

alleviates EPA's main concern that no information had been provided upon which the Agency could determine whether or not the pushing control system contemplated by the Order would have a control performance sufficient to comply with the applicable West Virginia Regulation. In an effort to resolve such concern, EPA met with the Company on March 30, 1979 to discuss the pushing emission control system design parameters. Using the information exchanged at this meeting, EPA conducted an engineering design study which concluded that the system as proposed by the Company did not have sufficient particulate control efficiency in order to comply with the requirements of the West Virginia SIP.

Therefore, in consideration of the comments received on EPA's proposed action and the engineering analysis performed, the Delayed Compliance Order issued to National Steel Corporation; Weirton Steel Division is disapproved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). Such a determination is based on EPA's opinion that the pushing emission control system contemplated under the Order will not result in

compliance with the applicable West Virginia regulation and, therefore, the Order does not satisfy the requirements of § 113(d)(1) (B) and (D). Because of the Administrator's disapproval, the Order is not effective under Section 113(d) of the Clean Air Act.

EPA has determined that its disapproval of the Order shall be effective upon publication of this notice because of the need to immediately place National Steel Corporation; Weirton Steel Division on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the West Virginia State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: June 15, 1979.

Douglas M. Costle,  
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.532:

#### § 65.532 EPA Disapproval of State delayed compliance orders.

| Source                                                            | Location                | Order No.  | SIP regulation(s) involved | Date of FR proposal | Final compliance date |
|-------------------------------------------------------------------|-------------------------|------------|----------------------------|---------------------|-----------------------|
| National Steel Corp.; Weirton Steel Division Mainland Coke Plant. | Weirton, West Virginia. | None ..... | Regulation VII ...         | 1/4/79 .....        | 7/1/79                |

[FR Doc. 79-22228 Filed 7-17-79; 8:45 am]

BILLING CODE 6560-01-M

#### 40 CFR Part 65

[FRL 1262-8]

#### State and Federal Administrative Enforcement of Implementation Plan Requirements After Statutory Deadlines; Delayed Compliance Order for Mannington Mills, Inc., Salem, N.J.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** By this rule the Administrator of the U.S.E.P.A. issues a Delayed Compliance Order pursuant to Section 113(d)(1) of the Clean Air Act, as amended, 42 U.S.C. section 7401 *et seq.* ("the Act"), requiring Mannington Mills,

Inc. ("Mannington Mills") to bring its vinyl floor covering manufacturing facility located at Salem, New Jersey, into compliance with certain regulations contained in the federally-approved New Jersey State Implementation Plan ("SIP"). This Order establishes a final compliance date by Mannington Mills of June 30, 1979 because of the inability of this source to comply with these regulations at this time. Source compliance with this Order will preclude suits under the federal enforcement and citizen suit provisions of the Act for violation of the SIP regulations covered by this Order.

**DATES:** This rule takes effect July 18, 1979.

#### FOR FURTHER INFORMATION CONTACT:

Samuel P. Moulthrop, Attorney, General Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York, (212) 264-5695.

**SUPPLEMENTARY INFORMATION:** On May 8, 1979 the Regional Administrator of the U.S.E.P.A.'s Region II office published in the *Federal Register* (44 FR 26936) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for Mannington Mills, Inc. The notice asked for public comments and offered the opportunity for a public hearing on the proposed Order. No public comments and no requests for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to Mannington Mills, Inc. by the Administrator of the U.S.E.P.A. The Order places Mannington Mills on a schedule to bring its Scrubber #1 on the Vinyl I Line into compliance with Title 7, Chapter 27, Subchapter 6 of the New Jersey Administrative Code by June 30, 1979. Mannington Mills is unable to immediately comply with this regulation, which limits the permissible opacity of particulate emissions and which is a part of the federally-approved New Jersey Implementation Plan ("SIP") for the Air Quality Control Region in which the source is located.

Compliance with the Order by Mannington Mills will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the regulation covered by the Order which occurred before the Order was issued by U.S.E.P.A. or after the Order is terminated. If the Administrator determines that Mannington Mills is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

Dated: July 12, 1979.

Douglas M. Costle,  
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of Code of Federal Regulations is amended as follows:

**PART 65—DELAYED COMPLIANCE ORDERS**

1. By adding the following entry to the table in § 65.350:

**§ 65.350 Federal delayed compliance orders issued under Section 113(d)(1), (3) and (4) of the Act.**

The delayed compliance orders referenced below have been issued by the Administrator in accordance with Section 113(d) of the Act and with this part. With regard to each order, the Administrator has made all the determinations and findings which are necessary for issuance of the Order under Section 113(d) of the Act.

| Source                  | Location          | Order No.             | Date of FR proposal     |
|-------------------------|-------------------|-----------------------|-------------------------|
| Merrington Mills, Inc.  | Salem, New Jersey | 70112                 | 5/8/79<br>(44 FR 26936) |
| SIP regulation involved |                   | Final compliance date |                         |
| N.J.A.C. 7-27-6.2       |                   | 8/30/79               |                         |

[FR Doc. 79-22236 Filed 7-17-79; 8:45 am]  
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**40 CFR Part 81****[FRL 1268-6]**

**Air Quality Control Regions, Criteria, and Control Techniques; Attainment Status Designations: Alabama and Kentucky**

**AGENCY:** U.S. Environmental Protection Agency, Region IV.

**ACTION:** Final rule.

**SUMMARY:** On April 2, 1979 (44 FR 19213), the Agency proposed to change the nonattainment designation of Greenup County, Kentucky, (for sulfur dioxide), and northern Mobile County, Alabama (for particulate matter) to attainment. No comments were received in response to the proposed notice. These changes are made final as proposed. Greenup County, Kentucky is redesignated attainment for sulfur dioxide because a large source of that pollutant has come into compliance with emission limiting regulations. A portion of northern Mobile County is redesignated attainment for particulate matter on the basis of measured air quality data showing attainment of the national ambient air quality standards for that pollutant.

**EFFECTIVE DATE:** These actions are effective today, July 18, 1979.

**FOR FURTHER INFORMATION CONTACT:** Walter Bishop, Air Programs Branch, EPA Region IV, 345 Courtland Street, N.E. Atlanta, Georgia, 30308, telephone 404/881-3286 (FTS 257-3286).

**SUPPLEMENTARY INFORMATION:** On March 3, 1978 (43 FR 8962 at 8997), Greenup County, Kentucky was designated nonattainment for sulfur dioxide. The basis for this designation was air quality modeling results for the vicinity of a non-complying source, DuPont's sulfuric acid plant. Since that time, the source has come into compliance.

Recent modeling of the plant at the allowable emission rate shows the national ambient air quality standards for SO<sub>2</sub> are being attained. Consequently, the Kentucky Department for Natural Resources and Environmental Protection requested on December 27, 1978, that the designation be changed to attainment. Based on EPA's finding that Kentucky's submittal is valid, this change is hereby made.

On January 19, 1979, the director of the Alabama Division of Air Pollution Control submitted air quality data showing that the national ambient air quality standards for particulate matter were not violated at the Salco and Axis sites (northern Mobile County) during the period May 1976 through October 1978, and requested that the status of the area be redesignated attainment.

(This area had been designated nonattainment on March 3, 1978 [43 FR

**§ 81.301 Alabama.**

**Alabama—TSP**

| Designated area                                                                                                        | Does not meet primary standards | Does not meet secondary standards | Cannot be classified | Better than national standards |
|------------------------------------------------------------------------------------------------------------------------|---------------------------------|-----------------------------------|----------------------|--------------------------------|
| That portion of Etowah County within the western section of Gadsden                                                    | *X                              | *X                                |                      |                                |
| That portion of Jackson County surrounding TVA's Widows Creek plant                                                    | X                               | X                                 |                      |                                |
| Those portions of Jefferson County within central Birmingham and the area surrounding the Universal Atlas Cement plant | *X                              | *X                                |                      |                                |
| That portion of Lauderdale County containing Florence                                                                  |                                 |                                   | X                    |                                |
| That portion of Mobile County within a section of downtown Mobile                                                      | X                               | X                                 |                      |                                |
| A portion of Morgan County including portions of the city of Decatur                                                   |                                 | X                                 |                      |                                |
| Rest of State                                                                                                          |                                 |                                   |                      | X                              |

\* These designations were held invalid by the U.S. Court of Appeals for the Fifth Circuit on May 3, 1979.

2. In § 81.318, the attainment status designation table for SO<sub>2</sub> is revised to read as follows:

8962 at 8965.) EPA has verified that the data in question meets all applicable Agency criteria established to assure the validity and representativeness of quality data. Accordingly, the area is redesignated as the State requests.

The Morgan County (Alabama) nonattainment area was incorrectly identified in the April 2, 1978, proposal notice; it is in Decatur, not Huntsville. The correct identification is listed below.

On May 3, 1979, the U.S. Court of Appeals for the Fifth Circuit set aside the TSP nonattainment designation for Jefferson and Etowah Counties, Alabama, on petition by United States Steel Corporation (78-1922) and Republic Steel Corporation (78-1927). The TSP attainment status designations for these areas are being proposed for public comment in another issue of the Federal Register. A note is today inserted in the Alabama TSP table to identify the voided designations.

(Sections 107, 171, 301 of the Clean Air Act (42 U.S.C. 7407, 7501, 7601)).

Dated: July 11, 1979.

Douglas M. Costle,  
Administrator.

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

**Subpart C—Section 107 Attainment Status Designations**

1. In § 81.301, the attainment status designation table for TSP is revised to read as follows:

## § 81.318 Kentucky.

## Kentucky—SO.

| Designated area                               | Does not meet primary standards | Does not meet secondary standards | Cannot be classified | Better than national standards |
|-----------------------------------------------|---------------------------------|-----------------------------------|----------------------|--------------------------------|
| Boyd County                                   | X                               |                                   |                      |                                |
| That portion of Daviess County in Owensboro   | X                               | X                                 |                      |                                |
| That portion of Henderson County in Henderson | X                               |                                   |                      |                                |
| Jefferson County                              | X                               | X                                 |                      |                                |
| McCracken County                              | X                               |                                   |                      |                                |
| Muhlenberg County                             | X                               | X                                 |                      |                                |
| Webster County                                | X                               | X                                 |                      |                                |
| Rest of State                                 |                                 |                                   |                      | X                              |

[FR Doc. 79-22235 Filed 7-17-79; 8:45 am]

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## 40 CFR Part 172

[FRL 1217-1; OPP-30031]

## Experimental Use Permits for Pesticides

**AGENCY:** Environmental Protection Agency, Office of Pesticide Programs.

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth regulations under which States may submit plans to the Environmental Protection Agency requesting authority to issue experimental use permits for pesticides. This rule also specifies the requirements which States must impose on persons seeking such permits. States receiving authority from EPA under this rule may issue experimental use permits to any person who needs to gather the data required to register a pesticide product to meet a special local need, or to any public or private agricultural research agency or educational institution within the State for the purpose of experimentation.

**EFFECTIVE DATE:** August 17, 1979.

**FOR FURTHER INFORMATION CONTACT:** P. H. Gray, Jr., Operations Division (TS-770-M), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 472-9400.

**SUPPLEMENTARY INFORMATION:** On September 3, 1975, a notice was published in the *Federal Register* (40 FR 40545) proposing regulations to govern the issuance of experimental use permits by States. This final rule is based upon those proposed regulations and applies to the issuance of experimental use permits by States which have been authorized by EPA under section 5(f) of FIFRA to issue such permits.

Written comments on the proposed regulations were invited and were received from twelve interested parties. In addition, the proposal was distributed for review to all State pesticide control lead agencies and to the former State-Federal FIFRA Implementation Advisory Committee (SFFIAC). The proposal was amended in response to some of the comments. An amended proposal was submitted to interested persons, including the original commenters, and 19 additional comments were received. As a result, certain changes have been made in this final rule. All of the written comments received are on file with EPA and may be seen between 8:30 a.m. and 4:00 p.m. in the office of the Federal Register Section, Room 401, East Tower, Program Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, (202) 755-8454.

As a result of the extensive public participation in the development of this regulation as described above, the Agency finds that additional notice and public comment thereon are unnecessary and would be contrary to the public interest. Thus, pursuant to the Administrative Procedures Act (5 U.S.C. 553(b)(3)(B)) there is no need to repropose this regulation.

The significant changes made in the regulation since it was proposed are discussed below, along with EPA's response to the more significant comments.

## Dual Permit Systems

A new § 172.22(b) has been added to make it clear that this regulation does not affect any mechanism under State law by which a State requires that a person receiving an experimental use permit issued by EPA under FIFRA, section 5, must also obtain a State permit for the same use.

## Purposes for Which Experimental Use Permits Are Issued

The proposed regulations limited the State issuance of experimental use permits to those persons gathering data needed to support a registration to meet special local needs under section 24(c) of FIFRA. Several commenters, including SFFIAC, said that authorized States should also be allowed to issue permits for certain additional purposes, including academic research done within the State, work on integrated pest management, and other experimentation concerning unexpected or unusual local problems which might not initially be intended to result in a section 24(c) registration.

At the time the regulations were proposed, FIFRA section 5(a) strictly limited the purpose of issuance of federal and, by implication, State experimental use permits to "accumulation of information necessary to register a pesticide \* \* \*". Since that time, however, Congress has authorized the issuance of Federal experimental use permits to agricultural research agencies and educational institutions for general research purposes (FIFRA section 5 (g)). Accordingly, the Agency has also modified this final rule to authorize States to issue experimental use permits to educational institutions or agricultural research agencies for purposes of experimentation, as well as for the accumulation of information necessary to support a registration under section 24(c) of FIFRA.

Accordingly, EPA has broadened the scope of this regulation and has changed §§ 172.20, 172.23 and 172.24 to provide for State issuance of experimental use permits for such additional purposes.

One person commenting on the revised draft rule protested the limitation in the final sentence of the definition of "Public or Private Agricultural Research Agency or Educational Distribution" (§ 172.21(a)(1)), excluding researchers working on behalf of pesticide distributors. The commenter cited this as an unnecessary restriction. EPA believes, however, that the definition as stated is in accordance with the intent of Congress. Research agencies or educational institutions not coming within the framework of the definition may obtain a State permit under § 172.24(b)(1), or may apply for a Federal permit.

## Establishment Registration Requirement

Subsection 172.22(d) of these regulations requires that pesticide

products be produced under State experimental use permits only in federally registered establishments (except when produced solely for application by the permittee). One commenter pointed out that some permittees who will be producing State experimental use pesticides are not familiar either with EPA's definition of pesticide production or with establishment registration requirements under section 7 of FIFRA. The commenter was concerned that such permittees might inadvertently violate these requirements, even though they are set forth in the regulations implementing section 7. Thus, EPA recommends that States authorized to issue experimental use permits advise each permittee of EPA's establishment registration requirements in advance of production under the permit, and provide the permittee with a copy of EPA's establishment registration regulations (40 CFR Part 167).

The same commenter raised a second related concern about universities which might be simultaneously involved in more than one experimental use program and where different departments of the same university might be producing pesticide products, and thus become subject to EPA's establishment registration requirements. In such cases, the Agency has decided that a single registration for the university will be sufficient as long as production for each experimental use product is properly noted on the annual Pesticides Report form.

#### State Inspection Authority

One commenter suggested that § 172.24(c)(3), concerning State inspection of premises involved in permit programs, was too vague. This proposed paragraph has been modified and included as a requirement for State plan approval at § 172.23(c)(1)(i)(E) of this final rule. It has been amended to clarify that the State's authority to enter premises need extend only to permittees' and cooperators' premises, and to specify purposes for which entry may be sought by the State.

On the same topic, another commenter suggested that FIFRA might not authorize such a right of entry requirement. EPA has concluded that such authority should be required as a condition for approval of a section 5(f) plan. Authority for the designated State agency to enter premises, as described in § 172.23(c)(1)(i)(E), is a necessary and reasonable means of adequately enforcing State law and the State plan. EPA has a statutory duty to ensure that section 5(f) plans can be implemented

by a State effectively and consistently with the purposes of FIFRA. Therefore, the Agency has resolved to promulgate § 172.23(c)(1)(i)(E).

Another commenter suggested that EPA should require States to obtain consent to State entry, for inspection purposes, from each applicant for a State permit, as a condition to issuance of such a permit. As stated above, EPA believes that States must have sufficient authority under State law to enter permittees' and cooperators' premises for specified purposes, in order to be authorized to issue permits under this rule. For States with such legal authority, prior written consent from permit applicants would be superfluous. Therefore, EPA does not consider it necessary to amend the rules as the commenter suggested. However, EPA encourages permit applicants to indicate in their applications their consent to entry by State officials for legitimate inspection purposes.

Several additional comments were received concerning the requirements for State right-of-entry authority in connection with State plans for the issuance of EUPs. One commenter suggested dropping the phrase "or by other legal means", and limiting State inspection authority to entry by consent or warrant. Since this language merely leaves open to the States the option to choose various approaches to right-of-entry authority, EPA did not adopt the commenter's suggestion. EPA's decision to retain this language is also based on the fact that the courts have recognized that under certain circumstances entry without a warrant or without consent is justified and not unconstitutional. EPA believes that States who wish to take such an approach, consistent with State law, should have that option.

#### Limitations on Issuance of State Experimental Use Permits

Section 172.24 has been modified to list limitations applicable to all State permits. Under § 172.24(c)(2), permits may not be issued for pesticide products containing active or inert ingredients which are currently subject to an EPA cancellation or suspension of registration order, or which are subject to a notice of intent to cancel or suspend, or which are not found in any EPA registered product. However, States may issue permits for products containing ingredients subject to the EPA administrative review process known as Rebuttable Presumption Against Registration, provided that no notice of intent to cancel or suspend the registrations of such ingredients has been issued.

In response to several comments, a clause has been inserted in § 172.24(c)(2) authorizing a State to issue a permit for a product containing a cancelled or suspended ingredient intended for a use or in a formulation not specifically considered during cancellation or suspension proceedings for such an ingredient: *Provided*, That the State consults with EPA prior to issuing such a permit.

However, the Agency has decided to refuse the request of one commenter to delete the prohibition in § 172.24(c)(2)(i) on issuance of a permit for a product containing an *inert* ingredient not contained in any federally registered product, because EPA believes it to be in accordance with public policy that it review any ingredient, whether active or inert, for safety to public health and the environment, prior to the appearance of such an ingredient in a non-federally registered product. Thus, the Agency's response to several commenters who requested authority for States to issue permits for new active ingredients is that the proper type of permit to request in such cases is a Federal permit under section 5(a-e) of the amended FIFRA.

One commenter also protested the prohibition on States issuing permits for research on pesticide uses denied registration under section 3(c)(6) of the amended FIFRA. EPA believes that a greater degree of Federal control is needed in such cases, in order to protect man and the environment, and thus prospective permittees under these circumstances should be required to apply for a Federal permit.

Section 172.24(c)(3) requires that permits be issued by the States for use only of the amount of pesticide necessary to gather data or complete the experiment. As one commenter stressed, the determination of the necessary amount is a decision to be made by the State, based on its knowledge of the particular conditions of use.

#### Publication Requirements

A commenter noted that users of pesticides under State experimental use permits should be listed in the *Federal Register*. EPA does not believe this procedure is necessary, but feels that it would, rather, add to the administrative burden of implementing section 5(f) without creating sufficient incremental benefit to human health and the environment. EPA will, however, continue to publish notification of State actions under section 5(f), as it has been doing in the case of Federal experimental use permits under section 5(a).

Another commenter suggested that in order to eliminate unnecessary Federal Register notices, amendments to experimental use permits be dropped from the proposed list of items to be published. The Agency accepts this suggestion as a means of eliminating an unnecessary procedure which does not increase protection of public health or the environment. Accordingly, the regulations now require publication of Federal Register notices in seven instances: (1) State issuance of experimental use permits; (2) EPA receipt of State plans requesting authorization to issue experimental use permits; (3) approval of State plans; (4) notice of intention to reject State plans; (5) rejection of State plans; (6) notice of intention to revoke State authorization to issue experimental use permits; and (7) revocation of State authorization to issue experimental use permits.

On a similar matter, a third commenter suggested the deletion of the requirement for publication in the Federal Register of notices of State issuance of permits and amendments of permits. The commenter felt that such notices would be unnecessary, given that permits would be issued only in relation to "special local needs" in the States. The commenter also felt that publication of such notices might be "anti-competitive."

In response, EPA would again point out that under this final rule publication of notices of amendments to State permits is not required. However, with regard to notices of issuance of State permits, it should be observed that States with approved section 5(f) plans are no longer limited to "special local needs" as grounds for issuing such permits. In addition, even where research related to "special local needs" is the sole reason for issuing a permit, the program implemented under the permit may have interstate or nationwide impacts justifying publication of a notice in the Federal Register, despite the remote possibility that such a notice would harm business interests. Thus, this publication requirement is both reasonable and consistent with EPA's general policy of public disclosure of significant actions taken under Federal law.

A fourth commenter urged that notices of application for, or requests for amendments to, State experimental use permits be provided to EPA within 10 days of receipt and published in the Federal Register. The Agency does not agree with the need for such publication, if the State programs are to operate in a timely and efficient fashion. EPA's authority to revoke permits, and, if

necessary, to terminate a State program not in the public interest, provides sufficient safeguard for public health and the environment without the additional procedure of publication in the Federal Register.

#### Quantity of Pesticide To Be Used

One commenter suggested that State agencies should impose limitations in the permit on quantity, as well as on other parameters of pesticide use. The commenter also urged that these regulations establish upper limits on the quantity of pesticide which may be used, and the size of the area which may be treated. EPA agrees with the first request, noting that quantity was inadvertently omitted from the proposed parameters of pesticide use. Accordingly, § 172.25(e) now contains such a requirement. However, the Agency believes that establishing by regulation an upper limit on quantity, which is only one of several important parameters, could promote applications for permits to use quantities of pesticide in excess of that necessary to achieve the object of the permit. Also, such upper limits might prove to be too low in some cases, particularly those involving forestry use. Therefore, the quantity used and acreage treated should be consistent with the objectives of the program. Should abuse by the permittee occur, EPA and the State, of course, retain the authority to revoke the permit.

#### Possible Circumvention of Federal Experimental Use Permit Requirements

One commenter suggested that some experimenters might attempt to circumvent Federal experimental use permit requirements (40 CFR 172.1-172.11) in cases where a Federal permit should be obtained, by acquiring instead permits from several adjacent States certified under this rule. EPA recognizes the potential for misuse of the opportunities presented to experimenters by this rule. It would, however, be unfair to experimenters with legitimate needs for multiple State permits to prohibit more than one State from issuing a permit for a particular program. Therefore, the Agency intends to prevent abuse of this rule by carefully reviewing, under § 172.26, permits issued by several States for a single program. If EPA discovers that State permits have been issued in a situation where a Federal permit is more appropriate, the Agency may revoke some or all of the State experimental use permits under the authority granted by § 172.26(c)(1)(iv).

#### Permit Revocation

A commenter urged that the regulations provide that a State permit be considered revoked during any hearing requested by the permittee to contest revocation. EPA had intended that such a procedure would be followed in all revocation actions, and has modified § 172.26(c)(6) to state this explicitly.

Two commenters stated that EPA's authority to revoke State experimental use permits should be exercised through the designated State agency rather than by direct contact between EPA and the permittee. EPA intends to cooperate fully with States in cases involving revocation of permits. However, the Agency believes that it must retain authority to revoke a State permit directly, particularly in a case involving imminent hazard to man and the environment. This position is consistent with EPA procedures under sections 5(a)-(e) of the Act.

One commenter recommended that this rule be amended to require EPA to give a permit holder prior notice of the Agency's intent to revoke an experimental use permit. EPA agrees that a permit holder should be informed of any action being taken against him. However, this purpose will be accomplished without amendment of this rule, in the same fashion as is done for holders of Federal permits. The Agency intends for the State to notify permit holders of, and to discuss the reasons for, contemplated revocation actions prior to revoking any permits under section 5(f), unless continued use under the permits would cause unreasonable adverse effects on man or the environment. In the latter case, EPA will revoke the permit immediately under the authority granted in § 172.26 of this rule. In either case, however, § 172.26(c)(6)-(8) guarantees the permit holder the right to a conference with the Administrator to challenge any revocation order issued by the Administrator. In addition, § 172.26(c)(9) confirms the permittee's right to judicial review of any final decision by the Administrator to revoke a permit.

Another commenter noted that a permit could be revoked if "its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment." The commenter suggested that the regulation specify a period of time within which EPA would determine, prior to initiation of the experimental program, if the test program approved by the State met the requirements of § 172.25(c)(1)(ii) (in the final rule, § 172.26(c)(1)(ii)). EPA

believes that such a procedure would be both time consuming, delaying implementation of the test program, and duplicative of State review efforts. EPA's basic permit revocation authority provides a sufficient additional safeguard for public health and the environment.

Another commenter suggested that EPA should retain the option of requiring that the treated commodity be destroyed under § 172.26(c)(1)(iii) instead of revoking the permit. The Agency believes it must retain authority to revoke a permit under such circumstances. Although EPA does not have the authority to order destruction of a commodity, the permittee may avoid having his permit revoked by destroying the commodity himself. The same commenter protested as excessive the requirement in § 172.26(c)(5) that EPA notify the Food and Drug Administration of a permit revocation if the permit involved the use of a pesticide on food or feed. The Agency accepts this comment, and has deleted this provision from the final regulation. However, EPA retains the authority to notify FDA of any permit revocation if the Agency believes such action desirable.

Finally, one commenter suggested that in those situations where a State's authority to issue permits is revoked by EPA, the regulation should require that a statement be included which would list the status of State permits in effect at the time of revocation. Instead of taking such action, the Agency has decided to add a sentence to the revocation of State authority provision (now § 172.23(d)(2)) stating that permits issued prior to the revocation shall remain valid, unless revoked by EPA, until they expire or until three years from the date of revocation of State authority, whichever comes first. This provision should clarify the status of permits, in the event of revocation of State authority, to the advantage of all permittees.

#### Reports

Two commenters suggested that the requirement for State agency reports to EPA should be more limited than in the proposed rule. On the other hand, one EPA Regional commenter suggested the inclusion of several categories of information as part of regular reporting to EPA. EPA does not propose to burden the States with excessive reporting requirements. However, the Agency believes it must retain a certain flexibility in this area. Therefore, the final language in § 172.26(b) combines one regular, but minimal, reporting

requirement with a requirement for special reports when requested by EPA or when adverse effects to man and the environment occur as a result of pesticide usage.

#### Definition of "Special Local Needs"

Another commenter suggested that a definition be added to this rule to clarify what experimental uses are authorized by a permit to conduct research leading to registration for "special local needs" (as used in §§ 172.24(b)(1) and 172.24(c)). EPA recognizes that a definition of this expression might be useful to persons conducting such research. However, no such definition can be included in this rule at this time. Recent amendments to section 24(c) have substantially expanded State authority to register pesticides for "special local needs." These amendments require a change in EPA's interpretation of that term. The Agency expects within the next few months to publish new proposed section 24(c) regulations which will probably include a definition of "special local needs" applicable to research. Until then, States should exercise their discretion in determining whether or not an EUP is necessary to develop data for a State "special local needs" registration.

#### Tolerances

There was no specific discussion in the 1975 proposed regulations of the requirement for tolerances for pesticides to be used on or in food or feed. However, this requirement was implied. A new § 172.24(d) has been added which specifically addresses the possible alternatives insofar as tolerances are concerned. There is no change in the intent or effect of the rule.

One comment was received relating to the requirement in the initial draft of § 172.24(d) for a tolerance, or exemption from the requirement of a tolerance, whenever an experimental use pesticide is to be used in or on food or feed. The commenter wished to have included an alternative provision authorizing the submission of evidence to show that the proposed experimental program would not reasonably be expected to result in residues of the pesticide in or on food or feed, and that therefore no tolerance was necessary in such cases. The so-called "no residue" concept as it applies to food or feed was phased out more than 10 years ago. EPA's position is that any pesticide used in or on food or feed will reasonably be expected to result in residues of such pesticide. Therefore, some sort of legal residue clearance under the Federal Food, Drug and Cosmetic Act is required. Where such

residues are below the level of detection of the applicable analytical method, a tolerance is established at the level of sensitivity of the method. Therefore, the requested change would be inappropriate.

#### Disposal

The proposed regulations inadvertently omitted mention of disposal of pesticides and pesticide containers under, and following termination of, a State permit. A new § 172.25(g) has been added to address this need. Again, this addition does not alter the intent or effect of the rule, but merely provides a reference to existing federal disposal requirements, including the requirements of the Resource Conservation and Recovery Act (Pub. L. 94-580; 90 Stat. 2795; 42 U.S.C. 6901 *et seq.*) (RCRA) and the recommended disposal procedures in 40 CFR Part 165.

#### General

Concern has been expressed by several State regulatory officials that the newly added § 172.24(b) would require educational institutions and agricultural research agencies to obtain a State experimental use permit prior to all experiments involving pesticides. In response, EPA would point out that § 172.22(a) provides that State permits are not required in those situations (e.g., small plot pesticide research) described in § 172.3 of the regulations pertaining to Federal experimental use permits. These exemptions apply to educational institutions and to agricultural research agencies, as well as to all other persons subject to this rule. EPA believes that these exemptions afford legitimate experimenters adequate opportunity to perform pure research free from unnecessary procedural requirements.

#### Miscellaneous

Certain minor changes in this regulation have been made since it was proposed for purposes of greater clarity or to achieve consistency with recent amendments to FIFRA. These changes are not of such significance to require being specifically addressed in the preamble.

#### Regulatory Analysis

EPA has determined that this rule does not require a Regulatory Analysis under Executive Order 12044. However, in accordance with FIFRA section 25(a)(2)(B), the Agency carried out an Agricultural Regulatory Impact Analysis, which determined that there would not be any significant national effects on production and prices of agricultural commodities or retail food

prices as a result of promulgation of this rule.

#### Statutory Review

The U.S. Department of Agriculture has reviewed the final regulation in accordance with section 25(a) of FIFRA and concurs without comment with its publication in the Federal Register.

The regulation was also submitted for scientific review and comment to the FIFRA Scientific Advisory Panel (SAP) in accordance with section 25(d) of FIFRA. However, the SAP, in a memorandum dated January 29, 1979, to the EPA Deputy Assistant Administrator for Pesticide Programs, waived such review and comment on the grounds that "the regulation was procedural in nature and did not involve scientific matters which would directly impact on health and the environment."

#### Regulatory Review

Section 2(d)(8) of Executive Order 12044 requires that a plan for evaluating the regulation after its issuance be developed. EPA's plan for evaluating this rule calls for an analysis of data submitted by States in their reports required under § 172.26(b) of this rule. This evaluation will be performed within five years from the date of promulgation of this rule, and a determination will then be made, based upon such evaluation, as to whether modification of the rule is necessary.

Dated: July 6, 1979.

Barbara Blum,  
Acting Administrator.

### PART 172—EXPERIMENTAL USE PERMITS

40 CFR Part 172 is amended by establishing a new Subpart B, to read as follows:

#### Subpart B—State Issuance of Experimental Use Permits

Sec.

- 172.20 Scope.
- 172.21 Definitions.
- 172.22 General.
- 172.23 State plans.
- 172.24 State issuance of permits.
- 172.25 Administration of State program.
- 172.26 EPA review of permits.

Authority: Secs. 5(f), 25(a), Federal Insecticide, Fungicide, and Rodenticide Act as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

#### Subpart B—State Issuance of Experimental Use Permits

##### § 172.20 Scope.

This subpart sets forth regulations governing State issuance of experimental use permits pursuant to

section 5(f) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA). It also sets forth regulations governing authorization by the Administrator of State experimental use permit programs.

##### § 172.21 Definitions.

(a) Terms used in this subpart shall, with the exception of those terms defined below, have the meaning set forth in FIFRA and in § 172.1.

(1) "Public or Private Agricultural Research Agency or Educational Institution"—means any organization engaged in research pertaining to the agricultural use of pesticides, or any educational institution engaged in pesticides research. Any research agency or educational institution whose principal function is to promote, or whose principal source of income is directly derived from, the sale or distribution of pesticides (or their active ingredients) does not come within the meaning of this term.

(2) "Designated State Agency"—means the State agency designated by State law or other authority to be responsible for registering pesticides to meet special local needs.

##### § 172.22 General.

(a) Experimental use permits are not required under this rule in those situations described in § 172.3 of Subpart A pertaining to Federal experimental use permits.

(b) Subpart B is not applicable to experimental use permits issued by a State, as required by State law, to a permittee who already holds a valid Federal experimental use permit issued under Subpart A for the same purpose, or who is not required to obtain a permit under this rule.

(c) Pesticide products used under experimental use permits may not be sold or distributed other than through participants, and, if sold or distributed through participants, may be used only at an application site of a cooperator and in accordance with the terms and conditions of the experimental use permit.

(d) Establishments in which pesticide products under State experimental use permits are produced shall be registered as required by 40 CFR 167.2(a) and producers of such products shall maintain books and records as required by 40 CFR 169.2.

(e) Pesticide products and their containers used under this rule must also be packaged, stored, transported, used, and disposed of in accordance with all applicable Federal laws and regulations, including the Resource

Conservation and Recovery Act of 1976 as amended (Pub. L. 94-580; 90 Stat. 2795; 42 U.S.C. 6901 *et seq.*) (RCRA), and rules thereunder.

##### § 172.23 State plans.

(a) *Submission.* (a) A State may, by submitting a State plan, request the Administrator to authorize the designated State agency to issue experimental use permits under section 5(f) of FIFRA.

(2) A State shall request authorization to issue experimental use permits by having the Governor or Chief Executive Officer or his designated agent submit a State plan in writing to the Administrator.

(b) *Contents.* A State plan shall include—

(1) A designation of the State agency responsible for the administration of the State experimental use permit program.

(2) An opinion of the State attorney general or the legal counsel of the designated State agency that the State has the requisite legal authorities as set forth in paragraph (c)(1)(i) of this section, accompanied by copies of the applicable State laws and regulations.

(3) A description of procedures that the designated State agency will follow:

(i) To review experimental use permit applications, to ensure that experimental use permits will be issued in accordance with the terms and conditions of the authorization, FIFRA, and this subpart; and

(ii) To supervise use pursuant to the permits, and to ensure that permits are used in accordance with their terms and conditions, FIFRA, and this subpart.

(c) *Criteria for EPA acceptance of State plan.* (1) The Administrator shall grant authorization to issue experimental use permits if the State plan establishes that the designated State agency—

(i) Has adequate legal authority under State law to implement the plan, including authority:

(A) To issue experimental use permits, subject to limitations necessary for the protection of public health and the environment;

(B) To supervise the use of a pesticide pursuant to an experimental use permit, as provided in § 172.25(c);

(C) To deny an experimental use permit if it determines that a permit is not justified, or that the issuance of the permit would cause unreasonable adverse effects on the environment;

(D) To amend or revoke an experimental use permit, if the designated State agency finds that:

(1) The terms and conditions of the permit are being violated, or are

inadequate to avoid unreasonable adverse effects on the environment;

(2) Any required tolerance under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) has been revoked by EPA, or any exemption from the requirement for tolerance has been withdrawn by EPA; or

(3) A failure by the permittee or any cooperator to meet any other provision of FIFRA or this subpart has occurred;

(E) To enter, by consent or by warrant or by other legal means, in connection with an experimental use permit, a permittee's or cooperator's premises at reasonable times in order to sample or inspect any pesticides used or property treated, to inspect any equipment or records kept, or to observe any activities conducted, as necessary to enforce compliance with State law, the terms of the permit, and this subpart;

(F) To comply in all other respects with the requirements of this subpart, including labeling requirements; and

(ii) Utilizes procedures for the review of each permit which are adequate to ensure that the State program will be administered in accordance with the purposes of FIFRA and this subpart.

(2) After receiving a State plan, EPA shall publish a **Federal Register** notice announcing the fact and inviting interested parties to comment thereon.

(d) *Approval, rejection, and revocation.* (1) EPA shall approve or reject the State plan within 90 days after receipt of all information necessary for final review of the plan, including copies of effective statutes and regulations which satisfy the requirements of this subpart.

(2) The Administrator may at any time revoke the authorization of a State to issue experimental use permits if he determines that the designated State agency has not complied with the requirements of this subpart or with the terms and conditions of such authorization. State experimental use permits issued prior to the revocation of authority shall remain valid until they expire or until three years from the date of revocation of the State's authority, whichever comes first, unless sooner revoked by EPA under § 172.26(c) of this subpart.

(3) Notices of approval, rejection, and revocation shall be published in the **Federal Register**, as well as the basis for such approval, rejection, or revocation.

(4) Prior to rejecting or revoking authorization, the Administrator shall notify the State in writing of his intention to take such action, along with the basis for such action, and shall afford the State the opportunity for a hearing, and time to take corrective action.

#### § 172.24 State issuance of permits.

(a) *General.* Upon approval of a State plan by the Administrator under § 172.23, the designated State agency is authorized to issue, amend, renew, deny or revoke experimental use permits subject to the terms of the authorization and these regulations.

(b) *Authority.* A designated State agency may issue an experimental use permit—

(1) To any person for the purpose of gathering the data necessary to support the State registration of a pesticide to meet special local needs under section 24(c), FIFRA.

(2) To any agricultural research agency or educational institution conducting work within the State for the purpose of experimentation:

(i) Which is done within the State; and  
(ii) Which is not directly intended to result in the registration of a specific pesticide product.

(3) For use of a restricted use pesticide only if the pesticide is to be used by, or under the direct supervision of, an applicator certified in accordance with section 4 of FIFRA.

(c) *Limitations.* (1) In the case of applicants who need to gather data required to register a pesticide product to meet a special local need under section 24(c) of FIFRA, a State may only issue experimental use permits for the types of pesticide products and uses which it has authority to register under section 24(c).

(2) A State may not issue an experimental use permit under § 172.24(b)(1) or § 172.24(b)(2) for any of the following:

(i) A product containing an active or inert ingredient not contained in any EPA-registered product;

(ii) A product containing an active or inert ingredient which is currently subject to an EPA cancellation or suspension of registration order, or which is currently subject to an EPA notice of intent to suspend or cancel registration because of human health, environmental or efficacy considerations; except that the State may issue a permit for such a product for a purpose or in a formulation—

(A) Which was not specifically considered in, or which is not subject to, such suspension or cancellation proceedings, after consultation with appropriate EPA officials; or

(B) Which was specifically considered during such proceedings but not suspended, cancelled, or subjected to a notice of intent to suspend or cancel;

(iii) A use of a product which has been the subject of a notice of denial of registration published in the **Federal**

**Register** pursuant to section 3(c)(6) of FIFRA and 40 CFR 162.11(a) and (b); or

(iv) A use of a product which may involve use in or on food or feed other than as authorized under § 172.24(d), *Requirement of tolerance.*

(3) A State may not issue an experimental use permit for use of a pesticide product in an area or in an amount in excess of that necessary to accomplish the purposes for which the permit was issued under paragraph (b) of this section.

(d) *Requirement of tolerance.* If the experimental use pesticide is to be used in or on food or feed, the applicant must—

(1) Submit evidence that:

(i) A tolerance or exemption from the requirement of a tolerance has been established for residues of the pesticide in or on such food or feed under section 408 of the Federal Food, Drug and Cosmetic Act, or a regulation established under section 409 of the Act; and

(ii) The proposed program would not reasonably be expected to result in residues of the pesticide in or on such food or feed in excess of that authorized under section 408 of the Federal Food, Drug and Cosmetic Act, or a regulation established under section 409 of the Act; and

(iii) All inert ingredients in the pesticide are exempted from the requirement of a tolerance under the appropriate section of 40 CFR Part 180, Subpart D; or

(2) Certify that the food or feed derived from the experimental program will be destroyed or fed only to experimental animals for testing purposes, or otherwise disposed of in a manner which will not endanger man or the environment. The method of destruction or disposal shall be described in the application for the permit.

#### § 172.25 Administration of State programs.

(a) *General.* State experimental use permit programs shall be consistent with the Federal experimental use permit program, as set forth in Subpart A of 40 CFR Part 172.

(b) *Procedures leading to issuance.* An application for an experimental use permit shall be made in writing, and shall contain sufficient information, including a confidential statement of formula for any new product, to enable the State to determine whether use pursuant to the permit would be in accordance with the purposes of FIFRA and this subpart.

(c) *Labeling.* (1) New products shall bear labeling satisfying the requirements of § 172.6(a), except that the prominent statement "For Distribution and Experimental Use Only Within (State)" shall be used in place of "For Experimental Use Only". The designated State agency may approve, as directions for use on labeling, the experimental program, provided such program is to be distributed with the product.

(2) The designated State agency may permit an EPA or State registered pesticide to be used under an experimental use permit with supplemental labeling as approved by the State agency. In exercising this discretion, the designated State agency shall ensure that the supplemental labeling and the registered label together satisfy the requirements of § 172.6(a).

(d) *Duration.* State experimental use permits shall be issued for a specified period of time, not to exceed three years, depending upon the nature of the pest problem and the requirements of the testing program submitted. The designated State agency may renew, extend or amend the stated duration of a permit, if circumstances warrant.

(e) *Limitations.* The designated State agency shall impose such limitations in the permit as are necessary to protect health and the environment, including limitations on quantity, sites, area, disposal, and other aspects of pesticide use.

(f) *Program surveillance and reporting of data.* (1) The permittee shall supervise the test program and evaluate the results of testing at each site of application. The designated State agency shall require the permittee to report to it immediately any adverse effects resulting from use of, or exposure to, the pesticide.

(2) During the course of the program, the designated State agency shall require the permittee to submit such reports (both special and periodic) as are necessary to supervise effectively the progress of the program to prevent unreasonable adverse effects on man or the environment. The designated State agency shall also require the permittee to submit a final report at the conclusion of the program. Where applicable, such reports shall also be made available to the U.S. Department of Agriculture, Food Service and Quality Service (FSQS), as required by § 172.8(c).

(g) *Disposal.* All pesticides and pesticide containers, whether disposed of during the course of a State permit or remaining at the termination of a permit, must either be:

(1) Disposed of in accordance with 40 CFR Part 165 and a disposal plan approved as part of the experimental program; or,

(2) Returned to the permittee for storage or disposal in accordance with 40 CFR Part 165 and the requirements of RCRA and rules thereunder; or,

(3) If the product is currently registered, used in accordance with the registered label.

#### § 172.26 EPA review of permits.

(a) *Notification of State action.* (1) Within 10 days after the issuance of an experimental use permit, the designated State agency shall notify EPA of the action by forwarding to the appropriate EPA Regional Office a copy of the permit, a description of the experimental program to be conducted under the terms of the permit, a copy of the approved labeling, and a copy of the confidential statement of formula for any new product.

(2) Within 10 days after amendment or revocation of an experimental use permit by a State, the designated State agency shall notify the appropriate EPA Regional Office in writing of the amendment or revocation. The notice shall include a brief explanation of the reason for the amendment or revocation. If amendments to permits include changes in the approved labeling, the designated State agency shall also forward a copy of the amended labeling.

(3) EPA shall give notice in the Federal Register of State issuance of experimental use permits.

(b) *Reports.* The designated State agency shall submit the following reports to EPA:

(1) An annual report covering the number of permits issued, the names and addresses of permittees, the names of the products covered by permits, and the State permit numbers issued;

(2) Reports, as requested by EPA, containing any information that EPA may determine necessary to ensure that a State has acted in compliance with provisions of FIFRA and this subpart; and

(3) Reports of any serious adverse effect(s), as soon thereafter as possible, from use of, or exposure to, a pesticide used pursuant to an experimental use permit.

(c) *Revocation by EPA.* (1) The Administrator may revoke an experimental use permit issued under this Subpart if he finds:

(i) That its terms and conditions are being violated;

(ii) That its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment;

(iii) That new evidence demonstrates that any tolerance or food additive regulation upon which the permit is based will be inadequate to protect the public health, or that any exemption from the requirement for a tolerance or food additive regulation is no longer appropriate; or

(iv) That a failure by the permittee to meet any other provisions of FIFRA or this subpart has occurred.

(2) The Administrator shall, prior to revoking a State experimental use permit, consult with the State agency which issued the permit, except in cases where continued use of the pesticide under the permit would create an imminent hazard to man or the environment.

(3) The Administrator shall notify the designated State agency, in writing, of the revocation, and the State agency shall notify the permittee, also in writing, of the revocation.

(4) The permittee shall notify all participants of the revocation within 10 days after he receives notice of revocation.

(5) The revocation of a permit shall not preclude the Administrator from initiating civil or criminal sanctions for violations of the permit conditions or other violations, as authorized by law.

(6) If a permittee wishes to contest the revocation of a State experimental use permit, he shall, within 30 days after receipt of notice of such revocation, file with the Administrator a written request for an opportunity to confer with the Administrator or his designee. The revocation of the permit shall remain effective pending the outcome of any conference requested under this paragraph.

(7) If a permittee requests a conference under paragraph (c)(6) of this section, the Administrator shall provide the permittee:

(i) With information as to the time, place and nature of the conference, and of the matters of fact and law asserted by the Agency as grounds for the revocation action;

(ii) An opportunity to offer a written statement of facts, explanations, and arguments relevant to the revocation action;

(iii) All other procedural opportunities to which the permittee may be entitled by law.

(8) The Administrator shall notify the affected permittee and State Agency, in writing, of his final decision on the revocation matter as expeditiously as possible and shall attempt to do so within 30 days after the conclusion of a conference conducted under paragraph (c)(7). The Administrator shall also

provide the permittee and the State agency with a written statement of the reasons for his decision, which shall take into account the evidence presented pursuant to paragraph (c)(7)(ii) of this section.

(9) A decision to revoke a permit under paragraph (c)(8) of this section is a final Agency action subject to judicial review as provided by law.

[FR Doc. 79-21932 Filed 7-17-79; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 43 CFR Part 4

[Circular No. 2448]

#### Department Hearings and Appeals Procedures; Grazing Procedures

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** This rulemaking amends the Department's hearings and appeals procedures pertaining to grazing proceedings. The amendment makes the appeal regulations consistent with the revised grazing administration regulations in 43 CFR Part 4100, that were published in the Federal Register as final rulemaking on July 5, 1978.

**DATE:** Effective August 17, 1979.

**ADDRESS:** Director (210), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240

**FOR FURTHER INFORMATION CONTACT:** Maxwell T. Lieurance, 202 343-6011.

**SUPPLEMENTARY INFORMATION:** The principal author of this final rulemaking is David Little of the Division of Range, Bureau of Land Management assisted by the Division of Legislation and Regulatory Management, Bureau of Land Management and the Office of the Solicitor, Department of the Interior.

Proposed rulemaking was published in the Federal Register on November 19, 1976, following publication on July 26, 1976, of proposed rulemaking on grazing administration and trespass. The proposed rulemaking on grazing administration and trespass required that changes be made in the Department's hearings and appeals procedures. Proposed rulemaking for grazing administration and trespass was again published on July 8, 1977, to include changes required by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)

Under the existing regulations, applicants for grazing use and licensees and permittees on public lands administered under section 3 of the Taylor Grazing Act can appeal decisions that adversely affect them to an administrative law judge for a hearing. Decisions of an administrative law judge can be appealed to the Interior Board of Land Appeals. Applicants for grazing use and lessees of public lands administered under section 15 of the Taylor Grazing Act can appeal decisions adversely affecting their interest to the Interior Board of Land Appeals only. They cannot appeal to an administrative law judge, although the Interior Board of Land Appeals does have the discretion to assign or refer such cases to an administrative law judge for a hearing. Comments were invited for 30 days ending December 20, 1976. Two letters of comment were received. These letters have been reviewed and analyzed. The following summarizes the comments and suggestions received and the action taken on them.

It was suggested that the regulations provide that appeals be submitted directly to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah, by the authorized officer instead of forwarding the appeals to the State Directors for submission to the Hearing Division. This suggestion was not adopted. The appeals filed in the District Offices of the Bureau of Land Management are forwarded to the State Directors because it is at this level that the appeals are referred to the Field Solicitors. The Field Solicitors and the State Office resource specialists assist the Districts within the State in preparing for hearings on appeals.

As suggested, an administrative law judge will continue to set the dates and times for hearings. However, arranging for the place of the hearings and notifying the appellants of the hearings will continue to be the responsibility of the District Managers and not the administrative law judge, as suggested. The District Managers are in a better position to make the local arrangements and issue the notification of hearings.

Section 4.474 was changed to provide that the State Directors, and not the adversely affected parties, must present their case first following the opening statement of a hearing in the case of a show cause. In the case of appeals of decisions of the authorized officer, the appellants generally present their case first following the opening statement of a hearing.

One comment reflected concern about appealing decisions to an administrative law judge instead of going directly to

Federal Court. Section 9 of the Taylor Grazing Act provides that, "the Secretary of the Interior shall provide appropriate rules and regulations for local hearings on appeals from the decisions of the administrative officer in charge \* \* \*". These regulations provide for the local hearings. They also provide for exhaustion of administrative remedies before a case can be taken to Federal Court.

**Note.**—The Department of the Interior has determined that this document is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Editorial changes and corrections have been made as necessary and suggested changes have been made to eliminate redundancies.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315a-315r), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 4, Subtitle A, Title 43 of the Code of Federal Regulations is amended as set forth below.

Guy R. Martin,

*Assistant Secretary of the Interior.*

July 13, 1979.

1. Section 4.410 is amended by changing the reference from "Part 4110" to "Part 4100."

2. Sections 4.470 through 4.478 are amended to read as follows:

#### *Grazing Procedures (Inside and Outside Grazing Districts)*

#### **§ 4.470 Appeal to administrative law judge; motion to dismiss.**

(a) Any applicant, permittee, lessee, or any other person whose interest is adversely affected by a final decision of the authorized officer may appeal to an administrative law judge by filing his appeal in the office of the authorized officer within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision of the authorized officer is in error. All grounds of error not stated shall be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the administrative law judge.

(b) Any applicant, permittee, lessee, or any other person who, after proper notification, fails to appeal a final decision of the authorized officer within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in that final decision.