cine), § 182.5118 *Alanine*, § 182.5145 *Arginine*, § 182.5273 *Cystine*, § 182.5361 *Histidine*, § 182.5381 *Isoleucine*, § 182.5406 *Leucine*, § 182.5411 *Lysine*, § 182.5475 *Methionine*, § 182.5477 *Methionine hydroxy analog and its calcium salts*, § 182.5590 *Phenylalanine*, § 182.5650 *Proline*, § 182.5701 *Serine*, § 182.5881 *Threonine*, § 182.5915 *Tryptophane*, § 182.5920 *Tyrosine*, § 182.5925 *Valine*. (These amino acids are regulated as food additives for human food under § 172.320; they also appear under corresponding section numbers in Part 582, as GRAS for animal food only.)

§ 182.5470 [Deleted]

14. On page 14651, § 182.5470 *Mannitol*, which was inadvertently listed as GRAS for human food (but which is correctly regulated as a food additive on an interim basis under § 180.25) is deleted.

15. On page 14659, in the third column, in Part 189, the subpart headings are corrected as follows:

Subpart B is corrected in both places in which it appears, to read: "Subpart B — Substances Generally Prohibited from Direct Addition or Use As Human Food".

Subpart C heading is deleted in both places in which it appears, thereby placing §§ 189.110 through 189.190 under Subpart B.

The heading for Subpart D, appearing once on page 14659, and once on page 14660, the third columns, is redesignated as Subpart C.

16. On page 14660 in the third column, § 189.180(b) is corrected to incorporate amendments inadvertently omitted, as follows:

§ 189.180 Safrole.

* * * * *

(b) Safrole, oil of sassafras, isosafrole, or dihydrosafrole, as such, or food containing any safrole, oil of sassafras, isosafrole, or dihydrosafrole, e.g., sassafras bark, which is intended solely or primarily as a vehicle for imparting such substances to another food, e.g., sassafras tea, is deemed to be adulterated in violation of the act based upon an order published in the FEDERAL REGISTER of December 3, 1960 (25 FR 12412).

* * * * *

Dated: October 19, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-31096 Filed 10-27-77;8:45 am]

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Nicarbazin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations to reflect approval of a supplemental new animal drug application filed by Merck Sharp and Dohme Research Labs., proposing revised labeling for the use of nicarbazin premix in the manufacture of a chicken feed used as an aid in the prevention of certain forms of coccidiosis, and to provide for a tolerance for residues of nicarbazin in the edible tissues of chickens. The revised labeling is in accordance with the National Academy of Sciences—National Research Council (NAS/NRC) review of the product.

EFFECTIVE DATE: October 28, 1977.

FOR FURTHER INFORMATION CONTACT:

Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-149), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: In accordance with section 512(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(i)), and in response to an NAS/NRC report published in the FEDERAL REGISTER of April 15, 1969 (34 FR 6495), the regulations are amended to reflect approval of a supplemental new animal drug application (NADA 9-476V) filed by Merck Sharp and Dohme Research Labs, Division of Merck and Co., Inc., Rahway, N.J. 07065.

The NAS/NRC report concerned use of a 25 percent nicarbazin premix for preparation of a 0.0125 percent chicken feed. The Academy and the Food and Drug Administration found the drug effective when used as an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix*, and *E. brunetti*) coccidiosis in chickens.

The firm responded by submitting revised labeling to reflect the NAS/NRC review of the product and additional data and information to support safety for food use of treated animals. This independent action has not required a reevaluation of the parent NADA and does not constitute a reaffirmation of the drug's safety and effectiveness.

The NAS/NRC review deemed certain uses of the drug as effective. Those conditions of use are identified by a footnote. Submitted applications that include such conditions of use need not include data required by § 514.111 (21 CFR 514.111) of the animal drug regulations to establish the effectiveness of the drug for such usage, but may require bioequivalency and safety data.

In accordance with § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of the human safety data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC-20), Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, Monday through Friday, from 9 a.m. to 4 p.m., except on Federal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 556 and 558 are amended as follows:

1. Part 556 is amended by adding new § 556.445 to read as follows:

§ 556.445 Nicarbazin.

A tolerance of 4 parts per million is established for residues of nicarbazin in uncooked chicken muscle, liver, skin, and kidney.

2. Part 558 is amended by adding new § 558.366 to read as follows:

§ 558.366 Nicarbazin.

(a) *Approvals.* Premix level of 25 percent of nicarbazin granted to No. 000006 in § 510.600(c) of this chapter.

(b) *Assay limits.* Complete feed 80 to 120 percent of labeled amount.

(c) *Related tolerances.* See § 556.445 of this chapter.

(d) [Reserved]

(e) *Conditions of use.* It is used in chicken feed as follows:

(1) *Amount per ton.* 113.5 grams (0.0125 percent).[1]

(2) *Indications for use.* As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix*, and *E. brunetti*) coccidiosis.[1]

(3) *Limitations.* Feed continuously as the sole ration in a complete feed from the time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis; do not use in flushing mashes; do not feed to laying hens; withdraw 4 days before slaughter.

Effective date: This regulation shall be effective October 28, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: October 19, 1977.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.77-31236 Filed 10-27-77;8:45 am]

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[1] These claims are NAS/NBC reviewed and are deemed effective. Applications for these uses need not include the effectiveness data specified by § 514.111 of this chapter.

[4210-01]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-472]

PART 290—DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS

Waivers

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: The Interim Rule now in effect governing disposition of HUD-owned multifamily projects does not provide for waiver of its provisions. This Interim Amendment remedies that omission by setting forth the Assistant Secretary-Commissioner's authority to waive any of the rule's provisions under appropriate circumstances.

DATES: Effective: October 27, 1977. Comments due: November 28, 1977.

ADDRESSES: Rules Docket Clerk, Room 5218, Office of the Secretary, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Phone number 202–755–6207.

FOR ADDITIONAL INFORMATION CONTACT:

W. K. Cameron, Office of Property Disposition, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Phone number 202–755–6675.

SUPPLEMENTARY INFORMATION: The Interim Rule published January 27, 1977 (42 FR 5049) invited interested persons to submit comments on or before February 28, 1977. A number of comments have been submitted and they are being considered before adoption of a final rule. Pending issuance of the rule in its final form, however, HUD has determined that waiver of individual provisions not required by statute should be permitted in the interest of program flexibility. Various handbooks applicable to multifamily property disposition expressly allow waivers, but a corresponding provision was inadvertently omitted from the rule. That omission is now being remedied.

HUD finds that this amendment, designed to correct an inconsistency between the rule and current handbooks, represents no change in program practices or policies. Hence, comment and public procedure with respect to the amendment are unnecessary and it should be made effective upon publication. However, since a final rule has not yet been adopted in this proceeding, interested persons are invited to comment upon inclusion of the waiver provisions set forth below and the views expressed will be considered before the final rule is issued. All comments, suggestions, or materials regarding this amendment should be filed with the Rules Docket Clerk at the above address. Copies of all comments received will be available at the Office of the Rules Docket Clerk for inspection and copying by the public.

A finding of inapplicability with respect to environmental impact was made in connection with the basic amendments and that statement is applicable with respect to the clarification accomplished by this amendment. A copy of the statement of inapplicability is available in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C.

It is hereby certified that the economic and inflationary impacts of this interim rule have been carefully evaluated in accordance with Executive Order No. 11821.

Accordingly, 24 CFR Part 290 is amended as follows:

1. The table of contents to Subchapter I, Part 290, 24 CFR is amended with the addition of a new section as follows:

Sec. 290.11 Waivers.

2. A new § 290.11 is inserted in Subpart A as follows:

§ 290.11 Waivers.

Upon completion of a determination and finding of good cause, the Assistant Secretary for Housing—Federal Housing Commissioner or his designee may, subject to statutory limitations, waive any provision of this Subchapter. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-31244 Filed 10-27-77;8:45 am]

[4410-01]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 753-77]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart Z—Assigning Responsibility Concerning Applications for Orders Compelling Testimony or Production of Evidence by Witnesses

ORDERS TO COMPEL TESTIMONY IN RESPONSE TO ANTITRUST CIVIL INVESTIGATIVE DEMANDS

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Antitrust Civil Process Act (15 U.S.C. 1311 et seq.) authorizes the Department to issue civil investigative demands requiring persons believed to have information relevant to a civil antitrust investigation to produce documentary material, answer written interrogatories or give oral testimony. The 1976 amendments to the Act provide that a recipient of a civil investigative demand for oral testimony may refuse to respond to any question on the basis of the privilege against self-incrimination (15 U.S.C. 1312(i)(7)(A) and (B)). However, the testimony may then be compelled pursuant to statutory provisions for granting to witnesses immunity from criminal prosecution (18 U.S.C. 6002, 6004). This order expressly assigns to the Assistant Attorney General in charge of the Antitrust Division the authority to issue orders compelling testimony of witnesses who have refused to respond to questions in connection with antitrust civil investigations on the basis of the privilege against self-incrimination, under the immunity statute. All Departmental actions with respect to orders to compel testimony under the immunity of witnesses statutes are subject to the concurrence of the Assistant Attorney General in charge of the Criminal Division.

EFFECTIVE DATE: October 18, 1977.

FOR FURTHER INFORMATION CONTACT:

John H. Shenefield, Assistant Attorney General, Antitrust Division, Department of Justice, Washington, D.C. 20530. 202–739–2401.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Subpart Z of Part 0 of Title 28, Code of Federal Regulations, is amended by adding the following new § 0.177a immediately after § 0.177.

§ 0.177a Antitrust Civil Investigative Demands.

The Assistant Attorney General in charge of the Antitrust Division is authorized to issue orders pursuant to section 6004 of title 18, United States Code, to compel testimony in response to antitrust civil investigative demands for oral testimony. Issuance of such orders shall be subject to the concurrence of the Assistant Attorney General in charge of the Criminal Division.

Dated: October 18, 1977.

GRIFFIN B. BELL,
Attorney General.

[FR Doc. 77-31265 Filed 10-27-77; 8:45 am]

[3410-11]

Title 36—Parks, Forests and Public Properties

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 222—RANGE MANAGEMENT

PART 231—GRAZING

Grazing and Livestock Use on National Forest System

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment makes possible the implementation of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579) as it relates to grazing and livestock use of the National Forest System. The rule makes substantive changes in the regulations covering the grazing permit system and grazing advisory boards. In addition, the rule includes new sections on compensation for permittees' interest in authorized permanent improvements and on the range betterment fund.

EFFECTIVE DATE: November 28, 1977.

FOR FURTHER INFORMATION CONTACT:

Don D. Seaman, Assistant Director, Range Management Staff, Forest Service, P.O. Box 2417, Washington, D.C. 20013. Telephone 703–235–8139.

SUPPLEMENTAL INFORMATION: On June 30, 1977, a notice of proposed rulemaking was published in the FEDERAL

REGISTER (42 FR 33470) for the purpose of amending regulations covering grazing and livestock use of the National Forest System to implement direction given the Secretary of Agriculture in the Federal Land Policy and Management Act of 1976. The public was given until August 29, 1977, for interested parties to make written comments on the proposal. A series of meetings have been held in the western States for the purpose of explaining, to those interested, the content of the proposal and to answer questions regarding the regulations. Many of these meetings were conducted jointly by employees of the Bureau of Land Management and the Forest Service. The Bureau of Land Management has also published proposed regulations covering grazing on lands the agency administers.

Written comments were received by the Chief, Forest Service, from 120 parties. Substantive comments received have been considered as follows:

COMMENTS LEADING TO CHANGES IN RULEMAKING

1. It was suggested a definition of permanent improvement be included.

2. It was suggested that mules, burros, swine and buffalo be added to the definition of livestock.

3. It was suggested that the definition for range betterment be expanded to include wildlife habitat improvement.

4. Several comments suggested the regulations provide for authority to graze horses, mules or burros needed to manage permitted livestock and needed for cooperators to do research, administer, and other work. These provisions were authorized previously and have been incorporated in the final rule.

5. It was suggested that reference to the authority in the body of the rules in § 231.3(c) was confusing. The authority citation is removed in the final rule.

6. Several comments were received questioning the removal of provision for private land and on and off permits from previous regulations. The regulation has been written to clearly authorize these permits.

7. To assure compliance to title VI of the Civil Rights Act of 1964, provision has been added to § 222.4 Changes in grazing permits, to cancel association permits or grazing agreements in the event of noncompliance.

8. Several comments were received which suggested removal of the phrase, "exclusive benefit of the permittee" in § 231.3.

9. The suggestion was made that the word "continuing" be taken out of the regulation pertaining to the range betterment fund. This was done and replaced with the words "where necessary."

10. There were several comments received suggesting the provisions in § 231.4(e) of the proposal were unfair and discriminatory. The regulation is changed to limit action against the permit to those cases where there is conviction for failure to comply with Federal or State laws.

11. As a result of comments received, provision for "at-large" membership on grazing advisory boards has been removed.

COMMENTS NOT LEADING TO CHANGES IN THE RULEMAKING

1. It was suggested that "land management planning" be defined. This term will be defined in other parts of 36 CFR.

2. It was suggested that "sound land management" be defined. This is not necessary, as it is a well understood principle and is to be determined for each management situation.

3. There was suggestion that allotment management plans should have permittee involvement and consent. There is provision and encouragement for involvement; however, to require consent is delegation of authority, which is not desirable.

4. It was suggested that the regulations include provision for Forest officers to control the kind of animals grazing on the allotment to avoid mixing breeds or ages of animals. This is considered permittee responsibility; however, through grazing associations § 222.7 "special rules," can be made a part of term permits.

5. It was suggested more than one year be given to reestablish qualifications. This has been considered but is not deemed advisable. The traditional system which has limited the period to one year has proven satisfactory.

6. Comments were received on upper limits, both as to the need and the suggestion that the measure be animal unit months rather than numbers of livestock. Both suggestions were considered, but it is determined upper limits are helpful in preventing monopoly-type operations and are better expressed as numbers of animals rather than animal months.

7. Several letters received commented on the terms of permits. Some thought 10-year permits were excessively long terms. Others thought terms up to 25 years would be more proper. Traditionally, the Forest Service has issued 10-year term permits. The law directs that 10-year term permits will be issued on National Forests in the 11 western States unless excepted by one of three conditions. These conditions cover shorter than 10-year term permits when needed to meet specific circumstances.

8. It was suggested the provision permitting, free, up to 10 head of livestock to persons who reside within or contiguous to National Forest System lands for domestic use be removed. This provision has traditionally been part of the regulations. Very few individuals qualify but, if they do, the provision is available and is intended to aid those who have a distinct need for National Forest System forage.

9. It was suggested the provision for free permits to campers and travelers for livetstock actually used be removed. This is not in keeping with the policy of making the National Forest System available to all people for occasional use by livestock.

10. It was suggested the regulations state no one but citizens of the United States be entitled to hold a grazing permit. The regulations are not being changed to incorporate this. The question will be handled as Chief's policy and will be outlined as Forest Service Manual direction.

11. It was suggested there be provision for transfer of grazing privileges. Traditionally, there has been no permit transfer procedure in the grazing permit system of the Forest Service. Permits are privileges and are not transferable. The procedure for recognizing new applicants who have purchased ranch property or permitted livestock owned by an existing permittee has proven satisfactory.

12. It was suggested the regulations spell out how Indian tribal grazing permits will be handled. Grazing permits to Indians are issued in accordance with treaties with Indian tribes. The Forest Service Manual gives direction for administration of permits to Indians. Regulation is not needed.

13. It was suggested that § 222.4 "Changes in permits" be removed from the regulations. It was also suggested that amendments be made to make no changes during a suggested 25-year term permit, no cancellation during periods of physical or economic suffering, or when the Government failed to install improvements it agreed to. On the other side, there was comment that, for wilful violations, immediate suspensions be put into effect and that local law violation should also result in changes in permits. These suggestions were all considered. The section is needed to insure compliance of permit stipulations and to make needed changes; immediate suspensions will not be authorized to assure the parties involved are accorded due process.

14. It was suggested that 5 years' notice be given prior to cancellation action. The Federal Land Policy and Management Act directs that 2 years' notice be given for cancellation. The final regulation provides for 2 years' notice. Several suggest that fair market value be the minimum basis for compensation. As written, fair market value can be the consideration.

15. Two parties commented that permittees should not be allowed to invest funds in improvements constructed or installed on National Forest System lands. Such authority has long been utilized. It has resulted in a desirable cooperative team effort in managing the range resources of the National Forest System.

16. Several comments were received about the range betterment fund. Some suggested specific amounts, up to 50 percent, be earmarked for wildlife habitat improvement; others suggested wildlife improvement be excluded from the fund; and still others commented that livestock production should be given first priority. As written, local Forest officers can, with advice from users, determine where the funds can be best utilized.

17. It was suggested the funds be allocated to the allotment from which the grazing fees were derived. This was considered; however, it was determined

more flexibility and better utilization of the fund would result if one-half were to go to the National Forest where derived, and the other half allocated where the Regional Forester desired to make the best utilization.

18. There were several suggestions having to do with the number of grazing advisory boards established for each National Forest headquarters office. The law specifically authorizes at least one. The Secretary of Agriculture is to determine how many after being properly petitioned by a simple majority of the permittees.

19. It was suggested the nomination and election process was cumbersome. The Federal Land Policy and Management Act directs that board members shall be chosen through an election prescribed by the Secretary. Board membership is limited to permittees in the area administered by the headquarters office. Board members will be elected by grazing permittees in the area in which the board is established. The process outlined in the final rule fulfills these requirements.

20. There was suggestion that the regulations should limit the size of boards to not to exceed 15 advisors. The law limits board size to this number. The Forest Service Manual will suggest 7 to 11 members but make provision for up to 15 members on approval of the Secretary of Agriculture.

SUGGESTED CHANGES EXCEEDING EXISTING AUTHORITY

1. Several comments were received which suggested grazing permits were a "right." The legislation clearly states the issuance of grazing permits does not create a right, title, interest or estate in or to the National Forests.

2 It was suggested that permittees should be compensated where the permit is canceled in whole or in part. There is no authority for the United States to make such compensation.

3. It was suggested that provisions for compensating permittees for their interest in permanent improvements where the permit is canceled is absurd. The Federal Land Policy and Management Act directs that compensation be made.

4. It was suggested compensation be made to the permittee for those permanent improvements installed by his predecessor when the permit is canceled in whole or in part. The Federal Land Policy and Management Act limits compensation to the permittee who installed the improvement.

5. There were suggestions that wildlife representatives or others be members of grazing advisory boards. Section 403(c) of the Federal Land Policy and Management Act limits board membership to permittees or lessees.

6. It was suggested grazing advisory boards be established routinely rather than by petition. The Federal Land Policy and Management Act specifically authorized the Secretary to establish grazing advisory boards upon petition. Without petition, no authority is given.

7. It was suggested the function of grazing advisory boards should be broader, that they should have responsibility, and that they should be authorized to hear all permittee grievances. The Federal Land Policy and Management Act specifically limits the function of grazing advisory boards to "offer advice and make recommendations * * * concerning the development of allotment management plans and the utilization of range-betterment funds." Boards will be authorized to hear permittee grievances concerning development of allotment management plans and utilization of range betterment funds.

8. It was suggested authority for grazing advisory boards be extended beyond 1985. This is not possible as the Federal Land Policy and Management Act limits the time to 1985.

9. Several parties suggested that a person be eligible to serve on more than one U.S. Department of Agriculture advisory committee. Department policy limits each person to service on no more than one USDA advisory committee.

10. It was suggested grazing advisory boards be authorized on all National Forest System units. This suggestion could not be considered because the law specifically limits boards to "National Forest Headquarters office in the 11 contiguous western States having jurisdiction over more than five-hundred thousand acres of lands subject to commercial livestock grazing."

As part of a long-term effort to correlate the numbering schemes used in Forest Service regulations and the Forest Service Manual, these regulations are being redesignated into Subpart A, Part 222. The last two digits in the CFR part designation (e.g., Part 222 Range Management) correspond to the first two digits of the Forest Service Manual (e.g., 2200 Range Management). However, as a part of this effort to implement provisions of the Federal Land Policy and Management Act of 1976, a study is underway to establish a fee to be charged for livestock grazing on the National Forest System. This study may result in consideration of revised rules in what has been 36 CFR 231.5 Fees, payments, and refunds or credit. This section of the grazing regulation will remain in 36 CFR 231.5 until the new fee schedule is proposed in the rulemaking process.

NOTE.—The Department of Agriculture has determined that the publication of this rule is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is not required.

In light of the foregoing, 36 CFR Chapter II is amended as follows:

With the exception of § 231.5 *Fees, payments, refunds or credit*, Part 231 is deleted and its provisions are redesignated and transferred to Part 222.

A new Subpart A to Part 222, consisting in part of the former provisions of Part 231, except, as explained above, 231.5 Fees, payments, and refunds or credit, is added as follows:

Subpart A—Grazing and Livestock Use on the National Forest System

AUTHORITY: Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 580*l*); Title IV, Pub. L. 94-579, 90 Stat. 2771 (43 U.S.C. 1751), et seq., unless otherwise noted.

Subpart A—Grazing and Livestock Use on the National Forest System

§ 222.1 Authority and definitions.

(a) *Authority.* The Chief, Forest Service, shall develop, administer and protect the range resources and permit and regulate the grazing use of all kinds and classes of livestock on all National Forest System lands and on other lands under Forest Service control. He may redelegate this authority.

(b) *Definitions.* (1) An "allotment" is a designated area of land available for livestock grazing.

(2) An "allotment management plan" is a document that specifies the program of action designated to reach a given set of objectives. It is prepared in consultation with the permittee(s) involved and:

(i) Prescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained yield, economic, and other needs and objectives as determined for the lands involved; and

(ii) Describes the type, location, ownership, and general specifications for the range improvements in place or to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(iii) Contains such other provisions relating to livestock grazing and other objectives as may be prescribed by the Chief, Forest Service, consistent with applicable law.

(3) "Base property" is land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit.

(4) "Cancel" means action taken to permanently invalidate a term grazing permit in whole or in part.

(5) A "grazing permit" is any document authorizing livestock to use National Forest System or other lands under Forest Service control for the purpose of livestock production including:

(i) "Temporary grazing permits" for grazing livestock temporarily and without priority for reissuance.

(ii) "Term permits" for up to 10 years with priority for renewal at the end of the term.

(6) "Land subject to commercial livestock grazing" means National Forest System lands within established allotments.

(7) "Lands within National Forests in the 11 contiguous western States" means lands designated as National Forest within the boundaries of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming (National Grasslands are excluded).

(8) "Livestock" means animals of any kind kept or raised for use or pleasure.

(9) "Livestock use permit" means a permit issued for not to exceed one year where the primary use is for other than grazing livestock.

(10) "Modify" means to revise the terms and conditions of an issued permit.

(11) "National Forest System lands," are the National Forests, National Grasslands, Land Utilization Projects, and other Federal lands for which the Forest Service has administrative jurisdiction.

(12) "On-and-off grazing permits" are permits with specific provisions on range only part of which is National Forest System lands or other lands under Forest Service control.

(13) "On-the-ground expenditure" means payment of direct project costs of implementing an improvement or development, such as survey and design, equipment, labor and material (or contract) costs, and on-the-ground supervision.

(14) "Other lands under Forest Service control" are non-Federal public and private lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise.

(15) "Private land grazing permits" are permits issued to persons who control grazing lands adjacent to National Forest System lands and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.

(16) "Permittee" means any person who has been issued a grazing permit.

(17) "Permitted livestock" is livestock authorized by a written permit.

(18) "Person" means any individual, partnership, corporation, association, organization, or other private entity, but does not include Government Agencies.

(19) "Range betterment" means rehabilitation, protection and improvement of National Forest System lands to arrest range deterioration and improve forage conditions, fish and wildlife habitat, watershed protection, and livestock production.

(20) "Range betterment fund" means the fund established by title IV, section 401(b)(1), of the Federal Land Policy and Management Act of 1976. This consists of 50 percent of all monies received by the United States as fees for grazing livestock on the National Forests in the 11 contiguous western States.

(21) "Range improvement" means any facility or treatment constructed or installed for the purpose of improving the range resource or the management of livestock and includes the following types:

(i) "Non-structural" which are practices and treatments undertaken to improve range not involving construction of improvements.

(ii) "Structural" which are improvements requiring construction or installation undertaken to improve the range or to facilitate management or to control distribution and movement of livestock.

(A) "Permanent" which are range improvements installed or constructed and become a part of the land such as: dams, ponds, pipelines, wells, fences, trails, seeding, etc.

(B) "Temporary" which are short-lived or portable improvements that can be removed such as: troughs, pumps and electric fences, including improvements at authorized places of habitation such as line camps.

(22) "Suspend" means temporary withholding of a term grazing permit privilege, in whole or in part.

(23) "Term period" means the period for which term permits are issued, the maximum of which is 10 years.

(24) "Transportation livestock" is livestock used as pack and saddle stock for travel on the National Forest System.

§ 222.2 Management of the range environment.

(a) Allotments will be designated on the National Forest System and on other lands under Forest Service control where the land is available for grazing. Associated private and other public lands should, but only with the consent of the landowner, lessee, or agency, be considered in such designations to form logical range management units.

(b) Each allotment will be analyzed and, in consultation with and involvement of the affected permittee(s), an allotment management plan developed. The plan will then be approved and implemented. The analysis and plan will be updated as needed.

(c) National Forest System lands will be allocated for livestock grazing and the allotment management plans will be prepared consistent with land management plans.

§ 222.3 Issuance of grazing and livestock use permits.

(a) Unless otherwise specified by the Chief, Forest Service, all grazing and livestock use on National Forest System lands and on other lands under Forest Service control must be authorized by a grazing or livestock use permit.

(b) Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources.

(c) The Chief, Forest Service, is authorized to issue permits for livestock grazing and other use by livestock of the National Forest System and on other lands under Forest Service control as follows:

(1) Grazing permits with priority for renewal may be issued as follows: On National Forests in the 11 contiguous western States 10-year term permits will be issued unless the land is pending disposal, or will be devoted to other uses prior to the end of ten years, or it will be in the best interest of sound land management to specify a shorter term. On National Forest System lands other than National Forests in the 11 contiguous western States, the permit term shall be for periods of 10 years or less. Term grazing permits for periods of 10 years or less in the form of grazing agreements may be issued to cooperative grazing associations or similar organizations incorporated or otherwise established pursuant to State law. Such an agreement will make National Forest System lands and improvements available to the association for grazing purposes. The association may allocate and administer the available grazing in accordance with provisions of the grazing agreement and Forest Service policies. Term permits authorized in this paragraph may be in the form of private land or on-and-off grazing permits where the person is qualified to hold such permits under provisions the Chief may require. Permits issued under this paragraph are subject to the following:

(i) Paid term permits will be issued to persons who own the livestock to be grazed and such base ranch property as may be required, provided the land is determined to be available for grazing purposes by the Chief, Forest Service, and he finds that capacity exists to graze specified numbers of animals.

(ii) A term permit holder has first priority for receipt of a new permit at the end of the term period provided he has fully complied with the terms and conditions of the expiring permit.

(iii) In order to update terms and conditions, term permits may be cancelled at the end of the calendar year of the midyear of the decade (1985, 1995, etc.), provided they are reissued to the existing permit holder for a new term of 10 years.

(iv) New term permits may be issued to the purchaser of a permittee's permitted livestock and/or base property, provided the permittee waives his term permit to the United States and provided the purchaser is otherwise eligible and qualified.

(v) If the permittee chooses to dispose of all or part of his base property or permitted livestock (not under approved nonuse) but does not choose to waive his term permit, the Forest Supervisor will give written notice that he no longer is qualified to hold a permit, provided he is given up to one year to reestablish his qualifications before cancellation action is final.

(vi) The Chief, Forest Service, shall prescribe provisions and requirements under which term permits will be issued, renewed, and administered, including:

(A) The amount and character of base property and livestock the permit holder shall be required to own.

(B) Specifying the period of the year the base property shall be capable of supporting permitted livestock.

(C) Acquisition of base property and/or permitted livestock.

(D) Conditions for the approval of nonuse of permit for specified periods.

(E) Upper and special limits governing the total number of livestock for which a person is entitled to hold a permit.

(F) Conditions whereby waiver of grazing privileges may be confirmed and new applicants recognized.

(2) Permits with no priority for reissuance, subject to terms and conditions as the Chief, Forest Service, may prescribe, are authorized as follows:

(i) Temporary grazing permits may be issued, or existing permits modified:

(A) For not to exceed five years to use other available forage while resting or otherwise improving the range normally used by a term permit holder.

(B) For not to exceed one year to use forage created by unusually favorable climatic conditions.

(C) For not to exceed one year to use the forage available when the permit of the normal user's livestock is in nonuse status for reasons of personal convenience.

(D) To allow a person to continue to graze livestock for the remainder of the grazing season where base property has been sold, the permit waived, and a new term permit issued.

(E) To allow grazing use in the event of drought or other emergency of National or Regional scope where such use would not result in permanent resource damage.

(ii) Livestock use permits for not to exceed one year may be issued under terms and conditions prescribed by the Chief, Forest Service, as follows:

(A) Paid permits for transportation livestock to persons engaged in commercial packing, dude ranching, or other commercial enterprises which involve transportation livestock including mining, ranching, and logging activities.

(B) Paid or free permits for research purposes and administrative studies.

(C) Paid or free permits to trail livestock across National Forest System lands.

(D) Free permits to persons who reside on ranch or agricultural lands within or contiguous to National Forest System lands for not to exceed 10 head of livestock owned or kept and whose products are consumed or whose services are used directly by the family of the resident, and who distinctly need such National Forest System lands to support such animals.

(E) Free permits to campers and travelers for the livestock actually used during the period of occupancy. This may be authorized without written permit.

(F) Paid or free permits for horses, mules, or burros to persons who clearly need National Forest System land to support the management of permitted livestock.

(G) Free permits for horses, mules, or burros to cooperators who clearly need National Forest System land to support research, administration or other work being conducted. This may be authorized without written permit.

§ 222.4 Changes in grazing permits.

(a) The Chief, Forest Service, is authorized to cancel, modify, or suspend grazing and livestock use permits in whole or in part as follows:

(1) Cancel permits where lands grazed under the permit are to be devoted to another public purpose including disposal. In these cases, except in an emergency, no permit shall be cancelled without two years' prior notification.

(2) Cancel the permit in the event the permittee:

(i) Refuses to accept modification of the terms and conditions of an existing permit.

(ii) Refuses or fails to comply with eligibility or qualification requirements.

(iii) Waives his permit back to the United States.

(iv) Fails to restock the allotted range after full extent of approved personal convenience non-use has been exhausted.

(v) Fails to pay grazing fees within established time limits.

(3) Cancel or suspend the permit if the permittee does not comply with provisions and requirements in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based.

(4) Cancel or suspend the permit if the permittee knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto.

(5) Cancel or suspend the permit if the permit holder is convicted for failing to comply with, Federal laws or regulations or State laws relating to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit.

(6) Modify the terms and conditions of a permit to conform to current situations brought about by changes in law, regulation, executive order, development or revision of an allotment management plan, or other management needs.

(7) Modify the seasons of use, numbers, kind, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or permittee request. One year's notice will be given of such modification, except in cases of emergency.

(b) Association permits or grazing agreements may be canceled for noncompliance with title VI of the Civil Rights Act of 1964 and Department of Agriculture regulation promulgated thereunder.

§ 222.6 Compensation for permittees' interest in authorized permanent improvements.

(a) Whenever a term permit for grazing livestock on National Forest land in the 11 contiguous western States is canceled in whole or in part to devote the lands covered by the permit to another public purpose, including disposal, the permittee shall receive from the United States a reasonable compensation for the adjusted value of his interest in authorized permanent improvements placed or constructed by him on the lands covered by the canceled permit. The adjusted value is to be determined by the Chief, Forest Service. Compensation received shall not exceed the fair market value of the terminated portion of the permittee's interest therein.

(b) In the event a permittee waives his grazing permit in connection with sale of his base property or permitted livestock, he is not entitled to compensation.

§ 222.7 Cooperation in management.

(a) *Cooperation with local livestock associations.* (1) Authority. The Chief, Forest Service, is authorized to recognize, cooperate with, and assist local livestock associations in the management of the livestock and range resources on a single range allotment, associated groups of allotments, or other association-controlled lands on which the members' livestock are permitted to graze.

(2) Purposes. These associations will provide the means for the members to:

(i) Manage their permitted livestock and the range resources.

(ii) Meet jointly with Forest officers to discuss and formulate programs for management of their livestock and the range resources.

(iii) Express their wishes through their designated officers or committees.

(iv) Share costs for handling of livestock, construction and maintenance of range improvements or other accepted programs deemed needed for proper management of the permitted livestock and range resources.

(v) Formulate association special rules needed to ensure proper resource management.

(3) Requirements for recognition. The requirements for receiving recognition by the Forest Supervisor are:

(i) The members of the association must constitute a majority of the grazing permittees on the range allotment or allotments involved.

(ii) The officers of the association must be elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws.

(iii) The officers other than the Secretary and Treasurer must be grazing permittees on the range allotment or allotments involved.

(iv) The association's activities must be governed by a constitution and bylaws acceptable to the Forest Supervisor and approved by him.

(4) Withdrawing recognition. The Forest Supervisor may withdraw his recognition of the association whenever:

(i) The majority of the grazing permittees request that the association be dissolved.

(ii) The association becomes inactive, and does not meet in annual or special meetings during a consecutive 2-year period.

(b) *Cooperation with national, State, and county livestock organizations.* The policies and programs of national, State, and county livestock organizations give direction to, and reflect in, the practices of their members. Good working relationships with these groups is conducive

to the betterment of range management on both public and private lands. The Chief, Forest Service, will endeavor to establish and maintain close working relationships with National livestock organizations who have an interest in the administration of National Forest System lands, and direct Forest officers to work cooperatively with State and county livestock organizations having similar interests.

(c) *Interagency cooperation.* The Chief, Forest Service, will cooperate with other Federal agencies which have interest in improving range management on public and private lands.

(d) *Cooperation with others.* The Chief, Forest Service, will cooperate with other agencies, institutions, organizations, and individuals who have interest in improvement of range management on public and private lands.

§ 222.8 Cooperation in control of estray or unbranded livestock, animal diseases, noxious farm weeds, and use of pesticides.

(a) Insofar as it involves National Forest System lands and other lands under Forest Service control or the livestock which graze thereupon, the Chief, Forest Service, will cooperate with:

(1) State, county, and Federal agencies in the application and enforcement of all laws and regulations relating to livestock diseases, sanitation and noxious farm weeds.

(2) The Animal and Plant Health Inspection Service and other Federal or State agencies and institutions in surveillance of pesticide spray programs; and

(3) State cattle and sheep sanitary or brand boards in control of estray and unbranded livestock to the extent it does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971.

(b) The Chief, Forest Service, will cooperate with county or other local weed control districts in analyzing noxious farm weed problems and developing control programs in areas of which the National Forests and National Grasslands are a part.

(85 Stat. 649 (U.S.C. 1331–1340))

§ 222.9 Range improvements.

(a) The Chief, Forest Service, is authorized to install and maintain structural and nonstructural range improvements needed to manage the range resource on National Forest System lands and other lands controlled by the Forest Service.

(b) Such improvements may be constructed or installed and maintained, or work performed by individuals, organizations or agencies other than the Forest Service subject to the following:

(1) All improvements must be authorized by cooperative agreement or memorandum of understanding, the provisions of which become a part of the grazing permit(s).

(2) Title to permanent structural range improvements shall rest in the United States.

(3) Title to temporary structural range improvements may be retained by the Cooperator where no part of the cost for the improvement is borne by the United States.

(4) Title to nonstructural range improvements shall vest in the United States.

(5) Range improvement work performed by a cooperator or permittee on National Forest System lands shall not confer the exclusive right to use the improvement or the land influenced.

(c) A user of the range resource on National Forest System lands and other lands under Forest Service control may be required by the Chief, Forest Service, to maintain improvements to specified standards.

(d) Grazing fees or the number of animal months charged shall not be adjusted to compensate permittees for range improvement work performed on National Forest System lands: Provided, That, in accordance with section 32(c), title III, Bankhead-Jones Farm Tenant Act, the cost to grazing users in complying with requirements of a grazing permit or agreement may be considered in determining the annual grazing fee on National Grasslands or land utilization projects if it has not been used in establishing the grazing base value.

§ 222.10 Range betterment fund.

In addition to range development which is accomplished through funds from the rangeland management budget line item and the Granger-Thye Act, and deposited and nondeposited cooperative funds, range development may also be accomplished through use of the range betterment fund as follows:

(a) On National Forest land within the 11 contiguous western States, the Chief, Forest Service, shall implement range improvement programs where necessary to arrest range deterioration and improve forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. One-half of the available funds will be expended on the National Forest where derived. The remaining one-half of the fund will be allocated for range rehabilitation, protection and improvements on National Forest lands within the Forest Service Regions where they were derived. During the planning process there will be consultation with grazing permittees who will be affected by the range rehabilitation, protection and improvements, and other interested persons or organizations.

(b) Range betterment funds shall be utilized only for on-the-ground expenditure for range land betterment, including, but not limited to, seeding and reseeding, fence construction, water development, weed and other plant control, and fish and wildlife habitat enhancement within allotments.

§ 222.11 Grazing advisory boards.

(a) *Establishment.* Persons holding permits to graze livestock on National Forest System lands with headquarters, office in the 11 contiguous western States having jurisdiction over more than 500,000 acres of land subject to commercial livestock grazing may petition the Forest Supervisor for establishment of a statutory grazing advisory board in accordance with provisions of the Federal Land Policy and Management Act of 1976.

(1) Upon being properly petitioned by a simple majority (more than 50 percent) of grazing permittees under the jurisdiction of such headquarters office, the Secretary shall establish and maintain at least one grazing advisory board.

(2) The Chief, Forest Service, shall determine the number of such boards, the area to be covered, and the number of advisers on each board.

(3) Processing Petitions. Upon receiving a proper petition from the grazing permittees, the Forest Supervisor will request the Chief, Forest Service, through the Regional Forester, to initiate action to establish grazing advisory boards in accordance with regulations of the Secretary of Agriculture. Grazing advisory boards will comply with the provisions of the Federal Advisory Committee Act.

(b) *Membership.* Grazing advisory boards established under this authority shall consist of members who are National Forest System permittees under the jurisdiction of a National Forest headquarters office in the 11 contiguous western States, provided board members shall be elected by grazing permittees in the area covered by the board.

(c) *Elections.* The Forest Supervisor of the headquarters office shall prescribe and oversee the manner in which permittees are nominated and board members are elected. Nominations will be made by petition with all permittees under the jurisdiction of such headquarters office being eligible for membership on the board. All members of the board will be elected by secret ballot with each permittee in the area covered by the board being qualified to vote. No person shall be denied the opportunity to serve as a grazing advisory board member because of race, color, sex, religion, or national origin. No board member shall concurrently serve on another USDA advisory committee. The Forest Supervisor shall determine and announce the results of the election of the members of the board and shall recognize the duly elected board as representing National Forest System grazing permittees in the areas for which it is established. Board members will be elected to terms not to exceed 2 years.

(d) *Charter and bylaws.* (1) The Forest Supervisor will prepare a charter to be filed with the Department and the Congress as required by Section 9(c) of the Federal Advisory Committee Act.

(2) A duly recognized grazing advisory board may, with the concurrence of a majority of its members and the Forest Supervisor, adopt bylaws to govern its proceedings.

(e) *Function.* The function of grazing advisory boards will be to offer advice and make recommendations concerning the development of allotment manage-

ment plans and the utilization of range betterment funds.

(f) *Meetings.* The Forest Supervisor shall call at least one meeting of each board annually, and call additional meetings as needed to meet the needs of the permittees and the Forest Service. Each meeting shall be conducted in accordance with an agenda approved by the Forest Supervisor and in the presence of a Forest officer.

(g) *Termination.* (1) Grazing advisory boards established under the Federal Land Policy and Management Act of 1976 shall continue until December 31, 1985, unless terminated earlier.

(2) The Forest Supervisor may withdraw recognition of any board whenever:

(i) A majority of the permittees for the area which the board represents requests that the board be dissolved.

(ii) The board becomes inactive and does not meet at least once each calendar year.

(86 Stat. 770 (5 U.S.C., App. 1).)

Dated: October 20, 1977.

RICHARD L. DUESTERHAUS,
Acting Deputy, Conservation, Research, and Education.

[FR Doc.77-31275 Filed 10-27-77;8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 796-2]

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES CERTIFICATION AND TEST PROCEDURES

Technical Amendments; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action is a publication of several technical amendments to Subparts E and F of the motor vehicle certification regulations. The amendments correct errors made in the initial publication of these subparts and make minor, non-substantive changes to the regulations. The amendments are described in the table below.

DATES: These amendments are effective November 28, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert C. Smith, Regulatory Management Staff, Office of Mobile Source Air Pollution Control (AW-455), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-0596.

SUPPLEMENTARY INFORMATION: The Agency finds that good cause exists for omitting as unnecessary a notice of proposed rulemaking and public rulemaking procedure in the issuance of these amendments in that (1) the amendments primarily clarify the regulations, (2) they make non-substantive corrections, and (3) they impose no additional burden on the regulated industry in complying with the regulations.

NOTE.—The EPA has determined that this document does not contain a major regulation requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and under OMB Circular A-107.

Dated: October 14, 1977.

DOUGLAS M. COSTLE,
Administrator.

Section	Change	Reason
1. 86.402-78	Insert definition for "total test distance."	Total test distance is a term referred to at several places in the regulations but not defined in sec. 86.402-78.
2. 86.413-78(a)(2)	Modify language describing the requirements for vehicle emission labels.	Change will allow manufacturers more flexibility in choosing the material to be used to make emission labels put on vehicles.
3. 86.416-78(a)(2)(ii)	Remove requirement for manufacturers to report in 1978 and 1979 applications for certification the adjustment ranges for fuel and ignition systems. Calibration ranges will be reported.	The regulations do not call for the testing of vehicles at calibrations anywhere within the physically available adjustment range until 1980. Therefore, for 1978 and 1979, manufacturers should report those calibration ranges for fuel and ignition systems between which vehicles should be adjusted for testing.
4. 86.416-80	Insert a new section into the regulations identical to 86.416-78 except that manufacturers will report in their applications for certification the adjustment ranges for fuel and ignition systems.	After 1980 the administrator will specify ignition system and fuel system calibrations to be used during testing so long as they are within the physically available range for these adjustments. Manufacturers must state what this adjustment range is in their application for certification if the administrator is to specify those calibrations.
5. 86.426-78 (a) and (c)	Alter the mass at which vehicles must accumulate service distance during certification; add instructions for shifting vehicles during service accumulation.	Change is made to clarify weight at which vehicles should accumulate service distance on a dynamometer; instructions on what shift procedures should be used during service accumulation are intended to assure that vehicle operation during testing is typical of in-use operation.
6. 86.428-78(f)	Provide a more complete reference to another section of the regulations, and correct a typographical error.	The typographical error was made when the regulation was initially published (42 FR 1122); the section reference is clarified to simplify use of the regulations.
7. 86.432-78 (a) and (e)	Modify language describing what test data shall be used in the calculation of deterioration factors, and changes the precision to which these factors shall be determined.	Change was needed to more clearly delineate what test data should be included in the calculation of deterioration factors, and the precision to which this factor should be determined [makes consistent with that required by 86.432-78(d)].
8. 86.436-78 (b) and (e)(2)	Clarifies which test data will be used for deterioration lines.	Change is needed to make this section conform to changes made in sec. 86.432-78, deterioration factor.
9. 86.437-78 (b)(1)(ii) and (b)(3)	Clarifies section references used in manufacturer statements of conformance and the certificate of conformity, and makes plain that the certificate covers only motorcycles.	References to "Subpart E, Title 40" and "this chapter" do not adequately describe the portions of the regulations which must be satisfied in order to receive a certificate of conformity; current certificate of conformity language is misleading in that it implies that the certificate covers records required by 86.416 in addition to motorcycles.
10. 86.440-78 (a)(2)(ii)	Correct typographical error	Error was made in initial publication of regulations (42 FR 1122).
11. 86.442-78 (a)(1)	do	Do.
12. 86.508-78(c)	Correct typographical error and drop inertia tolerances for flywheels.	Error was made in initial publication of regulations (42 FR 112); tolerances cannot be met on current dynamometers.
13. 86.513-78(b)	Correct typographical error	Error was made in initial publication of regulations (42 FR 1122).
14. 86.519-78(a)(9)	Gives correct subscripts for the symbols V_s and D_s.	Do.
15. 86.535-78(c)	Modifies what should be measured to determine vehicle speed on a dynamometer.	Change is made to make this paragraph consistent with provisions of 86.508 which specifies use of a single roll dynamometer for testing.
16. 86.537-78(b)	Adds requirement to evacuate exhaust sample collection bags prior to the start of the emission test, and clarifies when during the test readings for exhaust samples should be taken.	Change will reduce the potential for testing being done with contaminated sample bags, and the reading of sample bags after too long a period of time has elapsed.
17. 86.540-78	Require that flow rates and pressures be checked before following the rest of the procedures for exhaust sample analysis.	Change is made to assure the accuracy of the emission test results.
18. 86.542-78 (f) and (o)	Clarifies when the vehicle odometer should be read and that information recorded, and the means for recording driving distance accumulated during an emission test.	Initial publication of the regulation omitted when odometer information was to be recorded; driving distance covered during the test is required to calculate emission test results.
19. 86.544-78 (c) and (d)	Corrects typographical errors and provides correct references to other parts of the regulations.	Typographical errors were made in the initial publication of the regulation.

40 CFR Part 86 is amended as follows:

1. In Section 86.402–78, the definition for "total test distance" is added to read as follows:

§ 86.402–78 Definitions.

* * * * *

"Total test distance" is defined for each class of motorcycles in § 86.427–78.

* * * * *

2. Section 86.413–78(a)(2) is revised to read as follows:

§ 86.413–78 Labeling.

(a)(1) * * *

(2) A permanent, legible label shall be affixed in a readily accessible position. Multi-part labels may be used.

* * * * *

3. Section 86.416–78, paragraph (a)(2)(ii) is revised to read as follows:

§ 86.416–78 Application for certification.

(a) * * *

(2) * * *

(ii) The range of available fuel and ignition system calibrations.

* * * * *

4. A new section, § 86.416–80, is added as follows:

§ 86.416–80 Application for certification.

(a) New motorcycles produced by a manufacturer whose projected sales in the United States is 10,000 or more units (for the model year in which certification is sought) are covered by the following:

(1) An application for a certificate of conformity to the regulations in the English language applicable to new motorcycles shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment. Where possible, a manufacturer should include in a single application for certification, a description of all vehicles in each class for which certification is required. A manufacturer may, however, choose to apply separately for certification of part of his product line. The selection of test vehicles and the computation of test results will be determined separately for each application.

(2) The application shall be in writing signed by an authorized representative of the manufacturer, and shall include the following:

(i) Identification and description of the vehicles covered by the application and a description of their engine, emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device. Transmission gear ratios, overall drive ratios and vehicle mass (or range of mass) shall also be included. The label and its location shall be specified, § 86.413. Available optional equipment shall be described.

(ii) The range of available fuel and ignition system adjustments.

(iii) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles for which certification is requested. If reduced testing based on low sales volume is requested the method of predicting sales shall be described.

(iv) A description of the test equipment (if applicable) and fuel and engine lubricant proposed to be used.

(v) A description of the proposed service accumulation procedure and a description of the proposed scheduled maintenance.

(vi) A statement of recommended periodic and anticipated maintenance and procedures necessary to assure that the vehicles covered by a certificate of conformity in operation conform to the regulations, listings of the fuels and lubricants to be recommended to the ultimate purchaser and a description of the program for training of personnel for such maintenance, and the equipment required to perform this maintenance.

(vii) A description of normal assembly line operations and adjustments if such procedures exceed 10 km (6.2 miles) or one hour of engine operation.

(3) Completed copies of the application and of any amendments thereto, and all notifications under §§ 86.438 and 86.439 shall be submitted in such multiple copies as the Administrator may require.

(4) For purposes of this section, "auxiliary emission control device" means any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

(b) New motorcycles produced by a manufacturer whose projected sales in the United States is less than 10,000 units (for the model year in which certification is sought) are covered by the following:

(1) All the information that would otherwise be required to be submitted to EPA under paragraph (a)(2) of this section must be made a part of the manufacturer's records, except there is no requirement to submit the information to the Administrator or receive approval from the Administrator.

(2) Section 86.437 details the statements that these manufacturers are required to provide to the Administrator.

(c) For the purpose of determining applicability of paragraphs (a) or (b) of this section, where there is more than one importer or distributor of vehicles manufactured by the same person, the projected sales shall be the aggregate of the projected sales of those vehicles by such importers or distributors.

5. Section 86.426–78, paragraph (a) is revised and a new paragraph (c) is added as follows:

§ 86.426–78 Service accumulation.

(a) The procedure for service accumulation will be the Durability Driving Schedule as specified in Appendix IV to this Part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate distance at a measured curb mass which is within 5 kg (11.0 lb) of the loaded vehicle mass specified by the Administrator.

* * * * *

(c) The manufacturer's recommended shifting procedure will be used for laps 1 through 10. Lap 11 shifts (W.O.T. accelerations) must be conducted at the manufacturer's recommended maximum safe engine speed.

6. Section 86.428–78(f) is revised to read as follows:

§ 86.428–78 Maintenance, scheduled; test vehicles.

* * * * *

(f) Requests for authorization of periodic maintenance of emission control related components not specifically authorized to be maintained by this section, and for anticipated maintenance (see § 86.428–78(g)), must be made prior to the beginning of distance accumulation. The Administrator will approve the performance of such maintenance if the manufacturer makes a satisfactory showing that the maintenance will be performed on vehicles in use and that the maintenance is reasonable and necessary.

* * * * *

7. In Section 86.432–78, paragraphs (a) and (e) are revised to read as follows:

§ 86.432–78 Deterioration factor.

(a) Deterioration factors shall be developed for each test vehicle from the emission test results. A separate factor shall be developed for each pollutant. The applicable data to be used in calculating these factors are:

(1) The results from all valid tests conducted by the manufacturer or Administrator at scheduled test intervals.

(2) The results from tests conducted before and after scheduled maintenance unless specifically excluded by the Administrator.

(3) The results from tests conducted before and after unscheduled maintenance, if approval of the maintenance by the Administrator was conditioned on the data being used in the deterioration factor calculation.

* * * * *

(e) Deterioration factors computed to be less than 1.000 shall be 1.000.

8. In Section 86.436–78, paragraphs (b), and (e)(2) are revised to read as follows:

§ 86.436–78 Additional service accumulation.

* * * * *

(b) New deterioration lines will be generated using all applicable test points (except the first official EPA test) up to the useful life. The same procedures for determining the original deterioration line will be used.

* * * * *

(e)(1) * * *

(2) A new deterioration line calculated using the procedure described in § 86.-

436–78(b) is below the standard at the minimum test distance and at the useful life, and,

* * * * *

9. In Section 86.437–78, paragraphs (b)(1)(ii) and (b)(3) are revised to read as follows:

§ 86.437–78 Certification.

* * * * *

(b) * * *

(1) * * *

(ii) A statement signed by the authorized representative of the manufacturer stating: "The vehicles described herein have been tested in accordance with the provisions of Subpart E, Part 86, Title 40, of the Code of Federal Regulations, and on the basis of these tests are in conformance with that Subpart. All of the data and records required by that Subpart are on file and are available for inspection by the Administrator. Total sales of vehicles subject to this Subpart will be limited to less than 10,000 units."

* * * * *

(3) Such certificate will be issued for such a period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motorcycle covered by the certificate will meet the requirements of the Act and of this subpart. Each such certificate shall contain the following language:

This certificate covers new motorcycles, as described in the application for certification and the records required in 40 CFR 86.416, manufactured by ---------- whose total United States sales are less than 10,000 units for the ---- model year production period as defined in 40 CFR 86.402. It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 86.441 which concern either the vehicle certified or any production vehicle covered by this certificate or any production vehicle which when when completed will be claimed to be covered by this certificate. Failure to comply with all the requirements of § 86.-441 with respect to any such vehicle may lead to revocation or suspension of this certificate as specified in 40 CFR 86.442. It is a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.442. It is also a term of this certificate that no changes which may reasonably be expected to affect emissions shall be made to the vehicles covered by this certificate unless the manufacturer conducts appropriate emission testing to demonstrate that such changes will not cause the test vehicle's emissions to exceed the applicable emission standards as set forth in 40 CFR Part 86.

* * * * *

10. Section 86.40–78(a)(2)(ii) is revised to read as follows:

§ 86.440–78 Maintenance of records.

(a) * * *

(2) * * *

(ii) Each such history shall be started on the date that the first of any of the selection or build-up activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification vehicle, shall be updated each time the operational status of the vehicle changes or additional work is performed on it, and shall be kept in a designated location.

* * * * *

11. Section 86.442–78(a)(1) is revised to read as follows:

§ 86.442–78 Denial, revocation, or suspension of certification.

(a) * * *

(1) The manufacturer submits false or incomplete information in his application for certification thereof; or

* * * * *

12. Section 86.508–78(c) is revised to read as follows:

§ 86.508–78 Dynamometer.

* * * * *

(c) Flywheels or other means shall be used to simulate the inertia specified in § 86.529.

* * * * *

13. Section 86.513–78(b) is revised to read as follows:

§ 86.513–78 Fuel and engine lubricant specification.

* * * * *

(b) Gasoline and engine lubricants representative of commercial fuels and engine lubricants which will be generally available through retail outlets shall be used in service accumulation. For leaded gasoline, the minimum lead content shall be 0.370 gram per litre (1.4 grams per U.S. gallon), except that where the Administrator determines that vehicles represented by a test vehicle will be operated using gasoline of different lead content than that prescribed in this paragraph, he may consent in writing to use a gasoline with a different lead content. This octane rating of the gasoline used shall be no higher than 4.0 Research octane numbers above the minimum recommended by the manufacturer. The Reid Vapor Pressure of the fuel used shall be characteristic of the motor fuel during the season which the service accumulation takes place. If the manufacturer specifies several lubricants to be used by the ultimate purchaser, the Administrator will select one to be used during service accumulation.

* * * * *

14. Section 86.519–78(a)(9) is revised to read as follows:

§ 86.519–78 Constant volume sampler calibration.

(a) * * *

(9) If the calibration has been performed carefully, the calculated values from the equation will be within ±0.50 percent of the measured value of V_o. Values of M will vary from one pump to another, but values of D_o for pumps of the same make, model, and range should agree within ±3 percent of each other. Particulate influx from use will cause the pump slip to decrease as reflected by lower values for M. Calibrations should be performed at pump startup and after major maintenance to assure the stability of the pump slip rate. Analysis of mass injection data will also reflect pump slip stability.

* * * * *

15. Section 86.535–78(c) is revised to read as follows:

§ 86.535–78 Dynamometer procedures.

* * * * *

(c) The vehicle speed, as measured from the dynamometer roll, shall be used. A speed vs. time recording, as evidence of dynamometer test validity, shall be supplied on request of the Administrator.

* * * * *

16. In Section 86.537–78(b), a new paragraph (b)(6) is added, paragraphs (b)(3), (b)(11), (b)(13), and (b)(18) are revised, and existing paragraphs (b)(6) through (b)(21) are redesignated, as follows:

§ 86.537–78 Dynamometer test runs.

* * * * *

(b) * * *

(3) With the sample selector valves in the "standby" position, connect sample collection bags to the dilute exhaust and dilution air sample collection systems.

(4) Start the Constant Volume Sampler (if not already on), the sample pumps, and the temperature recorder. (The heat exchanger of the constant volume sampler, if used, should be preheated to operating temperature before the test begins.)

(5) Adjust the sample flow rates to the desired flow rate (minimum of 80 cc/s (10.2 ft³/hr) for PDP–CVS) and set the gas flow measuring devices to zero.

(6) Evacuate sample collection bags.

NOTE.—CF–CVS sample flowrate is fixed by the venturi design.

(7) Attach the flexible exhaust tube to the vehicle tailpipe(s).

(8) Start the gas flow measuring device, position the sample selector valves to direct the sample flow into the "transient" exhaust sample bag and the "transient" dilution air sample bag and start cranking the engine.

(9) Fifteen seconds after the engine starts, place the transmission in gear.

(10) Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule.

(11) Operate the vehicle according to the dynamometer driving schedule (§ 86.515).

(12) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously switch the sample flows from the "transient" bags to the "stabilized" bags, switch off gas flow measuring device No. 1 and start gas flow measuring device No. 2. Before the acceleration, which begins at 510 seconds, record the roll revolutions. As soon as possible, transfer the "transient" exhaust and dilution samples to the analytical system and process the samples according to § 86.540 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the cold transient phase of the test.

(13) Turn engine off 2 seconds after the end of the last deceleration (at 1,369 seconds).

(14) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 2 and

position the sample selector valves to the "standby" position. Record the measured roll revolutions. As soon as possible, transfer the "stabilized" exhaust and dilution air samples to the analytical system and process the samples according to § 86.540 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the cold stabilized phase of the test.

(15) Immediately after the end of the sample period turn off the vehicle cooling fan system.

(16) Turn off the CVS or disconnect the exhaust tube from the tailpipe of the vehicle.

(17) Repeat the steps in paragraphs (b)(2) through (10) of this section for the hot start test, except only one evacuated sample bag is required for sampling exhaust gas and one for dilution air. The step in paragraph (b)(7) of this section shall begin between 9 and 11 minutes after the end of the sample period for the cold start test.

(18) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously turn off gas flow measuring device No. 1 and position the sample selector valve to the "standby" position. (Engine shutdown is not part of the hot start test sample period.) Record the measured roll revolutions.

(19) As soon as possible, transfer the hot start "transient" exhaust and dilution air samples to the analytical system and process the samples according to § 86.540 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the hot transient phase of the test.

(20) Disconnect the exhaust tube from the vehicle tailpipe(s) and remove vehicle from dynamometer.

(21) The constant volume sampler may be turned off, if desired.

(22) Continuous monitoring of exhaust emissions will not normally be allowed. Specific written approval must be obtained from the Administrator for continuous monitoring of exhaust emissions.

17. In Section 86.540–78, a new paragraph (a) is added, and existing paragraphs (a) through (h) are redesignated as follows:

§ 86.540–78 Exhaust sample analysis.

* * * * *

(a) Check flow rates and pressures. Adjust if required.

(b) Zero the analyzers and obtain a stable zero reading. Recheck after tests.

(c) Introduce span gases and set instrument gains. In order to avoid corrections, span and calibrate at the same flow rates used to analyze the test sample. Span gases should have concentrations equal to 75 to 100 percent of full scale. If gain has shifted significantly on the analyzers, check the calibrations. Show actual concentrations on chart.

(d) Check zeros; repeat the procedure in paragraphs (a) through (c) of this section if required.

(e) Check flowrates and pressures.

(f) Measure HC, CO, CO_2, and optionally, NO^x concentrations of samples.

(g) [Reserved]

(h) Check zero and span points. If difference is greater than 2 percent of full scale, repeat the procedure in paragraphs (a) through (g) of this section.

18. In Section 86.542–78, paragraph (f) is revised and a new paragraph (o) is added, as follows:

§ 86.542–78 Records required.

* * * * *

(f) *Vehicle:* Make, Vehicle identification number, Model year, Transmission type, Odometer reading at initiation of preconditioning. Engine displacement, Engine family, Emission control system, Recommended Idle RPM, Nominal fuel tank capacity, Inertial loading, Actual curb mass recorded at 0 kilometres, and Drive wheel tire pressure.

* * * * *

(o) The driving distance for each of the three phases of test, calculated from the measured roll or shaft revolutions.

19. In Section 86.544–78, paragraph (c), descriptions for symbols "R" and Vo" are corrected and the equation for "DF" corrected; paragraph (d) is corrected and the equation for "HCWN" in subparagraph (4) is corrected, as follows:

§ 86.544–78 Calculations; exhaust emissions.

* * * * *

(c) * * *

R = Relative humidity of the dilution air, in percent (see § 86.542–78(n).

* * * * *

$DF = 13.4/[CO2e + (HCe + COe)\ 10^{-4}]$

* * * * *

Vo = Volume of gas pumped by the positive displacement pump, in cubic metres per revolution. This volume is dependent on the pressure differential across the positive displacement pump. (See calibration techniques in 86.519–78.)

* * * * *

(d) Sample calculation of mass emission values for vehicles with engine displacements equal to or greater than 170 cc (10.4 cu. in.):

* * * * *

(4) * * *

$HCwm = 0.43[(11.114 + 7.184)/(5.650 + 6.070)] + 0.57[(6.122 + 7.184)/(5.660 + 6.070)]$

* * * * *

(Sections 202, 206, 207, 208, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7525, 7541, 7542, 7601(a), formerly 42 U.S.C. 1857f–1, 1857f–5, 1857f–5a, 1857f–6, 1857g(a) which was reclassified by 91 Stat. 685 (August 7, 1977)).)

[FR Doc.77–31068 Filed 10–27–77;8:45 am]

[6560–01]

[FRL 795–1]

SUBCHAPTER D—WATER PROGRAMS

PART 120—WATER QUALITY STANDARDS

Interim Final Rule

AGENCY: Environmental Protection Agency

ACTION: Interim Final Rule to amend 40 CFR Part 120.

SUMMARY: The purposes of this interim final rule are to delete those sections of 40 CFR 120 that relate only to State water quality standards adoptions and approvals and not to Federal promulgation of water quality standards or to other rulemaking activities relating to water quality standards and to delete those Federal promulgations that have been rendered obsolete or unnecessary because of subsequent action. State water quality standards are not Federal regulations and, hence, should not be a part of the Code of Federal Regulations. The State adoption and Federal approval of water quality standards will, hereinafter, appear as a Notice in the FEDERAL REGISTER soon after Federal approval of the State standard occurs. This action is procedural and is without legal impact, thus, it is adopted as interim final.

EFFECTIVE DATE: Effective October 28, 1977. Comments must be submitted on or before November 28, 1977.

FOR FURTHER INFORMATION CONTACT:

Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH–585), Office of Water and Hazardous Materials, U.S. Environmental Protection Agency, Washington, D.C. 20460, 202–755–0100.

SUPPLEMENTARY INFORMATION: 40 CFR 120.5 is being withdrawn because the States have adopted salinity standards as required. State water quality standards approvals are being withdrawn (§ 120.10), and will henceforth not appear in the Code of Federal Regulations because such standards are not a part of a Federal regulation but, instead, are State-adopted water quality standards that have been approved by the Administrator pursuant to section 303 of the Federal Water Pollution Control Act. State-adopted, Federally approved water quality standards will appear as Notices in the FEDERAL REGISTER. The Alabama standard promulgated by the Environmental Protection Agency (§ 120.11) is being withdrawn because the United States District Court has so ordered (*Associated Industries of Alabama* v. *Train*, 9 ERC 1561). The first paragraph of § 120.21 is being withdrawn because it is an approval action and not a Federal regulation; § 120.22, paragraphs (a) and (b) of § 120.104, and § 120.115 are being withdrawn because the respective States have adopted appropriate standards as required. Existing Federal promulgations of water quality standards for States have been renumbered to permit their listing in alphabetical order and to reserve numbers for intervening States in alphabetical sequence, should such be necessary.

No Inflationary Impact Statement is required by Executive Order 11821 for these interim final regulations because the economic effects will not exceed the criteria established by EPA and approved by the Office of Management and Budget for the preparation of such statements.

In consideration of the foregoing, 40 CFR 120 is hereby amended as set forth

below. All comments on this action should be submitted to Mr. Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Office of Water and Hazardous Materials, U.S. Environmental Protection Agency, Washington, D.C. 20460. All comments received on or before November 28, 1977 will be considered in developing final rulemaking.

Dated: October 19, 1977.

BARBARA BLUM,
Acting Administrator.

Part 120 is amended as follows:

1. Delete § 120.5 in its entirety.
2. Delete § 120.10 in its entirety.
3. Delete § 120.11 in its entirety.
4. Redesignate § 120.21 as § 120.27 Federally promulgated Water Quality Standards for the Commonwealth of Kentucky. Delete the first paragraph. Retain paragraphs (a) and (b).
5. Delete § 120.22 in its entirety.
6. Redesignate § 120.104 as § 120.12 Federally promulgated water quality standards for Arizona. Delete paragraphs (a) and (b) in their entirety. Redesignate paragraph (c) as paragraph (a).
7. Delete § 120.115 in its entirety.

[FR Doc.77-31297 Filed 10-27-77;8:45 am]

[6820-24]

Title 41—Public Contracts and Property Management

CHAPTER I—FEDERAL PROCUREMENT REGULATIONS

[FPR Amdt. 185]

PART 1-18—PROCUREMENT OF CONSTRUCTION

Responsible Prospective Construction Contractors

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment of the Federal Procurement Regulations (FPR) provides that surety company prequalification surveys normally will not be duplicated by the contracting officer in preaward survey efforts. The amendment also excludes a requirement that Government's administrative costs be included in damages under a termination for default liquidation of liability. The changes are being made in response to a GAO report concerning the use of surety bonds in Federal construction contracts. The intended effect of the amendment is (1) to eliminate unnecessary preaward surveys when a surety company has conducted a prequalification survey and (2) to provide that sureties will not be liable for the Government's administrative costs when a construction contract is terminated for default.

EFFECTIVE DATE: December 9, 1977.

FOR FURTHER INFORMATION CONTACT:

Philip G. Read, Director of Federal Procurement Regulations. (703-557-8947).

SUPPLEMENTARY INFORMATION:

Subpart 1-18.1—General Provisions

Section 1-18.106 is revised as follows:

§ 1-18.106 Minimum standards for responsible prospective contractors.

In evaluating the responsibility of a prospective contractor, the contracting officer shall consider whether a bid bond has been furnished and performance and payment bonds are to be furnished. Prior to underwriting bid, performance, and payment bonds, it is normal practice for each surety company to conduct a prequalification survey which examines, verifies, and evaluates the contractor's financial resources, technical expertise for the type of work involved, management and organization ability, current workload, and capability to complete the contract in the required time. Normally, the contracting officer is not expected to duplicate this effort in conducting the preaward survey, but should emphasize in addition thereto the evaluation of information which is uniquely available to the Government, such as the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (see § 1-1.602 *et seq.*), contractor experience lists, and performance evaluations on present or previous contracts with the Government. More extensive preaward surveys should be conducted when the project requires unique or unusual construction expertise or when information available to the contracting officer indicates that the contractor may not be responsible (see § 1-1.1203, Minimum standards for responsible prospective contractors, for other pertinent factors). The responsibility for determining the extent to which a preaward survey is appropriate to the circumstances rests with the contracting officer. Where the prospective contractor is a joint venture, the sum of its financial resources and the individual capacities of all its members will be used in determining the responsibility of the joint venture.

Subpart 1-18.8—Termination of Construction Contracts

Section 1-18.803-9 is revised as follows:

§ 1-18.803-9 Liquidation of liability.

In accordance with the provisions of the contract, the contractor and his surety are liable to the Government for resulting damages except those administrative costs which are necessary for, and directly assignable to, completing the work following such termination and which would not have been required had termination not been necessary. All retained percentages of progress payments previously made to the contractor and any progress payments due for work completed prior to the termination of the right to proceed shall be used for the purpose of liquidating the liability of the contractor and his surety to the Government for such damages. Where the retained and unpaid amounts are insufficient to liquidate such liability, steps shall be taken to recover the additional sum from the contractor and his surety.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

NOTE.—The General Services Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: October 18, 1977.

JAY SOLOMON,
Administrator of General Services.

[FR Doc.77-31266 Filed 10-27-77;8:45 am]

[6820-25]

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E-210]

PART 101-32—GOVERNMENT-WIDE AUTOMATED DATA MANAGEMENT SERVICES

Computer Security

AGENCY: Automated Data and Telecommunications Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule provides standard terminology to be used when Federal agencies need to acquire ADP equipment and services that incorporate the standard encryption algorithm for cryptographic protection of computer data. The algorithm will help safeguard computer data and is intended to reduce the opportunity for unauthorized disclosure, to protect computer data during transmission or while in storage, and to maintain the integrity of the information represented by the data. The encryption capability must be validated by the National Bureau of Standards (NBS).

EFFECTIVE DATE: October 28, 1977.

FOR FURTHER INFORMATION CONTACT:

L. Perlman, Regulations Branch, Agency Services Division, Office of Agency Assistance, Planning, and Policy, Automated Data and Telecommunications Service, General Services Administration, Washington, D.C. 20405. Telephone (202-566-0834).

SUPPLEMENTARY INFORMATION: The encryption algorithm is prescribed in the Federal Information Processing Standards Publication (FIPS PUB) 46, "Data Encryption Standard." The NBS issues FIPS PUBS under the provisions of Public Law 89-306 and under Part 6 of Title 15, Code of Federal Regulations. GSA's responsibility is to ensure that standard terminology relating to FIPS PUBS is included in solicitation documents for use by Federal agencies.

The table of contents for Part 101-32 is amended by adding the following entry:

Sec. 101-32.1304-19 FIPS PUB 46, Data Encryption Standard (DES).

Subpart 101–32.13—Implementation of Federal Information Processing Standards Publications (FIPS PUBS) Into Solicitation Documents

Section 101–32.1304–19 is added as follows:

§ 101–32.1304–19 FIPS PUB 46, Data Encryption Standard (DES).

(a) FIPS PUB 46 specifies an algorithm to be implemented in computer or related data communication devices using hardware (not software) technology. This standard shall be used by Federal agencies for the cryptographic protection of computer data when:

(1) A department or agency decides that cryptographic protection is required; and

(2) The data are not classified according to the National Security Act of 1947, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Federal agencies using cryptographic devices for protecting data classified according to either the National Security Act or the Atomic Energy Act can use those devices for protecting unclassified data in lieu of the standard.

(c) Technical specifications are included with FIPS PUB 46.

(d) The standard terminology for use in solicitation documents is:

In the event that a data encryption requirement is specified elsewhere in this solicitation, such encryption will be accomplished in accordance with FIPS PUB 46. Implementations of the standard embodied in products or services offered as a result of this solicitation that are asserted to have an encryption capability in conformance with FIPS PUB 46 must have that capability validated by the National Bureau of Standards prior to being proposed. Arrangements for validation may be made with the Systems and Software Division, National Bureau of Standards, Washington, D.C. 20234.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

NOTE.—The General Services Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: October 18, 1977.

JAY SOLOMON,
Administrator.

[FR Doc.77–31267 Filed 10–27–77;8:45 am]

[6712–01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21020; RM–2741; FCC 77–708]

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Unattended Operation of FM Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This action amends § 74.1266 of the FCC rules and regulations to permit the unattended operation of FM translator stations, as requested by the National Translator Association. Unattended operation is already permitted for television translators, and the Communications Act was recently amended to remove the operator requirements for FM translators.

EFFECTIVE DATE: November 28, 1977.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

James J. Gross, Broadcast Bureau, 202–632–7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—PROCEEDING TERMINATED

Adopted: October 13, 1977.

Released: October 21, 1977.

In the matter of amendment to 47 CFR 74.1266, Unattended Operation of FM Translator Stations, Docket No. 21020, RM–2741.

1. The Commission now considers the comments and replies on its Notice of Proposed Rule Making[1] which was issued in response to a petition of the National Translator Association ("NTA"). In that petition, NTA sought an amendment to the Commission's rules to permit the unattended operation of FM translator stations. FM translator stations are low-powered broadcasting facilities which receive and amplify the incoming signals of an FM radio station, then convert the signals to a different frequency, and retransmit them to small, sparsely populated communities. Comments were received from petitioner, the National Cable Television Association, Inc. ("NCTA"), the American Broadcasting Companies, Inc. ("ABC"), and the General Electric Broadcasting Company ("GEBCO").

2. The Notice proposed implementation in the Commission's rules of a Congressional amendment to Section 318 of the Communications Act; Pub. L. 94335, which was enacted in 1976, amended the Communications Act to permit FM translators to be operated without having a licensed operator in attendance. (Until the law was amended, only television translators were exempted from the statutory requirement in Section 318 that all broadcast stations shall be operated only with a licensed operator in attendance.) The House Report on the legislation contained the following conclusions:

Translators were conceived as simple, inexpensive devices designed to provide broadcast signals to the residents of sparsely populated, rural, remote, or mountainous areas. Technological advances through the past decade have made FM translator stations possible and, in 1970, the Federal Communications Commission authorized such stations. In order to make the FM translator stations more economically feasible, the Committee recommends that section 318, be amended as proposed, to authorize FM translators to operate unattended in the same manner as is now permitted for television translator stations * * *. The Committee finds that FM translator service is a valuable communications service in underserved and sparsely populated areas of the country. Given the existing exception for unattended television translator operation, the Committee perceives no reason for refusing to extend this exception to FM translators. H.R. 94–1261 (June 14, 1976).

In light of this Congressional enactment and at the request of NTA, the Commission adopted a Notice in this proceeding proposing to adopt rule provisions in § 74.1266 for FM translators paralleling those which govern operator requirements for television translators in § 74.766.[2]

3. Opposition has been raised by NCTA which asserts that this matter should be consolidated with other rulemaking petitions before the Commission for a broad rulemaking proceeding aimed at developing a consistent translator policy. Cited by NCTA are:

(a) Docket No. 20539, a proposal to allow translators to receive their input signals via FM microwave or any other suitable service;

(b) RM–2739, a proposal by NTA to allow VHF translators to originate local announcements soliciting or acknowledging public financial support;

(c) RM–2740, a proposal by NTA to allow origination of emergency messages on FM, UHF, and VHF translators; and

(d) RM–2751, a proposal filed August 25, 1976, by Cablecom-General, Inc., calling for the consolidation of all pending translator proposals to allow the Commission to examine the interrelationship of translators with other aspects of the national communications scheme.

NCTA points out that 27 different parties have filed comments in support of consolidation in RM–2751, including broadcasters, common carriers, cable operators, and translator licensees.

4. NCTA also challenges the statement in the Notice of this proceeding that consolidation is inappropriate because the "subject matter differs entirely, and the present petition does not raise any basic question regarding overall communications policy." Rather, states NCTA, the policy considerations in allowing unattended FM translators are of serious consequence and deserve careful scrutiny. NCTA states that translator interference problems are increasing and have not been remedied by the Commission; that no study has been made by the Commission on the impact of translator interference; that technical problems in translators can go unremedied; and that interference could result to air navigation and marine emergency radio services.

[1] 42 FR 2087, published January 10, 1977.

[2] When the FM translator rules were first developed, they were adapted from the rules already in force governing television translators. At that time, through inadvertence, a rule (§ 73.1234) was included which permitted unattended FM operation. However, since the Communications Act did not then allow unattended operation, this section could not be given effect, and § 74.1266, which required attended operation, governed instead.

5. Support for the proposal to permit unattended FM translators is contained in comments and reply comments from petitioner, ABC and GEBCO. ABC and GEBCO say that the promotion and development of translator facilities would benefit the public and that there is no rational basis for treating FM and television translators differently. They also state that NCTA has failed in comments to support its allegations of interference due to frequency drift from unattended FM translators, as was also pointed out in the Notice. NTA argues that NCTA has filed no engineering statement or support for its allegations of interference. ABC, in its reply comments, opposes consolidation on the theory that the instant rulemaking deals with a discrete aspect of FM translator operation which may be handled separately. ABC also notes that NCTA has made no mention of progress on its study of translator interference problems which was stated to be underway prior to the Notice, and that such a study at any rate could not show the differences between attended and unattended FM translators.

CONCLUSIONS

6. It is within the Commission's discretion to consolidate rule making proposals or treat them separately. We have considered the arguments of the parties regarding consolidation of this proceeding with other translator proceedings. It is still our finding that the question of permitting unattended FM translator operation is sufficiently separable from the translator issues in other proceedings to be dealt with directly in this proceeding. This in no way precludes reexamination of this matter if changed circumstances should show that to be appropriate.

7. NCTA has offered no evidence that FM translators have caused, or are likely to cause, interference. Upon review of the arguments of all parties herein, it is our conclusion that the potential for significant interference from unattended FM translators has not been established and, based on the record and our experience in the area, could be expected to be minimal. Thus, there is no reason to distinguish between television and FM translators in the matter of unattended operation, and therefore we shall follow the expressed intent of Congress and conform our FM translator rules to the television translator rules.

8. *Accordingly, it is ordered,* That effective November 28, 1977, § 74.1266 of the Commission's rules and regulations, is amended to read as follows:

§ 74.1266 Operator requirements.

(a) An FM broadcast translator station may be operated only by a person designated by and under the control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's rules and regulations.

(b) A licensed operator employed to operate an FM translator may, at the discretion of the licensee, be employed for other duties or for the operation of another class of station or stations in accordance with the class of license which he holds and the rules and regulations governing such other stations. However, such duties shall not interfere with the operation of the FM translator station.

9. Authority for the action taken herein is contained in Sections 4(i), 303 (g), (l) and (r) of the Communications Act of 1934, as amended.

10. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS COMMISSION,[2]
WILLIAM J. TRICARICO,
Acting Secretary.

[FR Doc.77-31269 Filed 10-27-77;8:45 am]

[4910-06]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. RSEP-2, Notice No. 1]

PART 209—RAILROAD SAFETY ENFORCEMENT PROCEDURES

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document creates a new Part 209 in Title 49, Code of Federal Regulations, which sets forth certain of the procedures utilized by FRA in carrying out its safety enforcement mission. Specifically, the new part prescribes procedures for the assessment of civil penalties under section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809) for violations of the Department of Transportation Hazardous Materials Regulations related to the shipment and transportation of hazardous materials by rail. The new part also prescribes procedures for issuance of orders directing compliance with the Federal Railroad Safety Act of 1970 (45 U.S.C. 421, 431-441) (Safety Act) and the Hazardous Materials Transportation Act (49 U.S.C. 1801-1812) (HMTA) and with regulations and orders issued under the respective statutes. Finally, the new procedures provide guidance concerning requests for confidential treatment of materials provided to FRA in connection with enforcement of all railroad safety statutes and regulations within FRA's jurisdiction. The procedures are responsive to provisions of Pub. L. 93-633, the Transportation Safety Act of 1974. That statute enacted the HMTA, which contains civil penalty authority and compliance order authority with respect to the regulation of hazardous materials. The same public law amended the Safety Act to provide for compliance order authority. Since the Department of Transportation has reissued its regulations under the HMTA, effective January 3, 1977 (see 41 FR 38175-38183 (1976)), and since the enforcement of those regulations in the rail mode has been delegated to FRA (49 CFR 1.49(t)), it has become necessary for FRA to issue these implementing procedures. The procedures are intended to assure the prompt and efficient resolution of specified enforcement actions under the Safety Act and the HMTA and to provide administrative due process to those against whom proceedings are instituted.

EFFECTIVE DATE: These procedures are effective on October 28, 1977.

FOR FURTHER INFORMATION CONTACT:

J. Thomas Furphy, Assistant Chief Counsel, Office of Chief Counsel, Federal Railroad Administration, 400 7th Street SW., Washington, D.C. 20590, 202-426-8285.

SUPPLEMENTARY INFORMATION: FRA has not previously issued written procedures for its enforcement of railroad safety statutes and regulations. The collection of civil penalties under the Safety Act and the older railroad safety statutes is handled through informal settlement procedures and, where necessary, suits in the district courts. See 31 U.S.C. 951-953; 4 CFR Parts 101-105. Those informal procedures are not affected by the current rulemaking. However, in 1974 new authority was conferred on the Secretary of Transportation to issue compliance orders under the HMTA and the Safety Act and to assess civil penalties under the HMTA.

The HMTA requires that the Secretary exercise these specific powers "after notice and opportunity for a hearing" (49 U.S.C. 1808(a), 1809). The Safety Act also contains a provision for oral presentations (45 U.S.C. 431). Neither statute requires full-blown "on-the-record" hearings falling within the purview of sections 5, 7 and 8 of the Administrative Procedure Act (5 U.S.C. 554, 556, 557). However, it is clear that both the Safety Act (with respect to compliance orders) and the HMTA (with respect to compliance orders and hazardous materials civil penalties) contemplate that fact finding and discretion shall be vested in the administrative agency. Therefore, FRA believes it is essential to issue procedures which provide respondents with administrative due process and which will lead to the creation of a record in each individual proceeding which can form the basis for judicial review without a new trial of all the facts and issues in the district court. The Department's Materials Transportation Bureau and the Federal Highway Administration have already issued procedures which will be used in their respective enforcement roles under the HMTA. See 49 CFR Part 107; 42 FR 18076, April 5, 1977 (revising 49 CFR Part 386).

Although neither due process nor any statute requires that administrative law judges preside over any proceeding instituted under the new rules, FRA believes that the skills and recognized impartiality of administrative law judges will contribute materially to the quality of hearing processes. Therefore, the FRA will request administrative law judges to preside in those compliance order and

[2] Chairman Wiley not participating.

hazardous materials penalty proceedings in which a request for an oral hearing is made.

DISCUSSION OF INDIVIDUAL RULES

SUBPART A—GENERAL

Section 209.1 recites the responsibility of the Administrator for the enforcement of the railroad safety statutes, including the HMTA, and states that the purpose of the part is to describe certain of the procedures employed by FRA in its enforcement of those statutes.

Section 209.3 consists of definitions for certain terms as they are used in Part 209.

Section 209.5 prescribes procedures for the service of documents other than subpoenas in compliance order and hazardous materials penalty proceedings.

Section 209.7 prescribes procedures for the issuance of subpoenas and the payment of witness fees. The rules stress getting actual notice to the person whose testimony is sought. Fees and mileage for witnesses are to be paid at the same rates which prevail in the U.S. District Courts. Expenses of subpoenaed witnesses are borne by the party at whose request the subpoena is issued. FRA employees who have been involved in the field investigation of the particular matter are available as witnesses concerning issues of fact in the normal course of their duties by direction of FRA or on timely request of a respondent. But see 49 CFR 9.5.

Section 210.9 provides for centralized filing of all papers and evidence submitted under Subpart B or C, other than documents produced under a subpoena.

Section 209.11 governs requests for confidential treatment of documents filed with or otherwise provided to FRA in connection with the enforcement of all the statutes referred to in § 209.1. As used in this section "enforcement" includes all investigative and compliance activities under the railroad safety statutes. Therefore, by way of example, materials submitted to FRA in connection with an accident investigation under the Accident Reports Act (45 U.S.C. 38–41) or a violation investigation under the Hours of Service Act (45 U.S.C. 61–64b) would all be subject to this section to the extent that any claim of confidentiality might be made. The section must be read in light of the Department of Transportation regulations on public availability of information (49 CFR Part 7), which will govern all decisions concerning whether a claim of confidentiality will be honored.

Section 209.13 provides that the Chief Counsel may consolidate proceedings arising under the same subpart for purposes of the oral hearing. FRA believes that, wherever there are significant common issues in separate actions against a single respondent or multiple respondents, the just and speedy resolution of these matters will be facilitated by consolidation. An example of the type of actions which would likely be consolidated would be those arising out of the shipment and carriage of a hazardous material involving successive alleged violations of the Hazardous Materials Regulations by a shipper and one or more railroads. Another example would be the case of a carrier which is alleged to have committed several violations of the same regulation on the same division of the railroad. If the hearing officer determines that a consolidated proceeding is unmanageable, the Chief Counsel will modify or rescind the consolidation. The concept of "manageability" is intended to be quite broad, comprehending fairness, economy of effort by all parties, and the clear presentation of individual allegations and defenses.

Section 209.15 states that the Federal Rules of Evidence shall be used as general guidelines in proceedings under Subparts C and D, but states the policy of the agency that all revelant and probative evidence should be received into the record. FRA believes that questions of reliability and prejudice should be considered by the hearing officer as matters going to the weight accorded the evidence, not its admissibility.

SUBPART B—HAZARDOUS MATERIALS PENALTIES

Sections 209.101–209.121 govern the assessment of civil penalties under the HMTA. Sections 209.131 and 209.133 relate to criminal sanctions under the HMTA.

Sections 209.101 and 209.103 explain the purpose of the provisions on civil penalties and the maximum penalty liability under the HMTA.

Section 209.105 describes the notice of probable violation served on the respondent to commence a civil penalty proceeding. It is contemplated that, in many instances, notices will incorporate by reference significant portions of field investigatory reports.

Section 209.107 explains the options available to a respondent on receipt of the notice of probable violation and requires the respondent to pursue one of the options within 30 days, a time period which may be extended for good cause. Failure to reply within 30 days constitutes a waiver of any hearing and authorizes the Chief Counsel to find the facts to be as alleged and to assess an appropriate penalty. It should be noted that, once the Chief Counsel assesses the penalty based on a waiver of administrative process, a legal debt exists which is not subject to collateral attack.

Section 209.109 sets forth the method of payment of penalty liabilities and notes that contested penalty liability may be compromised through discussions with the Chief Counsel or his delegate prior to referral for collection in the courts.

Section 209.111 describes procedures for informal written and oral responses to a notice of probable violation. After review of any materials submitted and after an informal conference, if requested, the Chief Counsel takes administratively final action to assess a penalty or dismiss the notice. Since the respondent has elected not to avail himself of a hearing with its opportunities for the development of an administrative record, any judicial review of an assessment order issued after an informal response should be based on a standard of gross abuse of discretion.

Section 209.113 provides general rules for requesting and scheduling hearings.

Section 209.115 governs the conduct of hearings. FRA intends that presiding administrative law judges shall have full authority to accomplish justice in the framework of the administrative proceedings. However, § 209.115 requires that the hearing request "state with respect to each allegation whether it is admitted or denied" and "state with particularity the issues to be raised by respondent at the hearing." That is, having been confronted in the notice of probable violation with the specific allegations, a respondent is entitled to an oral hearing only on those matters which, in good faith, the respondent wishes to contest. In fulfilling the burden of providing the facts necessary to establish a violation, the Chief Counsel may rely on the failure of the respondent to deny specific allegations or to question the veracity of representations made in the notice of probable violation. FRA believes that these provisions are fully warranted by the interest of the public in the prompt and efficient resolution of these proceedings. Indeed, each provision has an analogue in the Federal Rules of Civil Procedure. By the same token, FRA recognizes that the procedures must be administered in such a way as to stress a full resolution of the merits of each proceeding, rather than rigid adherence to agency procedures.

Section 209.117 concerns the decision of the presiding officer. A respondent against whom an adverse order is entered has twenty (20) days within which to appeal to the Administrator (§ 209.121) or to pay the civil penalty.

Section 209.119 recites the statutory criteria for determining the amount of penalty assessed. See 49 U.S.C. 1809(a)(1).

Section 209.121 provides for appeal to the Administrator by any party within twenty days.

Sections 209.131 and 209.133 recite the criminal sanctions for willful violations of the Hazardous Materials Regulations and describe the process of referral for prosecution.

SUBPART C—COMPLIANCE ORDERS

Section 209.201 explains the application of the subpart and states that a compliance order proceeding is instituted by FRA when the agency has reason to believe that the respondent is engaging in continuing conduct or a pattern of conduct which involves one or more violations of the HMTA, the Safety Act, and/or any regulation, order, or conditional waiver issued under either Act.

Section 209.203 provides that a proceeding is commenced by the issuance of a notice of investigation containing certain elements, including the proposed form of compliance order. The notice of investigation may be amended as new facts are developed, but the respondent is given an opportunity to reply to any significant amendment.

Section 209.205 requires that a respondent reply in writing to the notice of investigation within thirty days, a period which may be extended for good cause. The section also contains the heart of a modified summary judgment procedure, in that it requires the respondent actively to oppose each material allegation set forth in the notice of investigation. Failure actively to challenge the agency notice constitutes an admission with respect to each particular element or allegation which is not opposed. Failure to reply authorizes the Administrator to issue a compliance order.

Section 209.207 outlines the purpose and form of consent orders. FRA will cooperate with respondents in appropriate circumstances to avoid unnecessary costs by negotiating the terms of proposed consent orders.

Section 209.209 governs the conduct of consent order hearings. It should be noted that the Chief Counsel may discharge all or part of his burden of providing the facts alleged in the notice of investigation by relying on the failure of the respondent to dispute or contest the specific allegations of the notice. (See discussion of § 209.205, above.)

Section 209.211 concerns the decision of the hearing officer. It provides that a compliance order shall become effective twenty (20) days after service, unless the order provides otherwise. Depending on the severity of the hazard to the public and the existing state of compliance at the time the order is issued, the order may be made effective immediately.

The compliance order itself is the administrative equivalent of a mandatory injunction. As such, it may contain and normally will contain such ancillary provisions as may be necessary to assure compliance with the regulation or other agency order in question. If the administrative findings warrant, provisions may be included requiring such steps as making a specified minimum number of repairs or undertaking additional training or testing.

Section 209.213 provides that any party may appeal the presiding officer's decision within twenty (20) days.

Section 209.215 provides that compliance order proceedings undertaken under the authority of the Safety Act shall be completed within twelve (12) months after issuance of the notice of investigation. See 45 U.S.C. 431(d).

Since this rulemaking does not affect any substantive right or duty and pertains solely to procedures and practices before FRA, notice and public procedure thereon are unnecessary. As stated above, the revision is effective on October 28, 1977.

The principal draftsman of this document was Grady Cothen, Jr., of the Office of Chief Counsel.

In consideration of the foregoing, Chapter II of Title 49 of the Code of Federal Regulations is amended by adding a new Part 209, Railroad Safety Enforcement Procedures, to read as set forth below.

Issued in Washington, D.C. on October 20, 1977.

JOHN M. SULLIVAN,
Administrator.

Subpart A—General

Sec.

Subpart B—Hazardous Materials Penalties

CIVIL PENALTIES

CRIMINAL PENALTIES

Subpart C—Compliance Orders

AUTHORITY: Secs. 6 and 9, Pub. L. No. 89-670, 80 Stat. 937 and 944 (49 U.S.C. 1655 and 1657); sec. 1.49 of Title 49, Code of Federal Regulations.

Subpart B also issued under secs. 103, 105, 109 and 110, Pub. L. No. 93-633, 88 Stat. 2156, 2157, 2159, and 2160 (49 U.S.C. 1802, 1804, 1808 and 1809).

Subpart C also issued under sec. 109 of Pub. L. 93-633, 88 Stat. 2159 (45 U.S.C. 1808); sec. 206, Pub. L. No. 93-633, 88 Stat. 2166, amending sec. 208, Pub. L. No. 91-458 (45 U.S.C. 437); sec. 5(a), Pub. L. No. 94-348, 90 Stat. 819, amending sec. 202(d), Pub. L. No. 91-458 (45 U.S.C. 431).

Subpart A—General

§ 209.1 Purpose.

This part describes certain procedures employed by the Federal Railroad Administration in its enforcement of statutes and regulations related to railroad safety. By delegation from the Secretary of Transportation, the Administrator has responsibility for:

(a) Enforcement of Subchapters B and C of Chapter I, Subtitle B, Title 49, Code of Federal Regulations, with respect to the transportation or shipment of hazardous materials by railroad (49 CFR 1.49(t));

(b) Exercise of the authority vested in the Secretary by the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 431-441 (49 CFR 1.49(n)); and

(c) Exercise of the authority vested in the Secretary pertaining to railroad safety as set forth in the statutes transferred to the Secretary by section 6(e) of the Department of Transportation Act, 45 U.S.C. 1655(e) (49 CFR 1.49 (c), (d), (g); 45 U.S.C. 1655(f)(3)(a)).

§ 209.3 Definitions.

As used in this part—

(a) "FRA" means Federal Railroad Administration, Department of Transportation.

(b) "Administrator" means the Federal Railroad Administrator, the Deputy Administrator of the FRA or the delegate of either.

(c) "Chief Counsel" means the Chief Counsel, FRA, or his or her delegate.

(d) "Person" includes a corporation, company, association, firm, partnership, society, joint stock company, joint venture, or sole proprietorship, as well as any officer, director, owner or duly authorized representative of any such unit or an individual.

(e) "Respondent" means a person upon whom the FRA has served a notice of probable violation or a notice of investigation.

§ 209.5 Service.

(a) Each order, notice, or other document required to be served under this part shall be served personally or by registered or certified mail, except as otherwise provided herein.

(b) Service upon a person's duly authorized representative constitutes service upon that person.

(c) Service by registered or certified mail is complete upon mailing. An official United States Postal Service receipt from the registered or certified mailing constitutes prima facie evidence of service.

§ 209.7 Subpoenas; witness fees.

(a) The Chief Counsel or a hearing officer appointed under this part may sign and issue subpoenas either on his or her own initiative, or upon an adequate showing that the information sought will materially advance the proceeding, upon the written request of any party to the proceeding.

(b) A subpoena may require the attendance of a witness, or the production of documentary or other tangible evidence in the possession or under the control of the person served, or both.

(c) A subpoena may be served personally by any person who is not an interested person and is not less than eighteen (18) years of age, or by certified or registered mail.

(d) Service of a subpoena shall be made by delivering a copy of the subpoena in the appropriate manner, as set forth below. Service of a subpoena requiring attendance of a person is not complete unless delivery is accompanied by tender of fees for one day's attendance and mileage as specified by paragraph (f) of this section. However, when a subpoena is issued upon the request of any officer or agency of the United States, fees and mileage need not be tendered at the time of service but will be paid by FRA at the place and time specified in the subpoena for attendance.

Delivery of a copy of the subpoena may be made:

(1) To a natural person by:

(i) Handing it to the person;

(ii) Leaving it at his or her office with the person in charge thereof;

(iii) Leaving it at his or her dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;

(iv) Mailing it by registered or certified mail to him or her at his or her last known address; or

(v) Any method whereby actual notice of the issuance and content is given (and the fees are made available) prior to the return date.

(2) To an entity other than a natural person by:

(i) Handing a copy of the subpoena to a registered agent for service or to any officer, director, or agent in charge of any office of the person;

(ii) Mailing it by registered or certified mail to any representative listed in subdivision (i) of this subparagraph at his or her last known address; or

(iii) Any method whereby actual notice is given to such representative (and the fees are made available) prior to the return date.

(e) The original subpoena bearing a certificate of service shall be filed in accordance with § 209.9.

(f) A witness subpoenaed by the FRA shall be entitled to the same fees and mileage as would be paid to a witness in a proceeding in the district courts of the United States. See 28 U.S.C. 1821. The witness fees and mileage shall be paid by the person requesting that the subpoena be issued. In an appropriate case, the Chief Counsel or the hearing officer may direct the person requesting issuance of a subpoena for the production of documentary or other tangible evidence to reimburse the responding person for actual costs of producing and/or transporting such evidence.

(g) Notwithstanding the provisions of paragraph (f) of this section, and upon request, witness fees and mileage or the costs of producing other evidence may be paid by the FRA if the official who issued the subpoena determines on the basis of good cause shown that:

(1) The presence of the subpoenaed witness or evidence will materially advance the proceedings; and

(2) The party at whose instance the subpoena was issued would suffer a serious financial hardship if required to pay the witness fees and mileage.

(h) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than ten (10) days after the date of service of such subpoena, apply in writing to the official who issued the subpoena, or if that person is unavailable, to the Chief Counsel, to quash or modify the subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein. The issuing official or the Chief Counsel, as the case may be, may:

(1) Deny the application;

(2) Quash or modify the subpoena; or

(3) In the case of subpoena to produce documentary or other tangible evidence, condition denial of the application upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the evidence.

(i) If there is a refusal to obey a subpoena served upon any person under the provisions of this section, the FRA may request the Attorney General to seek the aid of the United States District Court for any district in which the person is found to compel that person, after notice, to appear and give testimony, or to appear and produce the subpoenaed documents before the FRA, or both.

(j) Attendance of any FRA employee engaged in an investigation which gave rise to a proceeding under Subpart B or C of this part for the purpose of eliciting factual testimony may be assured by filing a request with the Chief Counsel at least fifteen (15) days before the date of the hearing. The request must indicate the present intent of the requesting person to call the employee as a witness and state generally why the witness will be required.

§ 210.9 Filing.

All materials filed with FRA or any FRA officer in connection with a proceeding under Subpart B or C of this part shall be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590, except that documents produced in accordance with a subpoena shall be presented at the place and time specified by the subpoena.

§ 209.11 Request for confidential treatment.

(a) This section governs the procedures for requesting confidential treatment of any document filed with or otherwise provided to FRA in connection with its enforcement of statutes related to railroad safety. For purposes of this section, "enforcement" shall include all investigative and compliance activities, in addition to the development of violation reports and recommendations for prosecution.

(b) A request for confidential treatment with respect to a document or portion thereof may be made on the basis that the information is—

(1) Exempt from the mandatory disclosure requirements of the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from public disclosure.

(c) Any document containing information for which confidential treatment is requested shall be accompanied at the time of filing by a statement justifying nondisclosure and referring to the specific legal authority claimed.

(d) Any document containing any information for which confidential treatment is requested shall be marked "CONFIDENTIAL" or "CONTAINS CONFIDENTIAL INFORMATION" in bold letters. If confidentiality is requested as to the entire document, or if it is claimed that nonconfidential information in the document is not reasonably segregable from confidential information, the accompanying statement of justification shall so indicate. If confidentiality is requested as to a portion of the document, then the person filing the document shall file together with the document a second copy of the document from which the information for which confidential treatment is requested has been deleted. If the person filing a document of which only a portion is requested to be held in confidence does not submit a second copy of the document with the confidential information deleted, FRA may assume that there is no objection to public disclosure of the document in its entirety.

(e) FRA retains the right to make its own determination with regard to any claim of confidentiality. Notice of a decision by the FRA to deny a claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

§ 209.13 Consolidation.

At the time a matter is set for hearing under Subpart B or Subpart C of this part, the Chief Counsel may consolidate the matter with any similar matter(s) pending against the same respondent or with any related matter(s) pending against another (other) respondent(s) under the same subpart. However, on certification by the hearing officer that a consolidated proceeding is unmanageable, the Chief Counsel will rescind or modify the consolidation.

§ 209.15 Rules of Evidence.

The Federal Rules of Evidence for United States Courts and Magistrates shall be employed as general guidelines for proceedings under Subparts C and D of this part. However, it is intended that all relevant and probative evidence be received into the record.

Subpart B—Hazardous Materials Penalties

Civil Penalties

§ 209.101 Civil penalties generally.

(a) Sections 209.101–209.121 prescribe rules of procedure for the assessment of civil penalties pursuant to section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809).

(b) When the FRA has reason to believe that a person has knowingly committed an act which is a violation of any provision of Subchapter B or C of Chapter I, Subtitle B of this title for which the FRA exercises enforcement responsibility or any waiver or order issued thereunder, it may conduct a proceeding to assess a civil penalty.

§ 209.103 Maximum penalties.

A person who knowingly violates a requirement of Subchapters B or C of Chapter I, Subtitle B of this title is liable for a civil penalty of not more than $10,000 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense. 49 U.S.C. 1809.

§ 209.105 Notice of probable violation.

(a) FRA, through the Chief Counsel, begins a civil penalty proceeding by serving a notice of probable violation on a person charging him or her with having violated one or more provisions of Subchapter B or C of Chapter I, Subtitle B of this title.

(b) A notice of probable violation issued under this section includes:

(1) A statement of the provision(s) which the respondent is believed to have violated;

(2) A statement of the factual allegations upon which the proposed civil penalty is being sought;

(3) Notice of the maximum amount of civil penalty for which the respondent may be liable;

(4) Notice of the amount of the civil penalty proposed to be assessed;

(5) A description of the manner in which the respondent should make payment of any money to the United States;

(6) A statement of the respondent's right to present written explanations, information or any materials in answer to the charges or in mitigation of the penalty; and

(7) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing.

(c) The FRA may amend the notice of probable violation at any time prior to the entry of an order assessing a civil penalty. If the amendment contains any new material allegation of fact, the respondent is given an opportunity to respond.

§ 209.107 Reply.

(a) Within thirty (30) days of the service of a notice of probable violation issued under § 209.105, the respondent may—

(1) Pay as provided in § 209.109(a) and thereby close the case;

(2) Make an informal response as provided in 209.111; or

(3) Request a hearing as provided in § 209.113.

(b) The Chief Counsel may extend the thirty (30) days period for good cause shown.

(c) Failure of the respondent to reply by taking one of the three actions described in paragraph (a) of this section within the period provided constitutes a waiver of his or her right to appear and contest the allegations and authorizes the Chief Counsel, without further notice to the respondent, to find the facts to be as alleged in the notice of probable violation and to assess an appropriate civil penalty.

§ 209.109 Payment of penalty; compromise.

(a) Payment of a civil penalty should be made by certified check or money order payable to the Federal Railroad Administration and sent to the Accounting Division, Federal Railroad Administration, Department of Transportation, Washington, D.C. 20590.

(b) At any time before an order assessing a penalty is referred to the Attorney General for collection, the respondent may offer to compromise for a specific amount by contacting the Chief Counsel.

§ 209.111 Informal response and assessment.

(a) If a respondent elects to make an informal response to a notice of probable violation, respondent shall submit to the Chief Counsel such written explanations, information or other materials as respondent may desire in answer to the charges or in mitigation of the proposed penalty.

(b) The respondent may include in his or her informal written response a request for a conference. Upon receipt of such a request, the Chief Counsel arranges for a conference as soon as practicable at a time and place of mutual convenience.

(c) Written explanations, information or materials submitted by the respondent and relevant information presented during any conference held under this section are considered by the Chief Counsel in reviewing the notice of proposed violation and determining the fact of violation and the amount of any penalty to be assessed.

(d) After consideration of an informal response, including any relevant information presented at a conference, the Chief Counsel may dismiss the notice of probable violation in whole or in part. If he or she does not dismiss it in whole, he or she may issue an order assessing a civil penalty.

§ 209.113 Request for hearing.

(a) If a respondent elects to request a hearing, he or she must submit a written request to the Chief Counsel referring to the case number which appeared on the notice of the probable violation. The request must—

(1) State the name and address of the respondent and of the person signing the request if different from the respondent;

(2) State with respect to each allegation whether it is admitted or denied; and

(3) State with particularity the issues to be raised by the respondent at the hearing.

(b) After a request for hearing which complies with the requirements of paragraph (a) of this section, the Chief Counsel schedules a hearing for the earliest practicable date.

(c) The Chief Counsel or the hearing officer appointed under § 209.115 may grant extensions of the time of the commencement of the hearing for good cause shown.

§ 209.115 Hearing.

(a) When a hearing is requested and scheduled under § 209.113, a hearing officer designated by the Chief Counsel convenes and presides over the hearing. If requested by respondent and if practicable, the hearing is held in the general vicinity of the place where the alleged violation occurred, or at a place convenient to the respondent. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

(b) The presiding official may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by § 209.7;

(3) Adopt procedures for the submission of evidence in written form;

(4) Take or cause depositions to be taken;

(5) Rule on offers of proof and receive relevant evidence;

(6) Examine witnesses at the hearing;

(7) Convene, recess, reconvene, and adjourn and otherwise regulate the course of the hearing;

(8) Hold conferences for settlement, simplification of the issues or any other proper purpose; and

(9) Take any other action authorized by or consistent with the provisions of this subpart pertaining to civil penalties and permitted by law which may expedite the hearing or aid in the disposition of an issue raised therein.

(c) The Chief Counsel has the burden of providing the facts alleged in the notice of proposed violation and may offer such relevant information as may be necessary fully to inform the presiding officer as to the matter concerned.

(d) The respondent may appear and be heard on his or her own behalf or through counsel of his or her choice. The respondent or his or her counsel may offer relevant information including testimony which he or she believes should be considered in defense of the allegations or which may bear on the penalty proposed to be assessed and conduct such cross-examination as may be required for a full disclosure of the material facts.

(e) At the conclusion of the hearings or as soon thereafter as the hearing officer shall provide, the parties may file proposed findings and conclusions, together with supporting reasons.

§ 209.117 Presiding officer's decision.

(a) After consideration of the evidence of record, the presiding officer may dismiss the notice of probable violation in whole or in part. If the presiding officer does not dismiss it in whole, he or she will issue and serve on the respondent an order assessing a civil penalty. The decision of the presiding officer will include a statement of findings and conclusions as well as the reasons therefor on all material issues of fact, law, and discretion.

(b) If, within twenty (20) days after service of an order assessing a civil penalty, the respondent does not pay the civil penalty or file an appeal as provided in § 209.121, the case may be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate United States District Court.

§ 209.119 Assessment considerations.

The assessment of a civil penalty under § 209.111 or § 209.117 is made only after considering:

(a) The nature and circumstances of the violation;
(b) The extent and gravity of the violation;
(c) The degree of the respondent's culpability;
(d) The respondent's history of prior offenses;
(e) The respondent's ability to pay;
(f) The effect on the respondent's ability to continue in business; and
(g) Such other matters as justice may require.

§ 209.121 Appeal.

(a) Any party aggrieved by a presiding officer's decision or order issued under § 209.117 assessing a civil penalty may file an appeal with the Administrator. The appeal must be filed within twenty (20) days of service of the presiding officer's order.
(b) Prior to rendering a final determination on an appeal, the Administrator may remand the case for further proceedings before the hearing officer.
(c) In the case of an appeal by a respondent, if the Administrator affirms the assessment and the respondent does not pay the civil penalty within twenty (20) days after service of the Administrator's decision on appeal, the matter may be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate United States District Court.

CRIMINAL PENALTIES

§ 209.131 Criminal penalties generally.

Section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)) provides a criminal penalty of a fine of not more than $25,000 and imprisonment for not more than five years, or both, for any person who willfully violates a provision of the Act or a regulation issued under the Act.

§ 209.133 Referral for prosecution.

If an inspector or other employee of FRA becomes aware of a possible willful violation of the Act or a regulation issued under the Act for which FRA exercises enforcement responsibility, he or she reports it to the Chief Counsel. If evidence exists tending to establish a prima facie case, and if it appears that assessment of a civil penalty would not be an adequate deterrent to future violations, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

Subpart C—Compliance Orders

§ 209.201 Compliance orders generally.

(a) This subpart prescribes rules of procedure leading to the issuance of compliance orders pursuant to Section 208 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 437) or Section 109 of the Hazardous Materials Transportation Act (49 U.S.C. 1808).
(b) The FRA may commence a proceeding under this subpart when FRA has reason to believe that:
(1) A railroad is engaging in continuing conduct or a pattern of conduct which involves one or more violations of the Federal Railroad Safety Act of 1970 or any rule, regulation, order or standard issued under the Act; or
(2) A person is engaging in continuing conduct or a pattern of conduct which involves one or more violations of the Hazardous Materials Transportation Act or any regulation, waiver or order issued under the Act for which FRA exercises enforcement responsibility.

§ 209.203 Notice of investigation.

(a) FRA begins a compliance order proceeding by serving a notice of investigation on the respondent.
(b) The notice of investigation contains:
(1) A statement of the legal authority for the proceeding;
(2) A statement of the factual allegations upon which the remedial action is being sought; and
(3) A statement of the remedial action being sought in the form of a proposed compliance order.
(c) The FRA may amend the notice of investigation at any time prior to the entry of a final compliance order. If an amendment includes any new material allegation of fact or seeks new or additional remedial action, the respondent is given an opportunity to respond.

§ 209.205 Reply.

(a) Within thirty (30) days of service of a notice of investigation, the respondent may file a reply with the FRA. The Chief Counsel may extend the time for filing for good cause shown.
(b) The reply must be in writing, signed by the person filing it, and state with respect to each factual allegation whether it is admitted or denied. Even though formally denied, a factual allegation set forth in a notice of investigation is considered to be admitted for purposes of the proceeding unless:
(1) Opposed by the affidavit of an individual having personal knowledge of the subject matter;
(2) Challenged as defective on its face together with a supporting explanation as to why it is believed to be defective; or
(3) Otherwise actively put at issue through the submission of relevant evidence.
(c) The reply must set forth any affirmative defenses and include a statement of the form and nature of proof by which those defenses are to be established.
(d) If it is necessary to respond to an amendment to the notice of investigation, the respondent may amend the reply concerning the substance of matters contained in the amendment to the notice at any time before the issuance of an order under § 209.211.
(e) If the respondent elects not to contest one or more factual allegations, he or she should so state in the reply. An election not to contest a factual allegation is an admission of that allegation solely for the purpose of issuing a compliance order. That election constitutes a waiver of hearing as to that allegation but does not, by itself, constitute a waiver of the right to be heard on other issues. In connection with a statement of election not to contest a factual allegation, the respondent may propose an appropriate order for issuance by the Administrator or propose the negotiation of a consent order.
(f) Failure of the respondent to file a reply within the period provided constitutes a waiver of his or her right to appear and contest the allegation and authorizes the Administrator, without further notice to the respondent, to find the facts to be as alleged in the notice of proposed violation and to issue an appropriate order directing compliance.

§ 209.207 Consent order.

(a) At any time before the issuance of an order under § 209.211, the Chief Counsel and the respondent may execute an agreement proposing the entry by consent of an order directing compliance. The Administrator may accept the proposed order by signing it. If the Administrator rejects the proposed order, he or she directs that the proceeding continue.
(b) An agreement submitted to the Administrator under this section must include:
(1) A proposed compliance order suitable for the Administrator's signature;
(2) An admission of all jurisdictional facts;
(3) An express waiver of further procedural steps and of all right to seek judicial review or otherwise challenge or contest the validity of the order; and
(4) An acknowledgment that the notice of investigation may be used to construe the terms of the order.

§ 209.209 Hearing.

(a) When a respondent files a reply contesting allegations in a notice of investigation issued under § 209.203 or when the FRA and the respondent fail to agree upon an acceptable consent order, the hearing officer designated by the Chief Counsel convenes and presides over a hearing on the proposed compliance order.
(b) The presiding official may:
(1) Administer oaths and affirmations;
(2) Issue subpoenas as provided by § 209.7;
(3) Adopt procedures for the submission of evidence;
(4) Take or cause depositions to be taken;
(5) Rule on offers of proof and receive relevant evidence;
(6) Examine witnesses at the hearing;
(7) Convene, recess, reconvene, adjourn and otherwise regulate the course of the hearing;
(8) Hold conferences for settlement, simplification of the issues or any other proper purpose; and
(9) Take any other action authorized by or consistent with the provisions of this subpart pertaining to compliance orders and permitted by law which may expedite the hearing or aid in the disposition of an issue raised therein.

(c) The Chief Counsel has the burden of providing the facts alleged in the notice of investigation and may offer such relevant information as may be necessary fully to inform the presiding officer as to the matter concerned.

(d) The respondent may appear and be heard on his or her own behalf or through counsel of his or her choice. The respondent or his or her counsel may offer relevant information, including testimony which he or she believes should be considered in defense of the allegations or which may bear on the remedial action being sought, and conduct such cross-examination as may be required for a full disclosure of the material facts.

(e) At the conclusion of the hearing or as soon thereafter as the hearing officer shall provide, the parties may file proposed findings and conclusions, together with supporting reasons therefor.

§ 209.211 Presiding officer's decision.

(a) After consideration of evidence, the presiding officer may dismiss the notice of investigation or issue a compliance order. The decision of the presiding officer will include a statement of findings and conclusions as well as the reasons therefor on all material issues of fact, law, and discretion.

(b) A compliance order issued under this section is effective twenty (20) days from service on the respondent unless otherwise provided therein.

§ 209.213 Appeal.

(a) Any party aggrieved by a presiding officer's decision may file an appeal with the Administrator. The appeal must be filed within twenty (20) days after service of the presiding officer's decision.

(b) Prior to rendering a final determination on an appeal, the Administrator may remand the case for further proceedings before the hearing officer.

(c) The filing of an appeal does not stay the effectiveness of a compliance order unless the Administrator expressly so provides.

§ 209.215 Time limitation.

A proceeding for the issuance of a compliance order under the Federal Railroad Safety Act of 1970, as amended, shall be completed within twelve (12) months after issuance of the notice of investigation.

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[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Opening of Certain National Wildlife Refuges to Hunting of Upland Game; Arizona, California, New Mexico, Oklahoma, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of certain national wildlife refuges in Arizona, California, New Mexico, Oklahoma, and Texas, is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. The name of each affected refuge and the special regulations for each refuge are set forth below.

EFFECTIVE DATES: See the dates listed for each refuge under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT:

Refuge Managers, as listed for each refuge under Supplementary Information below.

SUPPLEMENTARY INFORMATION:

CIBOLA NATIONAL WILDLIFE REFUGE

DATES: October 1, 1977 through January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

George M. Constantino, Refuge Manager, Cibola National Wildlife Refuge, P.O. Box AP, Blythe, Calif. 92225, telephone: 714-922-4433.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Public hunting of quail and cottontail rabbits on Cibola National Wildlife Refuge, Arizona and California, is permitted, but only on the area designated by signs as open to hunting. These open areas, comprising 8,900 acres, are delineated on maps available at refuge headquarters, Federal Building, Blythe, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: Arizona—rabbits and quail, from October 1, 1977 through January 31, 1978. California—rabbits, from October 1, 1977 through January 31, 1978; quail, from October 22, 1977 through January 29, 1978. Hunting shall be in accordance with all applicable State regulations covering the hunting of quail and rabbits subject to the following special conditions:

1. Up to 2 dogs per hunter may be used for the purpose of legal bird hunting only.

2. Hunting is prohibited within one-fourth mile of any occupied dwelling or 250 yards of any field farm worker.

3. Open campfires are permitted only on the end of unvegetated jetties. Charcoal cooking fires in grills or other similar equipment are permitted in public use areas if all vegetation is cleared within a 10-foot radius of the fire.

4. Hunters may not enter closed zones to retrieve game.

5. Only shotgun firearms may be used to take quail and rabbits on the refuge.

6. Possession of handguns and/or rimfire firearms on the refuge is prohibited.

HAVASU NATIONAL WILDLIFE REFUGE

DATES: October 1, 1977 through January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Tyrus W. Berry, Refuge Manager, Havasu National Wildlife Refuge, P.O. Box AP, Needles, Calif. 92363, telephone: 714-326-3853.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Public hunting of quail, cottontail rabbits and jackrabbits on the Havasu National Wildlife Refuge, Arizona and California, is permitted, but only on the areas designated by signs as open to hunting. These open areas, comprising 29,150 acres, are delineated on maps available at refuge headquarters, 1406 Bailey Avenue, Needles, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: Arizona—cottontail rabbits and jackrabbits, from October 1, 1977 through January 31, 1978; quail, from October 1, 1977 through January 31, 1978. California—cottontail rabbits and jackrabbits, from September 1, 1977 through January 29, 1978; quail, from October 22, 1977 through January 29, 1978. Hunting shall be in accordance with all applicable State regulations covering the hunting of quail and rabbits subject to the following special conditions:

1. Hunting is prohibited within one-fourth mile of any occupied dwelling or concession operation.

2. Weapons—shotguns only, not larger than 10 gauge and incapable of holding more than 3 shells.

3. Shooting hours—one-half hour before sunrise to sunset.

4. Up to 2 dogs per hunter may be used for the purpose of hunting and retrieving.

5. Hunters must enter the Topock Marsh hunting areas by way of parking lots only.

6. The portion of Topock Marsh known as the Pintail Slough Management Unit will be open to hunting only on Saturdays, Sundays, and Wednesdays. This unit comprises all refuge land north of the north dike.

IMPERIAL NATIONAL WILDLIFE REFUGE

DATES: October 1, 1977 through January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald E. Duncan, Refuge Manager, Imperial National Wildlife Refuge, P.O. Box 2217, Martinez Lake, Ariz. 85364, telephone: 602-783-3400.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Public hunting of quail and cottontail rabbits on the Imperial National Wildlife Refuge, Arizona and California, is permitted only on the areas designated by signs as open to hunting. These open areas, comprising 16,500 acres, are delineated on maps available at refuge head-