it.

[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).

[9] These requirements are:

(1) The power production capacity of the facility, together with the capacity of any other facilities which use the same energy resource, are owned by the same person, and are located at the same site, may not exceed 80 megawatts. 18 CFR 292.204(a) (1986).

(2) The primary energy source of the facility must be biomass, waste, renewable resources, or any combination thereof, and 75 percent or more of the total energy input must be from these sources. 18 CFR 292.204(b) (1986).

(3) The facility must not 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 292.206(a) (1986).

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—but not 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,[10] 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(e). The total cost includes (but is not limited to) the cost of agency consultation, environmental studies, and engineering studies conducted pursuant to 18 CFR 4.38, 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 *[c]ompletion* of environmental consultations prior to enactment is not to be considered the benchmark for the interpretation of the term "substantial" (emphasis added).[11]

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

[10] *See* footnote 7, *supra.*

[11] H.R. Rep. No. 99-934, 99th Cong., 2nd Sess., at 32 (Sept. 30, 1986).

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.[12] 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, 1986, the petition must include an itemized statement of the total costs that were expended on the application for license or exemption, and a schedule of the costs that were expended or committed to be expended on the application before October 16, 1986. 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 submissions 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**, § 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, 1986, to determine whether the 50 percent threshold has been met.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act[13] 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.[14] 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.[15] 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 rule-making proceedings."[16]

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

[12] 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).

[13] 5 U.S.C. 601–612 (1982).

[14] 5 U.S.C. 604 (1982).

[15] 5 U.S.C. 553(b)(B) (1982).

[16] Senate Rep. No. 752, 79th Cong., 1st Sess., at 16 (1945).

refer to Docket No. RM87–8–000. An original and fourteen copies should be filed. All comments received prior to 4:30 p.m. EST on April 6, 1987, will be considered by the Commission in any future revisions to this rulemaking. Written submissions will be placed in the public file established in this docket and will be available for public inspection during regular business in the Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

VI. Paperwork Reduction Act

The information collection provisions in this interim rule have been submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[17] and OMB's regulations.[18] If OMB has not approved this interim rule by its effective date, that effective date will be suspended pending approval. Interested persons may obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357–8272). Comments on the information collection provisions should be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

Effective Date

The amendments of this interim rule will be effective March 23, 1987.

List of Subjects

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission amends Parts 292 and 375, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 292—[AMENDED]

1. The authority citation for Part 292 is revised to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), as amended, unless otherwise noted.

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(e) 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 8(d) of ECPA.

3. New §§ 292.208 and 292.209 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; or

(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)(iv) 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(e) 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 of this chapter before October 16, 1986.

(b) "Commitment of substantial monetary resources" means the

[17] 44 U.SC. 3501–3520 (1982).

[18] 5 CFR 1320.12 (1986).

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 or April 16, 1988, 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 § 385.2010(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:

Authority: Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7532, Exec. Order No. 12,009, 3 CFR 1977 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553; Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.;* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

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.

[FR Doc. 87–3490 Filed 2–19–87; 8:45 am]
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.

SUMMARY: The Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) amended the Urgent Supplemental Appropriations Act of 1986 (Pub. L. 99–349) by striking out the undesignated paragraph relating to the prepayment of loans by Rural Electrification and Telephone Systems (FFB Prepayment Provision). Public Law 99–509, Title I, section 1011. The FFB Prepayment Provision allowed prepayment of certain loans made by the Federal Financing Bank (FFB) and guaranteed by the Rural Electrification Administration. Public Law 99–349, Title I, Chapter I; 7 U.S.C. 936 note. To implement the FFB Prepayment Provision, the Department of the Treasury promulgated interim regulations governing the prepayments. By revoking the ability for prepayment of those loans, Pub. L. 99–509 effectively repealed those interim regulations. Accordingly, this document revokes the "Interim Regulations Governing Prepayment of Loans Made by the Federal Financing Bank and Guaranteed by the Rural Electrification Administration" published in the **Federal Register,** Vol. 51, No. 155, August 12, 1986, and removes those regulations from the Code of Federal Regulations since they no longer apply.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: John Bowman, Acting Deputy Assistant General Counsel, Office of the General Counsel, Room 2026, 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)(B). Similarly, for good cause it is found that a delayed effective

date is unnecessary pursuant to 5 U.S.C. 553 (d)(3).

PART 16—[REMOVED]

Subtitle A of Title 31, Code of Federal Regulations, is amended by removing Part 16.

Authority: Title I, Section 1011 of Pub. L. 99–509.

Dated: February 9, 1987.

Charles O. Sethness,

Assistant Secretary of the Treasury (Domestic Finance).

[FR Doc. 87–3539 Filed 2–19–87; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

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

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that Large Harbor Tugs YTB–752 and YTB–758 are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval vessels. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 6, 1987.

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

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that Large Harbor Tugs YTB–752 and YTB–758 are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(b), pertaining to the placement of the sidelights; Rule 21(c), pertaining to the location of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; and Annex I, section 2(a)(i), pertaining to the height above the hull of the masthead light, without interfering with their special functions as naval vessels. YTB–752 and YTB–758 are tugs of special construction and functions. They perform towing services for naval vessels. The masts of these tugs are hinged and are lowered when towing alongside or pushing ships having radically flared bows or sponsoned sides and sterns. When the mast is in the lowered position, the masthead lights, and task lights mounted on this mast, cannot be displayed. During such operation, only the pilot house top-mounted auxiliary masthead light, sidelights, and sternlight will be exhibited. The Secretary of the Navy has further certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

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

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

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

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

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

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship sides in meters; sec. 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; sec. 2(k) Annex I	Anchor lights relationship of aft light to forward light in meters; sec. 2(k), Annex I
YTB–752	YTB–752				2.69	13.71		
YTB–758	YTB–758				2.66	15.97		

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:

* * * * *

23. 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.

Vessel No.	Distance in meters of aux. masthead light below minimum required height. Annex I, sec. 2(a)(i)
YTB–752	3.97
YTB–758	3.97

Dated: February 6, 1987.

Approved: February 6, 1987.

John Lehman,

Secretary of the Navy.

[FR Doc. 87–3519 Filed 2–19–87; 8:45 am]

BILLING CODE 3810–AE–M

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.

EFFECTIVE DATE: March 21, 1987.

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:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 407, 408, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise 123.4 to read as follows:

123.4 Nonmailable Written, Printed or Graphic Matter Generally

.41 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 has been approved by the Postal Service or by the Postmaster General or that it conforms to any postal law or regulation is nonmailable.

Example

SOLITATIONS INCORPORATED
RETAIL STORES
CAR-RT-SORT
** CR 43

RETAIL STORE
1515 MAIN STREET
ANYWHERE, USA

___ CHECK ENCLOSED
___ BILL ME LATER

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.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-3513 Filed 2-19-87; 8:45 am]

BILLING CODE 7710-12-M

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 to clarify two provisions that were confusing and susceptible of misinterpretation.

EFFECTIVE DATE: February 20, 1987.

ADDRESS: Inquiries or suggestions should be sent to: Director (150), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David S. Johnson, (202) 343-2054.

SUPPLEMENTARY INFORMATION: This document corrects 2 provisions of the final rulemaking on Advisory Committees in Part 1780 published in the **Federal Register** on October 29, 1986 (51 FR 39528). These corrections clarify the final rulemaking to reflect the intention of the Department of the Interior in that final rulemaking.

1. Section 1784.3(b)(4), page 39530, first column, is corrected by removing the unnecessary phrase, "if 3 years had elapsed since the completion of that person's last 3-year term before being appointed to the vacancy," which, in the context of paragraph (b)(4), could be misinterpreted to imply that, under some unstated circumstances, a person could be appointed to a council to fill a vacancy sooner than 3 years after completion of 2 consecutive 3-year terms. The phrase is rendered unnecessary by the prohibition in paragraph (b)(5) that a person cannot be subsequently appointed sooner than 3 years after the completion of 2 consecutive 3-year terms.

2. Section 1784.3(b)(5), page 39530, first column, is corrected to avoid the possible misinterpretation that it applies only to immediate reappointments to extend or continue a term on a council, and not to subsequent appointments. The phrase "may be reappointed" and the word "reappoint" are removed, and the phrase "may be subsequently appointed" and the word "appoint" are inserted in their places.

Dated: February 13, 1987.

James E. Cason,

Acting Assistant Secretary of the Interior.

The following corrections are made in the final rulemaking on 43 CFR 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.

[FR Doc. 87-3575 Filed 2-19-87; 8:45 am]

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 1508).

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 § 10.8(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:

Authority: 42 U.S.C. 4321 *et seq.* E.O. 11514 as amended by E.O. 11991; Reorganization Plan No. 3 of 1978, E.O. 12127, E.O. 12148.

§ 10.8 [Amended]

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

* * * * *

(c) * * *

(2) * * *

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

* * * * *

Dated: February 11, 1987.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

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

BILLING CODE 6718-02-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 (Pub. L. Number 99-272). The decisions made in the Report and Order include: (1) Adoption of the fees exactly as mandated by Congress; (2) retention of fees by the government regardless of the Commission's disposition of an application or filing; (3) new locations for the filing of fees and applications; (4) a policy whereby fees will be due in full upon submission of an application or filing to the Commission; (5) payment of fees by check, bank draft, or money order; (6) penalties for late or failed payments; (7) a procedure for modifying the fees based upon changes in the Consumer Price Index; (8) fee exemptions for certain radio services or users; (9) a procedure for waivers or deferrals of fees; and (10) an analysis of each fee including its calculation and connection to current processing rules.

EFFECTIVE DATE: April 1, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Brent Weingardt, Office of the Managing Director, (202) 632-3906, or Marilyn McDermett, (202) 632-5316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in General Docket 86-285, FCC 86-562, Adopted December 23, 1986 and Released February 17, 1987.

The full text of this Commission decision 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) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Report and Order amends the Commission's rules in order to implement those provisions of 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. 158). 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 principles: (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 also 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, delay's 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(c)(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 bureaus 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 accounts receivable 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 drawee'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(b)(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 1952 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 nocommercial educational basis on unreserved channels. 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 education 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.

Chargeable Radio Services and Authorizations

23. The Commission makes several decisions interpreting the new Schedule of Charges and its accompanying legislative history as they relate to the radio services and authorization functions subject to fees. These interpretations are incorporated into the rules.

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 5002(e) of Pub. L. Number 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985, and in sections 4(i), 4(j), 8(f) and 303(r) of the Communications Act of 1934, as

amended, 47 U.S.C. 154(i), 154(j), 158(f) and 303(r), Parts 0, 1, 2, 21, 22, 23, 25, 62, 73, and 74 if 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, 1082 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 existing paragraph (i) as paragraph (h); and by removing existing paragraph (h) 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.

* * * * *

§ 0.284 [Amended]

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).

§ 0.332 [Amended]

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

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. Subpart E contains general rules and procedures applicable to common carriers. Additional procedures applicable to certain common carriers by radio are set forth in Part 21. Subpart F contains rules applicable to applications for licenses in the Private Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Subpart G contains rules pertaining to the application processing fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. Number 99-272). Subpart H, concerning ex parte presentations, sets forth standards governing communications with Commission personnel in hearing proceedings and contested application proceedings. Subparts G and H will be of interest to all applicants, and Subpart H will, in addition, be of interest to all persons involved in hearing proceedings.

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, 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, or delivered to the Forfeiture Unit, Financial Services Branch, Room 452, 1919 M St., NW., Washington, DC 20554.

* * * * *

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 on or after the date fee collection is implemented by the Commission. *See* Subpart G, Part 1 for amount due. The hearing fee is required of each applicant designated for hearing in a case involving the comparative review of applicants for a new commercial television, radio, or Direct Satellite Broadcasting (DBS) construction permit, a maior/minor change construction permit for a previously authorized commercial television, radio, or DBS facility, or a comparative renewal license proceeding for these facilities. The fee must accompany each written appearance at the time of its filing and must be in a form of payment prescribed by § 1.1108 of the Commission's rules.

(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 should 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 effectuated, the hearing fee 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, DC. 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) which 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 each 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 63 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. These 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 that 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 1.1116 is revised in its entirety to read as follows:

Subpart G—Schedule of Statutory Charges and Procedures for Payment

Sec.

Subpart G—Schedule of Statutory Charges and Procedures for Payment

Authority: Sec. 5002 (e) and (f), Pub. L. No. 99–272, 100 Stat. 82, 118–121, 47 U.S.C. 158.

§ 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:[1]	
New Authorizations	[2] $60
Modifications and Assignments	[3] $60
Renewals	[4] $60
Operational Fixed Microwave Stations:	
New Authorizations	[5] $135
Modifications and Assignments	[6] $135
Renewals	[7] $135
Aviation (Ground Stations)[8]	
New Authorizations	[9] $60
Modifications and Assignments	[10] $60
Renewals	[11] $60
Land Mobile Radio Licenses:[12]	
New Authorizations	[13] $30
Modifications and Assignments	[14] $30

Renewals	[15] $30

[1] Includes applications for public coast stations, limited (private) coast stations, marine-utility stations, maritime radio location stations, maritime radionavigation stations, mariner-ecerver test stations, shore radiolocation test stations, shore radar test stations, shore radiolocation training stations, operational fixed stations, Alaska-public fixed stations and Alaska-private fixed stations.

[2] An additional fee of $60 is required for each station requested. No fee is required for special temporary authority or duplicate licenses.

[3] An additional fee of $60 is required for each station requested. No fee is required to inform the FCC of changes in licensee name or address, vessel name, or that station is no longer in service when done through FCC Form 405 or letter. A fee of $60 per call sign also applies for applications for assignments of licenses.

[4] An additional fee of $60 is required for each station requested. Concurrent modifications and renewals on FCC Form 503 require fee of $60 per station.

[5] An additional fee of $135 is required for each station requested. No fee is required for special temporary authority or duplicate licenses.

[6] An additional fee of $135 is required for each station modified. No fee is required when the FCC is informed of a change of licensee name or address, or that the station is no longer in service, when done by FCC Form 405–A or letter. A fee of $60 per call sign applies to requests for assignment of a station.

[7] An additional fee of $135 is required for each station renewed. Concurrent modifications and renewals on FCC Form 402 require a fee of $135 per station.

[8] Fee applies to all radio stations licensed under Part 87 of our rules except Civil Air Patrol stations. An additional fee of $60 is required for each station requested.

[9] No fee is required for special temporary authority or duplicate licenses.

[10] No fee is required when the FCC is informed of a change in licensee name or address, or that a station is no longer in service, when done by FCC Form 405–A or letter. Requests for assignment of a station are treated as modifications and require a fee of $60 per call sign.

[11] Requests for a concurrent modification and renewal made on FCC Form 406 require a fee of $60.

[12] Land mobile radio includes all radio services regulated under Part 90 of our rules as well as the general mobile radio services (GMRS) regulated under Part 95 of the rules.

[13] Each request consisting of not more than six (6) specific fixed stations will require a fee of $30. An additional fee of $30 is required for each increment of six fixed stations. Example: Thirteen (13) fixed stations requires a fee of $90. No fee is required for special temporary authority or duplicate licenses.

[14] An additional fee of $30 is required for each increment of six (6) fixed stations. No fee is required to inform the FCC of a change in licensee name or address, a change in the number or locations of station control points, a change in the number or location of control stations meeting the requirements of § 90.119(a)(2)(iii), a change in the number of mobile units operated by radiolocation service licensees, or that the station is no longer in service when done by FCC Form 405–A or letter. Requests to assign a station are considered modifications and require a fee of $30 for each increment of six (6) fixed stations.

[15] An additional fee is required for each station license renewed. Concurrent modifications and renewals made on FCC Form 574 require a fee of $30 per station license.

§ 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:[16]	
Receivers (Except TV & FM Receivers)	$250
All Other Devices	$650
Type Acceptance:	
Approval of Subscription TV Systems	[17] $2,000
All Other	[18] $325
Type Approval:	
All Devices (With Testing)	[19] $1,300
All Devices (Without Testing)	[20] $150
Notifications	$100

[16] Certification fees are also required under the abbreviated procedures for private label equipment and non-permissive changes.

[17] Modifications that require a new application for advance approval will require an additional fee of $2000.

[18] Fee applies for non-permissive changes. Ship radio radiotelegraph automatic alarm systems and ship and lifeboat radiotelegraph transmitters are subject to $325 type acceptance fee.

[19] Fee also applies to major modifications that require testing.

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

§ 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[21]	
New and Major Change Constructions Permits Application Fees	[22] $2,250
Minor Changes Application Fee	$500
Hearing Charge	[23] $6,000
License Fee	[24] $150
Station Assignment and Transfer Fees:[25]	
Application Fee (Forms 314/315	$500
Application Fee (Form 316)	$70
Renewals	[26] $30
Commerical Radio Stations[27]	
New and Major Change Construction Permits[28]	
Application Fee AM Station	$2,000
Application Fee FM Station	$1,800
Minor Changes Application Fee[29]	
AM	$500
FM	$500
Hearing Charge	[30] $6,000
License Fee:	
AM	[31] $325
FM	[32] $100
Station Assignment and Transfer Fees:	
Application Fee (Forms 314/315)	$500
Application Fee (Form 316)	$70
Renewals	$30
Directional Antenna License Fee (AM only)	[33] $375
FM Translators:	
New & Major Change Construction Permits Application Fee	$375
License Fee	$75
Station Assignment and Transfer Fee	[34] $75
Renewals	[35] $30
TV Translators and LPTV Stations:	
New & Major change Construction Permits Application Fee	[36] $375
License Fee	[37] $75
Station Assignment and Transfer Fee	[38] $75
Renewals	$30
Auxiliary Services Major Actions[39]	
Application Fee	[40] $75
Renewals	[41] $30
Cable Television Service:	
Cable Television Relay Service:	
Construction Permits	[42] $135
Assignments & Transfers	[43] $135
Renewals	[44] $135
Modifications	$135
Cable Special Relief Petitions—Filing Fee	[45] $700
Direct Broadcast Satellite New & Major Change Construction Permits:	
Application for Authorization to Construct a Direct Broadcast Satellite	[46] $1,800
Issuance of Construction Permits & Launch Authority	$17,500
License to Operate Satellite	$500
Hearing Charge	[47] $6,000

[21] These fees apply to television stations other than those classified by the FCC as noncommercial educational stations.

[22] Fee is required for each application for a construction permit or a major change to an authorized facility.

[23] Fee required for each application designated for hearing in a new and major/minor change construction permit comparative proceeding and for applications designated in a comparative renewal license proceeding. Fee is due in accordance with procedures set out at § 1.221 of the rules.

[24] No fee is required to request a modified station license to reflect changes that do not require prior authorization from the FCC.

[25] An additional fee is required for each station license requested for assignment or transfer on FCC Forms 314, 315, or 316.

[26] An additional fee is required for each license submitted for renewal.

[27] Fees do not apply to stations that operate as noncommerical educational stations. *See* § 1.1112 of the rules.

[28] A separate fee is required for each application submitted.

[29] An additional fee is required for each application for a construction permit to make minor changes in a previously authorized facility. No fee is required for requests for special temporary authority, requests for extension of time and/or replacement of construction permits, requests for remote control operation, or modifications that may be made without prior authorization from the Commission.

[30] 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 license renewal proceedings. Fee must accompany the Notice of Appearance filed under § 1.221 of the rules.

[31] 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.

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

[33] Fee is required for each application for a directional antenna license. This fee is in addition to the $325 fee for an AM station license.

[34] 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 stations that may be simultaneously assigned or transferred.

[35] An additional fee of $30 is required for each application requesting a station renewal.

[36] An additional fee is required for each application.

[37] No fee is required to obtain a modified station license to reflect either a change in the type of TV transmitter antenna or a change in the output power of TV aural or visual transmitters to accommodate a change in the antenna type or transmission line.

[38] An additonal fee of $75 is required for each license or construction permit requested to be assigned or transferred.

[39] Auxiliary services include Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary stations.

[40] The fee will be required for applications for changes in frequency, antenna system, power, and number of mobiles; relocation of stations; addition of a base station; and replacement of equipment.

[41] Renewal charge not required for each auxiliary license held by a broadcast licensee.

[42] An additional fee of $135 is required for each application for a CARS station. This request also includes the resulting license to cover the construction permit.

[43] An additional fee of $135 is required for each license requested to be assigned or transferred.

[44] Each application for license renewal requires a fee of $135.

[45] This fee applies to those petitioning under § 70.7 of the rules seeking an exemption from the rules or the imposition of special requirements beyond those provided in the rules.

[46] This fee also applies to requests to make a major change in the authorization to construct. A major change is considered any modification involving a significant, additional use of the orbit/spectrum resource.

[47] This hearing fee is required for each application designated for hearing in a new or major/minor change comparative construction permit proceeding as well as comparative license renewal proceedings.

§1.1105 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 [48]	
Domestic Public Land Mobile Stations (Base Dispatch, Control & Repeater Stations):	
New or Additional Facility Authorizations (Per transmitter)	[49] $200
Assignments & Transfers (Per call sign)	[50] $200
Renewals (per station)	[51] $20
Minor Modifications (Per station)	[52] $20

[48] The applicable fee will also be required for requests for developmental authorizations that involve service to the public and are not purely for testing purposes.
[49] An additional fee of $200 is required for each transmitter requested in the construction permit application.
[50] An additional fee of $200 is required for each call sign requested for assignment or transfer.
[51] An additional fee of $20 is required for each station requested for renewal.
[52] An additional fee of $20 is required for each station requested for minor modification.

Air-Ground individual License: [53]	
Initial License	$20
Renewal of License	$20
Modification of License	$20
Cellular Systems:	
Initial Construction Permits & Major Modification Applications (Per cellular system)	$200
Assignments & Transfers (Per call sign)	[54] $200
Initial covering license (Per cellular system)	
Wireline carrier	$525
Nonwireline carrier	$50
Renewals	[55] $20
Minor modifications	[56] $50
Additional licenses	[57] $50
Rural Radio (Central Office, Interoffice or Relay Facilities);	
Initial Construction Permit (Per transmitter)	$90
Assignments & Transfers (Per call sign	$90
Renewals (Per station)	$20
Modifications (Per station)	$20
Offshore Radio Service: [58]	
Initial Construction Permit (Per transmitter)	$90
Assigments & Transfers (Per transmitter)	$90
Renewals (Per station)	$20
Modifications (Per station)	$20
Local Television or Point to Point Microwave Radio Service:	
Construction Permits	[59] $135
Modifications of Construction Permits	[60] $135
Initial License for New Frequency (per station)	[61] $135
Renewals of Licenses (per station)	$135
Assignments & Transfers of Control (per station)	$45
International Fixed Public Radio (Public & Control Stations):	
Initial Construction Permits	[62] $450
Assignments & Transfers	[63] $450
Renewals	[64] $325
Modifications	[65] $325
Satellite Services:	
Transmit Earth Stations:	
Initial Station Authorization (per earth station)	[66] $1,350

[53] These requests require an additional fee of $20 per station.
[54] Each request for the assignment of a construction permit or license or request to transfer control of a corporation a construction permit or license will require an additional fee of $200 per call sign.
[55] An additional fee of $20 is required for each cellular system requested for renewal.
[56] Fee is required per each cellular system.
[57] An additional fee of $50 is required per each cellular system.
[58] 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.
[59] An additional fee of $135 is required for each application for a constuction permit or modification thereto. No fee is required for requests for special temporary authority or for waiver of construction permit requirements.
[60] No Fee is required for permissive changes that do not require a modified construction permit.
[61] This fee is required in addition to that for a construction permit although a license and construction permit may be requested simultaneously.
[62] An additional fee of $450 is required for each station requested.
[63] An additional fee of $450 is required for each application for assignment or transfer.
[64] An additional fee of $325 is required for each license renewed.
[65] An additional fee of $325 is required for each station modified.
[66] An additional fee of $1,350 is required for each application for an initial authorization to construct and/or operate a domestic or international transmitting earth station for 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)	[67] $90
Small Transmit/Receive Earth Stations (2 meters or less) [68]	
Lead Authorization (per application)	[69] $3,000
Routine Authorization (per earth station	[70] $30
All other Applications	[71] $90
Receive Only Earth Stations [72]	
Initial Station Authorization	$200
All other Applications	[73] $90
Space Stations:	
Applications for Authority to Construct a Space Station	[74] $1,800
Applications for Authority to Launch & Operate a Space Station	[75] $18,000
Satellite System Applications: [76]	
Initial Station Authorization (per system)	[77] $5,000
Assignments & Transfers of Systems	[78] $1,333
All Other Applications (per request)	$90
Multipoint Distribution Service:	
Construction Permits	[79] $135
Modifications of Construction Permits	[80] $135
Initial License (Per channel)	[81] $400
Renewals of Liceneses	[82] $135
Assignments & Transfers of Control (Per station)	$45
Section 214 Applications: [83]	
Applications for Overseas Cable Construction	$8,100
Applications for Domestic Cable Construction	$540
All Other 214 Applications	[84] $540

[67] These requests include applications for regular or temporary authorization, renewal or modification of station authorizations, or waivers.
[68] These earth stations operate in the ⅛ GHz frequency band.
[69] A lead authorization is the first earth station authorization in a network of user earth stations. The lead authorization establishes the terms and conditions under which routine authorizations may be granted.
[70] An additional fee of $30 is required for each earth station requested under the terms and conditions of the lead authorization. Each routine authorization must identify the lead authorization to which it is associated.
[71] An additional fee of $90 is required for each earth station. These requests include, but are not limited to, applications for regualar or temporary authorization, modification or renewal of station authorizations, requests for waivers, transfers and assignments, and requests for developmental authority.
[72] These requests involve the authorization or assignment of a frequency to a regular commerical receive-only earth station for which protection from interference is being requested.
[73] *See* note 71.
[74] This fee also applies to requests to construct an in-orbit or on-ground spare. Fee is required for domestic and international space stations.
[75] This fee is also required to request authority to launch and or operate an in-orbit spare. Only one fee of $18,000 will be required to request the launch of the in-orbit spare and later request to operate.
[76] These systems consists of technically identical small earth station antennas that operate in bands where frequency coordination is not required, such as the 12/14 GHz bands, and interconnect through a hub station. Fees apply to fixed-satellite systems, the radiodetermination satellite service and the mobile satellite service.
[77] Each hub station will require an additional fee of $5000.
[78] This fee is charged per satellite system.
[79] Each construction permit request requires an additional fee of $135. No fee is required for requests for special temporary authority or a waiver of the construction permit requirements.
[80] An additional fee of $135 is required for each application for modification to an existing construction permit. Permissive changes do not require a fee.
[81] Commission rules designate frequencies that correspond to each channel in the MDS service. Each time an applicant requests a license to operate on an MDS frequency, and additional fee of $400 is required.
[82] An additional fee of $135 is required for each station requested to be renewed.
[83] Each 214 request to install or acquire communications channels, regardless of the number of communications channels requested, will require only one multiple of the applicable fee.
[84] Requests for reduction or discontinuance of service, or 214 applications that are submitted purely for notification purposes, do not require a fee.

Tariff Filings: [85]	
Filing Fee	$250
Special Permission Filings	$200
Telephone Equipment Registration	$135
Digital Electronic Message Service:	
Construction Permits	$135
Modifications of Construction Permits	$135
Initial License (First License or License Adding a New Frequency)	[86] $135
Renewals of License	[87] $135
Assignments & Transfers of Control (Per station)	$45

[85] The $250 Filing fee is required for each Tariff Publication, which is accompanied by a Letter of Transmittal; the $200 Special Permission Fee is required for each Special Permission filing.
[86] An additional fee of $135 will be required for each new or additional frequency (channel) requested.
[87] Fee required for each station requested for renewal.

§ 1.1106 Attachment of charges.

The charges required to accompany a request for the Commission regulatory services listed in §§ 1.1102 through 1.1105 of this subpart will not be refundable to the applicant irrespective of the Commission's disposition of that request. Return or refund of charges will

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, bureau or office staff discover upon 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.

Note.—Receipts will not be furnished. Information on receipt of payments will be provided through cancelled checks, rejection letters issued by the fee processing staff, or return copies provided by the applicant with a stamped, self-addressed envelope.

§ 1.1109 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.

(1) 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 rescision 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 rescision 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;

(i) 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,

as appropriate, in the following circumstances:

(1) When no fee is required for the application or other 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) requesting Commission authorization in any other mass media radio 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 filing. 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, 1986.

(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 equalling 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 § 1.1107. They will not be permitted to resubmit their applications if initial filing deadlines have expired. The Commission will not be responsible for delays in acting upon these requests.

(d) Deferrals of fees will be granted for an established period of time not to exceed six months.

§ 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]

16. Appendix B of Part 1, Interpretations of Fee Rules, is 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: Sec. 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 PUBLIC FIXED RADIO 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:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154,303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

§ 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:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

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:

Authority: Secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744.

§ 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:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 212, 48 Stat. 1974, as amended; 47 U.S.C. 212.

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 and ½ inches wide and not more than 11 inches long, with a left-hand margin of approximately 1 and ½ 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 secs. 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 73.1010 is amended by revising paragraph (a)(5) to read as follows:

§ 73.1010 Cross references to rules in other parts.

(a) * * *

(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 decending 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 DISTRIBUTIONAL SERVICES

34. The authority citation for Part 74 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. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, 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.

(a) * * *

(4) Subpart G "Schedule of Statutory Charges and Procedures for Payment".

* * * * *

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 Abiquiu Reservoir on the Chama River, and in the Pecos River in New Mexico from the upper reaches of Avalon Reservoir north to 1 mile (mi.) (1.6 kilometers) (km.) above Santa Rosa. The Pecos River subspecies, *Notropis simus pecosensis,* is still extant in much of the Pecos River, but has severely declined in numbers. A 1982 study by the New Mexico Department of Game and Fish reported this fish in the Pecos River only from Fort Sumner to Artesia 175 mi. (282 km.). The largest collections were made from 22 mi. (35 km.) south of Fort Sumner to Roswell. Population estimates were not made, but the abundance of this species appeared to be substantially lower than in previous years. No specimens were found in the northern and southern regions of the 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 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Burton, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, New Mexico (505/766-3972 or FTS 474-3972).

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 1982, 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 simus,* 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 Isleta, 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 sing1e largest collection. This is in contrast to single collections of 1,482 specimens in 1939 and 818 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, siltation, 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 in the Pecos River is in fact a valid subspecies of *Notropis simus* (Chernoff *et al.* 1982), and that it is still extant in the Pecos River (New Mexico Department of Game and Fish 1982). Therefore, the RGFRT feels that sufficient information was available, and in November 1980 recommended listing of *Notropis simus pecosensis*.

A 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 *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 notified 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.

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

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 also 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 for the bluntnose shiner. 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 NMGF 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 reponse to BR. *C. Notropis simus pecosensis* is not presently known to occur in Major Johnson Springs. *R.* See reponse 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 NMGF 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 NMGF 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 NMGF 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 NMGF is concerned about the possibility of inadvertent taking of *Notropis simus pecosensis* by bait seiners 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.* NMGF 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/or 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 Pumpers Association (PRPA), the BR, the NMGF, 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 a 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 reponse 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 rule. *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. NMSIC 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 ephemeral 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 diversion 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 irrigational 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 1,500 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 McMillian 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 cms.) 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, Group 2. Group 2 includes those species ". . . whose prospects of survival or recruitment in New Mexico are likely to be in jeopardy within the foreseeable future." This provides the protection of the New Mexico Wildlife Conservation Act (Section 17–2–37 through 17–2–46 NMSA 1978), and prohibits taking of any State listed species except under the issuance of a scientific collecting permit. The State also has a limited ability to protect the habitat of this species through the Habitat Protection Act (Section 17–6–1 through 17–6–11), through water pollution legislation, and tangentially through a provision which makes it illegal to dewater areas used by game fish (Section 17–4–14). U.S. COE and BR regulations protect species that are listed as threatened or endangered under the Act on lands and waters administered by them and in their planning and construction activities. The Endangered Species Act offers needed protection for this species and its habitat through section 7 (interagency cooperation) and section 9 (prohibited acts) requirements.

There are presently no provisions in New Mexico's water law for the acquisition and protection of instream water rights for the preservation of fish and wildlife and their habitat. This deficiency has been a major factor in the decline of many native fishes, and has made it difficult to protect such species as *Notropis simus pecosensis* against the habitat losses caused by water diversions and impoundments.

E. *Other natural or manmade factors affecting its continued existence.* The reduced numbers of populations and individuals make this species more susceptible to extinction due to fluctuations in the populations caused by continued habitat modification.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list *Notropis simus pecosensis* as threatened. Threatened status seems appropriate because of the severely reduced range of the species, and because of the continually increasing threats to the species' habitat. Not to propose this species could reasonably be expected to cause it to become endangered within the foreseeable future. *Notropis simus pecosensis* is known to be extant over a fairly large area, although with severely reduced numbers. In addition, there are no major imminent threats to its existence; therefore, the species does not appear to be in danger of extinction. 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 irrigational uses. Irrigational uses greatly affect the volume of the river, with the heaviest demand 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, agriculture areas, and fish toxicants.

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. (1.25 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 Hagerman 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; NMDGF'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 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, 17.23, 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 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 administered 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.—126.5 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.

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This rule was prepared by S.E. Stefferud, 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).

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:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

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		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Shiner, Pecos bluntnose	*Notropis simus pecosensis*	U.S.A. (NM).	Entire	T	258	17.95(e)	17.44(r)

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.

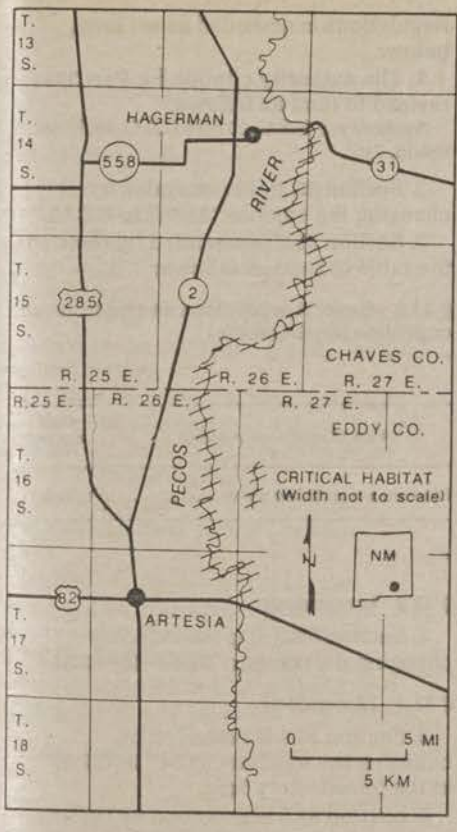
(e) * * *

* * * * *

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; T17S; 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.

[FR Doc. 87-3507 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 33

Refuge-Specific Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is amending certain regulations in 50 CFR Part 33 that pertain to fishing on individual national wildlife refuges (NWR). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, State and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications will ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established and, to the extent practicable, make refuge fishing programs consistent with State regulations.

EFFECTIVE DATE: March 23, 1987.

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: 50 CFR Part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the fishery resource and (3) protect other refuge values. On many refuges, the Service policy of adopting State fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement State regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific fishing regulations are issued only after the final publication of the opening of a wildlife refuge to fishing. These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service previously issued refuge-specific fishing regulations in 50 CFR Part 33.

This final rule is amending and supplementing certain refuge-specific regulations in 50 CFR Part 33, §§ 33.5 through 33.55, which pertain to fishing on individual refuges in their respective alphabetically listed States.

This rulemaking is also updating § 33.2, Office of Management and Budget information collection approval numbers which have become obsolete.

The policy 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. 668dd), 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:

Type of information collection	OMB approval No.
Economic and public use permits	1018-0014

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 1692, 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:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.

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:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3542.

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:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i.

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

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

§ 33.2 General regulations and information collection requirements.

* * * * *

Type of information collection	OMB approval No.
Economic and public use permit	1018-0014

* * * * *

§ 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)(2); and adding (h) (4) and (5) to read as follows:

§ 33.13 Florida.

* * * * *

(f) *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.

* * * * *

(h) *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 (b) through (i); 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.

* * * * *

(b) *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, Manngers, 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 or 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.

* * * * *

(e) *Lacassine National Wildlife Refuge.* * * *

(2) Fishing is permitted from one hour before sunrise until one hour after sunset during the period of March 1 through October 15.

* * * * *

(f) *Sabine National Wildlife Refuge.* * * *

(1) Fishing, crabbing, crayfishing and shrimping are permitted from one hour before sunrise to one hour after sunset.

(2) Fishing, crabbing, crayfishing and shrimping are permitted from the State Highway 27 Canal Road and Weir sites year-round.

(3) Fishing, crabbing, crayfishing and shrimping are permitted year-round on the East Cove Unit except during the State duck hunting season.

(4) All other refuge waters are open to fishing, crabbing, crayfishing and shrimping from March 1 through October 15 only.

(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.

(6) Shrimp may be taken by cast nets only; crabs and crayfish may be taken by hand lines and/or ring nets of 30 inches in diameter or less.

(7) 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.

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

(9) 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.

* * * * *

14. Section 33.23 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 condition: 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 (e)(2) to read as follows:

§ 33.41 Oregon.

* * * * *

(e) *Malheur National Wildlife Refuge.* * * *

(2) Boats are not permitted, except nonmotorized boats and boats with electric motors are permitted on Krumbo Reservoir.

* * * * *

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 NcNary 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.

Dated: January 21, 1987.

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

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987

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 requiremens 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.

EFFECTIVE DATE: February 20, 1987.

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 29545), 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 that 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 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 (9840 kernelweight tons) in 1985 and crops of about 29,000 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 cities statement 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 also is 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 importers 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 packed filberts is below the stated tolerance level already. Thus, proponents failed to established 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 Insdustries (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 pay 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, §§ 982.101 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

Marketing agreements and orders, Filberts, Hazelnuts, Oregon, Washington.

7 CFR Part 982

Food grades and standards, Imports, Dates, Walnuts, Prunes, Raisins, Filberts.

Dated: February 17, 1987.

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

Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William E. Ketter, Chief Staff Veterinarian, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 826, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8565.

SUPPLEMENTARY INFORMATION: On December 24, 1986, the Animal and Plant Health Inspection Service published in the **Federal Register** (51 FR 46685–46687) a proposal which would amend the "Standards for Accredited Veterinarians" regulations (9 CFR Parts 160 and 161) by prohibiting an accredited veterinarian from performing official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest.

The proposed rule provided that written comments would be accepted for 60 days until February 23, 1987. We have received a request from a veterinary medical association that we extend the comment period for 30 days to provide interested persons with adequate time to prepare comments.

We believe it is in the public interest to extend the comment period. Accordingly, we are extending this comment period for 30 days, until March 25, 1987.

Done in Washington, DC, this 13th day of February, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–3609 Filed 2–19–87; 8:45 am]

BILLING CODE 3410–34–M

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), Petition Docket No. _____, 800 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) 267–3132.

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).

Issued in Washington, DC on February 13, 1987.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	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). Petitioner's Reason for Rule: Petitioner states that its members are heavily dependent upon the use of foreign aircraft because of the dearth of U.S.-manufactured aircraft in the size range from 19 seats to 100 seats. Petitioner states the appropriate method of alleviating this problem is to amend the rules to enable carriers operating foreign aircraft to have those aircraft and their components repaired and overhauled by the foreign original equipment manufacturer.
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 recordkeeping, inspections, and replacement.

PETITIONS FOR RULEMAKING: WITHDRAWN OR DENIED

Docket No.	Petitioner	Description and disposition of the rule requested
24897	Mr. Stephen B. Jordan.....	Description of Petition: To establish Flight Level intervals between FL290 and FL420 as follows: Westbound: FL300, FL330, 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 proposed rule is intended to reduce the time required for completing factfinding investigations and issuing determinations on petitions by reassigning the responsibility for certifying worker groups for adjustment assistance, and to make other changes that will facilitate administrative efficiency and flexibility.

DATE: Written comments on these proposed regulations must be received 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) 376–2646 (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 worker 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. 2271–2321, 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 subpenas, and to change the organizational location of certifying officers from the Bureau of International Labor Affairs to 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 subpenas.

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 recommending to 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 the representative base period for determining whether imports increased consistent with the Department's practice that has been upheld by the courts.

The present reference in the definition to the Kennedy Round trade concessions which began to take effect in 1968 is outdated. Further, in practice the Department has focused on relatively recent year-to-year changes in determining whether imports have increased consistent with the Act's provision which limits certification coverage to workers whose separation from employment occurred no earlier than one year prior to the date of the petition.

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 subpenas 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 § 90.14.

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

limit for issuing certifications. Section 223 of the Act provides that the Secretary shall make a determination on a petition within 60 days of the date of filing of a petition. The Department believes that this statutory limitation is not jurisdictional, but directory. This position has been upheld by the courts in *Usery* v. *Whitin Mach. Works, Inc.*, 554 F.2nd 498 (1st Cir. 1977) and *Katunich* v. *Donovan*, 594 F. Supp. 744 (Ct. Int'l Trade 1984); also, see *Brock* v. *Pierce County*,—U.S.—, 106 S.Ct 1834 (1986). Therefore, § 90.16(a) is revised to state the general rule that the certifying officer shall make a determination within 60 days of the date of filing of a petition. But if, for any reason, the certifying officer has not made a determination within 60 days of the date of filing of a petition, the certifying officer shall make such determination as soon thereafter as is reasonably possible.

13. Section 90.16(b), *Requirements for determinations*, is revised by deleting the words "After reviewing the material submitted under § 90.15, including any supplemental material which may be required in reaching a detemination" since § 90.15 is being deleted. New language on determination requirements is added.

14. Section 90.17(c) *Recommendation*, is deleted since it reflects internal operating procedures and its deletion will provide greater administrative efficiency and flexibility. The first sentence of paragraph (d) of § 90.17 is also amended by deleting the reference to the report recommending termination in order to make the provision consistent with the deletion of paragraph (c) of this section.

15. Since section 250 of the Trade Act of 1974, which provided for judicial review of a negative determination was repealed by section 612 of Pub. L. 96–417, "Custom Courts Act of 1980," and section 614(a) of such Act provides for judicial review in the United States Court of International Trade of determinations on a petition for certification by enacting section 284 of the Trade Act of 1974, as amended, 19 U.S.C. 2395, the last sentence of each of paragraphs (e), (h) and (i) of § 90.18 is revised to reflect these statutory changes.

16. Section 90.19, *Judicial review of determinations*, has been amended to reflect the statutory change regarding judicial review, as discussed above in paragraph 15.

17. Paragraph (a) of § 90.32 has been changed to reflect the deletions of §§ 90.15 and 90.17(c), as discussed above in paragraphs 11 and 14, respectively.

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. 2320; 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 248 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.

* * * * *

"Act" means the Trade Act of 1974, Pub. L. 93–618, 88 Stat. 1978, 2011–2030 (19 U.S.C. 2271–2321, 2395), as amended.

* * * * *

"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.

* * * * *

"Increased imports" means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition.

* * * * *

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. * * *

5. 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 marshall 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 Subpena power.

(a) The Director or Deputy Director may require, by subpena, 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 subpena 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 subpena.

* * * * *

(d) Subpenas 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 subpena.

§ 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 detemination 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. * * *

* * * * *

11. Paragraphs (a), (e), (h) and (i) of § 90.18 are revised to read as follows:

§ 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(c), 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.**

* * * * *

(e) *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 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 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

(d) of § 90.16. The summary shall constitute a Notice of Revised Certification of Eligibility when the determination under reconsideration was a certification of eligibility. The summary shall constitute a Notice of Revised Determination 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. The party seeking judicial review must file for review in the 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.

* * * * *

Signed at Washington, DC, on February 13, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87-3456 Filed 2-19-87; 8:45 am]

BILLING CODE 4510-30-M

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) 361-4019.

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 26 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 1086), 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(f)(2)(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:

Authority: (10 U.S.C 1079, 1086, 5 U.S.C. 301).

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)(xi) 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 benfits.* (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) * * *

(16) *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)(5) as (e)(5) and (e)(6), and adding new paragraph (e)(4) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(xi) *Birthing centers.* 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 obstetrics 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.

(3) *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.

(4) *Medical direction:* The center has a written memorandum of understanding (MOU) for routine consultation and emergency care with an obstetrician-gynecologist who is certified or is eligible for certification by the American Board of Obstetrics and Gynecology or the American Osteopathic Board of Obstetrics and Gynecology and with a pediatrician who is certified or eligible for certification by the American Board of Pediatrics or by the American Osteopathic Board of Pediatrics, each of whom have admitting privileges to at least one of the back-up acute-care hospitals with which the birthing center has a transfer agreement. The memorandum of understanding must be renewed annually. In lieu of either MOU, the center may employ a physician with the required qualifications.

(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)(xi)(B)(4) of this section for the exclusion of a woman with a high-risk pregnancy from center 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. The MOU must be renewed annually.

(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.

* * * * *

(e) * * *

(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.

* * * * *

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 12, 1987.

[FR Doc. 87-3426 Filed 2-19-87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3158-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking on a revison to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). The revision pertains to the incorporation of revised coke oven pushing and charging rules into the SIP. It also pertains to the recodification of some rules now in the SIP. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of section 110 and Part D of the Clean Air Act (Act).

DATE: Comments on this revision and on the proposed USEPA action must be received by March 23, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protecton Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6036.

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 (SO_2), carbon monoxide (CO), ozone, and nitrogen dioxide (NO_2). See 43 FR 8962 (March 3, 1978), 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 67182 (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 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 Rule 203(d)(5)(B)(iii) on January 16, 1986 (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 the 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 codification system. See the *Recodification* discussion below.

Recodification and Description and Analysis of Revisions

USEPA's detailed evaluation of this proposed SIP revision is contained in a March 17, 1986, technical support document and a December 5, 1986, 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 5 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.

RECODIFICATION TABLE

	Old number	Recodified number
general	203(d)(5)(B)(i)	212.443(a)
doors	203(d)(5)(B)(iv)(aa) & (bb).	212.443(d) (1) & (2)
lids	203(d)(5)(B)(v)	212.443(e)
offtake piping.	203(d)(5)(B)(vi)	212.443(f)
combustion stack.	203(d)(5)(B)(vii)	212.443(g)
quenching	203(d)(5)(B)(viii)	212.443(h)
work rules	203(d)(5)(B)(ix)	212.443(i)

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 212.443(a) provides that Subpart B of Part 212 (recodified general visual emission limitation) shall not apply to by-product coke plants. Rule 212.443(a) 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 271, 323 NE 2d 84).

Rules 203(d)(5)(B)(iv)(bb) 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)(iv)(aa), 203(d)(5)(B)(v), 203(d)(5)(B)(vi), and

[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. *EPA* (No. 80–C–003 N.D. Ill.).

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 can be incorporated into the SIP as conditionally approved rules.

Proposed Rulemaking Action

USEPA proposes to approve the incorporation of the Illinois Coke Oven Pushing and Charging Rules 35 IAC 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. 7401–7642.

Dated: December 31, 1986.

Valdas 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 68

[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.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry and Proposed Rulemaking* in CC Docket 84–494, Adopted December 23, 1986, and Released January 30, 1987.

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) 857–3800, 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 the 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, perhaps an 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 question 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 recommending that the Department of State establish mandatory procedures for the grant of Recognized Private Operating Agency status to foreign-owned enhanced service providers conditioned on the treatment of U.S. enhanced service providers in the corresponding foreign market.

13. Similarly, we seek initial comment on whether we can, and should, consider applying reciprocity criteria 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 reinstituting 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 3504(h) 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.

Ordering Clauses

20. Accordingly, it is ordered, pursuant to 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 218, 219, 220, 221, 222, 301, 302, 303, 308, 310, 314, and 403, and 5 U.S.C. 553, that Notice is given that an inquiry and rulemaking proceeding into the above-captioned matters is hereby instituted.

Proposed 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. 387 (Sub-No. 960)]

Railroad Transportation Contracts—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:

Authority: 49 U.S.C. 10321, 10505, 10708, 10713, 10762, and 11105; and 5 U.S.C. 553.

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]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987

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.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Finding.

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 this merchandise to the United States 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 the review are the same as the preliminary results, and we revoke the antidumping duty finding on kraft condenser paper from Finland.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Elena Gonzalez or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44323) the preliminary results of its administrative review and intent to revoke the antidumping finding on kraft condenser paper from Finland (44 FR 54696, 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 252.4000, 252.4200, and 256.3080 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 and 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. 1675(a)(1)(c)), and section 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a and 353.54).

Dated: February 12, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-3622 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[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. 1673d(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.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, Internal Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4087.

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 December 23, 1986 (52 FR 121, January 2, 1987). This notice stated that we would issued 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 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 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.

February 12, 1987.

[FR Doc. 87-3623 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-601]

Postponement of Final Antidumping Duty Determination; Urea From the Socialist Republic of Romania

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On January 20, 1987, we received a request from the respondents in the antidumping duty investigation of urea from the Socialist Republic of Romania (Romania) 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 Romania have been made at less than fair value until not later than May 18, 1987.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On August 12, 1986, we published a notice in the **Federal Register** that we were inititating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), and antidumping duty investigation to determine whether imports of urea from Romania 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 (52 124, 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.

February 12, 1987.

[FR Doc. 87-3624 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-601]

Postponement of Final Antidumping Duty Determination; Urea From the Union of Soviet Socialist Republics

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

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.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4087.

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 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.

February 12, 1987.

[FR Doc. 87-3625 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-423-603 and C-508-605]

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 pursuant to 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). In accordance with Article 5¶3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), the Department will terminate the suspension of liquidation in the countervailing duty investigations 120 days after the date of publication of the preliminary determinations in these cases. In addition, we are rescheduling the public hearings.

EFFECTIVE DATE: February 20, 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), 202/377-1174 (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 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 43761-43762, December 4, 1986). On January 29, 1987, we issued preliminary affirmative determinations in the countervailing duty investigations (52 FR 3681/3684, 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, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] 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 [19 U.S.C. 1671d(a)(1)]. Pursuant to this provision, we are granting an extension of the deadline date for the final determinations in the countervailing duty investigations of industrial phosphoric acid from Belgium and Israel to June 29, 1987, the current deadline for the final determinations in the antidumping investigations.

Article 5¶3 of the Agreement on Interpretation and Application of 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 5¶3 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 pre-hearing 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.

February 12, 1987.

[FR Doc. 87-3626 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 H6802, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 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. 166) and listed in 5 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 5 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 Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Alfreda Burton, (202) 377-3737.

Dated: February 11, 1987.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-3649 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DR-M

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 B-841, 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.

4. Summary review of responses to **Federal Register** notice of December 5, 1986, requesting comments on the annual review of the Commodity Control List.

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.

Dated: February 12, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-3556 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 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: 87-085. Applicant: LDS Hospital, 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.

Manufacturer: Finnigan MAT, West Germany. Intended Use: The instrument will be used for studies of the $^{13}C/^{12}C$, $^{18}2O/^{16}O$, and $^{34}S/^{32}S$ ratios of a large variety of earth materials in order to quantify geochemical processes. The instrument will also be used to teach students isotope ratio measurement techniques in the course G&M 597 Special Topics in Isotope Mass Spectrometry. Application Received by Commissioner of Customs: January 13, 1987.

Docket number: 87-087. Applicant: The Pennsylvania State University, Intercollege Research Programs, 201 Materials Research Laboratory, University Park, PA 16802. Instrument: Materials Preparation System for Top Seeded Flux Growth, Model MCGS3. Manufacturer: Crystalox Ltd., United Kingdom. Intended Use. The instrument is intended to be used to provide a unique state of the art top seeded flux growth facility for the growth of large, defect-free, crack-free, flux-free single crystals. Major emphasis will be placed on the growth of single crystals of wide band gap insulating transparent materials. The facility will be used in the following areas of research:

(1) Synthesis of acentric materials,

(2) Theoretical and experimental investigation in materials that exhibit martensitic transformation,

(3) Studies of cement, concrete, clays, and soils and

(4) Research in ferroelectric, dielectric and composite materials.

Application Received by Commissioner of Customs: January 27, 1987.

Docket Number: 87-088. Applicant: Pennsylvania State University, College of Earth and Mineral Science, 503 Walker Building, University Park, PA 16802. Instrument: Ultrasonic Anemometer-Thermometer, Model DAT-300 Manufacturer: Kaijo Denki Company Ltd., Japan. Intended Use: The instrument is intended to be used to study atmospheric turbulence over the ocean during experiments to establish the relationship between atmospheric fluxes and high frequency variance spectra of velocity and temperature. Application received by Commissioner of Customs: January 27, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-3627 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[P6J]

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. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant: National Zoological Park, Smithsonian Institution, Washington, DC 20008.

2. Type of Permit: Scientific Research.

3. Summary of Activity: Up to 60 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.

Dated: February 2, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-3610 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-22-M

[P146A]

Marine Mammals; Application for Permit; Drs. 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. 1531-1544), 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

and

Dr. Randall S. Wells, Institute of Marine Sciences, Long Marine Laboratory, University of California, 100 Shaffer Road, Santa Cruz, California 95060

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

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: February 12, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87–3611 Filed 2–19–87; 8:45 am]

BILLING CODE 3510–22–M

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.

For further information contact: Leroy Brown, Jr., Department of Energy, Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, DC 20585, Telephone: (202) 586–6077.

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.

State:	*Per million BTU's*
Alabama	$2.17
Arizona [1]	1.82
Arkansas [1]	2.01
California	1.75
Colorado [2]	1.87
Connecticut [1]	2.30
Delaware [1]	2.44
Florida	2.26
Georgia [1]	2.41
Idaho [2]	1.87
Illinois	1.43
Indiana [1]	1.91
Iowa [1]	2.02
Kansas [1]	2.02
Kentucky [1]	1.91
Louisiana [1]	2.01
Maine [1]	2.30
Maryland [1]	2.44
Massachusetts	2.19
Michigan [1]	1.91
Minnesota [1]	2.02
Mississippi	2.41
Missouri	1.88
Montana [2]	1.87
Nebraska [1]	2.02
Nevada [1]	1.82
New Hampshire	2.28
New Jersey [1]	2.44
New Mexico [1]	2.01
New York	2.43
North Carolina [1]	2.41
North Dakota [1]	2.02
Ohio	1.84
Oklahoma [1]	2.01
Oregon [1]	1.82
Pennsylvania	2.40
Rhode Island [1]	2.30
South Carolina [1]	2.41
South Dakota [1]	2.02
Tennessee	2.28
Texas	2.01
Utah [2]	1.87
Vermont [1]	2.30
Virginia	2.37
Washington [1]	1.82
West Virginia [1]	1.91
Wisconsin [1]	1.91
Wyoming [2]	1.87

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

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. 167, 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. RM81–28, 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.[3] 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. Reported 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 values 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 6.3 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	

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	

Issued in Washington, DC, February 18, 1987.

L.A. Pettis,

Deputy Administrator, Energy Information Administration.

[FR Doc. 87-3778 Filed 2-19-87; 8:45 am]

BILLING CODE 6450-01-M

[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Federal Energy Regulatory Commission

[Docket Nos. ER87-183-000 et al.]

Electric Rate and Corporate Regulation Filings; Boston Edison Co. et al.

February 12, 1987.

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, Masscahusetts, and Cambridge Electric Light Company. The Director of the Division of Electric Power Application Review, acting pursuant to a delegation of authority in § 375.308(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 Light 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 13 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, 1976, 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.
Washington Water Power Co.	Supplement No. 45.
Puget Sound Power & Light.	Supplement No. 26.
Portland General Electric Co.	Supplement No. 51.
Montana Power Co.....	Supplement No. 45.
Southern California Edison.	Supplement No. 40.
Pacific Gas & Electric.....	Supplement No. 20.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Co.

Docket No. ER85-596-004

Take notice that on February 6, 1987, New England Power Company (NEP) filed a Compliance Refund Report and supporting documentation that effectuates the terms of a Partial Settlement Agreement between NEP and the Massachusetts Municipal Wholesale Electric Company.

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]

Take notice that on January 29, 1987, North Carolina Municipal Power Agency (Power Agency) tendered for filing a complaint against Duke Power Company and motion for summary judgment concerning an alleged violation of the filed rate schedule.

Comment date: March 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Co.

[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 I-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 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corp.

[Docket No. ER87-246-000]

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 I-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 26, 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 6717-01-M

[Docket No. RP87-17-000]

East Tennessee Natural Gas Co.; Application To Withdraw Suspended Rate Change Filing

February 13, 1987.

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 certificated 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 facilties 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 214 and 211 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. 87-3650 Filed 2-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-15-006]

Trunkline Gas Co.; Compliance Filing

February 13, 1987.

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 214 and 211 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. 87-3651 Filed 2-19-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3158-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed February 9, 1987 Through February 13, 1987 Pursuant to 40 CFR 1506.9.

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) 622-8487

EIS No. 870053, Final, BLM, ID, Egin-Hamer Road Construction, Right-of-Way Application, Medicine Lodge Resource Area, 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: Paul Larson (314) 875-5214

EIS No. 870056, Final, FRC, AR, OK, Lee Creek Hydroelectric and Water Supply Project, Construction and Operation, License, Due: March 23, 1987, Contact: Dianne Rodman (202) 376-9045

EIS No. 870057, DSuppl, UMT, FHW, NC, US 74/Independence Boulevard Corridor Improvements, Mechlenburg County to Uptown Charlotte, Additional Altrnatives, Mecklenburg County, Due: April 6, 1987, Contact: John Caruolo (215) 597-4179

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) 233-4666

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/Glenn Highway Interchange, Anchorage, Due: April 15, 1987, Contact: Tom Neunaber (907) 586-7428.

Amended Notice

EIS No. 870024, Draft, BLM, ID, Pocatello Resource Area, Resource Management Plan, Published FR 1-30-87—Filing date reestablished.

Dated: February 17, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-3667 Filed 2-19-87; 8:45am]

BILLING CODE 6560-50-M

[ER-FRL-3158-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 2, 1987 through February 6, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-K65096-CA, Rating EC2, Mendocino Nat'l Forest, Land Resource Mgmt. Plan, CA. SUMMARY: EPA expressed concerns regarding the maintenance of the Forest's water quality and the protection of beneficial uses from multiple-use activities.

ERP No. D-COE-H36098-MO, Rating LO, Coldwater Creek Watershed Flood Damage Reduction and Related 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-E40698-NC, Rating EC2, Silas Creek Parkway Completion, Silas Creek Parkway to N. Point Blvd., 404 Permit, NC. SUMMARY: EPA requests that the final EIS provide 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-K99022-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. FS-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 proposed regulation revision.

Dated: February 17, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-3668 Filed 2-19-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00076; FRL 3159-8]

Biotechnology Science Advisory Committee; Subcommittee on Premanufacture Notification Review; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Premanufacture Notification Review. This subcommittee will advise EPA on three premanufacture notifications (PMNs) submitted to EPA by BioTechnica, International, Inc. (BTI), in compliance with the Toxic Substances Control Act (TSCA). These PMNs concern BTI's development of three genetically engineered strains of a microorganism. The PMNs also concern BTI's plans to conduct a small-scale field test to determine the ability of two strains to fix nitrogen to increase crop yields. The meeting will be closed in part to the public but will be open for most of its sessions.

DATES: The meeting will be held on Monday, March 23, 1987, from 8:30 a.m. to 6 p.m. It will be closed to the public from 10 a.m. to 11 a.m., and closed again from 4 p.m. to 4:30 p.m. It will be open to the public at all other times.

Requests to speak at the subcommittee meeting, and written comments for consideration by the subcommittee should be submitted by March 12, 1987.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written comments for consideration by the subcommittee and requests to speak at the subcommittee meeting should be identified with the docket control number "[OPTS-00076]" and should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

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 BSAC. 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-51663, and copies are 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 BSAC will meet to advise EPA in its review of three PMNs under the authority of section 5 of TSCA. EPA has decided that such expert assistance is necessary for these reviews because risk assessment of genetically modified microorganisms released to the environment is a new area in which the Agency is just beginning to develop its expertise. EPA plans to consult with experts outside the Agency during its review of certain Microorganisms until the Agency develops additional expertise and experience in this specialized area.

Members of the BSAC Subcommittee on Premanufacture Notification Review will advise EPA on the risks that may be associated with the microorganisms. They will assist in assessing data available on the potential hazards and likely exposures to the microorganisms, and will review any comments provided by the public in writing in advance of the meeting. Members of the Subcommittee will also assist in identifying additional information that may be necessary to determine whether the environmental release of the microorganisms may present an unreasonable risk to human health or the environment.

After the meeting of the BSAC Subcommittee, EPA may request additional information from BTI. EPA will develop a risk assessment, estimate the benefits associated with the new substances, and reach a regulatory decision. EPA will develop a risk assessment based on the advice of the BSAC Subcommittee, the information submitted in the PMNs, and other available information. It will estimate the benefits associated with the commercial use of the new microorganisms, and will use this estimate to evaluate whether any risk associated with the new microorganisms may be unreasonable. After considering these evaluations, the Agency has authority to allow manufacture and use, to prohibit release of the microorganisms, or to impose restrictions on their manufacture and use. EPA has 90 days to review the PMNs. The review period may be extended by agreement between BTI and EPA, or unilaterally by EPA under section 5(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 this 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 in more detail its approach to risk assessment for the microorganisms, but confidential business information 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 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 FACA 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 the **Federal Register** of June 26, 1986 (51 FR 23313). 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.

Dated: February 13, 1987.

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-3159-7]

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 87-563, 87-564, 87-565, 87-566, 87-567, 87-568, 87-569, 87-570, 87-571, and 87-572—May 6, 1987

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 87-585, 87-586, 87-587, 87-588, 87-589, 87-590, 87-591, 87-592, 87-593, 87-594, 87-595, 87-596, 87-597, 87-598, 87-599, 87-600, 87-601, 87-602, 87-603, 87-620, 87-621, 87-622, and 87-623—May 10, 1987

P 87-604, 87-605, 87-606, and 87-607—May 11, 1987

P 87-608, 87-609, 87-610, 87-611, 87-612, 87-613, 87-614, 87-615, 87-616, 87-617, 87-618, 87-619, 87-624, 87-625, 87-626, 87-627, 87-628, 87-629, 87-630, 87-631, 87-632, 87-633, 87-634, 87-635, 87-636, 87-637, 87-638, 87-639, 87-640, 87-641, and 87-642—May 12, 1987.

Written comments by:

P 87-563, 87-564, 87-565, 87-566, 87-567, 87-568, 87-569, 87-570, 87-571, and 87-572—April 6, 1987

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—April 9, 1987.

P 87-585, 87-586, 87-587, 87-588, 87-589, 87-590, 87-591, 87-592, 87-593, 87-594, 87-595, 87-596, 87-597, 87-598, 87-599, 87-600, 87-601, 87-602, 87-603, 87-620, 87-621, 87-622, and 87-623—April 10, 1987

P 87-604, 87-605, 87-606, and 87-607—May 11, 1987

P 87-608, 87-609, 87-610, 87-611, 87-612, 87-613, 87-614, 87-615, 87-616, 87-617, 87-618, 87-619, 87-624, 87-625, 87-626, 87-627, 87-628, 87-629, 87-630, 87-631, 87-632, 87-633, 87-634, 87-635, 87-636, 87-637, 87-638, 87-639, 87-640, 87-641, and 87-642—May 12, 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.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

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-G004 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 acetanilide.
Use/Production. (G) Captive intermediate used in manufacturing a minor component for paper coatings. Prod. range: Confidential.

P 87-564

Manufacturer. Confidential.
Chemical. (G) Substituted acetanilide.
Use/Production. (G) Captive intermediate for use in the manufacture of a minor component in paper coatings. Prod. range: Confidential.

P 87-565

Importer. Nuodex, Incorporated.
Chemical. (S) Copper(II) hydroxide phosphate.

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

Importer. Confidential.

Chemical. (S) Aluminum hydroxy (octadecanoato-o)(tetradecanoato-O).

Use/Import. (G) Gelling agent for hydrocarbons. Import range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Moderate.

P 87–567

Manufacturer. Confidential.

Chemical. (G) Urethane modified acid functional saturated aliphatic polyester.

Use/Production. (G) Industrially used coating having a dispersive use. Prod. range: 30,000 to 300,000 kg/yr.

P 87–568

Manufacturer. BioTechnica International, Inc.

Substance. (G) Genetically engineered strain of *Rhizobium meliloti,* containing a recombinant 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. Plasmid retention in *R. meliloti* strains in soil: greenhouse tests show that 32% of surviving bacteria of this strain contained the plasmid in test-site soil after 8 wks while 60% 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 field trail: 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. Disposal by Publicly Owned Treatment Works (POTW), and soil and possible groundwater release at field site.

P 87–569

Manufacturer. BioTechnica International, Inc.

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^{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 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-acres) 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

Manufacturer. BioTechnica International, Inc.

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^{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 filed 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 87–571

Manufacturer. Confidential.

Chemical. (G) Cycloalkenyl substituted alkenone.

Use/Production. (G) Soaps and detergents, functional products and fine fragrance additives. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg., Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer.

P 87–572

Manufacturer. IOVITE, Incorporated.

Chemical. (S) Polymer of linseed oil; rosin; mono pentaerythritol; isophthalic acid; and maleic acid.

Use/Production. (S) Site-limited will furnish the primary plasticizing and pigment wetting function in the printing ink varnishes IOVITE manufactures. Prod. range: 25,000 to 50,000 kg/yr.

P 87–573

Manufacturer. Reichhold Chemicals, Inc.

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

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (S) 2,4,6-trimethyl-2,4,6-tris(3,3,3-trifluoropropyl) cyclotrisiloxane hexamethyl cyclotrisiloxane, 2,4,6-triethenyl-2,4,6-trimethyl cyclotrisiloxane, ethenyldimethyl silanol.
Use/Import. (S) Industrial ingredient for silicone rubber compound. Import range: 1,000 to 3,000 kg/yr.

P 87–576

Manufacturer. Confidential.
Chemical. (G) Carbocyanine dye.
Use/Production. (G) Dye stuff 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 87–578

Manufacturer. Confidential.
Chemical. (G) Carbocyanine dye.
Use/Production. (G) Dye stuff for destructive use. Prod. range: Confidential.

P 87–579

Manufacturer. Confidential.
Chemical. (G) Alkylindolenium bromide.
Use/Production. (G) A dye stuff intermediate for destructive use. Prod. range: Confidential.

P 87–580

Manufacturer. Confidential.
Chemical. (G) Magnesium organoborate.
Use/Production. (G) Organoboron intermediate for destructive use. Prod. range: Confidential.

P 87–581

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) Dicarbocyanine borate dye.
Use/Production. (G) Polymerization promoter for non-dispersive use. Prod. range: Confidential.
Toxicity data. Acute oral: 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Minimal irritant; Ames test: Non-mutagenic.

P 87–583

Manufacturer. Confidential.
Chemical. (G) Carbocyanine borate dye.
Use/Production. (G) Polymerization initiator for open, non-dispersive use. Prod. range: Confidential.
Toxicity data. Acute oral: 1.4 g/kg; Irritation: Skin—Mild, Eye—Irritant; Ames test: Non-mutagenic; Skin Sensitization: Non-sensitizer.

P 87–584

Manufacturer. Confidential.
Chemical. (G) N,N-dialkylarylamine.
Use/Production. (G) Radical polymerization accelerator. Prod. range: Confidential.
Toxicity data. Acute oral: 5.0 g/kg; Irritation: Skin—Moderate, Eye—Minimal; Ames test: Non-mutagenic, Skin Sensitization: Non-sensitizer.

P 87–585

Manufacturer. Confidential.
Chemical. (G) Polyetherpolyol polymer with 1,3-diisocyanate methylbenzene, isocyanate terminated.
Use/Production. (S) Industrial component for manufacturing of high resiliency flexible polyurethane foam parts. Prod. range: Confidential.

P 87–586

Importer. Confidential.
Chemical. (G) Diarylaroylphosphine oxide.
Use/Import. (G) Polymerization catalyst for unsaturated polyester resin systems. Import range: Confidential.

P 87–587

Manufacturer. Alcolac Inc.
Chemical. (S) Poly(oxy-1,2-ethanediyl), alpha-(2-methyl-1-oxo-2-propenyl)-omega-(sulfooxy)-,ammonium salt.
Use/Production. (G) Polymer modifiers. Prod. range: Confidential.

P 87–588

Importer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Import. (G) Destructive use. Import range: Confidential.

P 87–589

Manufacturer. Confidential.
Chemical. (G) Acid functional saturated aliphatic polyester.
Use/Production. (G) Industrially used coating having a dispersive use. Prod. range: 30,000 to 300,000 kg/yr.

P 87–590

Manufacturer. Confidential.
Chemical. (G) Epoxy functional aliphatic alicyclic polyester urethane.
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 acrylic 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 benzotriazole.
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) Industrial manufacture of polyurethane elastomers. Prod. range: Confidential.

P 87–597

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Macrycyclic cobalt complex.
Use/Production. (G) Contained use. Prod. range: Confidential

P 87–598

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Macrocyclic cobalt compound.
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 hexanedoic acid, 2,2-dimethyl-1,3-propanediol, 1,3-benzenedicarboxylic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propane diol.
Use/Production. (S) Industrial polymer used to manufacture coatings for metal and plastic substrates. Prod. range: Confidential.

P 87–601

Manufacturer. Confidential.
Chemical. (S) Phthalic anhydride, propylene glycol, isooctyl alcohol.
Use/Production. (S) Industrial plasticizer. Prod. range: Confidential.

P 87–602

Importer. The Nippon Synthetic Chemical Industry Company, Ltd.
Chemical. (G) Copolymer of styrene, acrylate and methacrylate.
Use/Import. (S) Commercial toner for electrophotography. Import range: 30,000 to 100,000 kg/yr.

P 87–603

Importer. American Hoechst Corporation.
Chemical. (S) N-stearyl (N',N'' N'''-polyethoxy) ammonium lactate.
Use/Import. (S) Shampoo additive. Import range: 100,000 to 150,000 kg/yr.
Toxicity data. Acute oral: 5,000 mg/kg; Acute dermal: 0.5 ml; Irritation: Skin—Non-irritant, Eye—Severe; LC_{50}: 96 hr (Bracydaniorerio): 1 mg/l.

P 87–604

Manufacturer. Resinall Corporation.
Chemical. (G) Tall oil fractions unsaturated hydrocarbon resin, substituted alkylbenzene, paraform dieneophile-modified polymer with pentaerythritol.
Use/Production. (G) Resin binder for printing inks. Prod. range: 3,000,000 to 6,000,000 kg/yr.

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.
Chemical. (G) Amino hydroxy ester.
Use/Production. (G) Open, non-dispersive use. Prod range: Confidential.

P 87–607

Manufacturer. E. I. du Pont de Nemours and Company Inc.
Chemical. (G) Amino hydroxy ester.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–608

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids, alkane diol and dimeric fatty acids.
Use/Import. (G) Hot melt adhesive. Import range: 20,000 to 100,000 kg/yr.

P 87–609

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Branched saturated polyester resin containing hydroxyl groups.
Use/Import. (S) Metal decorating laquers and enamels. Import range: 180,000 to 450,000

P 87–610

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of an aryl ester, alkyl dicarboxylic acid and alkyl diol.
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

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids, alkane diols and ester.
Use/Import. (S) Industrial base for coil-coating paint for outdoor exposure. Import range: 135,000 to 450,000 kg/yr.

P 87–612

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin an aryl dicarboxylic acid and an alkane diol.
Use/Import. (S) Industrial metal coating. Import range: Confidential.

P 87–613

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Branched saturated polyester resin coating hydroxyl groups.
Use/Import. (S) Industrial metal primers and topcoats in the building and automobile industries. Import range: 180,000 to 450,000 kg/yr.

P 87–614

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids, alkane diols and dimeric fatty acids.
Use/Import. (S) Resin for industrial maintenance paints. Import range: Confidential.

P 87–615

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids and alkane diols.
Use/Import. (G) Resin for coil coating paint. Import range: 30,000 to 100,000 kg/yr.

P 87–616

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Linear saturated polyester resin containing hydroxyl groups.
Use/Import. (S) Protective/decorative coatings for appliances, office furniture and decorative coating for exterior of can, caps and closure. Import range: 180,000 to 450,000 kg/yr.

P 87–617

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Saturated polyester resin of an aryl ester, aryl dicarboxylic acid, alkyl dicarboxylic acid and alkyl diol.
Use/Import. (S) Industrial sealant for side seams of cans. Import range: 9,000 to 45,000 kg/yr.

P 87–618

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids plus alkane diols.
Use/Import. (S) Metal decorating and protecting laquers and enamels. Import range: 180,000 to 450,000 kg/yr.

P 87–619

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Linear saturated polyester resin containing hydroxyl groups.
Use/Production. (S) Industrial laminating adhesive mainly for the furniture and automobile industries. Prod. range: 180,000 to 450,000 kg/yr.

P 87–620

Manufacturer. Confidential.

Chemical. (G) Phosphoric acid, mono and di esters, compounds with morpholine.
Use/Production. (G) Petro chemical and refinery process additive. Prod. range: 44,500 to 213,500 kg/yr.

P 87-621

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, mono and di esters, compounds with fatty diamine.
Use/Production. (G) Petro chemical and refinery process additive. Prod. range: 1,700 to 8,200 kg/yr.

P 87-622

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, mono and esters, mixed salt with fatty diamines and morpholine.
Use/Production. (G) Petro chemical and refinery process additive. Prod. range: 29,000 to 139,000 kg/yr.

P 87-623

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, mono and di esters compounds with alkyl amines.
Use/Production. (G) Petro chemical and refinery process additive. Prod. range: 34,000 to 163,000 kg/yr.

P 87-624

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Molded parts. Prod. range: Confidential.

P 87-625

Manufacturer. Confidential.
Chemical. (G) Polyamide resin.
Use/Production. (G) Paint additive. Prod. range: Confidential.

P 87-626

Manufacturer. Confidential.
Chemical. (G) Polyamide resin.
Use/Production. (G) Paint additive. Prod. range: Confidential.

P 87-627

Manufacturer. Confidential.
Chemical. (G) Polyamine phosphonate, sodium salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 87-628

Manufacturer. Confidential.
Chemical. (G) Polyamine phosphonate, potassium salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 87-629

Manufacturer. Confidential.
Chemical. (G) Polyamine phosphonate, ammonium salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 87-630

Manufacturer. Confidential.
Chemical. (G) Phosphonomethylated polyamine.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87-631

Manufacturer. Confidential.
Chemical. (G) Dithiophosphate polyamine salt.
Use/Production. (S) Consumptive use. Prod. range: Confidential.

P 87-632

Manufacturer. Confidential.
Chemical. (G) Dithiophosphate heterocyclic amine salt.
Use/Production. (G) Consumptive use. Prod. range: Confidential.

P 87-633

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine based chelating agent.
Use/Production. (S) Site-limited and industrial gas conditioning solvent. Prod. range: Confidential.

P 87-634

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine based chelating agent.
Use/Production. (S) Site-limited intermediate and industrial gas conditioning solvent. Prod. range: Confidential.

P 87-635

Manufacturer. The Dow Chemical Company.
Chemical. (G) Metal salt of amminated chelating agent.
Use/Production. (S) Industrial gas conditioning solvent. Prod. range: Confidential.

P 87-636

Manufacturer. The Dow Chemical Company.
Chemical. (G) Metal salt of amminated chelating agent.
Use/Production. (S) Industrial gas conditioning solvent. Prod. range: Confidential.

P 87-637

Manufacturer. The Dow Chemical Company.
Chemical. (G) Metal salt of amminated chelating agent.
Use/Production. (S) Industrial gas conditioning solvent. Prod. range: Confidential.

P 87-638

Manufacturer. The Dow Chemical Company.
Chemical. (G) Metal salt of amminated chelating agent.
Use/Production. (S) Industrial gas conditioning solvent. Prod. range: Confidential.

P 87-639

Manufacturer. Nuodex Inc.
Chemical. (G) Metal alkonates.
Use/Production. (G) Coating additive. Prod. range: Confidential.

P 87-640

Importer. The Dow Chemical Company.
Chemical. (G) Epoxy acrylate.
Use/Import. (S) A binding agent for printing inks curable by means of ultraviolet radiation or electron beam energy; and clear or pigmented varnishes curable by means of ultraviolet radiation or electron beam energy. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant; Inhalation: Non-sensitizer.

P 87-641

Importer. The Dow Chemical Company.
Chemical. (G) Epoxy acrylate.
Use/Import. (S) A binding agent for printing inks curable by means of ultraviolet radiation or electron beam energy; and clear or pigmented varnishes curable by means of ultraviolet radiation or electron beam energy. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant; Inhalation: Non-sensitizer.

P 87-642

Importer. The Dow Chemical Company.
Chemical. (G) Epoxy acrylate.
Use/Import. (S) A binding agent for printing inks curable by means of ultraviolet radiation or electron beam energy; and clear or pigmented varnishes curable by means of ultraviolet radiation or electron beam energy. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant; Inhalation: Non-sensitizer.

Dated: February 17, 1987.

Linda Smith,

Acting Division Director, Information Management Division.

[FR Doc. 87-3702 Filed 2-19-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Universal Savings Association, F.A., Chickasha, OK

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Universal Savings Association, F.A., Chickasha, Oklahoma, on February 13, 1986.

Dated: February 17, 1987.

By the Federal Home Loan Bank Board

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-3628 Filed 2-19-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010807-002.

Title: Long Beach Terminal Agreement.

Parties:

City of Long Beach

Moller Steamship Company, Inc.

Synopsis: The proposed amendment would revise the means of handling an adjustment to compensation set forth in the original agreement between the parties.

Agreement No.: 224-011067.

Title: Long Beach Terminal Agreement.

Parties:

City of Long Beach (Port)

Long Beach Container Terminal, Inc. (LBC)

Synopsis: The proposed agreement would permit the Port to preferentially assign cranes for LBC's use at the Port's Pier A, Berths 6 through 10.

Dated: February 17, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-3642 Filed 2-19-87; 8:45 am]

BILLING CODE 6730-01-M

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 interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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.

2. *Trustcorp, Inc.*, Toledo, Ohio; to engaged *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.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Shawsville Bancorp, 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. 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) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Barnett Banks of Florida, Inc.*, Jacksonville, Florida; to engage *de novo* through its subsidiary, Verifications, Inc., Jacksonville, Florida, in operating a credit bureau pursuant to § 225.25(b)(24) of the Board's Regulation Y. Comments on this application must be received by March 9, 1987.

D. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

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)(iii) of the Board's Regulation Y. These activities will be conducted in the State of Michigan.

Comments on this application must be received by March 6, 1987.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Clearwater Home State Bancshares, Inc.*, Clearwater, Kansas; to engage *de novo* through its subsidiary Home Financial Corporation, Wichita, Kansas, in acting as agent or principal for credit related life, accident and health insurance (including home mortgage redemption insurance) pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; acting as agent for property insurance directly related to extensions of credit by finance company subsidiaries pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y; and providing securities brokerage and incidental services where brokerage services are limited to buying and selling on customer orders pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by March 6, 1987.

2. *Perry Bancshares, Inc.*, Perry, Oklahoma; to engage *de novo* in the activity of community development pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 13, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-3578 Filed 2-19-87; 8:45 am]

BILLING CODE 6210-01-M

Decatur County Back 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's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 6, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Decatur County Bank Employee Stock Ownership Plan*, Greensburg, Indiana; to acquire 2.6 percent of the voting shares of Decatur Bancshares, Inc., Greensburg, Indiana.

2. *Dale DeVries* and Carl Keltner, both of Pearl City, Illinois, and I. Ronald Lawfer, Stockton, Illinois; to acquire 60 percent of the voting shares of Kent Bancshare, Inc., Kent, Illinois.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *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.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *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 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. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First State Bancorporation Inc.*, Elkins, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank Elkins, Inc., Elkins, West Virginia, a *de novo* bank.

2. *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:

1. *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:

1. *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.

2. *Success Financial Group, Inc.*, Lincolnshire, Illinois; to become a bank holding company by acquiring 25 percent of the voting shares of Lincolnshire Bancshares, Inc., Lincolnshire, Illinois, and thereby indirectly acquire First National Bank of Lincolnshire, Lincolnshire, Illinois; Bellwood Bancorporation, Inc., Bellwood, Illinois, and thereby indirectly acquire Bank of Bellwood, Bellwood, Illinois; First National Bank of Wheaton, Wheaton, Illinois, and Peterson Bank, Chicago, Illinois. Comments on this application must be received by March 10, 1987.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *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 55480:

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.

2. *McLeod Bancshares, Inc.*, Hutchinson, Minnesota; to acquire 49 percent of the voting shares of Exchange State Bank, St. Paul, Minnesota. Comments on this applicatin must be received by March 11, 1987.

3. *Merchants and Miners Bancshares, Inc.*, Hibbing, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants and Miners State Bank of Hibbing, Hibbing, Minnesota. Comments on this application must be received by March 12, 1987.

4. *Sauk Centre Financial Services, Inc.*, Sauk Centre, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Sauk Centre, Sauk Centre, Minnesota.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bonner Springs Bancshares, Inc.*, Bonner Springs, Kansas; to acquire 80 percent of the voting shares of First State Bank of Lansing, Lansing, Kansas. Bank engages in the sale of credit related life, accident and health insurance.

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.

Board of Governors of the Federal Reserve System, February 13, 1987.

William W. Wiles,

Secretary of the Board.

[FR. Doc. 87-3577 Filed 2-9-87; 8:45 am]

BILLING CODE 6210-01-M

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) 245-6141).

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 652 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 avialable 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 HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$5,500
2	7,400
3	9,300
4	11,200
5	13,100
6	15,000
7	16,900
8	18,800

For family units with more than 8 members, add $1,900 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$6,860
2	9,240
3	11,620
4	14,000
5	16,380
6	18,760
7	21,140
8	23,520

For family units with more than 8 members, add $2,380 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,310
2	8,500
3	10,690
4	12,880
5	15,070
6	17,260
7	19,450
8	21,640

For family units with more than 8 members, add $2,190 for each additional member.

Dated: February 13, 1987.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

[FR Doc. 87-3655 Filed 2-19-87; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Board of Scientific Counselor; 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 552b(c)(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: 9:00-9:15 a.m., CLOSED—Otherwise.

Contact: Frederick K. Goodwin, National Institute of Mental Health, 9000 Rockville Pike, Building 10, Room 4N-224, Rockville, Maryland 20892, (301) 496-3501.

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, NIMH, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: February 13, 1987.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-3567 Filed 2-19-87; 8:45 am]

BILLING CODE 4160-20-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 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. 2 10(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.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Status of Meeting: Open—March 4: 9:00-10:00 a.m. Closed—Otherwise.

Contact: Shirley Maltz, Room 9C26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

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 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, 1733 N Street, NW., Washington, DC 20036.

Status of Meeting: Oen—March 5: 1:30–3:30 p.m. Closed—Otherwise.

Contact: Betty Russell, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

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) 443–1367.

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 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: February 13, 1987.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–3568 Filed 2–19–87; 8:45 am]

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, 4676 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, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephones: FTS: 684–8193, Commercial: 513/533–8193.

Dated: February 12, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–3560 Filed 2–19–87; 8:45 am]

BILLING CODE 4160–19–M

Center for Environmental Health; Open Meeting

ACTION: Notice of meeting.

The following meeting will be convened by the Center for Environmental Health (CEH), Centers for Disease Control (CDC), and will be open to the public for observation, limited only by the space available.

Time and Date: 9:00 a.m., Tuesday, March 10, 1987.

Place: Presidential Hotel, 4001 Presidential Parkway, Atlanta, Georgia 30340–3708.

Status: Open.

Matters To Be Considered: Discussion with leaders of communities in which lethal chemical warfare agents storage depots are located concerning the communities' ability to respond to an accidental agent release.

Contact Person for More Information: Ginny Jones, Program Specialist, CEH, CDC, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephones: FTS: 236–4595, Commercial: 404/454–4595.

Dated: February 10, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–3559 Filed 2–19–87; 8:45 am]

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 Rms. 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 Dockets 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. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 13, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–3569 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.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7M3974) 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).

Dated: February 9, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–3573 Filed 2–19–87; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Etiology; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on March 5–6, 1987, Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on March 5 and from 9 a.m. to adjournment on March 6 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 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 from 9 a.m. to approximately 12 p.m. on March 5 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–3602 Filed 2–19–87; 8:45 am]

BILLING CODE 4140–01–M

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 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 or cooperative agreements. These applications or cooperative agreements 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.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Ann Sestili, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20892, (301/496–7481) will provide substantive program information upon request.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–3600 Filed 2–19–87; 8:45 am]

BILLING CODE 4140–01–M

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 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Edwin M. Bartos, Executive Secretary, National Cancer Institute, 5333 Westbard Avenue, Room 826, Bethesda, Maryland 20892 (301/496–7565) will furnish substantive program information.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–3601 Filed 2–19–87; 8:45 am]

BILLING CODE 4140–01–M

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.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will furnish summaries of the meeting and roster of committee members upon request.

Dr. Suzanne E. Fisher, Executive Secretary, 5333 Westbard Avenue, Room 820, Bethesda, Maryland 20892 (301/496–2330) will provide other information pertaining to the meeting.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–3603 Filed 2–19–87; 8:45 am]

BILLING CODE 4140–01–M

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–660, 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

programs supported by the National Cancer Institute. Attendance by the public will be limited to space available. Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide an agenda for the meeting, a roster of the Panel members, and substantive program information upon request.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3604 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological and Communicative Disorders and Stroke: Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, Intramural Research Program, on March 25-27, 1987, Conference Room 1B-07, Building 36, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. to 5 p.m. on March 26 to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 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 from 8 p.m. to 10 p.m. on March 25 and from 9 a.m. until adjournment on March 27 for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Mr. Edward M. Donohue, Federal Building, Room 1004, 7550 Wisconsin Avenue, Bethesda, Maryland 20892, telephone (301) 496-9231, will furnish a summary of the meeting and a roster of committee members upon request. The Executive Secretary from whom substantive program information may be obtained is Dr. Irwin J. Kopin, Director, Intramural Research Program, NINCDS, Building 10, Room 5N214, NIH, Bethesda, Maryland 20892, telephone (301) 496-4297.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research).

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3608 Filed 2-19-87; 8:45 am]

BILLING 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 April 22-24, 1987, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9 a.m. to recess on April 22 and from 9 a.m. to 12 Noon on April 23, to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 1 p.m. to recess on April 23 and from 9 a.m. to adjournment on April 24 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH, Building 30, Room 132, Bethesda, MD 20892 (telephone 301-496-1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3607 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Transplantation Biology and Immunology Subcommittee of the Alergy, Immunology, and Transplantation Research Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Transplantion 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 progam 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 Transplantion 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 adjourment 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.

Dr. Nirmal K. Das, Executive Secretary, Alergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301-496-7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3606 Filed 2-19-87; 8:45 am]

BILLING 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 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 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.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health)

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–3605 Filed 2–19–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK 964–07–4213–15; F–21901–60[1]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 172,408.65 acres. The lands are within the following townships:

Fairbanks Meridian, Alaska

T. 16 N., R. 21 W.

Kateel River Meridian, Alaska

T. 6 N., R. 18 E.
T. 6 N., R. 19 E.
T. 7 S., R. 19 E.
T. 6 S., R. 20 E.
T. 7 S., R. 20 E.
T. 5 S., R. 23 E.
T. 5 S., R. 24 E.
T. 6 S., R. 24 E.
T. 4 S., R. 25 E.
T. 5 S., R. 25 E.
T. 4 S., R. 26 E.
T. 5 S., R. 26 E.
T. 5 S., R. 29 E.

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 (960), 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 Doyon, Adjudication.

[FR Doc. 87–3558 Filed 2–19–87; 8:45 am]

BILLING CODE 4310–JA–M

[1] F–21901–61, F–21901–63, F–21902–01, F–21902–02, F–21903–77, F–21903–78, F–21903–79, F–21903–80, F–21903–81, F–21903–82, F–21903–83, F–21903–84, F–21903–85, F–21903–86, F–21905–52, F–21905–53, F21905–55, F–21906–42

[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; 6,640 acres suitable, 4,935 acres nonsuitable.

Tule Mountain WSA—16,950 acres; 16,950 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.

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 1506.10b(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, 2800 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.

Dated: February 11, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–3476 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 nonsuitable.

Panoche Hills South—11,267 acres; 11,267 acres nonsuitable.

Pinnacles Wilderness Contiguous—5,838 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 widerness 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 filling 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 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 365, Hollister, CA 95024–0365. 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.

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825

or

Bureau of Land Management, Bakersfield District Office, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Jim Jennings, Outdoor Recreation Planner, Bakersfield District Office, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301, (805) 861–4287.

Dated: February 11, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–3477 Filed 2–19–87; 8:45 am]

BILLING CODE 4310–40–M

[CA–930–07–4332–13; 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-wildeness. 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 Timbered Crater WSA.

The names of the two WSAs analyzed in the EIS, their toal acreage, and the proposed actions for each are as follows:

Timbered Crater—18,690 acres; 0 acres suitable, 18,690 acres nonsuitable.

Lava—11,632 acres; 0 acres suitable, 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 mthis 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 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 20240

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825

or

Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, GA 96130.

FOR FURTHER INFORMATION CONTACT: Richard Drehobl, Area Manager, Alturas Resource Area, Post Office Box 771, Alturas, CA 96101, (916) 233–4666.

Dated: February 12, 1987.

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

February 13, 1987.

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.

[FR Doc. 87–3583 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-DQ-M

[NM–030–07–4322–14]

Las Cruces District Grazing Advisory Board; Meeting

AGENCY: Nureau of Land Management (BLM), Las Cruces District, New Mexico, Interior.

ACTION: Notice of meeting.

SUMMARY: The agenda topics for the meeting are an update on FY–87 range improvement projects; a discussion of FY–88 range improvement projects; and consideration of the White Sands Resource Area Range Management Program Summary.

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 Marquess, Las Cruces, New Mexico.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess, 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.

Dated: February 11, 1987.

David A. Jones,

District Manager.

[FR Doc. 87–3597 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-33-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, 705 Hall Street, Susanville, California.

The meeting 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. Sherve,

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 given relating 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:

	Acres
Malheur River—Blue Bucket Creek	2,080
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 829,995 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, or 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:

WSA Unit No.	WSA Name	Acres in Burns District
2-14	Malheur River/Blue Bucket Creek.	[1] 3,480
2-23L	Stonehouse	[2] 14,825
2-23M	Lower Stonehouse	8,090
2-72C	Sheepshead Mountains.	23,790
2-72D	Wildcat Canyon	8,730
2-72F	Heath Lake	20,520
2-72I	Table Mountain	40,592
2-72J	West Peak	8,535
2-73A	East Alvord	22,240
2-73H	Winter Range	15,440
2-74	Alvord Desert	97,165
2-77	Mahogany Ridge	27,940
2-78	Red Mountain	16,215
2-81	Pueblo Mountains	72,090
2-82	Rincon	100,445
2-83	Alvord Peak	16,825
2-84	Basque Hills	70,600
2-85F	High Steens	[3] 69,740
2-85G	South Fork Donner und Blitzen River.	[3] 37,555
2-85H	Home Creek	[3] 26,590
2-86E	Blitzen River	[3] 54,280
2-86F	Little Blitzen Gorge	[3] 9,400
2-87	Bridge Creek	[3] 14,545
2-98A	Pine Creek (Strawberry Mtns).	200
2-98C	Sheep Gulch (Strawberry Mtns).	720
2-98D	Indian Creek (Straw. Mtns).	208
2-103	Aldrich Mountain	9,395
1-146	Hawk Mountain	25,380
3-152	Willow Creek	2,140
3-153	Disaster Peak	3,740

[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, 1980, which is consistent with Wilderness IMP: 2-85F, 57,650 acres; 2-85 G, 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 west 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:

	Acres
Steens Mountain Recreation Lands additional acreage from land exchanges	12,362
Little Blitzen Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC)	[1] 2,539
Little Wildhorse RNA/ACEC	[1] 240
South Fork Willow Creek RNA/ ACEC	[1] 228
Rooster Comb RNA-ACEC	[1] 720
East Kiger Plateau RNA/ACEC	[1] 1,240
Silver Creek RNA/ACEC	640
Pueblo Foothills RNA/ACEC	2,520
Tum Tum Lake RNA/ACEC	1,522
Long Draw RNA/ACEC	440
Mickey Basin RNA/ACEC	560
Alvord Desert ACEC	16,700
Borax Lake ACEC	520
Alvord Peak ACEC	14,700
Picket Rim ACEC	4,000
South Steens ACEC	[2] 50,500
Diamond Craters Outstanding Natural Area/ACEC	16,656
Warm Springs Reservoir	23,811
Oregon Dept. of Fish & Wildlife hunting areas	49,652

[1] All acres are within boundaries of Steens Mountain Recreation Lands vehicle management designation of September 30, 1980.

[2] 45,740 acres are within the boundaries of Steens Mountain Recreation Lands vehicle management designation of September 30, 1980.

C. Open Designations

Areas which are designated open to off-highway motor vehicle use comprise 2,390,772 acres. Much of the district's land topography naturally limits off-highway motor vehicle use. Open designation was determined to be appropriate as off-highway use of motorized vehicles is essential to conduct the management and authorized utilization of resource values.

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.

Dated: February 12, 1987.

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:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 7 E.,
Sec. 3, Lots 3 and 4, S½NW¼, SW¼.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 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.

Dated: February 12, 1987.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 87–3592 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-32-M

[CO-940-07-4220-10; C-34653]

Colorado; Proposed Withdrawal and Opportunity for Public Hearing

February 12, 1987.

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, N½NE¼ and SW¼NE¼.
T. 2 N., R. 77 W.,
  sec. 23, lot 8;
  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.

[FR Doc. 87-3584 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-07-4220-11; NM NM 12479]

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 134.70-acre withdrawal for the Canon Administrative Site continue for an additional 20 years. The land would remain closed to location and entry under the mining laws but 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 Mexcio State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 5485 of February 5, 1975, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

Canon Administrative Site

T. 25 N., R. 13 E.,
  sec. 15, W½W½ of lot 5, W½W½S W¼SW¼;
  sec. 16, lots 4, 5, 7 and 8.

The area described contains 134.70 acres in Taos County.

The purpose of the withdrawal is to protect the Canon Administrative Site within the Carson National Forest, Taos Ranger District. The site consists of extensive permanent facilities and improvements. The withdrawal segregates the land from location and entry under the mining laws, but not from leasing under the mineral leasing laws. No change in the segregative effect or use of the land is proposed by this action. 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.

Dated: February 11, 1987.

Sarah E. Wisely,

Acting State Director.

[FR Doc. 87-3580 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 039510]

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 Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 1890 of June 26, 1959, be continued for a period of 18 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

Coal Mine Canyon Picnic Ground

T. 12 N., R. 8 W.,
Sec. 29, SW¼SE¼.

The area described contains 40.00 acres in Cibola County.

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.

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.

Dated: February 9, 1987.

Sarah Wisely,

Acting State Director.

[FR Doc. 87–3581 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 46840]

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 Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Secretarial Order of September 30, 1908, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

Sandia Ranger Station Administrative Site (formerly Cedro Administrative Site)

T. 10 N., R. 5 E.,
Sec. 22, lot 25;
Sec. 23, lot 18, S½ lot 19;
Sec. 26, lots 3, 4.

The area described contains 153.53 acres in Bernalillo County.

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.

Dated: February 9, 1987.

Sarah E. Wisley,

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 (602) 855–4071.

FOR FURTHER INFORMATION CONTACT: Robert Brose, Bureau of Reclamation, Nevada Highway and Park Street, P.O.

Box 427, Boulder City, Nevada 89005 (702) 293–8520.

Dated: February 18, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87–3787 Filed 2–19–87; 9:40 am]

BILLING CODE 4310–09–M

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 672624) 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).

Dated: February 11, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–3661 Filed 2–19–87; 8:45 am]

BILLING CODE 4310–55–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. 92–463).

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 Ternary 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 OCS Regional Office at (504) 736–2959 by March 6, 1987. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

Dated: February 11, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region, Minerals Management Service.

[FR Doc. 87–3595 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 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.

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 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 44487, 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 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 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 11, 1987.

J. Rogers Pearcy,

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 8406, 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 Managment 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 44487, 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. Additionaly, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Managment 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 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 11, 1987.

J. Rogers Pearcy,

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 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 ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8461, 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: 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., Mondy through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, 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 became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 13, 1987.

J. Rogers Pearcy,

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

Chicago, Rock Island and Pacific Railroad Company at Colorado Springs, CO (3.5 miles; milepost 599.4 to milepost 602.7). Any comments must be filed with the Commission and served on Alan P. Sherbrooke; Garvey, Schubert & Barer, Tenth Floor, 1011 Western Avenue, Seattle, WA, telephone (206) 464–3939.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption in 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.

Dated: February 10, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3630 Filed 2–19–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30973]

Denver Terminal Railroad Co.; Acquisition and Operation; Colorado and Eastern Railroad Co.; Exemption

Denver 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: 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 propety of the former Chicago, Rock Island and Pacific Railroad Company at Denver (8.0 miles) (milepost 0.72 to milespost 3.95). 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.

Dated: February 10, 1987.

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

[Finance Docket No. 30979]

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(d).

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 G&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[1] 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 (a) of C&E; (b) of the five new railroads, and (c) 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. 11343. *See* CFR 1180.2(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.

Dated: February 10, 1987.

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

[Finance Docket No. 30976]

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 terminal railroad property of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Council Bluffs, IA (22 Miles; milepost 0.0 to milepost 3.0); and (b) the line and yards of the former Norfolk and Western Terminal Railroad between Council Bluffs and Blanchard, IA (72 miles; milepost 344.71 to milepost 410.86). 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

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[1] The new railroads, and the lines to be acquired and operated by each, are: (1) Denver Terminal Railroad Company, which will acquire and operate the former Denver Union Stockyards terminal railroad property at Denver, CO (3.3 miles), and the former Chicago, Rock Island and Pacific Railroad Company (Rock Island) line and terminal property at Denver (8.0 miles); (2) Colorado Springs & Eastern Railroad Company, which will acquire and operate the former Rock Island main line and terminal railroad property at Colorado Springs, CO (3.5 miles); (3) Iowa Southern Railroad Company, which will acquire and operate the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee) terminal railroad property 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); (4) Ottumwa Terminal Railroad Company, which will acquire and operate the former Milwaukee "city track" and railroad property at Ottumwa, IA (4.3 miles), and the former Norfolk and Western Terminal Railroad property at Ottumwa, IA (3.4 miles); and (5) Oklahoma Central Railroad Company, which will acquire and operate the former Rock Island yards and facilities at El Reno, OK (6.0 miles). Notices of exemption under 49 CFR 1150.31 with regard to the acquisition and operations of these lines have been filed concurrently in Finance Docket Nos. 30973, 30975, 30976, 30977, and 30978, respectively.

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.

Dated: February 10, 1987.

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 Exemption—Minnesota Transfer Railway Co.; Exemption

Minnesota Commercial Railway Company (MCR) has filed a notice of exemption to acquire by long-term lease and operate all the lines of the Minnesota Transfer Railway Company (MTR)[1] as follows:

From a connection with the Soo Line Railroad Company's (Soo), 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.[2]

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 1175.1.

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.[3]

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.

Decided: February 13, 1987.

By the Commission, Jane F. Mackall, 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]

Oklahoma Central Railroad Co.; Acquisition and Operation—Colorado and Eastern Railroad Company

Oklahoma Central 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 yards and facilities of the former Chicago, Rock Island and Pacific Railroad Company at El Reno, OK (6.0 miles, milepost 0.0 to milepost 0.8). 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.

Dated: February 10, 1987.

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

[Finance Docket No. 30977]

Ottumwa Terminal Railroad Co.; Acquisition and Operation—Colorado and Eastern Railroad Co.; Exemption

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 (3.4 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.

Dated: February 10, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3636 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. 1319, 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

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[1] On December 11, 1986, MTR changed its corporate name to MT Properties, Inc., but has continued rail operations as MTR.

[2] Under 49 U.S.C. 10907(b)(1), the acquisition of "spur, industrial, team, switching, or side track . . . located entirely in one State" is exempted from the Commission's prior approval authority. The exempt trackage is part of a unified transaction and is properly included within this notice of exemption.

[3] The Railway Labor Executives' Association (RLEA), joined by the United Transportation Union, filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, RLEA's request is rejected. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, I.C.C. 2d 810 (1985).

The Brotherhood of Maintenance of Way Employees (BMWE) also filed an unsupported protest alleging that the transaction constitutes an abandonment and a sale of a rail line between two carriers. Under the class exemption procedures of 49 CFR 1150.31 allegations of false or misleading information may only be raised in petitions to revoke the exemption. Therefore BMWE's pleading will be treated as a petition for revocation and considered, along with any other petitions for revocation that may be filed, in a separate decision.

unauthorized discharges constituted violations of section 301 of the Act, 33 U.S.C. 1311.

Under the terms of the proposed consent decree, International Paper will construct a new pipeline to replace the pipeline that leaked. The construction is to be completed by January 10, 1987. The decree directs International Paper to minimize unpermitted discharges from the existing pipeline during construction and imposes effluent limits that shall apply if International Paper must bypass the existing pipeline during tie-in of the 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 International Paper to 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 Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (211) 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) 226-5277.

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. 87-3618 Filed 2-19-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-18,458]

Alpha Consulting, Inc.; Pintex Petroleum Corp.; Boulder, CO; Revised Determination on Reconsideration

On December 18, 1986, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Alpha Consulting, Inc., and Pintex Petroleum Corporation, Boulder, Colorado.

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, UIS.

[FR Doc. 87-3669 Filed 2-19-87; 8:45 am]

BILLING CODE 4510-30-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 (AFGWU) 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 justified 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.

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.

[FR Doc. 87-3670 Filed 2-19-87; 8:45 am]

BILLING CODE 4510-30-M

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:
MD87-2 (Jan. 2, 1987) ..... p. 418.
MD87-15 (Jan. 2, 1987) ..... p. 450.
Pennsylvania:
PA87-1 (Jan. 2, 1987) ..... pp. 844-846.
PA87-4 (Jan. 2, 1987) ..... pp. 874-882.

Volume II

Illinois:
IL87-1 (Jan. 2, 1987) ..... p. 69.
IL87-2 (Jan. 2, 1987) ..... p. 98, pp. 101, 111.
Indiana:
IN87-5 (Jan. 2, 1987) ..... p. 292.
IN87-6 (Jan. 2, 1987) ..... pp. 302-318.
Kansas:
KS87-9 (Jan. 2, 1987) ..... p. 364.
Missouri:
MO87-1 (Jan. 2, 1987) ..... pp. 580-584, pp. 586-591, pp. 593-595.
Ohio:
OH87-29 (Jan. 2, 1987) ..... pp. 817-819, pp. 821-822, pp. 828-829, pp. 833-846, pp. 848-851.
Oklahoma:
OK87-13 (Jan. 2, 1987) ..... p. 893.
OK87-14 (Jan. 2, 1987) ..... p. 903

Volume III

Alaska:
AK87-1 (Jan. 2, 1987) ..... pp. 3, 7-8.
Hawaii:
HI87-1 (Jan. 2, 1987) ..... p. 130.
Idaho:
ID87-3 (Jan. 2, 1987) ..... p. 158
Utah:
UT87-3 (Jan. 2, 1987) ..... p. 325.

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.

[FR Doc. 87-3515 Filed 2-19-87; 8:45 am]

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 G. 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 standards 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, 1986, 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. 86–28.

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 4510–26–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 1965, 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.

February 13, 1987.

[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, 1987, from 9:00–10:00 a.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 for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvanis Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

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, Office of Council and Panel Operations, National Endowment for the Arts.

February 13, 1987.

[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 (Artists Colonies/Services 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 March 13, 1987, from 9:00 a.m.—3:00 p.m. in room 730 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 13, 1987, from 9:00 a.m.—12:00 noon on a space available basis for a discussion of 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, 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, 110 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

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, Office of Council and Panel Operations National Endowment for the Arts.

February 13, 1987.

[FR Doc. 87–3587 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, 1987, from 9:00 a.m.—6:30 p.m., and March 12, 1987, from 9:00 a.m.—10:30 p.m., and March 13, 1987, from 9:00 a.m.—6:00 p.m. in room 716 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 13, 1987, from 1:30 a.m.—3:00 p.m. on a space available basis. The topics for discussion will include policy issues.

The remaining sessions of this meeting on March 11, 1987, from 9:00 a.m.—6:30 p.m., on March 12, 1987, from 9:00 a.m.—10:30 p.m., and on March 13, 1987, from 9:00 a.m.—12:30 p.m. and 3:00—6:00 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, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

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, Office of Council and Panel Operations National Endowment for the Arts.

February 13, 1987.

[FR Doc. 87–3588–Filed 2–19–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR 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 and 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-

Term Operating License and Opportunity for Hearing was published in the **Federal Register** on November 28, 1972 (37 FR 25187). The full-term operating license was not issued previously pending completion of the reviews under the Systematic Evaluation Program (NUREG–0824, February 1983), and by the Advisory Committee on Reactor Safeguards. The Final Environmental Statement (FES) connected with the conversion to a full-term operating license was issued in June 1973. A Notice of Availability of the FES was published in the **Federal Register** on June 4, 1973 (38 FR 14699). Because the FES was issued a number of years ago, the staff performed an environmental assessment to determine if a FES supplement was necessary. This assessment dated December 17, 1984, concluded that a FES supplement was not necessary. This conclusion was noticed in the **Federal Register** on December 26, 1984 (49 FR 50131).

The application for the full-term operating license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I, as set forth in the license.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Facility Operating License DPR–21 is effective as of its date of issuance and shall expire May 19, 2006.

For further information concerning this action see: (1) The licensee's application for a full-term operating license dated September 1, 1972, (2) the Final Environmental Statement (June 1973), (3) the Commission's Environmental Assessment, dated December 17, 1984, (4) Facility Operating License No. DPR–21 with Appendix A, Technical Specifications, and (5) the Safety Evaluation Report (NUREG–1143) dated October 1985, and Supplement 1 to this report, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

A copy of Facility Operating License DPR–21 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report (NUREG–1143) and Supplement 1 to this report may be purchased through the U.S. Government Printing Office by calling (202) 275–2060, or by writing to the U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland this 31st day of October 1986.

Frank J. Miraglia,

Director, Division of PWR Licensing—B.

[FR Doc. 87–3638 Filed 2–19–87; 8:45 am]

BILLING CODE 7590–01–M

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 proposed principles and recommendations address railroad accounting and cost information issues relevant to regulatory proceedings in which cost determinations are used in ICC decisions. 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 50608, 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 the 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.

Dated: February 13, 1987.

Charles A. Bowsher,

Chairman, Railroad Accounting Principles Board.

[FR Doc. 87-3652 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.

DATE: 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.

ADDRESS: Interested parties shall send a summary of their testimony to: Railroad Accounting Principles Board, P.O. Box 50608, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Charles R. Yager, Executive Director, (202) 275-1635.

SUPPLEMENTARY INFORMATION: The RAPB has invited interested parties to submit written comments on the proposed principles, recommendations to the Interstate Commerce commission (ICC), and other matters discussed in an exposure draft. The proposed principles and recommendations address railroad accounting and cost information issues relevant to regulatory proceedings in which cost determinations are used in ICC decisions. Additional information on the exposure draft is provided by notice this date in the **Federal Register** in the RAPB's "Request for comments on proposed principles and recommendations, and other matters discussed in exposure draft."

Interested parties who wish to testify at the hearing shall notify the RAPB by March 20, 1987. Notification may be by mail or by telephone. Those notifying the RAPB of their intention to testify will be mailed information on where and at what time the hearing will convene. The hearing will be open to the public. Other parties wishing to attend may obtain the hearing time and location by calling the RAPB on (202) 275-1635 after March 20, 1987.

Any written comments parties submit on the exposure draft will be included in the record of the RAPB's deliberations. Therefore, parties testifying at the hearing need not submit a detailed statement for the hearing record although they are free to do so. A summary not to exceed five pages of the testimony to be given at the hearing 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.

Dated: February 13, 1987.

Charles A. Bowsher,

Chairman, Railroad Accounting Principles Board.

[FR Doc. 87-3653 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 Gratuity 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 $152.

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)(3)(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.

Dated: February 20, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-3615 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.

February 12, 1987.

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:

British Airways PLC
Interim American Depositary Shares will represent ten presently outstanding Ordinary Shares of 25p (File No. 7–9674)
Asarco Inc.
$2.25 Cumulative Convertible Exchangeable Preferred
$9.00 Par Value (File No. 7–9675)
Southland Corporation
$4.00 Cumulative Convertible Exchangeable Preferred A Stock, $2.00 Par Value (File No. 7–9676)
Sun Distributors L.P.
1 Class A Limited Partnership Interest and 1 Class B Limited Partnership Interest, No Par Value (File No. 7–9677)
Musicland and Group, Inc.
Common Stock, $.10 Par Value (File No. 7–9678)
Porta Systems, Corporation
Common Stock, $.01 Par Value (File No. 7–9679)
Spectra-Physics (Delaware), Inc.
Capital Stock, $.20 Par Value (File No. 7–9680)
Enterra Corporation (Delaware)
Common Stock, $1.00 Par Value (File No. 7–9681)
Lukens, Inc. (Delaware)
Common Capital Stock, No Par Value (File No. 7–9682)
Crystal Oil Company
Common Stock, $.01 Par Value (File No. 7–9683)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 6, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3614 Filed 2–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24100; File No. SR–MSE–87–2]

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. 78s(b)(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 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 ("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 NASD 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 Dual Trading System issues.

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. Paragraphs 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 1099 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 implement the trading of NASDAQ/NMS Securities pursuant to the requirements set forth in Securities Exchange Act Release Nos. 34–22412 and 34–22413 (September 16, 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 I(6)(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.

Dated: February 13, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3658 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24093; File No. SR–MSRB–86–16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N Street, NW., Washington, DC. 20036–2491, submitted on December 31, 1986, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G–12(1) on interest payment claim procedures.

The proposed rule change adds to the interest payment claim procedures described in MSRB Rule G–12(1). Specifically, the proposal adds procedures for inter-dealer claims on securities that are delivered by book-entry movement. The proposed procedures enable a dealer to make an interest payment claim against another dealer based on a transaction with a contractual settlement date before, and

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(1) 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.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 12, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3616 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24102; File No. SR–PCC–86–10]

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.

Dated: February 13, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3659 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–16374]

Application and Opportunity for Hearing; Associates Corporation of North America

February 12, 1987.

Notice is hereby given that Associates Corporation of North America (the "Company") has filed an application pursuant to clause (ii) of section 310(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 trusteeship of Harris Trust and Savings Bank (the "Bank") under indentures dated as of January 1, 1980 (the "1980 Indenture"), as supplmented as of November 15, 1981 (the "1981 Supplement") and June 15, 1981 (the "1981 Indenture") between the Company and Bank which were heretofore qualified under the Act, and the trusteeship 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 heretofore 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 310(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 conflicing 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 12⅛ percent Senior Debentures Due February 1, 2000 (the "12⅛ percent Senior Debentures"), and (ii) $100,000,000 aggregate principal amount of 14½ percent Senior Notes Due February 1, 1990, issued under the 1980 Indenture as supplemented by the 1981 Supplement (the "14½ percent Senior Notes"). The 12⅛ percent Senior Debentures and 14½ percent Senior

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) $8,490,000 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 12⅜ percent Senior Notes Due November 1, 1989 (the "12⅜ percent Senior Notes"), (iii) $100,000,000 aggregate principal amount of its 12.55 percent Senior Notes Due by May 15, 1988 (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 11¾ percent Senior Notes Due August 15, 1988 (the "11¾ percent Senior Notes"), and (vi) $50,000,000 aggregate principal amount 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 12⅛ percent Senior Debentures, the 14½ percent Senior Notes, the 6 percent Senior Debentures, the One-year Extendible Senior Notes, the 12⅜ percent Senior Notes, the 12.55 percent Senior Notes, the 11.85 percent Senior Notes, the 11¾ percent Senior Notes, and the 11.45 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 1980 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 1980 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 Fifth 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 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Divison of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3612 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–M

[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.

By order dated May 21, 1986 (HCAR No. 24100), Mississippi was authorized to issue $35 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 perferred 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

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 TSP OM9, 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 principal 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 Columbia debenture issue.

Columbus and Southern Ohio Electric Company (70–7351)

Columbus and Southern Ohio Electric Company ("C&SOE"), 215 North Front Street, Columbus, Ohio 43215, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50 thereunder.

C&SOE proposes to issue and sell, in one or more transactions from time-to-time through December 31, 1987, up to $100 million aggregate principal amount of its (i) first mortgage bonds ("Bonds"), in one or more series, each with a maturity of not less than 5 years and not more than 30 years, through a competitive bid basis, unless C&SOE later seeks and receives authorization for an exception from competitive bidding and/or (ii) unsecured notes ("Notes") pursuant to a proposed term loan agreement ("Agreement"), such Notes to mature in not less than 2 years nor more than 10 years and to bear interest at a rate not grater than 13 percent per annum. If C&SOE determines to issue the Bonds in 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. 87–3813 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–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, (202) 272–2644.

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. 77a et seq.

[2] Pub. L. 96–77 (October 21, 1980).

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") [3] 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.[4] 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.[5] 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 most appropriate methods of ensuring 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.[6] 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.[7] 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.[8]

[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 36385].

[5] Release No. 33–6683 (January 16, 1987) [51 FR 3015].

[6] Release No. 33–6652 34–23406, 39–2022 (July 8, 1986) [51 FR 25360].

[7] Release No. 34–23407 (July 9, 1986) [51 FR 25369].

[8] Release No. 34–23724 (October 17, 1986) [51 FR 37529].

Under section 19(b) of the Exchange Act, the Commission must approve or disapporve 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.[9] 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 [10] and proposed Rule 430A.[11]

(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 conferees 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 most 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 registration under the draft rules. The conferees 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 conferees 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, conferees 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 also will discuss the use of CRD in connection with broker-dealer registrations and other related matters.

(iii) *Inspections.* The conferees also expect to discuss ongoing efforts of the Commission and the states to increase the level of routine surveillance over the advisory industry through 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. Conferees 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

[9] Release No. 33-6568 (February 28, 1985) [50 FR 9281].

[10] Release No. 33-6682 (December 18, 1986) [51 FR 46874].

[11] Release No. 33-6672 (October 27, 1986) [51 FR 37868].

planner-adviser characteristics including compensation arrangements, (ii) address the extent to which advisers adn 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 regulaton 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 staff intends to seek NASAA'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 conferees 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 reulemaking 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 NASAA 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 NASAA 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 NASSA 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 NASAA 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 NASAA expect 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

address steps that would be useful on the national and state levels to facilitate international markets while protecting investors and maintaining fair and orderly markets in the United States.

f. Immobilization

The Commission has identified as a major goal the increased immobilization, and where appropriate, elimination of securities certificates. NASAA has established a committee to pursue initiatives that will advance the use of book-entry recordkeeping systems and will accelerate the immobilization of securities certificates in securities depositories. At the conference, Commission staff members will meet with the Committee to continue the discussions begun last year concerning goals to be achieved, book-entry initiatives that are being pursued by various banking and securities industry groups, and immobilization issues that may be of particular interest or concern to state securities law administrators. During the sessions, staff of the Commission and members of the Committee also will review efforts to secure needed changes in state laws and regulations to ensure greater use of safe and efficient book-entry ownership systems. The sessions also will review ways the Committee can increase public investor awareness of the characteristics of book-entry ownership systems (including transfer agent-operated investor ownership registration systems).

Comment is requested on initiatives the NASAA Committee can pursue to promote expanded use of safe and efficient book-entry ownership registration and transfer systems.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

(5) Edgar

The Commission currently is operating a Pilot electronic disclosure system, Edgar. The Commission has worked with NASAA to explore the possibility of a single filing in Edgar constituting the required filing with the states. This one-stop filing would reduce costs and increase efficiency for filers, as well as possibly reducing the time it takes to access the capital markets. Three states, California, Georgia and Wisconsin, were designated by NASAA to participate in the Edgar pilot, and they began receiving access to public Edgar 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 conferees 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 conferees 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 prospectus 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.

February 13, 1987.

[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 5:00 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 Act of 1958, as amended (15 U.S.C. 661 *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 Sycip, Chief Financial Officer and Director
Sau Wing Lam, Director
May Ngai, Director

Cleet Snyder, Director
Ninh Lawhon, Director
First Cal Bidco, 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)

Dated: February 11, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-3640 Filed 2-19-87; 8:45 am]

BILLING CODE 8025-01-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 3504(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 Gail J. Cook (202) 647-4086. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Dated: February 11, 1987.

John R. Burke,

Acting Assistant Secretary for Administration.

[FR Doc. 87-3619 Filed 2-19-87; 8:45 am]

BILLING 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 Act"), 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 requirement 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.

The Act makes it unlawful for any person to make available for benefits to a foreign mission contrary to the provisions of the Act. 22 U.S.C. 4311(a). Foreign mission includes the personnel of such mission. 22 U.S.C. 4302(a)(4).

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 purpose 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 "benefits" 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 maintenace 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.

Goods

(a) Motor vehicles;

(b) Construction equipment and materials;

(c) Equipment and materials for the maintenance of the mission;

(d) Computers and automated data processing equipment; and

(e) Furnishings for offices and residences.

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 Mission 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) Plumbling, 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) Equipment and materials for the maintenance of the mission;

(d) 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. Shultz,

Secretary of State.

[FR Doc. 87–3620 Filed 2–19–87; 8:45 am]

BILLING CODE 4710–35–M

[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.

Dated: January 7, 1987.

Ronald I. Spiers,

Under Secretary for Management.

[FR Doc. 87–3621 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, 19987, 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/3(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

(G–NSS), Washington, DC 20593–0001, telephone: (202) 267–0416.

Dated: February 12, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87–3596 Filed 2–19–87; 8:45 am]

BILLING CODE 4710–07–M

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 20590, 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 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Dated: February 17, 1987.

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- of 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.

Records to be Matched: Airmen medical certification records from the Federal Aviation Administration General Air Transportation Records on Individuals System (DOT/FAA 847), 49 FR 15412 (April 18, 1984) against the Federal Bureau of Investigation Identification Division Records System (Justice/FBI–009), 46 FR 7508 (January 23, 1981).

Disclosure of Records: The record subjects have not consented to this match. However, item 9 of the Departmental 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 those 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: 2125–0534
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: This information collection requirement is needed to ensure that a means of preventing accidental discharge or spillage of oil is in place for all vessels with a capacity to carry 250 or more barrels of oil.
Proposed Use of Information: The requirement is used to ensure that vessel personnel are aware of procedures to transfer oil to or from the vessel and from tank to tank within the vessel. The procedures reduce 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: 2862
OMB No: 2115–0108
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Access Openings (Watertight Doors)
Need for Information: This information is needed to enable the Coast Guard to review plans for watertight doors in watertight bulkheads of passenger vessels.
Proposed Use of 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: 4,369 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

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: 2865
OMB No: 2125–0522
Administration: Federal Highway Administration
Title: Utility Use and Occupancy Agreements

Need for Information: For FHWA to fulfill its statutory obligation regarding controls or use of right-of-way of Federal and highway projects.

Proposed Use of Information: Serves to document the arrangement made between the State highway agency and a utility to allow the utility to use public right-of-way under the control of the highway agency.

Frequency: Recordkeeping
Burden Estimate: 552,000 hours
Respondents: Utility companies and State highway agencies
Form(s): None.

DOT No: 2866
OMB No: 2115–0080
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

[Summary Notice No. PE–87–1]

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 Aviaition 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 (c), (e), 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

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
25153	Pan American World Airways, Inc.	14 CFR 121.371(a) and 121.378	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.
25188	Project Orbis Inc.	14 CFR 91.303	To allow petitioner to operate Stage 1 four engine turbojet aircraft for four operations in order to get a major aircraft maintenance inspection and restock medical supplies and medical equipment.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
23653	University of North Dakota	14 CFR Part 141, Appendix A	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. 3825, to be exempt from the FAA Private Pilot Airplane Written Test.
25155	SNECMA	14 CFR 145.71 and 145.73	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.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
18881	Experimental Aircraft Association	14 CFR 91.22(a)(1)	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. *GRANTED, December 22, 1986.*
25043	United Executive Jet, Inc	14 CFR 91.191(a)(4) and 135.165(b)	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. *GRANTED, December 17, 1986.*
18114	Flying Tiger Line, Inc	14 CFR 91.191(a)(4) and 135.165(b)	Extension of Exemption No. 2600 to allow petitioner to carry a journalist, reporter or photographer on board its cargo aircraft. *GRANTED, December 12, 1986.*
25079	Montex Drilling Company	14 CFR 61.58(c)	To allow petitioner's pilots to complete the requirement for 24-month pilot-in-command check for the BA-111 in an FAA-approved simulator. *GRANTED, December 9, 1986.*
24440	American Flyers	14 CFR 141.91(a)	Amendment of Exemption No. 4419 to allow petitioner to operate a pilot ground school in Farmers Branch, Texas, 28 nautical miles from its home base of operations. *GRANTED, January 6, 1987.*
24973	Florida West Airlines, Inc	14 CFR 121.6	To allow petitioner to operate on demand or on short notice flight without complying with the requirements. Petitioner also further requests, in the event the grant of exemption is not possible, that it be permitted to operate short notice flights on request with FLW supplying required information to the local inspector within 3 days. *DENIED, December 22, 1986.*
16955	American Airlines	14 CFR 61.58(c)	To allow students of American Airlines to complete the entire 24-month pilot-in-command check in an FAA-approved simulator. *GRANTED, December 30, 1986.*
25064	America West Airlines, Inc	14 CFR 121.371(a) and 121.378	To allow petitioner to install on its four Boeing 727 leased aircraft certain components provided by Orion Airways, Ltd., of the United Kingdom. *GRANTED, January 7, 1987.*
24819	United Airlines	14 CFR 121, Appendix H	To allow it to conduct Phase II training and checking in a Phase I L-1011-500 simulator under an approved Phase IIA program, and to extend the termination date of United's Interim Simulator Upgrade Plan to July 1, 1988. *GRANTED, December 29, 1986.*
24795	Spectrum Aircraft Corporation	14 CFR 21.19(b)(1)	To allow petitioner to apply for supplemental type certification of a design change from two engines to one engine on the Cessna 337G Skymaster airplane. *DENIED, December 17, 1986.*
23752	Mall Airways	14 CFR 135.225(e)(1)	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. *GRANTED, January 9, 1987.*
20583	Tenneco, Inc	14 CFR 61.58(c)	Extension of exemption No. 3106 to allow pilots of petitioner to complete a 24-month pilot-in-command check in an FAA-approved flight simulator. *GRANTED, December 19, 1986.*
24998	Aeron International Airlines, Inc	14 CFR 121.371(a) and 121.378	To allow petitioner to contract with MTU, Munich, Germany; Alfa Romeo, Naples, Italy; British Aerospace PLC, Hatfield, England; Airscrew Howden, Weybridge, England; Aircraft Engineering and Maintenance, Ltd., London, England; Jadepoint Engineering, Southend, England, and to employ original equipment manufacturers to perform maintenance, preventive maintenance, and alterations outside of the United States on CL-44 aircraft listed in the operations specifications of the petitioner or on the engines or components of such aircraft. *GRANTED, January 5, 1987.*
24658	Midstate Airlines	14 CFR 135.293(b) and 135.297	To allow petitioner to substitute a LOFT program for the pilot competency and instrument proficiency checks prescribed by those actions. *GRANTED, December 12, 1986.*
25095	Baron Aviation, Inc	14 CFR 45.29	To permit the operation of its 1977 Cessna 172 aircraft displaying 3-inch high nationality and registration marks (N-numbers) in place of the 12-inch high N-numbers required by the regulations. *DENIED, December 15, 1986.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23883	Florida Express	14 CFR 91.307	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, idenified 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, 1988:
23419	Continental Airlines	14 CFR 91.307	To amend Exemption No. 3650b to add 7 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, 1988: 25-DC-9 *GRANTED 12/31/86.*
20549	Boeing Commercial Airline Company	14 CFR 25.130(a) 14 CFR 25.1303(b), 14 CFR 21.601, 14 CFR 37.120(a).	To amend exemption No. 3035B to remove the operating limitation that restricts operation of Model 747 airplanes configures as described to certain operators retaining only the limitation requiring crews to be trained in a specific configuration. *PARTIAL GRANT, January 23, 1987.*

[FR Doc. 87-3561 Filed 2-19-87; 8:45 am]
BILLING CODE 4910-13-M

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 McPherson 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.

[FR Doc. 87-3562 Filed 2-19-87; 8:45 am]
BILLING CODE 4910-13-M

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.

SUMMARY: On November 26, 1986, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ALASKAN SEAFOOD COMPANY" was published in the **Federal Register** (51 FR 42966).

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.

DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC. 20229 (202-566-5765).

Dated: February 13, 1987.

Steven Pinter,

Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87-3654 Filed 2-19-87; 8:45 am]
BILLING CODE 4320-02-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 4458.

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. 87-3695 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: 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. 87-3696 Filed 2-18-87; 10:39 am]

BILLING CODE 6351-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, March 2, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed § 615.11 of Volume II of the EEOC Compliance Manual, Age Harassment

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated and issued: February 18, 1987.

Johnnie L. Johnson, Jr.,

Attorney-Advisor, Executive Secretariat.

[FR Doc. 87-3739 Filed 2-18-87; 2:58 pm]

BILLING CODE 6750-06-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:

1. Docket No. 86-27—Attorney's Fees in Reparation Proceedings—Consideration of Comments on Proposed Rule.

Portion closed to the public:

1. Controlled Carrier Status of Various Carriers.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523-5725.

Joseph C. Polking,

Secretary.

[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.

Dated: February 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3662 Filed 2-17-87; 4:17 am]

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.

DATE PREVIOUSLY ANNOUNCED: Thursday, February 5, 1987.

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.

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.

February 12, 1987.

[FR Doc. 87-3768 Filed 2-18-87; 3:57 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987

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: E½W½SW¼SE¼SE¼,E½SW¼SE¼SE¼".

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

federal register

Friday
February 20, 1987

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.

EFFECTIVE DATE: April 21, 1987.

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) 236-1750
or
Stephen Spector, (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 3882), 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 § 3163.2 of the final rulemaking. The issuance of this final rulemaking constitutes the third notice to lessees and operators of these duties and prohibited acts, with 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 otherwise established. While this concept was not discussed by the Associate Solicitor, Energy and Resources, in the memorandum of April 29, 1986, 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 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 benefical 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 47758), on September 16, 1983 (48 FR 41739), on September 21, 1984 (49 FR 37356), and on January 30, 1986 (51 FR 3882).

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. 189), 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. 188(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 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 supplant 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 lease operations 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 Mangement 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 Bureau of Land Management considers the prior approval requirements for both the actual drilling and associated surface disturbance as being very clear and the prior approval of these operations is critical to proper multiple use management of the public lands. One of the comments suggested that the final rulemaking provide relief for stripper wells. This suggested change was not adopted by the final rulemaking because the administrative review procedures in § 3165.3 provide that the effect of the assessment on the continued operation of the 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 abated 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 10-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(j) 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 either 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, to reinstate the daily accumulation of penalties in the case of those major violations that are considered serious. This procedure differs from that provided in the proposed rulemaking and followed by 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 the daily accumulation of penalties and assessments unless the Director specifically decides to reinstate them. The effectiveness of the decision requiring that a violation be corrected will not, however, be suspended during the hearing or appeal. Sections 3165.3 and 3165.4 have been revised to consolidate the appeals provisions in one section.

Comments were also received on several issues which were raised in the preamble to the proposed rulemaking and are discussed below.

Phased Implementation

Two written comments were received on the issue of phased implementation. One of the comments expressed the view that there should be a period after publication of this final rulemaking, but prior to its effective date, where the affected public could recommend changes. This recommendation has not been adopted by the final rulemaking. Because of the impacts of the provisions of this final rulemaking, the final rulemaking allows a 60-day period, instead of the usual 30-day period, from the date of publication to the effective date to give the using public an opportunity to become familiar with the provisions of the rulemaking and make any needed changes in their operations. If the affected public raises substantive questions about the provisions of the final rulemaking, the Bureau of Land Management will review the issues 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 no "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 Leshendok, 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.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.), Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

January 13, 1987.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for acquired Lands, as amended (30 U.S.C. 351–359), the Act of May 21, 1930, (30 U.S.C. 301–306), the Act of March 3,1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 et seq.); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

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 "3160–3";

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 "Filed"; 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 "1004–0138" 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 (NTL)*" by removing from where it appears the word "DMM" 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 it from where it appears the word "Supervisor" 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 failure to perform may also be 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 produciton 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 Order" by removing from where it appears the word "implements" and replacing it with the phrase "implements and supplements".

5. Section 3161.1 is revised to read:

§ 3161.1 Jurisdiction.

(a) All operations conducted on a Federal or Indian oil and gas lease by, or on behalf of, the lessee are subject to the regulations in this part.

(b) Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

6. Section 3161.2 is amended by removing from where it appears the phrase "to assess monetary penalties or liquidated damages;" and replacing it with the phrase "to impose monetary assessments or penalties;", and by removing from where it appears the phrase "technical and procedural reviews" and replacing it with the phrase "administrative reviews".

§ 3161.3 [Amended]

7. Section 3161.3(b) is revised to read:

* * * * *

(b) in accomplishing the inspections, the authorized officer may utilize Bureau personnel, may enter into cooperative agreements with States or Indian Tribes, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

§ 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 by removing from where it appears the phrase "production month" and replacing it with the phrase "operation month".

14. Section 3162.6 is revised to read:

§ 3162.6 Well and facility identification.

(a) Every well within a Federal or Indian lease or supervised agreement shall have a well indentification 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, 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 communitization 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 well signs in place on the effective date of this rulemaking which do not have the unit or communitization 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 communitization 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., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation.", and the term "effectively sealed" is revised to read *"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 "seal" 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

B. Revising paragraphs (b) through (d) to read:

* * * * *

(b) *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 operations unless otherwise modified by other subparagraphs of this paragraph, and 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.

(4) For oil measured and sold by hand gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable.

(5) 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.

(6) 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 from 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 appicable 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 also are 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 wil be put in place to detect or 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 communitization 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.

(2) 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 is due at the time the plan is completed as required by paragraph (c)(1) of this section, 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 recordation. The authorized officer may, upon examination, require adjustment of the method or 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.

(2) 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 an assessment of not more than $500 per day for each day nonabatement continues where the violation or default is deemed a major violation;

(2) Where noncompliance involves a minor violation, the authorized officer may subject the lessee to an assessment of $250 for failure to abate the violation or correct the default within the time allowed;

(3) When necessary for compliance, or where operations have been commenced without approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income, the authorized officer may shut down operations. Immediate shut-in action may be taken where operations are initiated and conducted without prior approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. Shut-in actions or other situations may be taken only after due notice, in writing, has been given;

(4) When necessary for compliance, the authorized officer may enter upon a lease and perform, or have performed, at the sole risk and expense of the lessee, operations that the lessee fails to perform when directed in writing by the authorized officer. Appropriate charges shall include the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The lessee shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be entered;

(5) Continued noncompliance may subject the lessee to lease cancellation and forfeiture under the bond. The lessee shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be recommended for cancellation and forfeiture declared under the surety bond;

(6) Where actual loss or damage has occurred as a result of the lessee's noncompliance, the actual amount of such loss or damage shall be charged to the lessee.

(b) Certain instances of noncompliance are violations of such a 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 control equipment, as required by the approved drilling plan, $500 per day for each day that the violation existed, including days the violation existed 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, dating 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 the violation continues, not to exceed a maximum of 60 days, dating 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 deemed 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

inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days 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 be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil 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 site 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 Amounts for this section are as follows:

(1) 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, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of $500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section, $5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of $1,000 per day, per operator, per lease under paragraph (a) of this section or $10,000 per day, per operator, per lease under paragraph (b) of this section. For paragraphs (d) through (f) of this section, the rate shall be $500, $10,000, and $25,000, respectively.

(2) 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 $250 under § 3163.1 of this title and a second notice has been issued giving an abatement period of not less than 20 days; and

(iii) The noncompliance was not abated within the time allowed by the second notice. The initial proposed penalty for a minor violation under paragraph (a) of this section shall be at the rate of $50 per day beginning with the date of the second notice. Under paragraph (b) of this section, the penalty shall be at a daily rate of $500. Such penalties shall not exceed a rate of $100 per day, per operator, per lease under paragraph (a) of this section, of $1,000 per day, per operator, per lease under paragraph (b) of this section.

(h) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under this section. In compromising or reducing the amount of a civil penalty, the Secretary shall state on the record the reasons for such determination.

(i) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law, except as provided in paragraphs (a) and (b) of this section.

(j) If the violation continues beyond the 60-day maximum specified in paragraph (b) of this section or beyond the 20 day maximum specific in paragraphs (e) and (f) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(k) If the violation continues beyond the 20-day maximum specified in paragraph (d) of this section, the authorized officer shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocation to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

20. Section 3163.4–2 is redesignated as § 3163.3.

21. 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 making the assessment or penalty becomes 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 § 3165.3(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 3165.3 is revised to read:

§ 3165.3 Notice 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 plenalty 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

civil penalty shall be mailed to the lessee of record.

(b) *State Director review.* Any adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and shall be filed with the appropriate State Director. Upon request and showing of good cause, 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.

(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 proposed penalty, may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in § 3165.4(b)(2) of this part. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice of proposed penalty. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals as provided in § 3163.4 of this title.

(d) *Action on request for State Director review. Action on request for administrative review.* The State Director shall issue a final decision within 10 business days of the receipt of a complete request for administrative review or, where oral presentation has been made, within 10 business days therefrom. Such decision shall represent the final Bureau decision from which further review may be obtained as provided in paragraph (c) of this section for proposed penalties, and in § 3165.4 of this title for all decisions.

(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 requirement 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 threating 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 requirement 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 lessor or upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(d) *Effect of appeal on assessments and penalties.* (1) Except as provided in subparagraph (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 subparagraph (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

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3430

[AA-650-07-4121]

Noncompetitive Leases; Amendment Providing Detailed Procedures for Processing Preference Right Lease Applications for Coal

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would provide detailed procedures for use in processing preference right lease applications for coal. The procedures contained in this proposed rulemaking would allow full public participation throughout the administrative process and would comply with the court order in *Natural Resources Defense Council (NRDC)* v. *Berklund,* 458 F. Supp. 925 (D.D.C. 1978), aff'd 609 F. 2d 553 (D.C. Cir. 1979).

DATE: Comments should be submitted by March 23, 1987. Comments received or postmarked after this date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carole Smith, (202) 343-6821.

SUPPLEMENTARY INFORMATION: The Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), established a prospecting permit—noncompetitive leasing system for the disposition of certain minerals, including coal, in certain Federally-owned lands. Under the provisions of the Mineral Leasing Act, any citizen could obtain a prospecting permit to explore for coal on the public lands and, if the exploration resulted in the discovery of an economic deposit of that coal, the prospector could file an application for a lease without competition. These noncompetitive leases became known as "preference right" leases. The term used in the Mineral Leasing Act to describe the type of discovery of coal that would entitle the prospector to a lease is coal in "commercial quantities."

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 required that the environmental impact statements or environmental analyses include 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 1978 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 specifically and in sufficient detail those matters (resource conflicts, permitting costs and mitigation measures) requiring "costing" in the adjudication itself.

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 and refined. At this time, agreement was reached that the results of the negotiations would be best implemented in a court order amending the 1978 order which expresses the procedures, concessions, and waivers of claims in a format binding on each side. These negotiations left some issues unresolved—chiefly other legal and

policy disputes the environmental groups have had about preference right lease applications and the processing of those applications that were not litigated in *Berklund*. 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 lease 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 the negotiations includes the following documents and is intended to be effected 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 challenge adjudications of preference right lease applications made pursuant to 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 or 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"; the proposed 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 withdrawal/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 an opportunity 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 the detailed 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 adjudicate the preference right lease application through the process set forth in this proposed rulemaking. If the additional data submitted by the applicant was not 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 Carole 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 processing 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.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Federal Coal Leasing Amendments Act of 1976, as supplemented (90 Stat. 1083–1092), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), it is proposed to amend Part 3430, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3430—[AMENDED]

1. The authority citation for Part 3430 continues to read:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 521–531; 30 U.S.C. 351–359; 30 U.S.C. 1201 *et seq.*; 42 U.S.C. 7101 *et seq.*; and 43 U.S.C. 1701 *et seq.*

§ 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 PRLAs (Beans Spring, Table, and Black Butte Creek Projects)* (September 1982), or covered by serial numbers C–0127832, C–0123475, C–0126669, C–8424, C–8425, W–234111, C–0127834, U–1362, 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)(2), 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 shall be given 60 days from the date of the publication of the notice in the **Federal Register** to comment on the Bureau's cost estimates.

(c) The cost estimate document and all substantive comments received (or summaries thereof if the response is voluminous) shall be part of the Record of Decision for the preference right lease application(s) (See 40 CFR 1505.2 or successor regulations).

(1) The authorized officer shall respond to each substantive comment in the Record of Decision by modifying or supplementing his/her cost estimates, or explaining why they were not modified or supplemented in response to the comments.

(2) The authorized officer shall submit a copy of the Record of Decision with the public comments and the Bureau's response to the Environmental Protection Agency.

(3) The authorized officer shall publish a notice of the availability of each Record of Decision in the **Federal Register.**

(4) No preference right lease shall be issued sooner than 30 days following publication of the notice of availability required by paragraph (c)(3) of this section.

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, screens, monitoring equipment, and preparation of baseline and impact reports).

(3) Air quality—costs of monitoring climatology and air quality (collection and evaluation of air quality data, purchases of air samplers, evaporation pans, rain gauges, recorders, wind speed and direction indicators, and preparation of baseline and impact reports).

(4) Vegetation—costs of monitoring indigenous vegetation and vegetation in reclaimed areas (collection and evaluation of samples for productivity analysis, and preparation of baseline and impact reports).

(5) Wildlife—costs of monitoring wildlife (collection and evaluation of wildlife and specimens and data, purchases of traps, nets, and preparation of baseline and impact reports).

(6) Soils—costs of monitoring soils (collection and evaluation of soil samples, through physical and chemical means, and preparation of baseline and impact reports).

(7) Noise—costs of monitoring noise (collection and analysis of noise data, purchases of necessary equipment, and preparation of baseline and impact reports).

(8) Socio-economics—costs of socio-economic studies (collection and evaluation of social and economic data, and preparation of baseline and impact reports).

(9) Archaeology, history and other cultural—costs of archaeological, historical and other cultural studies (conducting historical and archaeological surveys, excavations, and preparation of baseline and impact reports).

(10) Paleontology—costs of paleontological studies (conducting surveys and excavations and preparation of baseline and impact reports).

(11) Geology—costs of monitoring the geology (drilling overburden cores, physical and chemical analysis, and preparation of baseline and impact reports).

(12) Subsidence—costs of monitoring subsidence for underground mines (setting and monitoring monuments to measure subsidence).

(13) Mine planning—costs of developing all mining plans for obtaining and renewing mining permits (development of operating, blasting, air and water pollution control, fish and wildlife, and reclamation plans, preparation of maps).

(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).

(3) Air pollution control—costs of air pollution control, including compliance with National Ambient Air Quality Standard and Protection from Significant Deterioration requirements, for areas affected by mining and associated activities (water and chemical sprays for dust control, installation and operation of dust collectors).

(4) Noise abatement—costs of installing and maintaining noise mufflers on equipment and around mine site.

(5) Wildlife—costs of mitigating impacts to wildlife species identified as reasonably likely to occur and subject to proposed lease stipulations, and including costs of compliance with the Endangered Species Act and other laws, regulations, and treaties concerning wildlife protection.

(6) Socio-economics—costs of implementing any mitigation measure the Bureau or any other government agency has imposed; and of mitigating impacts on surface owners and occupants, including relocation costs and costs of compensation for improvements, crops, or grazing values.

(7) Archaeology, history, and other cultural—costs of monitoring and inspection during mining to identify archaeological, historical, and other cultural resources, and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(8) Paleontological—costs of monitoring and inspection during mining to identify paleontological resources and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(9) Subsidence—costs of mitigating the impacts of subsidence identified as reasonably likely to occur and subject to proposed lease stipulations.

(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.

January 12, 1987.

[FR Doc. 87–3572 FIled 2–19–87; 8:45 am]

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Friday
February 20, 1987

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]

Benign Prostatic Hypertrophy Drug Products for Over-the-Counter Human Use; Proposed Rulemaking

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) 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 the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 1, 1982 (47 FR 43566), 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 position on the establishment of a monograph for OTC benign prostatic hypertrophy drug products. Final agency action on this matter will occur with the publication at a future date of a final rule for OTC benign prostatic hypertrophy drug products.

This proposal constitutes FDA's tentative conclusions and recommendations on OTC benign prostatic hypertrophy drug products, based on the comments received and the agency's independent evaluation of the Panel's report.

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 "nonmonograph conditions" (old Category I) and "monograph 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 that 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, the agency stated that if it proposed to adopt the Panel's recommendations it would propose that 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.

I. 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 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 31696) and August 27, 1975 (40 FR 38179). 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 much 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 the 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 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 by law to 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 the 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 studies (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 1,000 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

(1) Feinblatt, H.M., and J.C. Gant, "Palliative Treatment of Benign Prostatic Hypertrophy. Value of Glycine-Alanine-Glutamic Acid Combination," *The Journal of the Maine Medical Association*, 49:99–102, 1958.

(2) Damrau, F., "Benign Prostatic Hypertrophy: Amino Acid Therapy for Symptomatic Relief," *Journal of the American Geriatrics Society*, 10:426–430, 1962.

(3) Aito, K., and E. Iwatsubo, "The Conservative Treatment of Prostatic Hypertrophy with Paraprost," *Acta Urologica Japonica*, 18:41–44, 1972

(4) Shiga, K., E. Kumaki, and A. Imamura, "Amino Acids Therapy for Hypertrophy of the Prostate," *Acta Urologica Japonica*, 14:625–630, 1968.

(5) Shimaya, M., and H. Sugiura, "Double Blind Test of PPC for Prostatic Hyperplasia," *Acta Urologica Japonica*, 16:231–236, 1970.

(6) Ishigami, J., and K. Kuroda, "Clinical Effect of PPC for the Palliative Treatment of Benign Prostatic Hypertrophy," *Acta Urologica Japonica*, 15:68–75, 1969.

(7) Sugiura, H., and M. Shimaya, "Clinical Application of 'PPC' to Prostatic Hypertrophy and Others," *Acta Urologica Japonica*, 15:450–453, 1969.

(8) Nishimura, Y., "Clinical Application of PPC for Prostatic Hypertrophy and Female Cystopathy," *Acta Urologica Japonica*, 15:127–134, 1969.

(9) Yamauchi, S., M. Hirakida, and H. Tsuji, "Experimental Application of P.P.C. for Prostatic Disease," *Acta Urologica Japonica*, 14:633–637, 1968.

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 revocation 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)

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. *An 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.,* 357 F.2d 713, 718 (10th 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 data are insufficient to determine 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"; (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 anslysis 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 16636) 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, 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 22, 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 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.

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 in Part 357 to read as follows:

1. The authority citation for Part 357 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Sat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

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

Sec.

Subpart L—Benign Prostatic Hypertrophy Drug Products

§ 357.1001 Scope.

(a) An over-the-counter drug product to relieve the symptoms of benign prostatic hypertrophy in a form suitable for oral administration 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.

§ 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.

[FR Doc. 87–3570 Filed 2–19–87; 8:45 am]

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federal register

Friday
February 20, 1987

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N-0122]

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, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 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 comment 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 that 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

1. In response to the Panel's statement at 47 FR 527 that it could not recommend a concentration of salicylic acid which would be safe and effective for removal of soft corns because of insufficient data on both safety and effectiveness, one comment submitted several studies to support the safety and effectiveness of salicylic acid for the removal of soft corns (Refs. 1, 2, and 3). The comment stated that the results of these clinical studies convincingly demonstrate that salicylic acid provides clinically and statistically significant improvement in the removal of soft corns. The comment requested that salicylic acid for the removal of soft corns be included in the monograph.

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 groups 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 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 this 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

(1) Karas, A. A., "A Pilot Study on the Safety and Effectiveness of a Formulation for the Removal of Soft Corns and Subsequent Relief of Pain," (IBT No. 636-03794), draft of unpublished study, Comment No. C00001, Docket No. 81N-0122, Dockets Management Branch.

(2) Reed, M. L., "Evaluation of Safety and Efficacy of Salicylic Acid for the Removal of Soft Corns," (Scholl Study No. S-82-6), draft of unpublished study, Comment No. LET, Docket No. 81N-0122, Dockets Management Branch.

(3) Goodman, J. J., and L. Farris, "Evaluation of Safety and Efficacy of 20% Salicylic Acid for the Removal of Soft Corns," (Scholl Study No. S-82-47), draft of unpublished study, Comment No. LET, Docket No. 81N-0122, Docket Management Branch.

(4) Popovich, N., "Foot Care Products," *in* "Handbook of Nonprescription Drugs," 7th Ed., American Pharmaceutical Association, Washington, p. 616, 1982.

(5) "United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 248, 1985.

(6) OTC Volume 160097.

(7) "Handbook of Nonprescription Drugs," 7th Ed., American Pharmaceutical Association, Washington, p. 640, 1982.

(8) "American Drug Index," 30th Ed., J. B. Lippincott Co., Philadelphia, p. 267, 1986.

(9) OTC Volume 160003.

(10) OTC Volume 160133.

(11) OTC Volume 160283.

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.

3. One comment contended that although the Panel's recommended indication "For the removal of hard corns and calluses"' in § 358.550(b) is an accurate description of the proper use of salicylic acid, there are other equally meaningful ways to state the indications. The comment suggested that the introductory wording in § 358.550(b) be changed from the restrictive statement ". . . limited to the following phrase . . .," to read, "Indications. The labeling of the product contains a statement of the indications under the heading 'indications' *such as:* 'For the removal of hard corns and calluses.' "

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"; (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

". . . limited to the following phrase . . ." is not included in this proposal.

4. One comment contended that the Panel erroneously expanded the scope of Category II by inappropriately including statements describing product performance rather than "conditions" that would result in the drug not being generally recognized as safe and effective or would result in misbranding. The comment contended that such statements as "You are about to make your feet more comfortable," and "Make walking more pleasurable for you," are merely describing desired results of use of the product and are not Category II conditions. The comment also pointed out that several corn/callus products are sold as a combination kit containing a drug (the medicated disks) and a medical device (the unmedicated pads, cushions, etc.). The comment contended that the statement "Other uses for . . . corn pads, chafing, tender 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 referred to 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 similar to the 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, FDR 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 that 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 reworded to be similar to the warnings language recommended in the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products (42 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 capping (§ 358.550(c)(2)(ii) and (iii)) to read "Cap bottle 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 to remove film and continue to flush with water 15 more minutes" to read, "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.

7. One comment suggested that the recommended warning in § 358.550(c)(1)(iii), which advises consumers to consult a doctor if discomfort persists, be modified to read, "If discomfort persists, see your doctor or podiatrist." The comment contended that because corns and calluses are often treated by podiatrists as well as by physicians, it seems reasonable and appropriate to direct the consumer to either if problems occur.

The agency agrees with the comment that it would be appropriate to include "podiatrist" in the warnings for corn and callus remover drug products because a podiatrist is a medical specialist who treats problems of the feet. Therefore, the agency is proposing to revise the labeling in this tentative final monograph to include the term "podiatrist" together with 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 for use 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 being 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 cohesiveness 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

(1) Davies, M., and R. Marks, "Studies on the Effect of Salicylic Acid on Normal Skin," *British Journal of Dermatology*, 95:187–192, 1976.

(2) Huber, C., and E. Christophers, "'Keratolytic' Effect of Salicylic Acid," *Archives for Dermatological Research*, 257:293–297, 1977.

(3) Roberts, D. L., R. Marshall, and R. Marks, "Detection of the Action of Salicylic on the Normal Stratum Corneum" *British Journal of Dermatology*, 103:191–196, 1980.

(4) Goodman, J. J., and L. Farris, "Evaluation of Safety and Efficacy of 20% Salicylic Acid for the Removal of Soft Corns," (Scholl Study No. S–82–47), draft of unpublished study, Comment No. LET, Docket No. 81N–0122, Dockets Management Branch.

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.

Corn and callus remover active ingredients	Panel	Agency
Acetic acid, glacial	II	II
Allantoin (5-ureidohydantoin)	II	II
Ascorbic acid	II	II
Belladonna (extract) (alkaloids of belladonna).	II	II

Corn and callus remover active ingredients	Panel	Agency
Chlorobutanol	II	II
Diperodon hydrochloride	II	II
Ichthammol (ichthyol)	II	II
Iodine	II	II
Methylbenzethonium chloride	II	II
Methyl salicylate	II	II
Panthenol	II	II
Phenoxyacetic acid	III	III
Phenyl salicylate (salol)	II	II
Salicylic acid	I	I
Vitamin A	II	II
Zinc chloride	III	III

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 corn and callus remover 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 includes 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

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. Based on data submitted in support of the safety and effectiveness of salicylic acid for the removal of soft corns, the agency is proposing that products covered by the monograph not be limited to the removal of hard corns and calluses. (See comment 1 above.)

2. Because medicated disks, pads, and plasters are similar in nature, the agency is proposing to use the term "plaster" to include "disk" and "pad." In addition, the agency is proposing to use the term "collodion-like" in place of "collodion" because marketed liquid formulations contain ingredients other than those included in the U.S.P. article. Thus, the agency is proposing a number of revised definitions in this tentative final monograph. (See comment 1 above and § 358.503 below.)

3. The agency is proposing to allow use of the secondary indication "For relief of pain associated with corns and calluses" but only in conjunction with the primary indication "For removal of corns and calluses." (See comment 2 above.)

4. 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 "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.)

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 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 25.24(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, 5600 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

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.

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

Sec.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

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 povided 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 a 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," conisistent with 16 CFR 1500.3(b)(10).

(ii) "Keep away from fire or flame."

(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(a).* "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

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

federal register

Friday
February 20, 1987

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. All comments must be marked: Docket No. 24594. 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.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, Transport Standards Staff, ANM–110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–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 identify 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 85–10 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 procedures and acceptance criteria. This petition was published in the Federal Register on July 21, 1986 (51 FR 26166).

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 certain refinements 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.

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1357, 1401, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1485, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Issued in Seattle, Washington, on February 4, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–3564 Filed 2–19–87; 8:45 am]

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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.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-1912.

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]

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