or withdrawn from warehouse, for consumption on or after August 23, 1988, which is the date of enactment of the OTCA.

**EFFECTIVE DATE:** April 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Entry Rulings Branch, (202–566–5856).

**SUPPLEMENTARY INFORMATION:**

**Background**

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee lawfully assessed or collected, which results from a particular use made of the merchandise on which the duty, tax or fee was assessed or collected.

Part 191, Customs Regulations (19 CFR part 191) sets forth the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims.

Drawback is payable with respect to regular Customs duties. To this end, the list of duties eligible for drawback in § 191.3 (b) and (c), Customs Regulations (19 CFR 191.3 (b) and (c)), includes dumping duties assessed under title VII, Tariff Act of 1930, as amended, 19 U.S.C. 1673, and countervailing duties assessed under sections 303 and 701, Tariff Act of 1930, as amended, 19 U.S.C. 1303, 1671.

In brief, antidumping duties are imposed on foreign merchandise that is, or is likely to be, sold in the United States at less than its fair value; and countervailing duties apply to imported merchandise, where foreign governments have bestowed bounties or grants upon its exportation. In both instances, these duties are only imported if the imports are injuring a domestic industry.

The right to drawback of such duties was specifically provided for in section 779 of the Tariff Act of 1930, as amended, 19 U.S.C. 1677h (Pub. L. 98–573; October 30, 1984).

However, section 1334 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418; August 23, 1988) (the OTCA) amended 19 U.S.C. 1677h to provide that such assessments, for purposes of drawback, "shall not be treated as being regular Customs duties." In accordance with section 1337(d) of the OTCA, this amendment applies to articles entered, or withdrawn from warehouse, for consumption, on or after the date of enactment of the OTCA (August 23, 1988).

Accordingly, pursuant to this statutory provision, the Customs Regulations, part 191, are being amended to remove the reference to countervailing and antidumping duties as being regular Customs duties subject to drawback.

**Inapplicability of Public Notice and Delayed Effective Date Provisions**

Inasmuch as the amendment merely conforms the Customs Regulations to existing statutory law, notice and public procedure in this regard are unnecessary under 5 U.S.C. 553(b)(B) and, for the same reason, under 5 U.S.C. 553(d)(3), a delayed effective date is not required.

**Executive Order 12291**

Because this document will not result in a "major rule" as defined in E.O. 12291, Customs has not prepared a regulatory impact analysis.

**Inapplicability of Regulatory Flexibility Act**

This document is not subject to the regulatory analysis or other requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

**Drafting Information**

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 191**

Customs duties and inspection, exports, imports, claims, drawback.

**Amendment to the Regulations**

Part 191, Customs Regulations (19 CFR part 191) is amended as set forth below.

## PART 191—DRAWBACK

1. The authority citation for part 191 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1313, 1624. Section 191.7 also issued under 19 U.S.C. 1514; § 191.8 also issued under 19 U.S.C. 1557; §§ 191.131(a), 191.133, 191.137, 191.139 also issued under 19 U.S.C. 1557; §§ 191.162–191.166 also issued under 19 U.S.C. 81c.

**§ 191.3 [Amended]**

2. Section 191.3, Customs Regulations, is amended by removing paragraphs (b) and (c) therefrom, and by redesignating paragraph (d) as (b).

**Michael H. Lane,**

*Acting Commissioner of Customs.*

Approved: April 5, 1990.

**John P. Simpson,**

*Acting Assistant Secretary for Enforcement.*

[FR Doc. 90–9631 Filed 4–25–90; 8:45 am]

**BILLING CODE 4820–02–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Oxytetracycline and Salinomycin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for use of previously approved oxytetracycline and salinomycin Type A medicated articles to make combination drug Type C medicated broiler chicken feeds. The Type C feeds are used as an aid in the reduction of mortality due to air-sac infections and for the prevention of coccidiosis.

**EFFECTIVE DATE:** April 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Diane T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 140–448, providing for combining previously approved oxytetracycline and salinomycin Type A medicated articles to make combination drug Type C medicated broiler feeds. The Type C broiler feeds contain oxytetracycline 500 grams per ton and salinomycin sodium 40 to 60 grams per ton used as an aid in the reduction of mortality due to air-sacculitis (air-sac infection) caused by *E. coli* infections susceptible to oxytetracycline and for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.* The NADA is approved, and the regulations are amended in 21 CFR 558.450 in Table 1 in paragraph (d)(1), entry (v) by adding a new item and in 21

CFR 558.550 by adding new paragraph (b)(3)(iii). The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(ii) of the Generic Animal Drug and Patent Term Restoration Act of 1988 (21 U.S.C. 360b(c)(2)(F)(ii)) this approval qualifies for 3 years of marketing exclusivity beginning on April 13, 1990, because new clinical trials for safety and effectiveness were required for the approval.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA 305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) 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.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

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

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.450 is amended in Table 1 in paragraph (d)(1), entry (v) by adding a new item under the heading "Combination in grams per ton" to read as follows:

**§ 558.450 Oxytetracycline.**

* * * * *

(d) * * *

(1) * * *

TABLE 1.—IN CHICKEN AND TURKEY FEED

| Oxytetracycline in grams per ton | Combination in grams per ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| * * * | * * * | * * * | * * * | |
| (v) * * * | * * * | * * * | * * * | |
| | Salinomycin 40 to 60 | Broiler Chickens; as an aid in the reduction of mortality due to air-sacculitis (air-sac infection) caused by *Escherichia coli* sensitive to Oxytetracycline; for the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.* | Feed for 5 days as sole ration. Do not feed to laying chickens. Withdraw 24 hours prior to slaughter. May be fatal if accidentally fed to adult turkeys or to horses. As salinomycin sodium. As mono-alkyl($C_8$-$C_{18}$) Trimethyl ammonium oxytetracycline. | 000069 |

* * * * *

3. Section 558.550 is amended by adding new paragraph (b)(3)(iii) to read as follows:

**§ 558.550 Salinomycin.**

* * * * *

(b) * * *

(3) * * *

(iii) Oxytetracycline as in § 558.450.

Dated: April 13, 1990.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 90–9692 Filed 4–25–90; 8:45 am]

BILLING CODE 4160–01–M

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**21 CFR Part 801**

**[Docket No. 86N–0479]**

**RIN 0905–AC54**

## Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an amendment to a final rule that standardizes tampon absorbency terms and requires manufacturers to use a specific test to determine absorbency. The amendment will allow the use of a plastic or glass chamber in the test apparatus. The final rule had specified only glass. FDA is issuing this amendment under the Federal Food, Drug, and Cosmetic Act.

**EFFECTIVE DATE:** The amendment is effective for packages of tampons initially introduced or initially delivered for introduction into commerce after April 26, 1990.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Les Weinstein, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 26, 1989 (54 FR 43766), FDA issued a final rule to amend the agency's regulations governing user labeling for menstrual tampons (§ 801.430(f)(2) (21 CFR 801.430(f)(2))) to standardize absorbency terms used on tampon package labels and to require uniform absorbency testing of tampons. The purpose of the final rule is to enable consumers to choose the least absorbent tampon needed to control menstrual flow and thus lower their risk of contracting toxic shock syndrome (TSS). The risk of TSS, a rare but sometimes fatal disease, increases with the use of tampons of higher absorbency.

Prior to the issuance of the final rule, the agency had published a proposed rule in the **Federal Register** of September 23, 1988 (53 FR 37250) (corrected November 3, 1988 (53 FR 44551) and January 17, 1989 (54 FR 1844)) and a reproposed rule in the **Federal Register** of June 12, 1989 (54 FR 25076) (corrected June 28, 1989 (54 FR 27188)). More than 270 comments were received on the proposed rule. A summary of these comments and the agency's response to them were set out in the preamble to the reproposed rule. Because of an oversight, FDA did not respond to a comment on the proposed rule about the syngyna test method specified in § 801.430(f)(2) to be used to measure tampon absorbency. The comment was submitted by a firm that

tests sanitary protection products. The comment recommended that FDA permit the syngyna test chamber to be fabricated of glass or "suitable plastic" instead of specifying only glass. FDA agrees with the comment that either a glass or plastic chamber should be permitted; however, the agency believes that the only kind of plastic material that is acceptable as a substitute for glass is hard transparent plastic.

Accordingly, the agency is revising § 801.430(f)(2) to permit the use of a glass chamber or a chamber made from hard transparent plastic. Also, Figure 1—Syngyna Test Chamber, referred to in § 801.430(f)(2), is being revised to remove the word "glass."

Under section 553 (b) and (d) of the Administrative Procedure Act (5 U.S.C. 553 (b) and (d)) and FDA's administrative practices and procedures regulations (21 CFR 10.40(e)), FDA finds that notice and public procedure prior to promulgating this amendment to the final rule are unnecessary for the following reasons. First, the amendment does not impose an additional burden on persons testing the absorbency of tampons; in fact, it relieves a burden because the amendment allows flexibility in the way the test chamber is fabricated. Second, the agency has solicited comments on absorbency testing and labeling in a proposed rule and in a reproposed rule, resulting in over 300 comments received. If FDA had not inadvertently overlooked the comment to which the agency is responding by this amendment, the agency would have responded to it by revising the proposed rule without asking for further public comment. Third, FDA believes that the amendment is only a minor change to the test method and does not substantively change the final rule. Fourth, promulgation of the amendment without notice and comment will shorten the time in which those persons testing the absorbency of tampons who wish to substitute plastic for a glass test chamber will be able to do so in order to comply with the final rule. For all these reasons, FDA has good cause to promulgate the amendment without prior notice and an opportunity for comment. FDA is making the amendment effective on the date of publication in the **Federal Register** for the same reasons and because the amendment relieves a restriction. (See 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4)(i).)

Although the agency is now promulgating the amendment, FDA is providing, in accordance with 21 CFR 10.40(e)(1), an opportunity to comment on the amendment after it is published. The agency will use any comments received to determine whether the portion of the final rule pertaining to the test method should be further modified or if the amendment should be revoked. If the comments justify any further changes in the final rule, the agency will publish these changes in the **Federal Register.**

Interested persons may submit written comments to the Dockets Management Branch (address above) at any time. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 801

Incorporation by reference, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

## PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. Section 801.430 is amended in paragraph (f)(2) by revising the first sentence and Figure 1 to read as follows:

**§ 801.430 User labeling for menstrual tampons.**

* * * * *

(f) * * *

(2) In the absorbency test, an unlubricated condom, with tensile strength between 17 Mega Pascals (MPa) and 30 MPa, as measured according to the procedure in the American Society for Testing and Materials (ASTM), D 3492–83, "Standard Specification for Rubber Contraceptives (Condoms)" [1] for determining tensile strength, which is incorporated by reference in accordance with 5 U.S.C. 552(a), is attached to the large end of a glass chamber (or a chamber made from hard transparent plastic) with a rubber band (see Figure 1) and pushed through the small end of the chamber using a smooth, finished rod. * * *

* * * * *

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[1] Copies of the standard are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

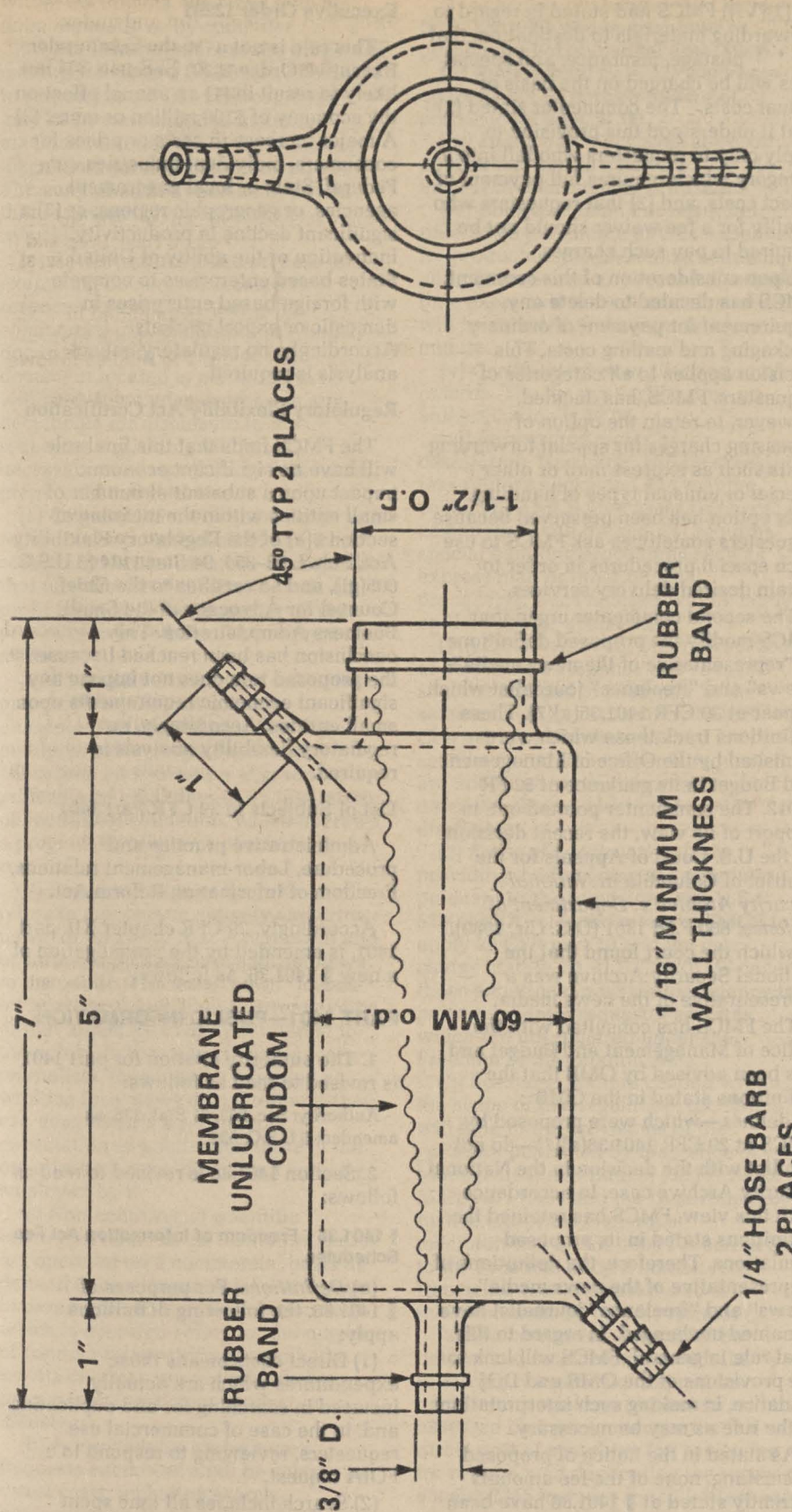


FIGURE 1 — SYNGYNA TEST CHAMBER

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* * * * *

Dated: April 18, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-9691 Filed 4-25-90; 8:45 am]

BILLING CODE 4160-01-M

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### 29 CFR Part 1401

### Freedom of Information Reform Act; Revision of Fee Schedule and Fee Waiver Policy

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Freedom of Information Act provisions at 29 CFR 1401.36. This amendment is made pursuant to the Freedom of Information Reform Act (Pub. L. 99-570, section 1803) which requires that agencies establish certain new criteria for the determination of fees, and when fees should be waived or reduced.

**EFFECTIVE DATE:** This rule will be effective on June 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ted M. Chaskelson, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Telephone: (202) 653-5305.

**SUPPLEMENTARY INFORMATION:** On October 27, 1986 the President signed into law the Freedom of Information Reform Act of 1986 (Pub. L. 99-570, section 1803). This Act created a new structure for the assessment of FOIA fees and also established a revised statutory standard for the waiver or reduction of fees. The Office of Management and Budget (OMB) has promulgated guidelines (52 FR 10012, March 27, 1987) which guide agencies in the development of implementing regulations pertaining to the assessment of fees, and the Department of Justice (DOJ) has issued guidance (Attorney General's memorandum on the 1986 Amendments to the Freedom of Information Act, December 1987) in regard to implementing regulations for fee reduction and fee waivers.

Pursuant to the Freedom of Information Reform Act of 1986, and the guidance provided by OMB and DOJ, a notice of proposed rulemaking was published by this agency on June 20, 1989 (54 FR 25879). Two comments were received, as follows.

One commenter noted that in the proposed regulation (at 29 CFR 1401.36 (b)(1)(VI)) FMCS had stated in regard to forwarding materials to destination, that "* * * postage, insurance, and special fees will be charged on the basis of actual costs." The commenter stated (1) that it understood this provision to apply only to requesters who fall into a category which requires full payment of direct costs, and (2) that requesters who qualify for a fee waiver should not be required to pay such charges.

Upon consideration of this comment, FMCS has decided to delete any requirement for payment of ordinary packaging and mailing costs. This decision applies to all categories of requesters. FMCS, has decided, however, to retain the option of assessing charges for special forwarding costs such as express mail or other special or unusual types of handling. This option has been preserved because requesters sometimes ask FMCS to use such special procedures in order to obtain desired delivery services.

The second commenter urged that FMCS modify the proposed definitions of "representative of the news media", "news" and "freelance" journalist which appear at 29 CFR 1401.36(a)(7). These definitions track those which were furnished by the Office of Management and Budget in its guidance at 52 FR 10012. The commenter pointed out, in support of its view, the recent decision by the U.S. Court of Appeals for the District of Columbia in *National Security Archive* v. *Department of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), in which the court found that the National Security Archive was a representative of the news media.

The FMCS has consulted with the Office of Management and Budget and has been advised by OMB that the definitions stated in the OMB guidelines—which were proposed by FMCS at 29 CFR 1401.36(a)(7)—do not conflict with the decision in the National Security Archive case. In accordance with this view, FMCS has retained the definitions stated in its proposed regulations. Therefore, the definitions of "representative of the news media", "news" and "freelance" journalist have remained unchanged. In regard to this final rule in general, FMCS will look to the provisions of the OMB and DOJ guidance, in making such interpretations of the rule as may be necessary.

As stated in the notice of proposed rulemaking, none of the fee amounts currently stated at § 1401.36 have been changed, rather only the criteria for assessing fees, or reducing or waiving them, have been revised.

**Executive Order 12291**

This rule is not a "major rule" under Executive Order 12291 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) a significant decline in productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

**Regulatory Flexibility Act Certification**

The FMCS finds that this final rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L 96-354, 94 Stat.1164 (5 U.S.C. 605(g)), and so certifies to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not impose any significant economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

**List of Subjects in 29 CFR Part 1401**

Administrative practice and procedure, Labor-management relations, Freedom of Information Reform Act.

Accordingly, 29 CFR chapter XII, part 1401, is amended by the promulgation of a new § 1401.36, as follows:

## PART 1401—PUBLIC INFORMATION

1. The authority citation for part 1401 is revised to read as follows:

**Authority:** Sec. 202, 61 Stat. 136, as amended; 5 U.S.C. 552.

2. Section 1401.36 is revised to read as follows:

**§ 1401.36 Freedom of Information Act Fee Schedules.**

(a) *Definitions.* For purposes of § 1401.36, the following definitions apply:

(1) Direct costs means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requesters, reviewing to respond to a FOIA request.

(2) Search includes all time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material

within documents. Searches may be done manually or by computer.

(3) Duplication refers to the process of making a copy of a document necessary to respond to a FOIA request. Copies may be in various forms including machine readable documentation (e.g. magnetic tape or disk) among others. The copy provided shall be in a form that is reasonably usable by the requester.

(4) Review refers to the process of examining documents located in response to a request that is for commercial use, to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure to the requester, e.g., doing all that is necessary to excise them or otherwise prepare them for release.

(5) Commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial trade or profit interest of the requester or the person on whose behalf the request is made.

(6) Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate or professional education or an institution of vocational education, which operates a program or programs of scholarly research.

(7) Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a reasonable expectation of publication through the organization, even though not actually employed by it.

(8) Non-commercial scientific institution refers to an institution that is not operated on a commercial basis as defined under "commercial use request" in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(b) *Fee schedules and waivers.* Requests submitted shall be subject to direct costs, including search, duplication and review, in accordance with the following schedules, procedures and conditions.

(1) *Schedule of charges*—(i) Clerical time. For each one-quarter hour or portion thereof of clerical time, $2.25.

(ii) *Professional time.* For each one-quarter hour or portion thereof of professional time, $7.00.

(iii) *Duplication.* For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records, $.20.

(iv) *Computer time.* For computer time, $3.00 per minute of time expended for production programming, searching and production of any record. Computer time expressed in fractions of minutes will be rounded to the next whole minute.

(v) *Certification or authorization of records.* The fee per certification or authentication is $2.00.

(vi) *Forwarding material to destination.* No charge will be assessed for ordinary packaging and mailing costs. The FMCS may assess a charge if compliance with the request requires special handling procedures such as express mail or other unusual procedures. Such charges will be made on the basis of actual costs.

(vii) *Other costs.* All other direct costs of preparing a response to a request shall be charged to requester in the same amount as incurred by FMCS. Charges may also be assessed for searches even if the records requested are not found, or the records are determined to be exempted from disclosure.

(2) *Rules of construction.* (i) In providing the foregoing the schedules pursuant to the provisions of 5 U.S.C. 552(a)(4)(A), it is the intent of FMCS to apply 29 CFR part 70 and the user charge statute, 31, U.S.C. 9701, to cover those situations in which the Agency is performing for a requester services which are not required under the Freedom of Information Act.

(ii) For those matters coming within the scope of this regulation, the FMCS will look to the provisions of the guidance published by the Office of Management and Budget (52 FR 10012, March 27, 1987) and the Department of Justice (Attorney General's memorandum on the 1986 Amendments to the Freedom of Information Act, December 1987) for making such interpretations as may be necessary.

(3) *Fee categories.* Fees shall be determined in accordance with the following categories of requesters.

(i) Commercial use requesters will be assessed charges to recover the full direct cost of searching for, reviewing for release, and duplicating the records sought. This includes the full direct costs of computer production programming, searching and production of records. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents, as described below.

(ii) Educational and non-commercial scientific institution requesters will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution pursuant to the criteria in paragraphs (a)(6) and (a)(8) of this section, and that the records are not sought for commercial use, but are sought in furtherance of scholarly or scientific research.

(iii) Requesters who are representatives of the news media will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(7) of this section, and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(iv) All other requesters will be assessed charges to recover the full reasonable direct costs of searching for and reproducing records that are responsive to the request, including costs of computer production programming, searching and production, except that the first 100 pages of reproduction, and the first 2 hours of search time shall be furnished without charge.

(v) In no event shall fees be charged when the total charges are less than $50.00, which is the Agency cost of collecting and processing the fee itself.

(4) *Waiver or reduction of charge.* Documents are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest; that is, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(c) *Fee payments.* (1) Payments shall be made by check or money order payable to "Federal Mediation and Conciliation Service" and shall be sent to: Director, Financial Management Staff, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427.

(2) If a requester fails to pay chargeable fees that were incurred as a result of this Agency's processing of the information request, the Agency beginning on the 31st day following the

date on which the notification of charges was sent, may assess interest charges against the requester in the manner prescribed in 31 U.S.C. 3717.

(3) The Agency may use the provisions of the Debt Collection Act of 1982, (Pub. L. 97-365, 29 CFR part 1450) including disclosure to consumer reporting agencies, for the purpose of obtaining payment.

(d) *Advance payments.* FMCS may require a requester to make an advance payment of anticipated fees under the following circumstances:

(1) If the anticipated charges are likely to exceed $250, FMCS may notify the requestor of the likely cost and obtain satisfactory assurance of full payment when the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payments.

(2) If a requester has previously failed to pay fees that have been charged in processing a request, within 30 days of the date when the notification of fees was sent, the requester may be required to:

(i) Pay the entire amount of fees that are owed, plus any applicable interest as provided for in paragraph (c)(2) of this section, and

(ii) To make an advance payment of the full amount of the estimated fee before the Agency will process the new pending request.

Dated: April 18, 1990.

**Bernard E. DeLury,**

*Director.*

[FR Doc. 90-9653 Filed 4-25-90; 8:45 am]

BILLING CODE 6732-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 931

### New Mexico Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of proposed amendment.

**SUMMARY:** OSM is announcing its decision to approve a proposed amendment to the New Mexico permanent regulatory program (New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to water control measures for coal processing waste banks, disposal of noncoal wastes, backfilling and grading, inspections, the definition of "blaster," and the training, examination, and certification of blasters. The amendment revises the New Mexico program to be consistent with the corresponding Federal standards.

**DATES:** April 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102, Telephone (505) 827-5970.

**SUPPLEMENTARY INFORMATION:**

#### I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program, can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15 and 931.30.

#### II. Proposed Amendment

On March 9 and 17, 1989, OSM published notices in the **Federal Register** (54 FR 9980 and 54 FR 11183; Administrative Record Nos. NM-480 and NM-484) announcing the Director of OSM's approval of the June 17, 1987 (as revised and clarified on February 18, 1988, and August 10, 1988; Administrative Record Nos. NM-356, NM-393, and NM-438), and April 18, 1988 (as revised and clarified on October 20, 1988; Administrative Record Nos. NM-405 and NM-452), State-proposed amendments to the rules of the New Mexico program. The Director approved the amendments on the condition that New Mexico adopt the rules in forms identical to those submitted to and reviewed by OSM and the public.

By letters dated March 29 and April 26, 1989 (Administrative Record Nos. NM-489 and NM-490), New Mexico submitted to OSM copies of the rules that it had promulgated (effective April 28, 1989) subsequent to the Director's approvals. Upon comparing the OSM-approved rules and the New Mexico-promulgated rules, OSM identified differences in the two sets of rules.

On June 12, 1989, OSM published a notice in the **Federal Register** (54 FR 24912) soliciting public review of New Mexico's promulgated rules to determine whether they were no less effective than the Federal regulations and no less stringent that SMCRA. The public comment period ended July 12, 1989.

After reviewing the promulgated rules and all comments received during the comment period, OSM identified the following provisions of the promulgated Coal Surface Mining Commission (CSMC) rules that appeared to be less effective than the Federal regulations and less stringent than SMCRA, or were in need of correction of typographical errors: water control measures for coal processing waste banks, CSMC Rule 80-1-20-83(b); disposal of noncoal wastes, CSMC Rule 80-1-20-89(d)(2); covering of coal and acid- and toxic-forming materials by backfilling and grading operations, CSMC Rule 80-1-20-103(a)(1); inspections, CSMC Rule 80-1-29-11(a); definition of "blaster," CSMC Rule 80-1-33-11; and training, examination, and certification of blasters, CSMC Rules 80-1-33-13 and 80-1-33-15. By letter dated August 7, 1989, OSM notified New Mexico of its concerns (Administrative Record No. NM-529). By letter dated October 23, 1989, New Mexico responded to these concerns by submitting proposed revisions to the promulgated rules (Administrative Record No. NM-548).

OSM published a notice in the **Federal Register** on November 17, 1989 (54 FR 47777), reopening the comment period on the revised rules. OSM did so to provide the public the opportunity to reconsider the adequacy of the proposed rules. The reopened comment period closed December 4, 1989.

#### III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that the proposed amendment is no less stringent than SMCRA and no less effective than the Federal regulations.

*1. CSMC Rule 80-1-20-83(b), Water Control Measures for Coal Processing Waste Banks*

On March 17, 1989, the Director approved New Mexico's proposed rule at CSMC Rule 80-1-20 83(b), which required control of surface water drainage on and from above coal processing waste banks in accordance with CSMC Rule 80-1-20-92(b). In making this decision, the Director found that the requirements of CSMC Rule 80-1-20-92(b), which sets out surface drainage structure design criteria for coal processing waste banks, are no less