Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 411

Grape Crop Insurance Regulations; Extension of Sales Closing Date

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Grape Crop Insurance Regulations for the 1980 crop year only by extending the final date on which applications may be accepted for grape crop insurance in California counties where such insurance is authorized to be offered. This action is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: September 19, 1979.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION: On September 1, 1976, the Federal Crop Insurance Corporation (FCIC) published in the **Federal Register** (41 FR 36792) the Grape Crop Insurance Regulations for the 1977 and Succeeding Crop Years (7 CFR Part 411), which prescribed procedures for insuring grapes. The Grape Crop Insurance Regulations provide that December 10 immediately preceding the beginning of the crop year shall be the closing date for accepting applications for such insurance.

The Board of Directors of the Corporation approved the addition of grape crop insurance to two additional counties in California (Merced and Stanislaus) effective with the 1979 crop year. It has been determined that the December 10 date for accepting applications would not be equitable for California grape growers. In view of this, the date for accepting such applications in California is hereby changed for the 1980 crop year to January 31, as outlined below.

The provisions for extension of such date are contained in 7 CFR 411.3, wherein the Manager of the Corporation is authorized in any crop year to extend the closing date for accepting applications in any county upon his determination that no adverse selectivity will result. If adverse conditions should develop during such extension period, the Corporation will immediately discontinue the acceptance of applications. For the purpose of this extension, the Manager has made such a determination.

Since this final rule is merely an extension of the date for filing applications and will benefit grape producers, and such producers need to be informed of the extension immediately, it is found and determined that good cause exists for issuing this rule without compliance with the notice and public participation provisions of the Administrative Procedure Act (5 U.S.C. 553(b) and (c), and Executive Order No. 12044).

Final Rule

Accordingly, 7 CFR 411.3 of the Grape Crop Insurance Regulations for the 1977 and Succeeding Crop Years is amended effective for the 1980 crop year only by adding at the end thereof the following new paragraph:

§ 411.3 Application for insurance.

* * * The time for filing 1980 crop year applications for crop insurance on grapes in California is hereby extended until the close of business on January 31, 1980.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516))

Dated: September 12, 1979.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Dated: September 12, 1979.

Approved by:

W. Otto Johnson,
Acting Manager.

[FR Doc. 79-29068 Filed 9-18-79; 8:45 am]
BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; FC-0165 and FC-0166]

Truth in Lending; Official Staff Interpretations; Suspension of Effective Date and Republication for Public Comment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Effective date of two official staff interpretations suspended; texts reprinted for public comment.

SUMMARY: The Board is suspending the effective date of official staff interpretations FC-0165 and FC-0166, both of which discuss the proper Truth in Lending disclosures for transactions involving required deposit balances, published August 8, 1979 (44 FR 46438) and is republishing them for public comment. The agency is taking this action in response to requests for public comment submitted in accordance with 12 CFR Part 226.1(d)(3). Each letter requesting a comment period is published below and immediately precedes the text of its respective official staff interpretation.

DATES: The effective date of FC-0165 and FC-0166 is suspended until further notice. Comments must be received on or before October 19, 1979.

ADDRESS: Comments (including reference to FC-0165 or FC-0166) may be mailed to Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, NW., Washington, D.C. between 8:45 am and 5:15 pm.

FOR FURTHER INFORMATION CONTACT: Maureen P. English, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3867).

SUPPLEMENTARY INFORMATION: (1) The effective date, September 7, 1979, of official staff interpretations FC-0165 and FC-0166 is suspended in accordance with 12 CFR Part 226.1(d)(2)(ii). The texts of the letters requesting the opportunity for public comment appear below. These interpretations will not go into effect until final action is taken. Notice of such action will be published in the **Federal Register** in approximately

60 days and will become effective upon publication.

(2) The texts of official staff interpretations FC–0165 and FC–0166 are republished for comment with the exception of language pertaining to their former effective date. Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR Part 261.6.

(3) Interested persons are invited to submit relevant comments. All material should be submitted in writing to: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and should be received not later than October 19, 1979. Comments will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

(4) After comments are considered, these official staff interpretations may be amended, may be rescinded or may remain unchanged. Final action regarding these official staff interpretations will appear in the **Federal Register.**

(5) Authority: 15 U.S.C. 1640(f).

First Federal Savings,
Phoenix, Ariz., August 14, 1979.

Re: Official Staff Interpretation FC–165 Truth-in-Lending Proper Treatment of Required Deposit Balances (FLIP) Loans.

Secretary,
Board of Governors of the Federal Reserve System, Washington, D.C.

Gentlemen: The purpose of this letter is to request an opportunity to prepare a more detailed comment with regard to the above-referenced interpretation.

In summary, we believe that the interpretation is incomplete and improperly applies Supplement I of Regulation Z and a possible interpretation of FC–165 would result in a computation procedure that produces a significant underdisclosure of the annual percentage rate.

FC–165 seems incomplete in that it does not specify the proper procedure for distinguishing between principal and interest for an amount withdrawn from a pledged savings account. The equation in paragraph (f)(3)(ii) in Supplement I does not appear to be the proper one to use to calculate the annual percentage rate when applied to a FLIP loan because the deposit releases in the (f)(3)(ii) example are cash flows to the customer, whereas the "deposit releases" for a FLIP loan are not made to the customer, i.e., are not cash flows.

We believe the equation presented in paragraph (f)(1)(ii) is the proper one to use to calculate the annual percentage rate for a FLIP loan, using the initial loan amount as the single advance and the borrower's out-of-pocket expenditures as the payments stream. Calculation of the annual percentage rate based on the equation in paragraph (f)(1)(ii) is consistent with the actuarial method in that it deals explicitly with all actual payments made by the borrower in terms of both timing and amount; and it ignores the rate of interest applicable to the pledged savings account except as this rate affects the out-of-pocket payments required by a borrower.

We are requesting an opportunity to provide more thorough and illustrative comment regarding the calculation problems in applying to FLIP loans the equation approved by FC–165.

Yours truly,

Wallace T. Neal,

Vice President.

226.8(d)—Proper treatment of required deposit balance in disclosure of amount financed and payment schedule and in computation of annual percentage rate in a pledged savings account mortgage (modifies PI letters 265, 734, 864 and 1136).

226.8(e)—Proper treatment of required deposit balance in disclosure of amount financed and payment schedule and in computation of annual percentage rate in a pledged savings account mortgage (modifies PI letters 265, 734, 864 and 1136).

July 24, 1979.

This will reply to your letter of * * *, concerning the proper disclosures for a mortgage loan which is secured in part by a pledged savings account, a program very similar to that discussed in Public Information Letters 1257 and 1304. In this program a borrower pledges funds in an interest-bearing savings account deposited with the lender; during the first five or ten years of the mortgage, the lender withdraws amounts from the savings account to supplement the borrower's out-of-pocket payments in order to make up the total monthly mortgage payments. In Letter 1257 the staff expressed its opinion that the pledged savings account constitutes a required deposit balance for purposes of Regulation Z; in Letter 1304 we stated that the interest earned on the pledged account may not be treated as an advance for purposes of computing the annual percentage rate. You ask three additional questions about this program, which will be answered in order below.

You first ask how the amount of the loan and the amount financed should be, calculated and disclosed when there is a required deposit balance. As you know, Regulation Z does not require disclosure of the "amount of the loan." It does, however, require disclosure of the "amount financed," which is defined in § 226.8(d)(1) as the amount of credit which will be paid to or on behalf of the customer, excluding, among other things, any required deposit balance. A transaction with a required deposit balance is, in effect, a multiple advance transaction, since the release of the deposit constitutes an advance by the creditor to or on behalf of the customer. The timing of the advance depends upon when the funds are made available. In your program, for example, if monthly withdrawals are made from the pledged account for five years, the transaction would consist of one large advance at the beginning, followed by 60 smaller, monthly advances.

A simplified example may be of some assistance in explaining this point. Assume a loan of $1,000 in which a required deposit balance of $200 is created at consummation and is to be released to the customer at the maturity of the loan. In this transaction there are two advances: $1,000 at consummation and $200 at maturity, for a total of $1,200 in advances. Deducting the required deposit balance of $200 from this figure results in an amount financed of $1,000. While this might appear to "cancel out" the effect of the required deposit balance, inasmuch as the amount financed of $1,000 is the same figure that would be disclosed if there were no required deposit balance or multiple advances, you will note that the existence of a required deposit balance has an impact on the annual percentage rate computation. This is because, although the disclosed amount financed does not reflect the timing of advances, calculation of the annual percentage rate does take proper account of the timing of advances. In this connection, see the annual percentage rate formulas beginning on page 10 of Supplement I to Regulation Z.

Applying this concept to your transaction, assume a $50,000 mortgage, with $5,000 deposited into the pledged savings account, a portion of which is to be withdrawn every month for the next five years. The transaction would be viewed as having one advance of $50,000 followed by 60 additional advances, the some of which equals $5,000. The total of advances thus would be $55,000. From this figure, you can deduct the required deposit balance of $5,000, to arrive at the amount financed of $50,000.

The staff has, in previous letters, stated that the amount financed in such a transaction could be disclosed as the difference between the initial advance and the required deposit balance, $800 in the first example and $45,000 in the second example described above (see Public Information Letters 265, 580, 734, 864, and 1136). Although the staff believes the disclosures described in this letter more properly reflect the value received in the transaction it believes that either of these two approaches may be used in disclosing the amount financed. In all cases, however, the annual percentage rate must be properly computed, taking account of the release of the deposit balance.

Your second question concerns whether the payment to be disclosed pursuant to § 226.8(b)(3) is the total monthly payment (i.e., the borrower's out-of-pocket payment and the principal and accrued interest from the pledged savings account), or whether it is only the "net" payment (i.e., the out-of-pocket payment and the earned interest from the account). You believe the payment required to be disclosed is the total payment, but wish to disclose the "net" payment as additional information pursuant to § 226.6(c). The staff agrees that this disclosure would be appropriate, provided the criteria discussed in § 226.6(c) are met.

Finally, you ask whether the equation in paragraph (f)(3)(ii) in Supplement I would be the proper one to use to calculate the annual percentage rate for your mortgage and, further, what figures should be used for the terms U_k and P_j. The staff believes that equation is the correct one to use. Note that this equation assumes that since the advance of the full loan amount occurs at the same time as the establishment of the deposit balance, the latter is equivalent to a "payment" and the two amounts offset each other. Therefore, using this equation, the first advance equals the amount of the loan less the required deposit balance and any prepaid finance charge. The principal amounts withdrawn monthly from the account are the subsequent advances. These amounts should be used for the values of U_k. The payments to be shown as P_j in this equation will be the total payments referred to in our answer to your second question above.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(2) of the regulation, and it is limited to the facts and issues as discussed herein.

Sincerely,

Nathaniel E. Butler,

Associate Director.

National Manufactured Housing Finance Association,

Washington, D.C. 20006, September 5, 1979.

Re: Request for Public Comment on Official Staff Interpretation FC-0166

Hon. Theodore E. Allison,

Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Dear Sir: The National Manufactured Housing Finance Association hereby requests that the Board provide an opportunity for public comment on the proposed Official Staff Interpretation FC-0166 published in the Federal Register on August 8, 1979 at page 46438, and that the proposed effective date be suspended pending the comment period and issuance of a final interpretation after consideration of comments received. The proposed interpretation concerns the proper treatment of a required deposit balance in the disclosure of the amount financed, and in the computation of the annual percentage rate (APR) in a mobile home sales transaction with a required escrow of the property insurance premiums.

The National Manufactured Housing Finance Association is an organization of lenders who finance the purchase of mobile homes through the use of Federal programs, including, among others, those of the Federal Housing Administration, the Government National Mortgage Association and the Veterans Administration. Assuring that mobile homes which they finance are covered by property damage and hazard insurance for the protection of homebuyers and lenders is a matter of substantial importance to our members. We are concerned with the concept of the proposed interpretation which would hold that, although a required deposit balance is not to be considered part of the charge for credit, i.e., the finance charge (assuming proper disclosures have been made), the required deposit balance is, nevertheless, to be included in the computation of the APR. We believe that this apparent inconsistency with other APR calculations should be the subject of widespread public comment. The public should also be able to comment on whether the complicated formulas which would be applicable to the computation of the APR (as found in Supplement I to Regulation Z) in transactions such as the example described in the proposed interpretation, are workable for the average person to use at the point of sale.

If the formulas are too complicated to work out, and different charts are required for each possible permutation of the example, the use of escrows for payment of future premiums may effectively have been discouraged. Thus, the effect of the proposed interpretation may be the same as a decision that it is in the public interest to discourage the use of escrows. We believe that before such a conclusion is reached concerning mobile home purchases, the public should be given the opportunity for comment.

We point out, in this regard, that the regulations of the Federal Housing Administration, 24 CFR 203.33(a)(4) require, for home mortgages on realty, that the monthly payments include escrows for future hazard insurance premiums. We recognize that such escrows are exempted from consideration in the finance charge by the Truth in Lending Act, 15 U.S.C. 1605(e)(3), and believe consideration should be given to the question of whether required deposit balances for hazard insurance premiums ought to receive comparable treatment in mobile home lending transactions.

It is the intention of this letter only to request public comment and to suggest some of the reasons why public comment is desirable in the public interest, rather than to suggest how the interpretation might be more desirably drafted. If such an opportunity is provided, it is further the present intention of the Association to provide more definitive comment and suggestions.

Respectfully submitted,

Sanford A Witkowski,

Secretary.

226.8(c)—Proper treatment of required deposit balance in disclosure of amount financed and payment schedule and in computation of annual percentage rate in a mobile home transaction with required escrow of property insurance (rescinds PI letter 1136).

226.8(e)—Proper treatment of required deposit balance in disclosure of amount financed and payment schedule and in computation of annual percentage rate in a mobile home transaction with required escrow of property insurance (rescinds PI letter 1136).

July 24, 1979.

This will respond to your letters of * * * and * * *, in which you request an official staff interpretation of Regulation Z concerning the proper disclosure of property insurance escrow accounts required in connection with credit sales of mobile homes. To make sure that insurance coverage on the mobile home is maintained throughout the term of the contract, usually 15 years, the creditor requires the customer to obtain an insurance policy for the first year and to make a monthly payment of one-twelfth of the following year's premium into an escrow account. These amounts are accumulated, then disbursed once a year for the next 14 years to the insurance company of the customer's choice. The insurance premiums are not part of the finance charge since the creditor makes the disclosures called for by § 226.4(a)(6). You recognize that the insurance escrow constitutes a required deposit balance within the meaning of § 226.8(e), and ask how the disclosures relating to the escrow should be made.

First of all, the staff would stress that establishment of escrow accounts for mobile home property insurance payments does not require the special treatment accorded required deposit balances as long as customers are given the option of either escrowing the premium in advance with the creditor or undertaking to maintain proper insurance coverage on their own. It is only when the creditor requires that the premiums be escrowed in this fashion that the account must be treated as a required deposit balance for calculation and disclosure purposes.

In those cases, then, where the escrow is required, the staff believes that the amount of the required deposit balance is the sum of all the monthly deposits made into the escrow account during the term of the transaction, since the customer will lose the use of this total amount by virtue of the escrow program. You are concerned that using this figure may distort the annual percentage rate. You should note, however, that the impact of the required deposit balance on the annual percentage rate is somewhat reduced inasmuch as the annual disbursements to the insurance company of the accumulated deposits constitute advances made by the creditor on the customer's behalf and are treated as such in determining the amount financed and the annual percentage rate.

An example may be helpful in explaining the proper disclosures. Assume a 15 year (180 monthly payments) contract in which the cash price is $10,000, there is no downpayment and no prepaid finance charge, and the annual insurance premium is $300. The creditor finances the initial year's premium and each month during the first 14 years (168 months) collects, in addition to its regular monthly installment, $25 to be deposited in the insurance escrow account. (The staff believes it would be appropriate for the creditor to assume that current insurance rates will continue to apply and to use those figures unless the creditor knows or has reason to know that a different rate will apply.) To the unpaid balance of cash price of $10,000 would be added $4,500 (the sum of the 15 advances for insurance), for an unpaid balance of $14,500. The required deposit balance of $4,200 (the sum of 168 payments of $25) is then subtracted, leaving an amount financed of $10,300.

The "payments scheduled to repay the indebtedness" to be disclosed pursuant to § 226.8(b)(3) and to be used in computing the annual percentage rate must include the amounts collected for the insurance. There will, therefore, be two levels of payments, 168 payments at the higher level which includes the $25 and 12 payments at the lower level which excludes that amount. You will note that in this type of transaction, the total of payments exceeds the sum of the amount financed and the finance charge by the amount of the required deposit balance.

Public Information Letter 1136 discussed a condominium fee that that was escrowed in advance in the same fashion as this mobile home property insurance premium. There the staff stated that the required deposit balance would be only a single year's fee. Since that position is inconsistent with that expressed in this interpretation, Letter 1136 is hereby rescinded.

You ask whether there are tables available for determining the annual percentage rate for transactions involving a required deposit balance. Since the transaction described above involves both multiple advances and unequal payments, use of tables such as those contained in Volume I of the Board's Annual Percentage Rate Tables would be inappropriate. Volume II of the tables may, however, be used for all combinations of advances and payments. You may also find tables prepared by commercial sources that can be adapted for such transactions.

This is an official staff interpretation of Regulation Z, issued pursuant to § 226.1(d)(2) of the regulation and limited to the facts and issues discussed herein.

Sincerely,

Nathaniel E. Butler,

Associate Director.

Board of Governors of the Federal Reserve System, September 12, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-29012 Filed 9-18-79; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM79-75, Order No. 46]

Certain Sales and Transportation of Natural Gas; Correction

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Erratum Notice Correcting Final Regulations.

SUMMARY: Notice is hereby given of correction to the Federal Energy Regulatory Commission's Final Regulations in Docket No. RM79-75, issued August 30, 1979, and entitled "Final Part 284 Regulations Under the Natural Gas Policy Act of 1978" 44 FR 52179.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 275-4184.

SUPPLEMENTARY INFORMATION:

Final Part 284 Regulations Under the Natural Gas Policy Act of 1978, Docket No. RM79-75, Erratum Notice, September 13, 1979, Order No. 46, Order Amending Part 284 and Issuing Subparts A, B, C, and E as final regulations, issued August 30, 1979.

In FR Doc. 79-27868 appearing at page 52179 in the Federal Register for September 7, 1979 the following correction should be made.

On page 52180, third column at the bottom of the page in footnote 8, the last sentence should read as follows:

* * * Conversely, if the interstate pipeline purchaser contracted for the transportation and if title passed to the purchaser at the point of delivery to the intermediary transporting interstate pipeline then, absent other evidence that the transaction was on behalf of an intrastate pipeline or local distribution company, the nexus would not be present and section 311(a)(1) authorization would not be available.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-29102 Filed 9-18-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-79-704]

Community Development Block Grants; Technical Amendments; Interim Rule

Correction

In FR Doc. 79-26593 appearing at page 50248 in the issue for Monday, August 27, 1979, under § 570.200(f)(2)(i), on page 50251, in the first column, in the 12th line, after the word "not" insert "grant exceptions for any special assessments that will"

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning

Correction

In FR Doc. 79-28713, appearing as a separate Part IV at page 53927 in the issue of Monday, September 17, 1979, Appendix F, which begins on page 53992 and ends on page 53999, should be inserted above the first complete paragraph in column two on page 53976.

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL 1318-6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice revises the attainment status designation of the Tucson area in Arizona for photochemical oxidant (Ox). The revision is the result of EPA establishing a new National Ambient Air Quality Standard (NAAQS) for ozone of 0.12 ppm (primary and secondary) to replace the Ox standard of 0.08 ppm (44 FR 8202, February 8, 1979). the Tucson area is redesignated from nonattainment for Ox to attainment for ozone.

DATES: Effective September 19, 1979.

ADDRESS: Comments should be directed to: Arnold Den, Chief, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco CA 94105.

FOR FURTHER INFORMATION CONTACT: Morris I. Goldberg (A-4-3), Technical Analysis Section, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco CA 94105, Phone: (415) 556-8065.

SUPPLEMENTARY INFORMATION: On March 3, 1978, in accordance with Section 107 of the Clean Air Act (CAA) Amendments of 1977, EPA promulgated attainment status designations for all States in relation to the NAAQS. EPA designated the entire area of Pima County in Arizona as nonattainment for Ox. On August 15, 1978, the State requested redesignation of the boundary of the Pima nonattainment area, reducing it in size from Pima County to the Tucson area. EPA approved the boundary redesignation on March 19, 1979 (44 FR 16388).

On February 8, 1979 (44 FR 8202) EPA established a new NAAQS for ozone of 0.12 ppm to replace the Ox standard of 0.08 ppm. In addition, EPA established a statistical method of determining whether the standard has been exceeded. The national standards for ozone are published as a revision to 40 CFR 50.9 and the statistical method as the new Appendix H, 40 CFR 50.

Because of the change in the standards, Governor Babbitt of Arizona submitted the State's redesignation of the Tucson area on May 21, 1979. The Governor recommended that the Ox nonattainment area be redesignated as an ozone attainment area. The redesignation was supported with data which indicates that the ozone air quality standards were not violated during the three year period, 1976 through 1978.

On July 6, 1979 (44 FR 39486) EPA published a notice of proposed rulemaking concerning the redesignation request. The notice proposed to approve the redesignation and provided a 30-day comment period. No comments were received.

Under Section 107 of the CAA, a state may revise its designations of attainment status and submit to EPA for promulgation the revised designations with such modifications as the Agency deems appropriate. Based upon a review of the air quality data for ozone in the Tucson area and the use of the statistical method for determining whether violations of the NAAQS had occurred, EPA believes that the NAAQS for ozone have been attained.

As a result of the redesignation, the State is not subject to the requirements of Part D of the CAA for ozone in the Tucson area.

Note.—The Environmental Protection Agency has determined that this document is not a significant regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

(Secs. 107(d) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d) and 7801(a)))

Dated: September 10, 1979.

Douglas M. Costle,

Administrator.

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

Subpart C—Section 107 Attainment Status Designations

1. Section 81.303—Arizona, the attainment status designation table for Ox (published in 44 FR 16388, March 19, 1979), is revised to read as follows:

§ 81.303 Arizona.

* * * * *

Arizona—03

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Maricopa Association of Governments Urban Planning Area.	X	
Tucson area		X
Rest of State		X

* * * * *

[FR Doc. 79-28948 Filed 9-17-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Parts 204, 205

[FRL 1320-3]

Amendment to Continued Testing Hearing Provision of Noise Emission Regulations for Medium and Heavy Trucks and Portable Air Compressors

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice publishes an amendment to the existing continued testing hearing provision of EPA's noise emission regulations for medium and heavy trucks and portable air compressors, which were promulgated in 1976 pursuant to the Noise Control Act of 1972. The amendment is necessary because of a decision by the United States Court of Appeals for the District of Columbia.

EFFECTIVE DATE: September 19, 1979.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice can be addressed to Timothy Dwyer, Noise Enforcement Division, U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 557-7406.

SUPPLEMENTARY INFORMATION: On January 14, and April 13, 1976, EPA published noise emission standards for Portable Air Compressors and Medium and Heavy Trucks, respectively, 40 CFR 204.1–204.59 and 205.1–205.59 (41 FR 2172; 41 FR 15544). Under §§ 204.57–8 and 205.57–8 of the regulations, the Administrator may require that an affected manufacturer test any or all products of a category, configuration or subgroup thereof which fails a selective enforcement audit before distributing them in commerce. Only those products which comply with the applicable standard may be distributed. These sections presently allow an affected manufacturer to request a hearing on whether the audit was properly conducted and whether the criteria for batch sequence rejection were met.

This regulation provision limiting the scope of a hearing on a continued testing order, 40 CFR 204.57–8(c), was challenged in the case of *Atlas Copco, Inc. v. Environmental Protection Agency*, (D.C. Cir. No. 76-1354). In *Atlas Copco*, the United States Court of Appeals for the District of Columbia held that § 204.57–8(c) was invalid since the limitations on the issues appropriate for a hearing "unduly and unreasonably" restricted the hearing provided for by the regulation. The court said that, "Reasonableness demands that evidence relevant to the scope of any order that may issue upon such a failure (of a SEA) be considered by the Agency." The court remanded the litigation to EPA to take corrective measures.

EPA acknowledges that the *Atlas Copco* decision invalidates § 204.57–8(c). Since § 205.57–8(c) is identical, EPA is promulgating an amendment to both § 204.57–8(c) and § 205.57–8(c) which expands the scope of the hearing on a continued testing order to include the issue of the appropriateness or the scope of a continued testing order.

The Administrator finds good cause for making this rulemaking effective immediately upon the date of promulgation without prior proposal. The Administrator finds that a pre-promulgation public comment period is impracticable and contrary to the public interest within the meaning of 5 U.S.C. 553(b)(B), because immediate action is necessary to bring the EPA regulations within the decision of *Atlas Copco*.

To accomplish the above stated purposes, 40 CFR 204.57–8(c) and 205.57–8(c) are amended as set forth below.

Dated: September 10, 1979.

Douglas M. Costle,

Administrator.

PART 204—NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

A. 40 CFR § 204.57–8(c) is revised to read as follows:

§ 204.57–8 Continued testing.

* * * * *

(c) The manufacturer may request a hearing on the issues of whether the selective enforcement audit was conducted properly; whether the criteria for batch sequence rejection in § 204.57–7 have been met; and, the appropriateness or scope of a continued testing order. In the event that a hearing is requested, the hearing shall begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request for a hearing nor the fact that a hearing is in progress shall affect the responsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

B. 40 CFR 205.57–8(c) is revised to read as follows:

§ 205.57-8 Continued testing.

* * * * *

(c) The manufacturer may request a hearing on the issues of whether the selective enforcement audit was conducted properly; whether the criteria for batch sequence rejection in § 204.57–7 have been met; and, the appropriateness or scope of a continued testing order. In the event that a hearing is requested, the hearing shall begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request for a hearing nor the fact that a hearing is in progress shall affect the reponsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

(Sec. 6, 13, Pub. L. 92–574; (42 U.S.C. 4912))

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40 CFR Part 761

[FRL 1325-1; OTS/62002(PCB/RR-2)]

Polychlorinated Biphenyls (PCB's); Disposal Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediately Effective Amendment to Final Rule Applicable to Chemical Waste landfill in Sedgwick County, Kansas.

SUMMARY: The final PCB regulation (44 FR 31514, May 31, 1979) requires that thirty days written notice be provided to applicable state and local jurisdictions before a PCB chemical waste landfill is first used for disposal of PCBs. The proposed amendment, which is being made immediately effective, allows the Regional Administrator to shorten the notice period to five days to allow expedited approval of one chemical waste landfill. The amendment is applicable solely to one facility in Sedgwick County, Kansas. Although the amendment is immediately effective, the Regional Administrator will not exercise her discretion under the amendment until an informal hearing is held on the amendment in Sedgwick County on September 17, 1979.

DATES: Written comments are being received by the Regional Office until the close of business on September 19, 1979. Pursuant to Section 6(d)(2)(B) of the Toxic Substances Control Act (TSCA), an informal hearing will be held by the EPA Regional Office in Sedgwick County, Kansas on September 17, 1979. Persons are being allowed to appear at the hearing without prior notification to the Regional Office. This notice is being published in a newspaper of general circulation in Sedgwick County.

ADDRESSES: Send comments to Dr. Kathleen Q. Camin, Regional Administrator, U.S. Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, Attn: Sedgwick County PCB Chemical Waste Landfill Application. Comments may also be submitted at the hearing on September 17, 1979. The hearing will be held on September 17, 1979 at 7:30 pm at the City Commission Chambers, City Hall, 455 North Main Street, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: David Wagoner, Director, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. Information may also be obtained by calling Mr. Wagoner at 816–374–5971.

SUPPLEMENTARY INFORMATION: On May 31, 1979, EPA published its final regulation for PCBs (44 FR 31514) pursuant to Section 6(e) of TSCA. The regulation establishes requirements for disposal facilities for PCBs. See § 761.10 (44 FR at 31545–48) and Annexes I and II (44 FR at 31551–55). Section 761.10(f)(1)(i) (44 FR at 31547) requires the operator of a disposal facility to give written notice to applicable state and local jurisdictions "at least thirty (30) days before a facility is first used for disposal of PCBs required by these regulations . . ."

EPA has been engaged in the approval of PCB disposal facilities since 1978 under the present regulation and its predecessor (43 FR 7150, February 17, 1978). It has become apparent that the previously-mentioned thirty day notice requirement should be reduced in the case of the pending application of a chemical waste landfill in Sedgwick County, Kansas. Approximately one hundred head of cattle in the State of Kansas have been found to be contaminated with PCBs and have been condemned by the State. However, because of the PCB levels in the cattle when they are destroyed, they can only be disposed of in a chemical waste landfill approved for PCB disposal under EPA's regulations.[1] The only close landfill that would otherwise be suitable for such disposal has not yet been approved by EPA and under the present regulations cannot be approved until the county has received thirty days notice. If the State must wait 30 days to dispose of the cattle, serious injury to health or the environment may occur. Some of the condemned cattle have already died. Additional cattle may die. If these carcasses of the PCB-contaminated cattle are not properly disposed of, the carcasses may become a source of disease. In addition, the live PCB-contaminated cattle are producing waste which may also contain PCBs. Accordingly, EPA has determined that permitting the Regional Administrator to reduce the thirty day notice requirement to five days in the previously-discussed situation meets the criteria of Section 6(d)(2)(A)(i) of TSCA. A thirty day delay in disposal of the PCB-contaiminated cattle would cause an "unreasonable risk of serious or widespread injury to health or the environment" (Section 6(d)(2)(A)(i)(I)). Similarly, the decision to make the rule effective immediately for the Sedgwick County facility "is necessary to protect the public interest . . . " (Section 6(d)(2)(A)(i)(II)) by avoiding delay in disposal.[2] EPA did not anticipate a situation such as this when it included the thirty day notice provision.

Although the amendment is effective immediately, the Regional Administrator will not exercise her discretion to shorten the notice period until after completion of the informal hearing on the amendment in Sedgwick County on September 17, 1979 and the close of the comment period on September 19, 1979. If after the hearing and reviewing any written comments, EPA believes this amendment is inappropriate, the rule will be revoked.

EPA plans to grant interim approval to the Sedgwick County facility solely for disposal of the PCB-contaminated animals, waste and related contaminated items. Subsequently, EPA plans to hold a public comment period

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[1] The PCB-Contaminated cattle are subject to TSCA because they are no longer being held "for use as a food . . ." under Section 3(2)(B)(vi).

[2] Written notice of the pending PCB chemical waste landfill application in Sedgwick County is deemed to have begun on the date when the written notice was delivered to the Board of Commissioners by the applicant for the PCB chemical waste landfill.