number shall be coded identically on each invoice and on the worksheet.

PART 142—ENTRY PROCESS

1. Section 142.21(f) is revised to read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(f) *Release from warehouse followed by warehouse withdrawal for consumption.* Merchandise may be released from warehouse under a special permit—

(1) At the discretion of the district director when

(i) The warehouse is located a considerable distance from the customhouse and actual release of the merchandise from the warehouse may not be effected within the next full business day after the day of the payment of duty, and (ii) The district has sufficient manpower to permit such practice;

(2) The importer shall have on file one of the types of Customs bonds provided for in § 142.4; and

(3) The immediate delivery permit shall be annotated to state that a warehouse withdrawal for consumption will be filed for this merchandise.

* * * * *

2. Section 142.22(b) is revised to read as follows:

§ 142.22 Application for special permit for immediate delivery.

(a) * * *

(b) *Customs custody.* Merchandise for which a special permit for immediate delivery has been issued under §142.21 of this part shall be considered to remain in Customs custody until the filing of one of the following:

(1) An entry summary for consumption, with estimated duties attached, an entry summary for warehouse, or an entry summary for entry under a temporary importation bond, which may be filed in any of the circumstances under §142.21 of this part except for merchandise released from warehouse under §142.21(f) of this part;

(2) A withdrawal for consumption, with estimated duties attached, which shall be filed only for merchandise released from warehouse under §142.21(f) of this part;

(3) An entry for transportation and exportation, immediate transportation without appraisement, or direct exportation, which shall be filed in those circumstances under §142.21(b) and (e)(2) of this part; or entry for transportation and exportation, or direct exportation, which shall be filed in the circumstances under §142.28 of this part or

(4) An application to destroy, which shall be filed in those circumstances under §§142.21(b) and (e)(2), and §142.28 of this part.

(R.S. 251, as amended (19 U.S.C. 66), sec. 484, 552, 553, 557, 624, 46 Stat. 722, as amended, 742, as amended, 744, as amended, 759 (19 U.S.C. 1484, 1552, 1553, 1557, 1624); 92 Stat. 888, (Pub. L. 95-410), October 3, 1978)

[FR Doc. 81-29302 Filed 10-7-81; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Ch I

Pavement Type Selection; Policy Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of policy statement.

SUMMARY: This notice provides a statement of FHWA policy on how the type of materials used in the various pavement components of a Federal-aid project should be determined.

FOR FURTHER INFORMATION CONTACT: Mr. L. M. Noel, Pavement Branch, Highway Design Division, (202) 426-0327, or Michael J. Laska, Office of the Chief Counsel, (202) 426-0800, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice establishes a policy on Pavement Type Selection pending completion of the rulemaking process initiated on August 21, 1980, with the issuance of an advance notice of proposed rulemaking (ANPRM) (FHWA Docket No. 80-14). This policy is based on an initial analysis of comments made to Docket No. 80-14. The policy is designed to provide the public with acceptable highway service at a minimal annual or life cycle cost while permitting maximum flexibility. The policy encourages the consideration of alternate designs and strategies in the type selection process. As used in this policy, pavement type includes both new and rehabilitated pavements including their components of overlays, shoulders, bases, and subbases.

The FHWA policy can be addressed under the following four key issues:

1. Pavement type selection should be based upon an engineering evaluation considering the factors contained in the 1960 AASHTO publication entitled "An Informational Guide on Project Procedures."

2. Pavement type determinations should include an economic analysis based on life cycle costs of the pavement type. Estimates of life cycle costs should become more accurate as pavement management procedures begin providing historical cost, serviceability, and performance data. States without this data are encouraged to obtain it.

3. An independent engineering and economic analysis and final pavement type determination should be performed or updated a short time prior to advertising on each pavement type being considered.

4. Where the analysis reflects that two or more initial designs and their forecasted performance are determined to be comparable (or equivalent), then alternate bids may be permitted if requested by the contracting agency. The Division Administrator shall review the analysis and concur in the finding of equivalency prior to PS&E approval. Price adjustment clauses where utilized would also have to be treated on an equal basis.

This policy is written with the intention of taking advantage of fluctuating material prices while not compromising good design and pavement management practices.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued: September 29, 1981.

R. A. Barnhart,

Federal Highway Administrator.

[FR Doc. 81-29181 Filed 10-7-81; 8:45 am]

BILLING CODE 4910-22-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2618

Allocation of Assets in Non-Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Amendment to final rule adding Subpart C—Allocation of Residual Assets.

SUMMARY: This is an amendment to the regulation on the allocation of assets in terminating, non-multiemployer pension plans. This amendment prescribes rules for the distribution of any assets that remain after all plan benefits have been paid in terminating plans that close out

pursuant to a Notice of Sufficiency from the Pension Benefit Guaranty Corporation. The amendment is necessary to set forth the rules under which those residual assets may revert to the employer. The amendment is further necessary to establish rules for computing what portion of the residual assets is due to employee contributions, and thus must be returned to the employees, and for distributing residual assets among eligible employees or their beneficiaries. The effect of the amendment is to provide plan administrators with needed guidance as to how they should distribute any assets remaining after all plan benefits have been paid.

EFFECTIVE DATE: November 9, 1981.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Code 220, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, 202-254-4895.

SUPPLEMENTARY INFORMATION: On October 2, 1980, the Pension Benefit Guaranty Corporation ("PBGC") published a supplemental notice of proposed rulemaking (45 FR 65259) containing rules to implement the provisions of Section 4044(d) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208 (the "Act"), concerning the allocation and distribution of residual assets. Residual assets are plan assets that remain after the allocation of assets to benefits through priority category 6, pursuant to the provisions of sections 4044 (a) and (b) of the Act and Part 2618 of this chapter (formerly Part 2608). Part 2618, Allocation of Assets in Non-Multiemployer Plans, was published as a final rule in the **Federal Register** on January 28, 1981 (46 FR 9480) (correction published February 4, 1981 at 46 FR 10720; amendment published February 24, 1981 at 46 FR 13689) and was redesignated "Part 2618" on June 24, 1981 at 46 FR 32574.

A number of comments on the October 2, 1980 proposal were received. After reviewing these comments, the PBGC has decided to make several of the recommended changes. In addition, the comments highlighted some unintended ambiguities in the proposal that have been eliminated in this final amendment. A full discussion of the comments received and the changes made in the final regulation follows:

Purpose and Scope

Section 2618.1 has been revised to clarify the purpose of each subpart of Part 2618. Thus, Subpart A contains general rules for applying Subpart B, which covers the allocation of assets to priority categories 1 through 6, and Subpart C, which covers the allocation of any assets remaining after all priority category 6 benefits have been provided. In addition, the amendment makes clear that the rules in both Subpart B and Subpart C have prospective application only.

Section 2618.1 of the proposal provided that the rules in Subparts A and B applied to all plans terminating after the date of enactment of the Act. This was in recognition of the fact that the rules are interpretative of section 4044 of the Act and PBGC presumes that the assets of all plans closing out pursuant to a Notice of Sufficiency from PBGC were allocated in accordance with the provisions of section 4044 in the absence of final regulations governing allocation in such plans. However, in the final regulation published on January 28, 1981 (46 FR 9480), and amended on February 24, 1981 (46 FR 13689), Subparts A and B were adopted effective April 1, 1981. This amendment reflects that change and clarifies coverage.

Coordination With the Internal Revenue Code

Several comments perceived an unintended conflict between the proposed allocation to employees and beneficiaries in plans not providing for reversion and Revenue Ruling 80-229, I.R.B. 1980-34. Moreover, PBGC notes that other provisions of the Internal Revenue Code and regulations may require an allocation or reallocation that varies from the basic allocation. Guidance concerning the procedure to be followed in event of a reallocation was also requested. In order to clarify the interaction of the allocation and non-discrimination requirements, and to state the procedure to be followed in the event of a reallocation, § 2618.32(c) has been revised. Specifically, this amendment makes clear that a plan administrator need not risk disqualification of a plan while allocating residual assets and need not seek PBGC approval of a reallocation required by the Internal Revenue Service to avoid disqualification of the plan. The plan administrator, however, must notify PBGC of any reallocation and revised distribution.

One comment concerned problems posed in a plan with one or more participants who have accrued the maximum benefit permissible under the Act and who would otherwise be entitled to receive a share of the residual assets. It was suggested that the regulation provide that any residual that produces an "excess benefit" be reallocated among other participants, or revert to the employer if all participants have the maximum benefit. Reallocation among other participants is provided for in this situation by § 2618.32(c) of this final amendment. However, the problem of possible reversion of an "excess benefit" to the employer in a plan that provides that there can be no reversion is not treated in the regulation. That situation occurs infrequently and involves legal issues that will not be addressed at this time.

Allocation to Employer

Section 2618.30 provides that residual assets that are not attributable to employee contributions may revert to the employer if the plan provides for reversion and the distribution does not violate any provision of law. This provision reflects the language in section 4044(d)(1) of the Act. One comment noted that the phrase "the distribution does not violate any provision of law" is too restrictive and disregards judicial elucidation and equity. It was suggested that the regulation require that "the distribution does not violate law or equity" and that "a good faith determination to terminate has been made under the fiduciary standards" of the Act. PBGC believes that the regulation should not, and need not, go beyond the statutory language. The allocation process is separate from any judicial remedies based on equity or violations of the fiduciary standards of the Act. Moreover, PBGC believes that "provision of law" includes judicial interpretation of written laws and does not preclude a court from exercising its equitable powers. PBGC further notes that the provisions on fiduciary responsibility and the enforcement of fiduciary responsibilities are found in Title I of the Act and are not within PBGC's jurisdiction.

One comment suggested that the regulation provide that residual assets may revert to the employer if the plan so provides *at the time of such reversion.* If adopted, this suggestion would permit post-termination amendments, which is contrary to PBGC's established position supported by the cases of *Audio Fidelity Corp.* v. *PBGC*, 624 F. 2d 513 (4th Cir. 1980); *In re Del Chemical Corp.*, No. 79-C-250 (E.D. Wisc. 1979); and *Plumbers and Steamfitters, Local Union 530 Annuity Fund* v. *Shaffer*, 457 F. Supp. 954 (W.D. Pa. 1978). The final regulation does not adopt the suggestion, but makes clear that reversion to the employer is permitted only if the plan provides for reversion as of the date of plan termination.

Residual Assets Attributable to Employee Contributions

Several comments objected to the proposed formula for allocating residual assets between employer and employees in contributory plans since it would result in the employees always sharing in residual assets. Under proposed § 2618.31(b), the employees' share of the residual would be determined by multiplying the residual by a fraction, the numerator of which is the present value of all benefits assigned to priority category 2 and the denominator of which is the present value of all benefits assigned to priority categories 2–6. PBGC agrees with the comments that this formula would give a portion of the residual assets to employees in all cases without regard to the fact that some of that portion may not be attributable to employee contributions and agrees that section 4044(d)(2) does not require that conclusion. However, PBGC proposed this simplified formula with the belief that lesser administrative burdens and costs might make it attractive to plan administrators and employers. For example, PBGC believes that determining the employees' share of the residual under this formula could be less costly in many cases than tracing actual investment income.

The proposal, and this final amendment, would allow plan administrators to use an alternative method for tracking investment income attributable to employee contributions, if PBGC approves the use of the alternative method. A request to use an alternative method must be submitted within 30 days after the date a Notice of Sufficiency is issued, or the plan administrator will be precluded from using an alternative method. Rules concerning timely submission, contents of the request, and submission of supporting data are set forth in § 2618.31(d). In deciding whether to approve a proposed alternative, PBGC will consider the accuracy and equities of the proposed method and if it is consistent with the statutory scheme and protects the rights of participants and beneficiaries.

One possible alternative method, set forth in § 2618.31(c)(1), is an accounting of actual investment income, to be offset by interest already allocated to priority category 2. Another example of an acceptable alternative is the formula set forth in § 2618.31(c)(2), which is an attempt to estimate investment gains or the amount by which actual investment income exceeded projected investment income. Under that formula *total plan assets* would be multiplied by a fraction, the numerator of which is net employee contributions and the denominator of which is net employee contributions plus all employer contributions, with all such contributions credited with the interest rate used in the plan's actuarial assumptions. The employees' share of the residual, which cannot exceed the total residual, would be determined by subtracting, from the product of the multiplication, the assets already allocated to priority category 2. Using either of these alternatives could result in a finding that all investment income on employee contributions already had been allocated to employees in the computation of their priority category 2 benefits.

Both of the alternative methods discussed above, as well as the basic method set forth in § 2618.31(b), require the computation and valuation of priority category 2 benefits. PBGC has determined, however, that the priority category 2 computation is not required in all cases. Since PBGC believes that it would be inequitable to require that time and money be spent to determine otherwise unnecessary figures, this final regulation contains a third possible alternative method for establishing the employees' share of the residual assets that will be considered by the PBGC at the request of a plan administrator. Under this third alternative, § 2618.31(c)(3), the employees' share of the residual assets would be determined by multiplying the residual assets by a fraction, the numerator of which is net employee contributions and the denominator of which is net employee contributions plus total employer contributions. Since this formula has the advantage of simplicity, using figures that are normally readily available, PBGC believes that it would be inequitable to limit the use of this formula to those plans for which priority category 2 benefits need not be computed. Therefore, the use of the formula in § 2618.31(c)(3) will not be denied by PBGC solely because a priority category 2 computation is required under § 2618.12. The PBGC will take note of the timing of employee and employer contributions in deciding whether to permit the use of this method.

Two comments received from the public interpreted the basic and alternative formulas as providing that contributing employees *must* share in the residual. They suggested that any residual almost always results from (1) advance or anticipatory funding, (2) the accrual method used, or (3) anticipation of "excess interest" in benefit formulas. The regulation does not preclude a showing that all of the residual is attributable to employer contributions for reasons such as the above, and any such claim would be addressed on a case-by-case basis.

Additional objections to the proposed allocation of residual assets between employer and employees were based on contentions (1) that residual assets may result from the type of plan, *i.e.* a plan in which the employer contributes what is actuarially needed to meet the benefits, or (2) that the Act does not require that contributing employees share in "excess interest" over the rate of interest specified in the plan. PBGC disagrees with both contentions. Regardless of the obligation assumed by the employer in a plan described in (1) above, employer and employee contributions are commingled and therefore indistinguishable. Thus, they contribute proportionately to any investment income. It follows that employees and employer should share that income proportionately. The employees in terminating plans bear the risk of loss of benefits where assets do not cover benefits through priority category 6 and the employer bears the risk of loss where assets do not cover benefits through priority category 4. It follows that both employer and employees should share the gains, if any, when assets reach beyond priority category 6.

With respect to the contention that employees who contribute should be limited to the interest rate provided in the plan, the legislative history of the Act supports a contrary conclusion. See Opinion Manual Letter No. 76–65.

Allocation Among Eligible Participants and Beneficiaries

Under the proposal, in § 2618.32(a), the employees' share of the residual in a plan that does not provide for reversion to the employer generally would be allocated among the pool of eligible participants and beneficiaries on a pro rata basis according to the present value of the respective participant's benefits assigned to priority categories 2–6, determined as of the date plan assets are to be distributed. One comment suggested that this would give a share of the residual assets to retirees who are already receiving full benefits under the plan whereas active participants are deprived of the opportunity to accrue additional benefits. It was suggested that the regulation permit residual assets attributable to employer contributions to be allocated in any manner permitted by a plan that does not result in prohibited discrimination.

Of course, residual assets attributable to employee contributions must always be distributed among those entitled to benefits in priority category 2 in proportion to the value of those benefits or, if an alternative method of allocation based on pro rata contributions in a contributory plan is approved under § 2618.31(c)(3), in proportion to the respective contributions. However, nothing in the regulation would preclude an employer from providing in the plan for the exclusion of specific groups of participants from sharing in the residual assets attributable to employer contributions, unless otherwise legally prohibited. The regulation is, therefore, unchanged in this respect.

One comment pointed out that an allocation among the pool based on relative accrued benefits may result in inequities, and recommended that the regulation permit an employer to propose and use, subject to PBGC approval, an alternative method. The ratio of the present value of a participant's benefits assigned to priority categories 2–6 to the present value of all benefits assigned to those categories was proposed by PBGC as the most logical and administratively simple basis for comparing the interests of pool members when the entire residual is to be distributed to them. The inequities envisioned by the comment are inherent in the statutory allocation provisions which, nevertheless, provide the most objective basis for allocating residual assets in plans that do not provide for reversion. Therefore, PBGC has not adopted this suggestion.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981 (46 FR 13193), because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries or significant adverse effects on competition, employment, investment, productivity, innovation, or competition.

In consideration of the foregoing, Part 2618 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby revised as follows:

1. The table of contents of Part 2618 is amended to add a new Subpart C and new sections as follows:

PART 2618—ALLOCATION OF ASSETS IN NON-MULTIEMPLOYER PLANS

* * * * *

Subpart C—Allocation of Residual Assets

Sec.

Authority: Secs. 4002 and 4044, Pub. L. 93–406, as amended by secs. 403(l), 406, and 402(a)(7), Pub. L. 96–364, 94 Stat. 1208, 1302, and 1299 (1980) (29 U.S.C. 1302 and 1344).

2. Section 2618.1 is revised as follows:

§ 2618.1 Purpose and scope.

(a) *Purpose.* Section 4044 of the Employee Retirement Income Security Act of 1974, as amended, contains rules for allocating a plan's assets when the plan terminates. These rules have been in effect since September 2, 1974, the date of enactment of the Act. Subpart A of this part sets forth general rules for applying Subparts B and C. Subpart B interprets the rules and describes procedures for allocating plan assets to priority categories 1 through 6. Subpart C interprets the rules and describes procedures for the allocation and distribution of any plan assets remaining after all benefits in priority categories 1 through 6 have been provided.

(b) *Scope.* This part applies to any non-multiemployer plan covered by Title IV of the Act that submits a Notice of Intent to Terminate, or for which PBGC commences an action to terminate the plan under section 4042 of the Act, on or after the effective date of each subpart.

3. Section 2618.2 is amended to add the following definitions, each to be inserted in alphabetical order among the definitions now in § 2618.2:

§ 2618.2 Definitions.

* * * * *

"Pool of eligible participants and beneficiaries" means—

(a) For a contributory plan that provides for reversion of residual assets to the employer, those individuals entitled to benefits in priority category 2, determined as of the date plan assets are to be distributed; and

(b) For any plan that does not provide for reversion of residual assets to the employer, those individuals entitled to benefits in priority categories 2 through 6, determined as of the date plan assets are to be distributed.

* * * * *

"Residual assets" means the plan assets remaining after all liabilities of the plan to participants and their beneficiaries for benefits through priority category 6 have been satisfied.

* * * * *

§ 2618.4 [Amended]

4. Section 2618.4 is amended by inserting the words "or distributed" between the words "allocated" and "upon."

5. Part 2618 is amended by adding a new Subpart C after § 2618.17, reading as follows:

Subpart C—Allocation of Residual Assets

§ 2618.30 Allocation to employer.

(a) Except for residual assets that are attributable to employee contributions, as computed under § 2618.31, residual assets in a plan may revert to the employer if—

(1) The plan provides, as of the date of plan termination, for the return of residual assets to the employer; and

(2) The distribution does not violate any provision of law.

(b) If the requirements of paragraph (a) of this section are not satisified, residual assets shalll be allocated among the pool of eligible participants and beneficiaries in accordance with § 2618.32(a).

§ 2618.31 Residual assets attributable to employee contributions.

(a) If a plan provides for employee contributions, any residual assets attributable to those employee contributions, as determined under paragraph (b) or (c) of this section, shall be allocated among the pool of eligible participants and beneficiaries in accordance with § 2618.32(b). In the absence of evidence to the contrary submitted pursuant to paragraphs (c) and (d) of this section, PBGC will assume that a portion of the residual assets is attributable to employee contributions.

(b) Unless an alternative method of computation is approved by PBGC pursuant to paragraphs (c) and (d) of this section, the portion of residual assets attributable to employee contributions shall be computed by multiplying the total residual assets by a fraction—

(1) The numerator of which is the present value of all benefits assigned to priority category 2, pursuant to § 2618.12; and

(2) The denominator of which is the present value of all benefits assigned to priority categories 2 through 6, pursuant to §§ 2618.12 through 2618.16.

(c) Notwithstanding the provisions of paragraph (b) of this section, a plan administrator may use an alternative method for determining the portion of residual assets attributable to employee contributions, subject to written approval by the PBGC as provided in paragraph (d) of this section. Examples of alternatives that generally would be acceptable to the PBGC are as follows:

(1) Determine the amount attributable to employee contributions, based on the difference between employee contributions to the plan, minus withdrawals and distributions, credited with actual earnings for each plan year, and the value of the benefits assigned to priority category 2, pursuant to §§ 2618.10 and 2618.12.

(2) Determine the amount attributable to employee contributions, but not in excess of total residual assets, by multiplying total plan assets by a fraction, the numerator of which is total employee contributions to the plan, minus withdrawals and distributions, and the denominator of which is the sum of such employee contributions and all employer contributions to the plan, with all contributions accumulated at the interest rate or rates used in the plan's actuarial assumptions, and subtracting the total assets allocated to priority category 2, pursuant to §§ 2618.10 and 2618.12.

(3) Determine the amount attributable to employee contributions by multiplying total residual assets by a fraction, the numerator of which is total employee contributions to the plan, minus withdrawals and distributions, and the denominator of which is the sum of such employee contributions and all employer contributions to the plan.

(d) A plan administrator may request approval of an alternative method under paragraph (c) of this section by submitting to the PBGC a description of the alternative method that is proposed and a statement that the residual assets will not be allocated or distributed until written approval is received from PBGC. The request must be submitted no later than 30 days after the date a Notice of Sufficiency is issued under Part 2617 of this chapter, addressed to Office of Program Operations, Code 500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. For purposes of this section, a request is considered submitted on the date on which it is postmarked by the United States Postal Service or, if not so postmarked or if the date is illegible, on the date it is received by the PBGC. Documents received after regular business hours are considered submitted on the next regular business day. In addition, a plan administrator shall submit computations illustrating that the proposed alternative method would equitably determine the amount of the residual attributable to employee contributions and properly allocate it among the pool of eligible participants and beneficiaries.

§ 2618.32 Allocation among the pool of eligible participants and beneficiaries.

(a) *Plans that do not provide for reversion to the employer.* Subject to the provisions of paragraph (c) of this section, in a plan to which § 2618.30(b) applies, the share of each member of the pool of eligible participants and beneficiaries in the residual assets shall be computed by multiplying total residual assets by a fraction—

(1) The numerator of which is the present value of the member's benefits assigned to priority categories 2 through 6, pursuant to §§ 2618.12 through 2618.16; and

(2) The denominator of which is the present value of all benefits assigned to priority categories 2 through 6, pursuant to §§ 2618.12 through 2618.16.

(b) *Contributory plans that provide for reversion to the employer.* Subject to the provisions of paragraph (c) of this section, the share of each member of the pool of eligible participants and beneficiaries in the residual assets in a contributory plan that provides for reversion to the employer shall be computed by multiplying the residual assets allocable to the pool of eligible participants and beneficiaries, as computed under § 2618.31(b) or (c), by a fraction—

(1) The numerator of which is the present value of the member's benefits assigned to priority category 2, pursuant to § 2618.12, or the member's contribution remaining in the plan if § 2618.31(c)(3) applies; and

(2) The denominator of which is the present value of all benefits assigned to priority category 2, pursuant to § 2618.12, or all members' contributions remaining in the plan if § 2618.31(c)(3) applies.

(c) Any amount allocated to a member under paragraph (a) or (b) of this section is subject to allocation or reallocation by the plan administrator or the Secretary of the Treasury to the extent that the allocation would result in disqualification of the plan or discrimination prohibited by the Code and regulations and rules issued thereunder. The plan administrator shall notify the PBGC, in writing, within 30 days of any reallocation and shall file with PBGC the revised distribution information as part of the information to be filed under Part 2617 of this chapter. A previously issued Notice of Sufficiency will not be affected by the reallocation and the revised distribution.

Effective date. November 9, 1981.

Raymond J. Donovan,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this Notice of Proposed Rulemaking.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 81-29309 Filed 10-7-81; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program; Informal Conference on Status

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

ACTION: Notice of informal conference.

SUMMARY: On January 19, 1981, the Secretary of the Interior approved Oklahoma's program to administer and enforce provisions of the Surface Mining Control and Reclamation Act (SMCRA) and the permanent regulatory program rules contained in 30 CFR Chapter VII (*See* 46 FR 4902–4911). On September 10, 1981, the Director, OSM, notified the Oklahoma Department of Mines that OSM had reason to believe that Oklahoma may not be able to administer, implement, maintain or enforce its approved program for the reasons discussed below under "SUPPLEMENTAL INFORMATION." (*See* Administrative Record No. OK–317.)

Under the provisions of 30 CFR 733.12(c), the Director may hold an informal conference to discuss the facts surrounding the Director's notification if such an informal conference is requested by the State. By letter dated September 21, 1981, the Oklahoma Department of Mines has requested that the Director hold an informal conference (*See* Administrative Record No. OK–318). Accordingly, the Director hereby notifies Oklahoma and the public that OSM will hold an informal conference on October 14, 1981, at the address shown below under "ADDRESSES." All interested persons may attend the informal conference.

DATE: OSM has scheduled an informal conference on October 14, 1981, to be held at the address below.

ADDRESSES: The informal conference will be held on October 14, 1981, beginning at 1:00 p.m. at: Oklahoma Department of Mines, Conference Room, 4040 N. Lincoln, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859.

Copies of Administrative Record documents referenced in this notice are available for public inspection and copying during normal business hours at:

Office of Surface Mining, Administrative Record, Room 153, Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343-4728
Office of Surface Mining, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374-3920
Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone (405) 521-3859

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Acting Assistant Director, Program Operations and Inspection, Office of Surface Mining, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343-4225.

SUPPLEMENTARY INFORMATION: On February 28, 1980, Oklahoma submitted a proposed program to regulate surface coal exploration, mining and reclamation within the State in accordance with Section 503 of SMCRA. The Secretary reviewed the State's submission, provided the public an opportunity to review it, and gave it his partial approval on October 10, 1980 (45 FR 67361-67372). Oklahoma resubmitted its program on December 8, 1980. The Secretary reviewed and invited public comment on those program elements that were not approved in his initial decision.

The Secretary conditionally approved Oklahoma's program on January 19, 1981 (46 FR 4902-4911), whereby primacy was granted to the State. In the Federal Register notice announcing his decision, the Secretary stated that his conditional approval was made with the understanding that implementation would begin with the lifting of a court injunction issued on January 9, 1981. The court injunction barred the State from enforcing its program. At the same time, the Court also ordered Oklahoma to continue to enforce the interim program established in Section 502 of SMCRA, 30 U.S.C. 1252. [A detailed discussion on the facts surrounding the injunction can be found in the Secretary's January 19, 1981, decision notice under the heading "State Court Litigation" at 46 FR 4910. Also, a copy of the Court injunction is available for review in OSM's Administrative Record. *See* Administrative Record No. OK-304.]

On February 12, 1981, under the provisions of the Oklahoma Administrative Procedures Act, the Oklahoma Legislature rescinded the State's permanent program regulations. By letter dated February 23, 1981, the Oklahoma Department of Mines informed OSM of the Legislature's action (*See* Administrative Record No. OK-300). On July 20, 1981, the Oklahoma County District Court lifted the injunction restraining the Department of Mines from implementing its program and dismissed the case on the grounds that as a result of the action of the State Legislature the basis for the suit was moot.

The Director now has reason to believe that Oklahoma may no longer be able to implement its permanent program due to the State Legislature's rescission of Oklahoma's surface mining regulations. The Director also has reason to believe that with the vacating of the injunction, Section 503(d) of SMCRA which prohibits the imposition of a Federal program by OSM is no longer applicable. Thus, the Director now wishes to discuss with Oklahoma how the State plans to implement, enforce or maintain its program, as required by Section 504(a)(3) of SMCRA.

In situations where a State may not be able to implement its approved program, the procedures set forth in 30 CFR 733.12(b) apply. This provision requires the Director to notify the State regulatory authority in writing and to indicate which portions of the program the Director believes are not being effectively implemented, administered, maintained or enforced, to state the reasons for such belief, and to specify a time period for the State regulatory authority to accomplish remedial actions. As mentioned earlier, the Director made his written notification to the Oklahoma Department of Mines on September 10, 1981 (*See* Administrative Record No. OK-317).

Section 733.12(c) of 30 CFR requires, in part, that the Director provide the State regulatory authority an opportunity for an informal conference within 15 days of receipt of the Director's written notification. On September 25, 1981, the Oklahoma Department of Mines requested the Director to hold such an informal conference (*See* Administrative Record No. OK-318).

The Director has agreed to Oklahoma's request, and hereby gives public notice of the informal conference for all persons wishing to attend. The date, time and location of the informal conference are identified above under the "Dates" and "Addresses" sections of this notice. The Director is notifying Oklahoma on the details of the informal conference by letter. A copy of the letter will be placed in the Administrative Record shortly.

Conference Rules

The informal conference is an opportunity for the Director to discuss the status of the implementation of Oklahoma's program with Oklahoma officials.

Because the conference will be informal, no testimony from the public will be taken nor will any transcript of the meeting be kept. However, persons wishing to attend the informal conference will be permitted to do so. Additionally, OSM will place notes of the informal conference in the Administrative Record for public review.

Other Information

In Oklahoma's letter requesting the informal conference, the Oklahoma Department of Mines also requested that the Secretary extend the deadlines for Oklahoma to meet the four conditions of the Secretary's approval. OSM is acting on Oklahoma's request by proposing a rule to provide such an extension. This action will be announced in a separate Federal Register notice.

Dated: October 5, 1981.

Dean Hunt,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 81-29295 Filed 10-7-81; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 162

[CGD 77-028]

Anchorage Grounds, Mississippi River Below Baton Rouge, La., Including South and Southwest Passes

AGENCY: Coast Guard, DOT.

ACTION: Final rule/interim final rule.

SUMMARY: This rule amends the anchorage grounds regulations for the Lower Mississippi River. These amendments are needed because the increased use by vessels has resulted in overcrowding. These changes incorporate anchorages previously established on a temporary basis, reduce restrictions on the use of

anchorages, and should facilitate vessel operation in the area.

The regulations in § 110.195 are all final rules except for paragraphs (a)(24) through (a)(26). The exceptions deal with the Lower, Middle and Upper Baton Rouge Anchorage area. They are being issued as interim final rules subject to further comment and changes where necessary.

The regulation in § 162.80 paragraph (b) which deals with mooring on the Mississippi River below Baton Rouge, La., including South and Southwest Passes, is also being issued as an interim final rule subject to further comment and changes where necessary.

DATES: (1) *Effective Date:* These rules become effective on November 9, 1981.

(2) *Comment Closing Date.* Comments on the Interim final rules may be submitted on or before November 23, 1981.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44) (CGD 77-028), U.S. Coast Guard, Washington, D.C. 20593. The comments will be available for inspection and copying between the hours of 7 a.m. and 5 p.m., Monday through Thursday, except holidays, at the Marine Safety Council (G-CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel W. Ziegfeld, Project Manager, Office of Marine Environment and Systems (G-WWM/TP11), Department of Transportation, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 755-6146.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Coast Guard published a notice of proposed rulemaking (43 FR 59521) concerning these amendments. Subsequently, two correction documents were published, one on January 12, 1979 (44 FR 2606), and another on February 5, 1979 (44 FR 6956). Due to the comment period extending over the Christmas Holidays, the comment period was initially extended until March 5, 1979 (44 FR 8902). During the extended comment period, two individuals requested that a public hearing be held on the proposal. Accordingly, a supplemental notice on July 16, 1979, (44 FR 41245) scheduled a public hearing for August 15, 1979 at New Orleans, LA and reopened the comment period until August 30, 1979.

Drafting Information

The principal persons involved in drafting this rule are: Mr. Daniel W. Ziegfeld, Project Manager, Office of Marine Environment and Systems, and Lieutenant Collin LAU, Project Attorney, Office of the Chief Counsel.

Discussion of Comments Received

Thirty-six comments were received in response to: the notice of proposed rulemaking; the subsequent corrections to this notice; and the public hearing which was held.

Two commenters encouraged the use of more visible markings to assist mariners in fixing their position within a designated anchorage. Additional funds have been requested to upgrade the markings of all anchorage grounds on the Lower Mississippi River.

A comment recommended that all cardinal references to the side of the river be deleted. The cardinal references have been deleted and replaced by the terms "left descending bank" or "right descending bank." These terms are the only side differentiation terms normally used by industry or government on the Lower Mississippi River.

Three commenters requested that the Coast Guard prohibit vessels from anchoring or conducting cargo transfer operations near populated areas to eliminate the possibility of air and noise pollution. It would be inappropriate to attempt to regulate these matters in conjunction with anchorage regulations. Air and noise pollution are subject to other federal, state, and local regulations. The statutory authority, 33 U.S.C. 471, under which the Coast Guard establishes anchorages is primarily concerned with the safety of navigation. Accordingly, the Coast Guard cannot accommodate these requests. However, a note has been added to paragraph (c)(6) pointing out the possibility of independent restrictions pertaining to the use of anchorage areas.

Four comments requested clarification of the anchorage grounds description. In response, a clause has been added in the final rule stating that all anchorage widths are measured from the average low water plane (ALWP).

Several commenters requested that vessels carrying cargoes of particular hazard, as defined in 33 CFR 126.10 or cargoes of petroleum products in bulk, be prohibited from entering various anchorage areas. At present, there are no incidents on record which warrant this type of restriction. The Captain of the Port will monitor movement of this cargo to ensure the continued safety of vessels in these anchorages. As stated in paragraph (c)(8), the New Orleans General Anchorage and Quarantine Anchorage will remain areas where permission from the Captain of the Port must be obtained before vessels carrying these cargoes may enter.

Two commenters felt that elimination of the anchorage in the Destrehan area, 121.1 A.H.P. to 121.4 A.H.P. was unjustified. The Destrehan anchorage was eliminated due to its immediate proximity to the new I-410 bridge over the Mississippi River. Ships anchored or maneuvering within this anchorage area would present an unacceptable hazard to the bridge and to vessels planning to navigate the eastbank secondary span of the bridge.

Specific Comments on § 110.195:

1. (a)(2) [same in Final Rule]:

Two comments concerned Boothville Anchorage (a)(2). One requested that the original size of the anchorage, which had its upper limit at mile 18.5 A.H.P., be maintained. In response to this comment, the Coast Guard has expanded the upper limit of the proposed anchorage one-tenth of a mile. This still retains a distance of one-tenth of a mile between the anchorage area and a pipeline. The other comment requested that this area be made a temporary anchorage only to be used when the Pilottown Anchorage (a)(1) is filled to capacity, and only if enlargement and deeping of the Pilottown Anchorage occurs. Since the Pilottown Anchorage has not been enlarged at this time, it is felt that this request cannot be accommodated.

2. (a)(9) [deleted in Final Rule]:

The Augusta Anchorage was deleted because vessels anchored conventionally in this anchorage frequently "tailed-out" into the navigation channel. This created a significant physical obstruction and visibility hazard. Further, the primary user is in the final stages of obtaining permits for mid-stream moorings.

3. (a)(15) [(a)(14) in Final Rule]:

One commenter requested that Kenner Bend Anchorage, which is suitable for cargo transfer, be enlarged to extend from mile 115.1 to mile 115.6 A.H.P. The Coast Guard has agreed to this; thus, the anchorage area has been enlarged 0.2 miles.

4. (a)(17) [deleted in Final Rule]:

Three comments were received objecting to the establishment of the St. Rose Anchorage (a)(17). These comments stated that vessels using this anchorage would seriously reduce the visibility of vessels transiting the point of a bend in an area which is highly congested. Further, there are two existing docks and one existing barge dock within the proposed anchorage. In view of the comments received, this proposed anchorage has been deleted.

5. (a)(18) [(a)(16) in Final Rule]:

One commenter recommended changing the title of this anchorage from "Cargo Transfer" to "Bonnet Carre Anchorage." Since "Bonnet Carre" is the customary title utilized by the mariner, the Coast Guard has adopted this recommendation.

6. (a)(19) [(a)(17) in Final Rule]:

The title of this anchorage has been revised by deleting "Special Purpose" since the anchorage restrictions in the proposed rule have been deleted (See DISCUSSION OF COMMENTS, item 10).

One commenter recommended that the La Place anchorage be shortened by 0.4 miles to extend only from mile 134.7 to mile 135.0 above Head of Passes. A permit for a barge fleet which overlaps the previous temporary La Place anchorage between miles 134.3 and 134.7 was approved without objection. The Captain of the Port has subsequently determined that during certain conditions, such as low water, the concurrent location of the barge fleet and anchorage would be unsafe. That portion of the anchorage (134.3 to 134.7) mile has therefore not been made permanent, however it may be established as a temporary anchorage by the District Commander, conditions permitting, with the recommendation of the Captain of the Port (COTP).

7. (a)(26), (27), (28) [(a)(24), (25), (26) in Final Rule]:

Two commenters reported a problem with the proposed Lower Baton Rouge Anchorage (a)(26), contending that vessels in this anchorage represent a hazard to vessels turning upstream from the Port Allen Locks. Two commenters objected to the proposed location of the Upper Baton Rouge Anchorage (a)(28) between mile 230.6 and 231.4 A.H.P. because of its close proximity to the Exxon Terminal. The Lower, Middle and Upper Baton Rouge Anchorages were incorrectly described in the notice of proposed rulemaking of December 21, 1978 (43 FR 59521). In the NPRM, they were described as areas off the left descending bank. They should have been described as areas off the right descending bank. Because it is desirable to have these anchorages established as part of this rulemaking, these anchorages are being published as interim final rules subject to additional comments. Thus, new comments regarding these anchorages are requested and should be sent to the above address.

8. (c)(6)[same in Final Rule]:

Twenty-five commenters addressed the provisions of proposed paragraph (c)(6) that would have prohibited the transfer of cargo in anchorages unless permission was obtained from the Captain of the Port. The commenters stated that this provision would effectively eliminate mid-stream transfers of cargo on the lower Mississippi. The commenters were primarily concerned with the lack of criteria to guide the COTP, the problems involved with scheduling transfers on short notice, and the potential overcrowding of the Cargo Transfer Anchorage (Bonnet Carre). Numerous commenters also pointed out the lack of any navigational accidents attributable to the mid-stream handling of cargo. The intent of the provision was to insure that the COTP is aware of operations conducted within the anchorages, not to prohibit all mid-stream transfers per se. The paragraph has been revised to require only notification to the COTP prior to and upon completion of cargo transfer operations in the anchorages. Within the General and Quarantine Anchorages, transfer operations are prohibited due to their proximity to New Orleans where anchorage space is in particular demand.

9. (c)(8) [deleted in Final Rule]:

One commenter objected to paragraph (c)(8), stating that a limit on the length of time a vessel may anchor in the Wills Point Anchorage or the Belle Chasse Anchorage would be counterproductive. The commenter stated that such a restriction will result in vessels avoiding use of these two anchorages, thus causing overcrowding in the others. Since this is contrary to the purpose of these regulations, the Coast Guard has deleted this paragraph.

10. (c)(12) [deleted in Final Rule]:

One commenter expressed concerns relating to the restrictions proposed for the La Place Anchorage. The commenter indicated that with the increase in the number of vessels calling in this reach of the river and the reduction in size of two anchorages above this area, the La Place Anchorage should be available for use by all vessels. The commenter felt that the provision requiring a pilot to remain on board an anchored vessel would make use of the anchorage economically impractical and result in vessels avoiding use of the area. In response to these comments, the Coast Guard has deleted this paragraph to insure that this prime anchorage area is utilized to the maximum extent possible.

11. After publication of these proposed rules, it was noted that an existing regulation (33 CFR 110.195(b)(2), which addresses mooring requirements on the Mississippi, was inadvertently excluded from the proposal. Since breakaway barges due to improper mooring constitutes a severe hazard to Mississippi River navigation, it is considered necessary to retain that regulation specifially addressing mooring. The Coast Guard also considers it appropriate to relocate the existing regulation in 33 CFR 110.195(b)(2) to 33 CFR 162.80(b). However, because the notice of proposed rulemaking of December 21, 1978 (43 FR 5921) stated that 33 CFR 110.195(b)(2) was to be deleted, the Coast Guard is publishing the new 33 CFR 162.80(b) and interim final rule subject to additional comments. New comments regarding this rule are requested and should be sent to the above address.

The Corps of Engineers in 1979 constructed the Bel Air Revetment from mile 60.0 to 65.5 LDB, LMR, AHOP. The Bel Air Revetment overlaps the proposed Will's Point Anchorage by one-tenth of a mile. Proposed paragraph (c)(5) of this rule prohibits vessels anchoring over revetted banks. Therefore, for the sake of consistency, the Coast Guard has shifted Will's Point Anchorage upriver one-tenth of a mile.

12. Minor editorial changes have been made to the New Orleans General Anchorage and paragraph (c)(5) of the proposed rule for the sake of clarity.

Regulatory Impact Analysis

The proposed regulations have been evaluated under Executive Order 12291 and the Department of Transportation Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations," dated May 22, 1980, and have been determined to be neither significant or major.

In the Lower Mississippi River Area, there are approximately 8,450 vessel arrivals and 22,120 vessel movements yearly. That is, approximately 23 vessels arrive in port and approximately 60 vessels leave or move to different areas to transport cargo daily.

About 60 vessel anchorage spaces are required daily to accommodate the flux of vessel traffic. Currently, there are only 23 permanently established anchorage spaces. Since 1971, the Coast Guard has coped with the excess demand of anchorage spaces by the temporary establishment of 37 anchorage spaces in various anchorages. This rule will make permanent anchorages already established as temporary anchorages. The permanency of these anchorages will aid users of the Lower Mississippi in planning voyages. There will be no cost or price increases and the rules will not affect employment, investment, productivity, or innovations.

In consideration of the foregoing, Chapter I of Title 33, Code of Federal Regulations is amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. By revising § 110.195 to read as follows:

§ 110.195 Mississippi River below Baton Rouge, La., including South and Southwest Passes.

(a) *The Anchorage Grounds.* Unless otherwise specified, all anchorage widths are measured from the average low water plane (ALWP).

(1) *Pilottown Anchorage.* An area 5.2 miles in length along the right descending bank of the river, 1,600 feet wide, extending from mile 1.5 to mile 6.7 above Head of Passes.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(2) *Boothville Anchorage.* An area 6.3 miles in length along the right descending bank of the river, 1,000 feet wide extending from mile 12.2 to mile 18.5 above Head of Passes.

(3) *Ostrica Anchorage.* An area 0.9 mile in length along the right descending bank of the river, 800 feet wide, extending from mile 23.5 to mile 24.4 above Head of Passes.

(4) *Port Sulphur Anchorage.* An area 2.2 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 37.5 to mile 39.7 above Head of Passes.

(5) *Davant Anchorage.* An area one mile in length along the left descending bank of the river, 800 feet wide, extending from mile 53.5 to mile 54.5 above Head of Passes.

(6) *Alliance Anchorage.* An area 2.2 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 63.6 to mile 65.8 above Head of Passes.

(7) *Wills Point Anchorage.* An area 1.1 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 66.5 to mile 67.6 above Head of Passes.

(8) *Cedar Grove Anchorage.* An area 0.6 mile in length along the right descending bank of the river, 700 feet wide, extending from mile 70.6 to mile 71.2 above Head of Passes.

(9) *Belle Chasse Anchorage.* An area 2.1 miles in length along the right descending bank of the river, 1,000 feet wide, extending from mile 73.1 to mile 75.2 above Head of Passes.

(10) *Lower 12 Mile Point Anchorage.* An area 2.3 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 78.5 to mile 80.8 above Head of Passes.

(11) *Lower 9 Mile Point Anchorage.* An area 2.3 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 82.7 to mile 85.0 above Head of Passes.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(12) *New Orleans General Anchorage.* An area 1.6 miles in length along the right descending bank of the river extending from mile 89.3 to mile 90.9 above Head of Passes. From mile 89.3 to mile 90.5 above Head of Passes, the area has a width of 550 feet measured from the riverward edge of the Cutoff Revetment. The riverward edge of the Cutoff Revetement is 400 feet from the average low water plane. From mile 90.5 to mile 90.9 above Head of Passes, the area has width of 800 feet measured from the shore.

(13) *Quarantine Anchorage.* An area 0.7 mile in length along the right descending bank of the river, 800 feet wide, extending from mile 90.9 to mile 91.6 above Head of Passes.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(14) *Kenner Bend Anchorage.* An area 0.5 mile in length along the right descending bank of the river, 700 feet wide, extending from mile 115.1 to mile 115.6 above Head of Passes.

(15) *Ama Anchorage.* An area 1.5 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 115.7 to mile 117.2 above Head of Passes.

(16) *Bonnet Carre Anchorage.* An area 1.5 miles in length along the left descending bank of the river, 600 feet wide, extending from mile 127.3 to mile 128.8 above Head of Passes. This area is located adjacent to the river end of the Bonnet Carre Spillway.

(17) *La Place Anchorage.* An area 0.3 mile in length along the left descending bank of the river, 600 feet wide, extending from mile 134.7 to mile 135.0 above Head of Passes.

(18) *Reserve Anchorage.* An area 0.5 mile in length along the right descending bank of the river, 800 feet wide, extending from mile 137.0 to mile 137.5 above Head of Passes.

(19) *Lower Grand View Reach Anchorage.* An area 0.6 mile in length along the left descending bank of the river, 700 feet wide, extending from mile 146.5 to mile 147.1 above Head of Passes.

(20) *Upper Grand View Reach Anchorage.* An area 1.1 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 147.7 to mile 148.8 above Head of Passes.

(21) *Lower Sunshine Anchorage.* An area 0.9 mile in length along the left descending bank of the river, 800 feet wide, extending from mile 165.0 to mile 165.9 above Head of Passes.

(22) *Upper Sunshine Anchorage.* An area 0.7 mile in length along the left descending bank of the river, 800 feet wide, extending from mile 166.3 to mile 167.0 above Head of Passes.

(23) *Baton Rouge General Anchorage.* An area 1.5 miles in length along the right descending bank of the river, 1,400 feet wide, extending from mile 225.8 to mile 227.3 above Head of Passes.

Caution: There are two wrecks located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(24) *Lower Baton Rouge Anchorage.* An area 0.5 mile in length near mid-channel between mile 228.5 to mile 229.0 above Head of Passes with the west limit 1100 feet off the right descending bank and having the width of 700 feet at both upper and lower limits.

(25) *Middle Baton Rouge Anchorage.* An area 0.2 mile in length near mid-channel between mile 229.6 to mile 229.8 above Head of Passes with the west limit 1100 feet off the right descending bank and having a width of 700 feet at both upper and lower limits.

(26) *Upper Baton Rouge Anchorage.* An area 0.4 mile in length near mid-channel between mile 230.6 and mile 231.0 above Head of Passes with the west limit 1100 feet off the right descending bank of the Mississippi River and having a width of 1075 feet at its upper limit and 1200 at its lower limit.

(b) *Temporary Anchorages.* (1) Temporary anchorages are non-permanent anchorages established by the Commander, Eighth Coast Guard District to provide additional anchorage space. Establishment of temporary anchorages is based on recommendations by the Captain of the Port.

(2) Each vessel using temporary anchorages shall anchor as prescribed by the Captain of the Port.

(3) Establishment of each temporary anchorage and any requirement for the temporary anchorage will be published in the Local Notice to Mariners.

(4) Each person who has notice of any requirement prescribed for a temporary anchorage shall comply with that requirement.

(c) *The Regulations.* (1) Anchoring is prohibited outside of established anchorages except in cases of emergency. In an emergency, if it becomes necessary to anchor a vessel outside an established anchorage, the vessels shall be anchored so that it does not interfere with or endanger any facility or other vessel. The master or person in charge of the vessel shall notify the Captain of the Port of the location of the emergency anchoring by the most expeditious means and shall move the vessel as soon as the emergency is over.

(2) In an emergency, if it becomes necessary to anchor a vessel in South Pass or Southwest Pass, the vessel shall be positioned as close to the left descending bank as possible.

(3) No vessel may be anchored unless it maintains a bridge watch, guards and answers Channel 16 FM (or the appropriate VTS New Orleans sector frequency), maintains an accurate position plot and can take appropriate action to ensure the safety of the vessel, structure, and other vessels.

(4) When anchoring individually, or in fleets, vessels shall be anchored with sufficient anchors, or secured with sufficient lines, to ensure their remaining in place and withstanding the actions of winds, currents and the suction of passing vessels.

(5) No vessel may be anchored over revetted banks of the river or within any cable or pipeline area. The locations of revetted areas and cable and pipeline areas may be obtained from the District Engineer, Corps of Engineers, New Orleans, LA.

(6) The intention to transfer any cargo while in an anchorage shall be reported to the Captain of the Port, giving particulars as to name of ships involved, quantity and type of cargo, and expected duration of the operation. The Captain of the Port shall be notified upon completion of operations. Cargo transfer operations are not permitted in the New Orleans General or Quarantine Anchorages. Bunkering and similar operations related to ship's stores are exempt from reporting requirements.

Note.—Activities conducted within a designated anchorage (e.g. cargo transfer, tank cleaning, stack blowing, etc.) may be restricted by other Federal, State or local regulations. Owners, or persons in charge of any vessel should consider all safety and/or environmental regulations prior to engaging in any activity within designated anchorages.

(7) Nothing in this section relieves the owner or person in charge of any vessel from the penalties for obstructing or interfering with navigation or navigational aids or for failing to comply with the navigation laws for lights, day shapes, or fog signals and any other applicable laws and regulations.

(8) Vessels carrying cargoes of particular hazard as defined in 33 CFR 126.10 or cargoes of petroleum products in bulk may not be anchored in the New Orleans General Anchorage (a)(12) or Quarantine Anchorage (a)(13) without permission from the Captain of the Port.

(9) Except when required by the United States Public Health Service for quarantine inspection, the Quarantine Anchorage, (a)(13), may be used as a general anchorage.

(10) When the Bonnet Carre Spillway is open, no vessel may be anchored in the Bonnet Carre Anchorage (a)(16).

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

2. By adding § 162.80(b) to read as follows:

§ 162.80 Mississippi River Below Mouth of Ohio River, Including South and Southwest Passes.

* * * * *

(b) *Mooring on Mississippi River below Baton Rouge, La., including South and Southwest Passes.* (1) When tied up individually or in fleets, vessels shall be moored with sufficient lines and shore fastenings to insure their remaining in place and withstanding the action of winds, currents and the suction of passing vessels.

(Sec. 7, 38 Stat. 1053, as amended, (33 U.S.C. 471); Sec. 6(g)(1)(A) 80 Stat 937, (49 U.S.C. 1655(g)(1)(A); Sec. 12, 92 Stat. 1471, (33 U.S.C. 1231); 49 CFR 1.46 (c)(1) and (n)(4))

Dated: September 14, 1981.

J. W. Kime,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 81-29361 Filed 10-7-81; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD5 80-20R]

Drawbridge Operation Regulations; Cambridge Harbor, Md.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Maryland State Highway Administration, the Coast Guard is changing the regulations governing operation of the drawbridge on Maryland State Highway 342 across Cambridge Harbor, mile 0.1, at Cambridge, Maryland, by extending the midday period when the draw need not be opened for the passage of vessels, and deleting that portion of the regulations providing for the departure of passenger trains on the Pennsylvania Railroad at Cambridge. These changes are being made because of an increase in vehicular traffic congestion during the period of change and the fact that passenger trains no longer serve Cambridge. This action will accommodate the needs of vehicular traffic while still providing for the reasonable needs of navigation. Additionally, several other changes are being made which are editorial in nature.

EFFECTIVE DATE: This amendment becomes effective on November 7, 1981.

FOR FURTHER INFORMATION CONTACT: Wayne J. Creed, Bridge Administrator, telephone (804) 398-6222.

SUPPLEMENTARY INFORMATION: On January 12, 1981, the Coast Guard published a proposed rule (46 FR 2652) concerning this amendment. The Commander, Fifth Coast Guard District, also published these proposals in Public Notice (5-476) dated January 22, 1981, which was included in Local Notice to Mariners No. 4 dated January 27, 1981. Interested persons were given until February 11, 1981, and February 23, 1981, respectively, to submit comments.

This regulation has been reviewed under the provisions of E.O. 12291 and has been determined not to be a major rule. In addition, the regulation is considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation was not conducted because the expected economic impact is so minimal as to not warrant an evaluation. Anticipated benefits to be derived are mainly intangible and include savings in time and increased convenience for motorists, and less wear and tear on the draw machinery of the bridge. In accordance with Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this regulation will not have a significant economic impact on a substantial number of small entities. These conclusions are supported below in the Discussion.

Drafting Information

The principal persons involved in drafting this rule are Ann B. Deaton, Project Manager, Fifth Coast Guard District, Aids to Navigation Branch, and LCDR Mark P. Troseth, Project Attorney, Assistant Legal Officer, Fifth Coast Guard District.

Discussion

No comments were received in response to the proposed rule published in the **Federal Register** on January 12, 1981, or to these proposals published in Coast Guard Public Notice (5-476) on January 22, 1981.

There are no known businesses that will be significantly impacted by the change, since those commercial marine interests operating in the area do not normally require a bridge opening between 12 noon and 1 p.m. The only boats that may be affected by the hour-long closure period are pleasure boats; however, the time delay would be of short duration, and any resultant fuel consumption would not be considered significant.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.270 to read as follows:

§ 117.270 Cambridge Harbor, MD; bridge.

(a) The draw shall be opened on signal except that:

(1) From 8 p.m. to 6 a.m., every day, and from 12 noon to 1 p.m., Monday through Friday, the draw need not be opened for the passage of vessels.

(b) A copy of the regulations in this section shall be posted in a conspicuous place on both the upstream and downstream sides of the bridge.

(Sec. 5, 28 Stat. 362, as amended, (33 U.S.C. 499); sec. 6(g)(2), Pub. L. 89-670, 80 Stat. 937, as amended (49 U.S.C. 1655)(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: August 27, 1981.

John D. Costello,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 81-29316 Filed 10-7-81; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 1928-7]

Air Programs; Approval of Revision of Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA announces its approval of a revision of the Maryland State Implementation Plan resulting from actions by the Maryland Legislature to establish consistency between the State ambient air standards and the National Ambient Air Quality Standards. The revision also includes a new ambient air quality standard for lead.

EFFECTIVE DATE: November 9, 1981.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices.

U.S. Environmental Protection Agency, Region III, Curtis Building, 10th Floor, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Patricia Sheridan

State of Maryland, Air Management Administration, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201, Attn: Mr. George Ferreri

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW. (Waterside Mall), Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Patricia Sheridan, Air Media & Energy Branch (3AH11), U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone (215) 597-8176.

SUPPLEMENTARY INFORMATION: On October 24, 1979, the State of Maryland submitted amendments to its State Implementation Plan (SIP) for Total Suspended Particulate Matter, Sulfur Dioxide, Nitrogen Dioxide, and other miscellaneous changes. The amendments are a result of action by the Maryland Legislature removing the authority of the Secretary of Health and Mental Hygiene to establish more restrictive standards for pollutants for which National Ambient Air Quality Standards already exist. In addition, existing regulations were required to be amended to be no more restrictive than necessary to attain and maintain ambient air quality standards, provided that there is no conflict with Federal requirements. Also, a new ambient air quality standard for lead was established, and the air quality episode criteria for the ozone alert stage has been changed to be consistent with the current Federal ozone standard.

EPA proposed approval of this revision and solicited comments on May 29, 1981, 46 FR 28871, and on June 16, 1981, 46 FR 31446. The Connecticut Department of Environmental Protection expressed concern for the proposed revision and its impact on the Prevention of Significant Air Quality Deterioration (PSD) increments in its state. However, the demonstration of air quality impacts resulting from this revision indicates that the revised emission limitations will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS) and will not cause substantial degradation of air quality in any other state. All major sources with a potential for impact are required under this SIP revision to remain at present emission levels. Furthermore, the State of Connecticut is approximately 130 miles from the nearest Maryland border, and EPA's approved reference models are only valid out to 50 kilometers from a source. No reference techniques have yet been established for accurately evaluating impacts beyond 50 km. All remaining comments were in favor of the revision.

This revision meets the criteria of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51. In view of this evaluation, the Administrator approves the revision to the Maryland State Implementation Plan as proposed in 46 FR 28871 (1981), and 46 FR 31446 (1981).

Note.—Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. Section 605(b) I certify that the SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(42 U.S.C. 7401-642)

Dated: October 2, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart V—Maryland

1. In § 52.1070 *Identification of Plan*, (c)(50) is added as follows:

§ 52.1070 [Amended]

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(c) The plan revision listed below was submitted on the date specified * * *