The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Barry Levene, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295 (303) 837-3711.

SUPPLEMENTAL INFORMATION: The State of Wyoming has submitted two sets of revisions to the Wyoming State Implementation Plan (SIP). The August 26, 1981, submittal contains (1) changes to the new source permitting regulations, (2) the Wyoming Air Monitoring Plan as required by 40 CFR 58, and (3) changes to the Emergency Episode Contingency Plan. The August 27, 1981, submittal consists of revisions to the Prevention of Significant Deterioration Regulation which eliminate references to designations of Class III areas.

Changes to Permit Requirements

Permit requirements in Section 21 of the Wyoming Air Quality Regulations have been revised to achieve three objectives:

(1) Provide for a self-issuance permit system for portable sources.

(2) Establish a requirement that a permit applicant demonstrate ownership of property as part of a permit application.

(3) Provide the Wyoming Air Quality Division Administrator with the specific authority to determine that a proposed minor source has an insignificant emission rate and air quality impact and thus is exempt from the permit system.

EPA has reviewed these changes and has found them to be consistent with the New Source Review requirements in 40 CFR 51.18. The changes will enable Wyoming to streamline its permitting program with no adverse effect on air quality.

Air Monitoring Program

Subpart C of 40 CFR 58 contains the requirements that states must follow in submitting a SIP revision which describes its air quality monitoring plan. The August 26, 1981, submittal contains Wyoming's Air Quality Monitoring Plan which meets the requirements of 40 CFR 58.

Emergency Episode Contingency Plan

This plan is being revised to remove references to Coefficient of Haze measurements as a basis for determining emergency episodes. This measurement method is not a universally accepted technique. Measurement of total suspended particulate is satisfactory for emergency episodes.

Prevention of Significant Deterioration Program Revisions

On August 27, 1981, the State of Wyoming submitted revisions to its Air Quality Standards and Regulations which eliminate references to the possibility of designating areas of the State as Class III under its Prevention of Significant Deterioration Program. Federal regulations (40 CFR 51.24) allow states to designate certain areas to Class III. The air quality in such areas would then be allowed to deteriorate a larger incremental amount than other areas but not further than the National Ambient Air Quality Standards (NAAQS). The intent is to allow for substantial increases in industrial growth in these specified areas.

The State of Wyoming has determined that the preservation of high quality clean air is of prime importance to the citizens of Wyoming and that degradation of this resource would have a detrimental impact on the quality of life for Wyoming residents and the tourist industry. The State has also determined that industrial development is proceeding without the need to designate Class III areas and that clean air is easier to maintain than to restore. Elimination of Class III areas will allow the State to better manage its clean air resource. This provision is more stringent than federal requirements.

EPA today is approving these revisions. The public is advised that this action will be effective April 12, 1982. However, if we receive written notice by March 11, 1982 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw this final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), I hereby certify that this action 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.

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 it imposes no new requirements. It only approves requirements adopted by the State.

(Sec. 110, Clean Air Act (42 U.S.C. 7410))

Dated: January 18, 1982.

Anne M. Gorsuch,

Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

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

(1) In § 52.2620, paragraph (c)(13) is added as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(13) On August 26, 1981 and August 27, 1981, Wyoming submitted revisions to the requirements for Prevention of Significant Deterioration, the Air Quality Monitoring Plan, revisions to the Emergency Episode Contingency Plan, and revisions to stationary source permitting regulations.

[FR Doc. 82-3213-Filed 2-8-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 55

[A-1-FRL-2026-4]

State and Federal Administrative Enforcement of Implementation Plan Requirements After Statutory Deadlines; Delayed Compliance Order for New England Power Company's Salem Harbor Generating Station

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) announces the issuance of an administrative order called a Delayed Compliance Order (DCO) to New England Power Company (NEPCO), allowing generating units 1, 2, and 3 of its Salem Harbor Generating Station, located in Salem, Massachusetts to convert from burning oil to burning coal. The increased particulate emissions caused by coal burning will mean that NEPCO will be unable to comply with certain provisions of the Massachusetts

State Implementation Plan (SIP) until December 31, 1985. Between now and December 31, 1985, NEPCO will be allowed to burn coal despite this noncompliance. During this interim period, however, NEPCO must install the pollution control equipment necessary to achieve final compliance with the Masssachusetts SIP. This DCO sets forth a compliance schedule, emissions limitations, and other requirements of Section 113(d)(5) of the Clean Air Act.

EFFECTIVE DATE: February 9, 1982.

ADDRESSES: Copies of all comments received and EPA's responses to these comments are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, JFK Federal Building, Room 1903, Boston, Massachusetts; and at the Salem Planning Department, One Salem Green, Church Street, Salem, Massachusetts. All reports required under the DCO also will be available for public inspection at EPA Region I.

FOR FURTHER INFORMATION CONTACT: Brian Hennessey at the U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 1903, Boston, Massachusetts 02203 or telephone (617) 223-4448.

SUPPLEMENTARY INFORMATION: On April 15, 1981, NEPCO requested a DCO under Section 113(d)(5) of the Clean Air Act, 42 U.S.C. 7413(d)(5), to enable it to burn coal in generating units 1, 2, and 3 of its Salem Harbor plant in Salem, Massachusetts. These units have a net power output generating capacity of approximately 81, 81, and 148 megawatts respectively when burning coal. NEPCO proposed an immediate conversion from oil to coal burning and stated that this would cause temporary noncompliance at Salem Harbor with the following regulations contained in the EPA-approved Massachusetts SIP:

310 CMR 7.02(8)—limiting particulate emissions to 0.12 pounds per million Btu heat input;

310 CMR 7.05(4)—limiting the ash content of fossil fuels to 9% dry weight (interpreted by the state as measured on a cargo received basis); and

310 CMR 7.06(1)—limiting visible emissions to 20 percent opacity, except up to 40 percent for no more than 6 minutes in any hour.

On July 31, 1981, EPA proposed (46 FR 39175) to issue a DCO to NEPCO, deferring the particulate and VE emission requirements for 43 months after initial burning of coal (or December 31, 1985, whichever is earlier), and the ash content regulation for two months after initial burning of coal (or July 31, 1982, whichever is earlier). EPA's proposal also contained interim pollution control requirements and emission limitations, as well as emissions, ambient air monitoring and reporting requirements. These requirements, as well as EPA's findings on Salem Harbor's eligibility for a DCO, are explained in detail in EPA's proposed rulemaking notice and will not be repeated here.

The comment period on EPA's proposal ran from July 31 to September 24, 1981. A public hearing was held in Salem, Massachusetts on September 2, 1981. Forty-two people testified at the public hearing and/or submitted written comments during the comment period. Of these forty-two commenters, five opposed the proposed DCO, five were neutral, twenty-six favored the proposed DCO, and six favored the DCO but also expressed other concerns. As previously stated, EPA's responses to all the comments submitted are contained in documents which are available for public inspection. Only those comments which address questions posed in EPA's proposed rulemaking notice or which have resulted in substantive changes in EPA's proposal will be discussed in today's notice.

1. *Best Practicable System of Emission Reduction (BPSER)*—NEPCO's original request contained commitments to implement certain upgrading measures and maintenance procedures on the existing electrostatic precipitators (ESPs), coal handling equipment and ash removal system, as well as to evaluate the effectiveness of flue gas conditioning (FGC) on one unit for possible application on all units. NEPCO predicted that these measures would result in emission rates varying from 0.67 to 0.85 pounds per million Btu heat input.

EPA's proposal specified a BPSER emission rate of 0.60 pounds per million Btu heat input for the first four months of burning conforming ash ("new") coal, and a rate thereafter of 0.35 pounds per million Btu heat input. These emission rates were based on projected emissions resulting principally from restoring the ESPs to design condition, installing and operating FGC systems, and installing additional transformer-rectifier (T-R) sets on all three units. However, EPA's proposal did not require the installation and operation of specific controls; rather, EPA proposed to allow NEPCO to select controls to meet the BPSER emission rates, and to submit their selection to EPA for approval prior to coal burning.

One commenter opposed EPA's proposed limits as being too lenient, especially with respect to fine particulates. Another commenter requested that EPA either specify the installation and operation of FGC systems and T-R sets in the Order, or release NEPCO's plan for 30 day public comment prior to any EPA action on the plan. A third commenter, NEPCO, opposed EPA's BPSER limits as being too stringent. During the comment period, NEPCO presented additional data pertaining to the effectiveness of the existing ESPs for controlling particulate emissions resulting from burning the quality coal intended for use at Salem Harbor. NEPCO did not revise its particulate emission estimates. Based on this new information, EPA has revised its estimate of BPSER emission rates of 0.60 and 0.35 pounds per million Btu. Therefore, the emission rates required by the order are 0.60 and 0.45 pounds per million Btu heat input. EPA believes this revision to the proposed limits is reasonable given the uncertainties inherent in this type of engineering estimate of predicting the efficiency of restored ESPs and in estimating the emission benefits of the modifications NEPCO will make to the ESPs.

NEPCO also presented new proposals for BPSER which included installation of FGC on all units, ESP resectionalization, additional upgrading measures on the existing ESPs, performance of ESP gas flow distribution tests, installation of a dry flyash hopper evacuation system, and installation of four new T-R sets with provision for additional T-R installations if FGS proves to be effective. These proposals correspond closely to the control equipment selection upon which EPA based its proposed BPSER emission rates. However, as previously stated, NEPCO did not predict an improvement in particulate control from implementation of these measures; NEPCO prefers to establish a final particulate emission limit after each unit is tested.

Upon consideration of public comment and review of NEPCO's new BPSER proposals, EPA has concluded that the new proposals should be incorporated in the Order. EPA continues to believe that the emission rates contained in the Order are achievable, but that NEPCO is the best judge of the most cost-effective way to achieve these rates. EPA has, therefore, accepted NEPCO's revised plan as described above with two minor modifications. In its revised plan, NEPCO agreed to install FGC systems on all three units. FGC systems from several vendors are available for use at Salem Harbor; FGC effectiveness may vary among the units and systems used. In order to ensure that installation of

FGC has a maximum effect on reducing emissions, EPA is requiring NEPCO to experiment with FGC systems from two vendors and to select, install and operate the more effective system within 6 months of coal burning. In its revised BPSER plan, NEPCO also agreed to perform gas flow distribution tests on two units. The Order requires NEPCO to implement improvements if the tests show that gas flow distribution significantly decreases ESP effectiveness.

2. *Plantwide Emissions Cap or "Bubble"*—EPA's proposal solicited comments on NEPCO's request that EPA impose a total plantwide emission rate as an alternative to specific emission rates for each unit. EPA's proposal further solicited comments on NEPCO's request that such plantwide emission rates be specified in terms of weight of particulates per unit time, and on how such a plantwide emissions cap could be enforced. In addition to NEPCO, four commenters addressed these questions. Two of these commenters supported the concept of a plantwide emissions cap and two opposed it.

NEPCO's comments suggested that EPA implement the plantwide emissions cap by first determining an emission rate in pounds per million Btu's for each unit, then coverting each emission rate to a pounds per hour emission rate assuming full load operation, and finally summing the pounds per hour emission rates for the three units to determine a single pounds per hour plantwide emission rate.

NEPCO suggested that EPA enforce the plantwide emissions cap by first requiring stack tests to determine emission rates as a function of various loads for each unit, next requiring NEPCO to plot graphs of emission rates (expressed in pounds per hour) versus power output (expressed in megawatts) for each unit, then requiring NEPCO to operate the plant such that the sum of the emissions from all units at any given time is less than the plantwide emissions cap, and finally requiring NEPCO to track and record hourly power output correlated with total emissions.

The effect of the plantwide emissions cap as expressed in terms of pounds per hour is to allow pollution credit for reduced load operation. EPA has determined that a plantwide emissions cap is legally permissible in this case. EPA will consider an emissions cap in this case provided the source installs and operates pollution control equipment which satisfies the requirements in the Act for use of the best practicable system of emission reduction. However, at this time, EPA believes that the Salem Harbor units individually are capable of meeting the emission rates contained in today's Order. Therefore, no final action is being taken today on NEPCO's proposal for a plantwide emissions cap. At a future date, EPA may supplement the Order to include such a cap in the event that any of the units fails to demonstrate compliance with the DCO's final emission rates after NEPCO has made all reasonable efforts to comply. Such data will be available for public inspection at the addresses listed above. Currently, EPA is refining the procedures to implement a plantwide emissions cap.

3. *Primary NAAQS for Sulfur Dioxide (SO_2)*—EPA's proposal discussed the potential for violations of the primary NAAQS for SO_2 during the DCO resulting from plume downwash from the three short stacks presently serving units 1, 2, and 3. EPA believes that if an SO_2 problem does presently exist at Salem Harbor, it will be resolved by the end of the DCO period. The permanent coal conversion includes the replacement of the three short stacks with a single taller stack representing good engineering practice, thus eliminating downwash. However, since at the time of proposing the DCO EPA had not required NEPCO to model SO_2 emissions under the tall stack configuration, EPA had no data that would demonstrate NAAQS attainment. One commenter argued persuasively that the public had a right to such a demonstration. EPA therefore required NEPCO to provide this modeling, which NEPCO submitted on December 2, 1981. EPA has reviewed this submission and has performed additional analyses of its own, and has concluded that Salem Harbor will not cause or contribute to a violation of any NAAQS for SO_2 when the tall stack is completed. This modeling, as well as EPA's review, is also available for public inspection.

Additionally, the Massachusetts Department of Environmental Quality Engineering (DEQE), as a condition of their permit to NEPCO allowing the Salem Harbor Plant to burn fuel with a sulfur content up to 1.21 pounds per million Btu heat release potential, has required NEPCO to maintain a supply of low (1%) sulfur oil on site. The DEQE has further required NEPCO to install a telemetry system within the plant to record the ambient SO_2 levels measured at the monitors around the plant. These monitors are required as part of the DCO. If these monitors measure SO_2 concentrations which approach the NAAQS, the DEQE will required NEPCO to convert one or more of its coal burning units to the low sulfur oil until the elevated levels decrease.

4. *Ash Content in Fuel*—NEPCO requested that EPA delay compliance with the Massachusetts 9% (dry weight) coal ash limitation in order to accommodate NEPCO's current contract for coal which specifies a 10% (as received) ash content. NEPCO's experience with this contract shows that occasionaly the coal it receives exceeds 9% ash by dry weight. NEPCO's submissions however show that most of the contracted coal complies with the state's ash regulation. In discussions with NEPCO, EPA had suggested that NEPCO monitor the ash content of coal shipments before delivery, so that lower ash shipments may be sent to Salem Harbor and higher ash shipments to another NEPCO plant. While monitoring and shipping arrangements to accomplish this may pose problems, NEPCO has not shown that these problems are insurmountable. More importantly, NEPCO has not documented that it cannot obtain coal elsewhere which complies with the state regulation.

NEPCO will be permitted to burn the high ash coal currently on-site, but only for a 60 day period. Due to severe space limitations this on-site coal must be disposed of before complying coal can be stored. All coal burned after this 60 day period must conform to the state regulation.

5. *Miscellaneous Testing and Reporting Requirements*—Based on comments received pertaining to the frequency, nature and timeliness of proposed data reporting requirements, EPA has revised its proposal in the following areas:

(a) increased the number of particulate stack tests,

(b) decreased the number of correlations of stack opacity with observations of visible emissions,

(c) accelerated the operation of the ambient monitoring network,

(d) reduced the sampling frequency of certain TSP monitors,

(e) changed the range of operation of the SO_2 monitors,

(f) added a provision for potential future analysis of TSP filters for fine particulates,

(g) extended the ambient data reporting deadlines,

(h) increased the availability of ambient data records to the public,

(i) extended the time for stack testing and installing opactiy monitors.

In addition, EPA made other minor administrative changes to its proposal. These changes are discussed more fully in EPA's responses to public comments.

Therefore, after considering all comments received, the DCO request by the New England Power Company, EPA's findings, and the written concurrence from the Governor of the Commonwealth of Massachusetts, this Order is hereby issued. In addition, this Order is being made effective February 9, 1982.

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

Dated: February 2, 1982.

Anne M. Gorsuch,

Administrator, Environmental Protection Agency.

Before the United States Environmental Protection Agency Region I, John F. Kennedy Federal Building, Boston, MA 02203.

Statutory Authority

This Order is issued under sections 113(d)(5) and 114 of the Clean Air Act [the Act], as amended, 42 U.S.C. 7413(d)(5) and 7414. This Order contains a compliance schedule, interim requirements, monitoring and reporting requirements and other requirements which satisfy the terms of these Sections of the Act. Public notice has been provided under section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1). The Governor of the Commonwealth of Massachusetts has concurred with issuance of this Order.

In consideration of the foregoing, 40 CFR Part 55 is amended as follows:

PART 55—FEDERAL ADMINISTRATIVE ORDERS ISSUED UNDER SECTION 113(d)(5) OF THE CLEAN AIR ACT

Subpart W—Massachusetts

1. By adding § 55.472 to read as follows:

§ 55.472 Federal administrative orders issued under Section 113(d)(5) of the Act.

Findings

The Administrator of EPA (Administrator) makes the following findings:

1. New England Power Company (NEPCO) owns and operates the Salem Harbor Generating Station (Salem Harbor) located in Salem, Massachusetts.

2. Salem Harbor is a major stationary source, having the potential to emit more than 100 tons per year of particulates and sulfur dioxide (SO_2) while using pollution control equipment.

3. Currently, units 1, 2 and 3 at Salem Harbor burn residual oil.

4. On April 3, 1980, the U.S. Department of Energy (DOE) published a proposed order under the Powerplant and Industrial Fuel Use Act (FUA), 42 U.S.C. 8301 *et seq.*, which would prohibit units 1, 2 and 3 from burning oil. On June 10, 1981, DOE published a Notice of Intent to Proceed on the Salem Harbor Prohibition Order (46 FR 30682).

5. A state implementation plan (SIP) to regulate air pollution in Massachusetts has been approved by the Administrator of EPA under Section 110 of the Act, 42 U.S.C. 7410.

6. 310 CMR 7.02(8), which concerns emission limitations, is part of the applicable SIP within the meaning of Section 113(d)(5) of the Act and reads in pertinent part as follows:

> No person owning, leasing, or controlling the operation of any fossil fuel utilization facility shall cause, suffer, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following tables * * * [0.12 lbs. of particulate per million Btu heat input].

7. 310 CMR 7.05(4), which concerns ash content of fuels, is part of the applicable SIP within the meaning of section 113(d)(5) of the Act and reads in pertinent part as follows:

> (b) No person shall cause, suffer, allow or permit the burning in the District [Boston Metropolitan] of any fossil fuel containing an ash content in excess of nine per cent (9%) by dry weight.

8. 310 CMR 7.06(1), which concerns visible emissions, is part of the applicable SIP within the meaning of section 113(d)(5) of the Act and reads in part as follows:

> (a) No person shall cause, suffer, allow, or permit the emission of smoke which has a shade, density, or appearance equal to or greater than No. 1 of the Chart [20%] for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time during the said six minutes shall the shade, density, or appearance be equal to or greater than No. 2 of the Chart. [40%].

9. EPA has determined that units 1, 2 and 3 will be unable to meet the requirements of 310 CMR 7.02(8), 7.05(4) and 7.06(1) if the units convert to coal burning.

10. Salem Harbor is located in the Metropolitan Boston Air Quality Control Region (AQCR). The city of Salem is located within this AQCR and EPA has designated Salem as an area which is attaining the primary national ambient air quality standard (NAAQS) for total suspended particulates (TSP).

11. The Administrator has determined that the emission limits, requirements respecting pollution characteristics of coal and other enforceable measures contained in the following Order are sufficient to assure that the burning of coal at Salem Harbor will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any primary NAAQS for such pollutant.

12. The Administrator also has determined that the compliance schedule in the following Order requires compliance with 310 CMR 7.02(8), 7.05(4) and 7.06(1) as expeditiously as practicable and before December 31, 1985.

13. Furthermore, the Administrator has determined that the interim requirements of the following Order require the best practicable systems of emission reduction (BPSER) to protect the public health and minimize noncompliance with 310 CMR 7.02(8), 7.05(4) and 7.06(1).

Based on the foregoing findings, it is hereby ordered:

I. SIP Limitation

As specified in this Order, units 1, 2 and 3 of the Salem Harbor Generating Station owned by NEPCO shall comply with the interim limitations, compliance schedules, and other enforceable requirements set forth in this Order. The emission limits contained in this Order are authorized only until NEPCO can install the pollution control equipment necessary to achieve compliance with Sections 310 CMR 7.02(8), 7.05(4), and 7.06(1) of the Massachusetts SIP while burning coal at Salem Harbor. These regulations govern particulate emissions, coal ash content and visible emissions, respectively.

As used in this Order, the term "old coal" means the high ash (over 17%) coal on site at Salem Harbor before April 15, 1981, when NEPCO petitioned EPA to allow coal burning at the plant. "New coal" as used in this Order, refers to coal which complies with the 9% ash limit of 310 CMR 7.05(4) (interpreted by the state as measured on a cargo received basis).

II. Interim Requirements

EPA has determined that the following interim requirements ensure that the burning of old or new coal in units 1, 2 and 3 will not cause or contribute to violations of the primary NAAQS for TSP:

A. Preliminary and General Measures

1. Prior to the burning of any coal at Salem Harbor, NEPCO shall submit to EPA a detailed program for minimizing fugitive particulate emissions from coal and coal ash handling. Upon approval by EPA, this program shall become enforceable under this Order.

2. (a) Prior to the burning of old coal in any unit Salem Harbor, NEPCO shall install a flue gas conditioning system in that unit to enhance the collection efficiency of its electrostatic precipitator. This flue gas conditioning system shall remain in operation when the unit converts to burning new coal.

(b) Prior to the burning of new coal in a second unit at Salem Harbor, NEPCO shall install another flue gas conditioning system in that unit. This second flue gas conditioning system shall be supplied by a different vendor than the one that supplied the system required by (a) above.

(c) Prior to the burning of new coal in the third unit at Salem Harbor, NEPCO shall install a flue gas conditioning system in that unit. This third flue gas conditioning system may be supplied by any vendor.

(d) Within 180 days after initial burning of old coal at Salem Harbor, NEPCO shall evaluate the effectiveness of the flue gas conditioning systems, shall select the more effective system, and shall install the more effective system on all three units. In the event that the systems are ineffective, EPA may eliminate the requirement for installation and operation of the system.

(e) For the duration of this Order, the selected flue gas conditioning systems shall be operated in a manner recommended by the supplier of the conditioning agents.

3. (a) Within 180 days after initial burning of old coal at Salem Harbor, NEPCO shall complete implementation of all measures identified as best practical system of emission reduction of NEPCO's September 24, 1981 submittal to EPA, summarized as

items 1–10 in Figure 12 of the testimony of G. P. Sasdi.

(b) Within 210 days after initial burning of old coal at Salem Harbor, NEPCO shall submit to EPA for approval a plan which details any corrective measures NEPCO intends to implement as a result of gas flow distribution tests (Item 7 in Figure 12). NEPCO shall be required to implement corrective measures if tests show that the existing gas flow distribution significantly decreases the effectiveness of the electrostatic precipitators. Upon approval by EPA, the terms of the above plan shall become enforceable under this Order.

4. (a) Within 30 days after initial burning of old coal at Salem Harbor, NEPCO shall submit to EPA a preliminary plan to optimize particulate emission reduction from operating the flue gas conditioning system or systems.

(b) In addition, NEPCO shall submit to EPA monthly status reports on the implementation of this plan.

(c) Within 210 days after initial burning of old coal at Salem Harbor, NEPCO shall conduct particulate emission tests on each unit to demonstrate optimization of the flue gas conditioning systems.

(d) Within 210 days after initial burning of old coal at Salem Harbor, NEPCO shall submit to EPA for approval a plan for installing any additional new transformer-rectifier sets. NEPCO shall be required to install additional new transformer-rectifier sets if flue gas conditioning optimization tests show that flue gas conditioning significantly enhances the effectiveness of the electrostatic precipitators. Upon approval by EPA, the terms of the above plan shall become enforceable under this Order.

(e) Within 240 days after initial burning of old coal, NEPCO shall submit to EPA a final plan to optimize particulate emission reduction from operating the flue gas conditioning system. Upon approval by EPA, this final plan shall become enforceable under this Order.

B. *Old Coal Burn*

1. Not later than 14 days before burning old coal in any unit, NEPCO shall submit to EPA written notice of the date it intends to start burning old coal in that unit.

2. (a) NEPCO shall be authorized to burn old coal for no more than 60 actual days of coal burning following the effective date of this Order, and not later than July 31, 1982.

(b) NEPCO shall burn old coal during this period only in either unit 2 or unit 3, but not in both units at the same time.

(c) During this time, unit 1 shall not burn any coal.

3. For the 60 days of burning of old coal under this Order, net electric power generation from coal burning shall not exceed the following rates:

(a) Unit 2: 64 MW

(b) Unit 3: 100 MW

Compliance with this limitation shall be based upon the monitoring and reporting required by IV(B)(5) of this Order.

4. For the 60 days of burning of old coal under this order, no unit shall burn coal at any time unless all fields of its electrostatic precipitator are fully energized and operating properly. Compliance with this requirement shall be verified by electrostatic precipitator records kept as required by IV(A)(6) of this order.

C. *New Coal Burn*

1. Not later than 14 days before burning new coal in any unit, NEPCO shall submit to EPA written notice of the date it intends to start burning new coal in that unit.

2. (a) Upon initial burning of new coal in any unit, particulate emissions from that unit shall not exceed 0.60 pounds per million Btu gross heat input.

(b) Within 60 days of initial burning of new coal in any unit, and not later than 150 days from the initial burning of any coal at Salem Harbor, NEPCO shall conduct particulate emission tests on that unit to demonstrate compliance with this emission limit.

3. (a) Within 240 days of initial burning of any coal at Salem Harbor under this Order, particulate emissions from each unit shall not exceed 0.45 pounds per million Btu gross heat input.

(b) Within 240 days of initial burning of any coal at Salem Harbor, NEPCO shall conduct a particulate emission test on each unit to demonstrate compliance with this emission limit.

(c) Eighteen months after completing (b) above, NEPCO shall conduct an additional particulate test on each unit to demonstrate continued compliance with the emission rate.

4. Within 30 days of completing each set of particulate emission tests required by II(C)(3), NEPCO shall submit to EPA a report which correlates visible emissions from each unit as determined by EPA Method 9 (40 CFR Part 60, Appendix A) as a function of particulate emissions from coal burning.

(a) Each report shall propose an enforceable visible emissions opacity limit for each unit covered by this Order.

(b) EPA shall set an opacity limit for enforcement under this Order within 30 days of receipt of each report.

(c) Each report also shall propose an opacity monitor reading which correlates with particulate emissions from coal burning.

(d) Within 30 days of receipt of each report, EPA shall set an opacity monitor reading which will be used as an indicator of continuous compliance with the emission limits of this Order.

(e) EPA may require NEPCO to submit additional visible emission analyses under IV(A)(5) of this Order, and may use the additional data to revise opacity limits applicable to coal burning under this Order.

III. Compliance Schedule

Before commencing the burning of old coal under this Order, NEPCO shall continue to comply at all times with 310 CMR 7.02(8), 7.05(4), and 7.06(1). Once the burning of old coal has commenced, NEPCO shall proceed as expeditiously as practicable to achieve compliance with 310 CMR 7.02(8), 7.05(4), and 7.06(1).

A. *Increments of Progress*

NEPCO shall achieve the following increments of progress towards final compliance no later than the earlier of the times specified in the following compliance schedule:

Compliance Schedule and Increment of Progress

1. Prior to the initial burning of old coal in any unit, or May 31, 1982—Hire an architect/engineer for coal conversion project design and engineering.
2. 2 months after initial burning of old coal in any unit, or July 31, 1982—Attain compliance with 310 CMR 7.05(4). (Compliance shall be determined from reports and fuel analyses required under (IV)(B) of this Order.)
3. 9 months after initial burning of old coal in any unit, or February 28, 1983—Enter contracts or place purchase orders for all major equipment including electrostatic precipitators, and ductwork, necessary for final compliance with 310 CMR 7.02(8) and 7.06(1).
4. 21 months after initial burning of old coal in any unit, or February 28, 1984—Initiate on-site construction or installation of electrostatic precipitators and ductwork.
5. (a) 31 months after initial burning of old coal in any unit, or December 31, 1984—Tie unit 1 into its completed electrostatic precipitator and ductwork.

(b) 35 months after initial burning of old coal in any unit, or April 30, 1985—Tie unit 2 into its completed electrostatic precipitator and ductwork.

(c) 39 months after initial burning of old coal in any unit, or August 31, 1985—Tie unit 3 into its completed electrostatic precipitator and ductwork.

6. (a) 34 months after initial burning of old coal in any unit, or March 31, 1985—Perform an emission test demonstrating compliance of unit 1 with 310 CMR 7.02(8) and 7.06(1).

(b) 38 months after initial burning of old coal in any unit, or July 31, 1985—Perform an emission test demonstrating compliance of unit 2 with 310 CMR 7.02(8) and 7.06(1).

(c) 43 months after initial burning of old coal in any unit, or December 31, 1985—Perform an emission test demonstrating compliance of unit 3 with 310 CMR 7.02(8) and 7.06(1).

B. Force Majeure

In the event NEPCO is unable to comply with any of the schedule increments established in III(A) above, and such failure is due to an act of God, war, strike, or other causes beyond its control, NEPCO may petition EPA to extend the time for compliance with such schedule increment and all subsequent schedule increments by a period equal to the delay caused by such circumstances. NEPCO shall bear the burden of proving that a delay is caused by circumstances clearly beyond its control. Any delay caused by such circumstances shall not be deemed a violation of this Order. In no event, however, shall final compliance be achieved later than December 31, 1985.

C. Compliance Reporting Requirements

1. NEPCO shall submit written notice of its compliance status with each of the above listed compliance milestones within 10 calendar days after the date for achieving such milestones.

2. If noncompliance is reported, notification should include the following information:

(a) A description of the noncompliance;

(b) A description of any actions taken or proposed by NEPCO to comply with the elapsed schedule requirements;

(c) A description of any factors which tend to explain or mitigate the noncompliance;

(d) An approximate date by which NEPCO will perform the required action.

3. Furthermore, NEPCO shall submit calendar quarterly construction progress reports to EPA for the duration of this Order.

IV. Monitoring and Reporting Requirements

A. Emissions Monitoring and Reporting Requirements

1. All particulate emission testing shall be conducted in accordance with Reference Method 5, 40 CFR Part 60, Appendix A, under operating conditions approved by EPA and in the presence of EPA personnel or EPA representatives.

(a) NEPCO shall provide safe access to safe sampling platforms on all units to be tested.

(b) For the purposes of this Order, a particulate emission test shall consist of four Method 5 sampling runs. If NEPCO chooses to sootblow its boilers continuously as its normal mode of boiler operation, then each sampling run shall be conducted under continuous sootblow. If NEPCO chooses not to sootblow continuously, however, then one of the four sampling runs shall be conducted during the normal boiler sootblowing cycle, and three runs shall be conducted without sootblowing.

(c) The average emission rate for a particulate emission test shall consist of the arithmetic average of the three non-sootblow runs prorated in a manner specified by EPA to account for the change in emissions encountered during the sootblow run.

2. For all particulate emission tests required by II(A)(4)(c) of this Order, the following additional requirements shall apply:

(a) Two sets of tests shall be performed on each unit; one set while the flue gas conditioning system is operating, and one set while it is not operating.

(b) The same type of coal shall be burned during both sets of tests.

(c) The boiler load, sootblowing operations and the amount of excess air shall be the same for both sets of tests.

(d) Both sets of tests shall be made while the unit and its electrostatic precipitator are operating under normal operating conditions.

(e) The tests with conditioning agents shall be preceded by at least 10 days of operation with conditioning agents to allow the precipitator to stabilize. Similarly, the tests without conditioning agents shall be preceded by a period of precipitator operation without conditioning agents, as specified by EPA.

(f) After the flue gas conditioning systems have been optimized on new coal, if the approximate composition or usage rate of the conditioning agent changes at any time during the life of this Order, NEPCO shall notify EPA in writing within 15 days of the change. If such change occurs after NEPCO has performed the testing detailed above, EPA may require additional tests. If EPA decides to require additional tests, NEPCO shall be notified in writing. NEPCO shall perform the additional tests within 30 days of receipt of the written notice.

3. For any emission or performance specification testing under this Order:

(a) NEPCO shall submit a pretest report to EPA at least 30 days before the proposed test date for any unit.

(b) No fewer than 5 days before NEPCO conducts any such test, appropriate NEPCO personnel and any representatives of the contractor responsible for the performance of the tests shall meet with EPA to discuss and finalize the testing protocol.

(c) NEPCO shall submit a written emission test report to EPA within 30 days of completing any EPA required emission testing.

(d) Pretest reports and emission test reports shall contain information as required by EPA and shall be presented in a format specified by EPA.

4. NEPCO shall install and operate continuous opacity monitoring equipment on each unit before burning new coal in that unit.

(a) NEPCO shall demonstrate that each opacity monitor complies with performance specifications within 30 days after coal is burned in the unit on which the monitor is installed. NEPCO shall comply with the provisions of 40 CFR Part 51, Appendix P, and the performance specification test requirements cross-referenced under 40 CFR Part 60, Appendix B. If two or more opacity monitors are used to report opacity from any single boiler, NEPCO shall submit to EPA prior to conducting performance specifications tests for the monitors, an approvable method for correlating each monitor to the total opacity at the stack outlet at any time after the effective date of this Order. NEPCO shall notify EPA 10 days before removing any monitor from its location. This notification also shall include data which demonstrates that the new location for the monitor or its replacement meets the requirements of 40 CFR Part 60, Appendix B. Additionally, the monitor or its replacement shall be completely recertified according to 40 CFR Part 60, Appendix B before it is reinstalled. Data demonstrating recertification shall be provided to EPA upon request.

(b) Not later than 30 days prior to initial start-up of the continuous opacity monitoring equipment, NEPCO shall submit to EPA an approvable quality assurance program for the monitoring system.

(c) NEPCO shall report to EPA on a monthly basis all hourly average opacity readings for each opacity monitor which exceed the limits specified by EPA under II(c)(4) of this Order. These summary reports shall be submitted to EPA within 15 days of the end of each month; records of all hourly average opacity readings shall be retained at Salem Harbor for inspection for the duration of this Order.

5. NEPCO shall perform any additional testing required by EPA within 30 days of receipt of written notification of such requirement. Among other things, additional testing may be required to quantify changes in emissions due to such factors as changes in coal characteristics or changes in boiler or precipitator operations. Additional tests also may be required to quantify suspected changes in emissions indicated by frequent opacity exceedences. Any proposal made by NEPCO to limit total station emissions by derating one or more generating units may result in additional testing requirements for that unit or units at any proposed generation levels.

6. NEPCO shall maintain a logbook available for EPA inspection containing the following data for each electrostatic precipitator serving a unit burning old or new coal under this Order.

(a) NEPCO shall log secondary voltage, secondary current, and spark rate for each transformer-rectifier set every 4 hours while the unit is burning old or new coal.

(b) NEPCO shall log voltage current relationships across each transformer-rectifier set's operating range every 15 days for the first 60 days after initial burning of old coal. Thereafter the data shall be logged every 30 days for the duration of this Order.

B. Coal Monitoring and Reporting Requirements

Within 30 days of the effective date of this Order, NEPCO shall submit an approvable fuel monitoring plan to EPA. As a minimum, such plan shall include a commitment on the part of NEPCO to do the following:

1. NEPCO shall perform proximate analyses of all coal cargoes off-loaded at the Salem Harbor Generating Station.

(a) ASTM D 3172 shall be used for the performance of the proximate analyses.

(b) ASTM D 2234, with systematic spacing shall be used for sample increment collection.

(c) Paragraph 7.1.5.2 and Table 2 of ASTM D 2234 shall be used to determine the number and weight of increments required per gross sample.

(d) One gross sample shall be collected for each shipment or for each 10,000 tons of coal, whichever is less.

2. NEPCO shall perform daily coal sampling and analyses for sulfur content, ash content and gross calorific value for coal burned at the station under this Order.

(a) ASTM D 2234, with systematic spacing shall be used for sample increment collection.

(b) As a minimum, one increment shall be collected from each coal conveyor during each hour that an individual conveyor is in operation. Such increments from all conveyors are to be composited for analysis on a daily basis.

(c) Table 2 of ASTM D 2234 shall be used to determine the weight of each increment.

(d) ASTM D 2013 shall be used for sample preparation.

(e) ASTM D 3177 or an equivalent method approved by EPA shall be used for sulfur analysis.

(f) ASTM D 3174 shall be used for ash analysis.

(g) ASTM D 2015 or ASTM D 3286 shall be used for gross calorific value determinations.

3. NEPCO shall participate in the EPA coal analysis methods audit program conducted by the Quality Assurance Division, Environmental Monitoring Systems Laboratory in Research Triangle Park, North Carolina. Coal audit samples shall be analyzed according to ASTM procedures for percent sulfur, moisture, ash content and gross calorific value and will be provided by EPA on a periodic basis.

4. Monthly reports containing coal cargo shipment sizes, coal analyses, cargo and daily coal analyses shall be submitted to EPA within 15 days of the close of each month in a format approved by EPA.

(a) Such reports also shall contain 30-day "rolling average" sulfur content values for the coal burned, calculated for each day of the month.

(b) The results of any audit coal sample analyses performed during that month also shall be included.

(c) All coal analysis data shall be presented on a dry basis.

5. NEPCO shall submit to EPA on a monthly basis, hourly average net megawatts generated by each unit. Monthly data shall be reported within 15 days of the end of each month in a format approved by EPA.

C. Ambient Monitoring and Reporting Requirements

1. (a) Within 60 days of the effective date of this Order but in no case later than the start of coal burning and subject to the provisions of IV(C)(5) of the order, NEPCO shall install and operate a network of ambient monitors to measure SO_2 concentration on a continuous basis, and TSP concentration on a frequency as specified in IV(C)(2) below.

(b) As a minimum, NEPCO shall place both TSP and SO_2 monitors near each of the following locations:

(i) Water Tower, Green Street, Marblehead

(ii) Winter Island Dam, Salem

(iii) NEPCO right-of-way, north of Fort Avenue, Salem

(iv) NEPCO property southeast of Derby and English Streets

(v) Beverly north of Mackerel Cove

(c) The burning of coal at Salem Harbor under this order constitutes acceptance by NEPCO that ambient monitoring data collected on its property is representative of ambient air quality levels in the surrounding area. EPA may use this data as such for any purpose appropriate under the Act.

2. The sampling frequency at the Green Street, Marblehead and Beverly TSP sites shall be once every three days unless an exceedence of the secondary NAAQS for TSP is measured. In this event, daily sampling is required. The sampling frequency at all the remaining TSP sites shall be daily; however, the sampling frequency at any TSP monitoring site may be reduced to once every three days if the following conditions are met at such site during any continuous 365 day period after new coal has been burned at all three units:

(a) Every 24-hour TSP concentration measured at the site must be less than 200 micrograms per cubic meter and;

(b) The annual geometric mean for TSP measured at the site must be less than 60 micrograms per cubic meter.

3. All ambient monitoring locations and equipment installations must be approved by EPA prior to operation and must meet 40 CFR Part 58, Appendix B (Quality Assurance), Appendix C (Ambient Air Quality Monitoring Methodology), and Appendix E (Probe Siting Criteria).

(a) All SO_2 analyzers are to be operated on the 0.5 ppm or 1.0 ppm ranges unless ambient air quality levels exceed this concentration. If this case occurs, then any such instrument must be operated on the appropriate higher range.

(b) Within 30 days of the effective date of this Order, NEPCO shall submit in writing to EPA an approvable quality control program.

(c) EPA will accept performance audits by the Massachusetts Department of Environmental Quality Engineering (DEQE) to satisfy the requirements for the quarterly accuracy audit (40 CFR Part 58, Appendix B, Section 3), but it will be NEPCO's responsibility to provide independent performance audits for any calendar quarter not audited by DEQE.

4. Within 60 days of the effective date of this Order, NEPCO shall construct a meteorological tower at a location near the company right of way north of Fort Avenue.

(a) NEPCO shall operate continuous monitoring instruments on this tower to measure and record wind speed and direction.

(b) The exact location and height of the tower shall be selected by NEPCO and approved by EPA in writing before the tower is constructed.

(c) All meteorological instrumentation shall comply with EPA requirements as specified in EPA Guideline 450/4–80–012.

(d) All meteorological monitoring procedures must be submitted to EPA for approval at least 30 days before they are implemented.

5. NEPCO shall obtain all the necessary permits, easements or permissions necessary to locate the monitors and meteorological towers required by IV(C)(1) and (4) of this Order. EPA may grant time extensions for monitor siting, select alternative sites, or eliminate sites altogether, but NEPCO shall bear the burden of establishing that a change is necessary.

6. NEPCO shall receive permission in writing from EPA prior to conducting any further analysis of the TSP filters. NEPCO must keep all TSP filters in a suitable condition for further analysis for a period of 12 months after termination of this order. NEPCO must supply any of these filters to EPA upon request for further analysis. If the Federal Reference method for total suspended particulates is modified or replaced during the period of this Order, EPA reserves the right to require NEPCO to modify or replace any or all existing particulate monitors.

7. All monitoring and meteorological data shall be submitted to DEQE within 30 days of the close of each month in machine-readable SAROAD format.

(a) The data reported to DEQE shall be for individual hourly observations of SO_2, wind speed, and direction, as well as daily averages for TSP.

(b) NEPCO shall insure that EPA receives the above information within 90 days of the end of each calendar quarter.

(c) NEPCO shall notify EPA of any exceedence of any primary NAAQS for SO_2, within 72 hours of its occurrence. NEPCO shall notify EPA of any exceedence to any primary NAAQS for TSP within 15 days of its occurrence.

(d) Within 30 days of the close of each month, NEPCO shall submit to both EPA and the DEQE, Northeast Regional Office, Woburn, one paper copy of all monitoring and meteorological data. This data will be maintained for public inspection at the EPA Regional Office, Boston, and the DEQE Regional Office, Woburn, during normal working hours.

(e) EPA may grant time extensions to these reporting requirements for this Section, but NEPCO shall bear the burden of establishing that extensions are necessary.

8. Within 30 days of the occurrence of any violation of the primary NAAQS for TSP, NEPCO shall submit to EPA all relevant data under Section 113(d)(5)(D)(i) through (iii) of the Act.

V. General Requirements

A. This Order shall not be effective during any interval after EPA finds, and notifies NEPCO, that (1) a primary NAAQS for TSP is being exceeded in the Metropolitan Boston AQCR (Section 113(d)(5)(D)), and (2) NEPCO has failed to prove that the requirements of Sections 113(d)(5)(D)(i) through (iii) of the Act have been satisfied. During any such intervals, NEPCO shall comply with 310 CMR 7.02(8), 7.05(4) and 7.06(1). If NEPO violates these regulations, it shall be subject to enforcement action under any and all authorities of the Act.

B. Nothing herein shall affect the responsibility of NEPCO to comply with any applicable local, state or federal regulations except as specified in this Order.

C. NEPCO shall submit a copy of all correspondence and reports required under this Order to the Director, Air and Waste Management Division, EPA, Region I, JFK Federal Building, Boston, MA 02203.

NEPCO may assert a business confidentiality claim covering part or all of the information requested by this Order, in the manner described by 40 CFR 2.203(b). Information covered by such a claim will be disclosed by EPA only as set forth in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to NEPCO. Certain categories of information are not properly the subject of such a claim. For example, the Act provides that emission data shall in all cases be made available to the public. See 42 U.S.C. 7414(c).

D. NEPCO is hereby notified that its failure to achieve final compliance at its Salem Harbor Station with 310 CMR 7.02(8), 7.05(4) and 7.06(1) by the compliance date specified in III(A)(6) of this Order may result in an assessment of a noncompliance penalty under section 120 of the Act, 42 U.S.C. 7240. This penalty may be imposed at an earlier date, as provided under section 113(d) and section 120 of the Act, in the event that this Order is terminated or violated as provided in V(E) and (F) below. In either event, NEPCO will be formally notified of its noncompliance, under section 120(b)(3) of the Act or any regulations promulgated thereunder.

E. This Order shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator determines, on the record, after notice and opportunity for hearing, that the inability of NEPCO to comply with 310 CMR 7.02(8), 7.05(4), and 7.06(1) as approved by EPA, no longer exists with respect to its Salem Harbor Station. Additionally, if NEPCO demonstrates compliance with 310 CMR 7.02(8), 7.05(4), and 7.06(1) prior to the applicable compliance dates specified in III(A)(2) and (6) of this Order, then this Order shall be terminated at that earlier date.

F. Under section 113 (d)(9) of the Act, 42 USC 7413(d)(9), violation of any requirement of this Order shall result in one or more of the following actions:

1. Enforcement of such requirement under section 113(a), (b), or (c) of the Act, 42 U.S.C. 7413(a), (b), or (c);
2. Revocation of this Order, after notice and opportunity for a public hearing;
3. Notification of noncompliance and assessment of a noncompliance penalty under section 120 of the Act.

G. This order is effective upon publication in the Federal Register and after having received concurrence from the Governor of the Commonwealth of Massachusetts.

Dated: February 2, 1982.

Anne M. Gorsuch,

Administrator, Environmental Protection Agency.

[FR Doc. 82-3435 Filed 2-8-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 62

[A-3-FRL-2045-5]

Approval of a Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of correction of final rule.

SUMMARY: This notice clarifies and corrects the language contained in the rulemaking sections of EPA's approval of two revisions to Pennsylvania's State Implementation Plan (SIP), published in the **Federal Register** on October 26, 1981 (46 FR 52107) and on November 30, 1981 (46 FR 58083).

In the rulemaking sections of the notices approving the SIP revisions, the paragraphs appeared out of sequence. This notice merely corrects the rulemaking section, presenting it as it should appear in the Code of Federal Regulations. These changes do not in any way affect the regulations that were submitted to and approved by EPA.

FOR FURTHER INFORMATION CONTACT: Gregory D. Ham (3AW11), Air Media and Energy Branch, U.S. Environmental Protection Agency, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, PA 19106, (215) 597-2745.

[42 U.S.C. 7401-7642]

Dated: January 22, 1982.

Peter N. Bibko,

Regional Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 62.9600, Identification of Plan—negative declaration, is revised to read as follows:

§ 62.9600 Identification of Plan—negative declaration.

(a) The Pennslyvania Department of Environmental Resources submitted on December 1, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B of this Chapter.

(b) The Allegheny County Bureau of Air Pollution Control submitted a letter on August 18, 1978 certifying that there are no phosphate fertilizer plants in the County subject to part 60, Subpart B of this Chapter.

2. Section 62.9601, Identification of Plan—negative declaration, is amended by the following change in title and by the revision of paragraphs (a) and (b) as follows:

§ 62.9601 Identification of Plan.

(a) The Allegheny County Bureau of Air Pollution Control submitted a letter on August 18, 1978 certifying that there are no sulfuric acid plants in the County subject to Part 60, Subpart B of this Chapter.

(b) A plan for the control of sulfuric acid mist emissions from existing sulfuric acid plants in the Commonwealth of Pennsylvania, submitted on May 30, 1978 and supplemented on August 17, 1981.

[FR Doc. 82-3434 Filed 2-8-82; 8:45 am]

BILLING CODE 6560-38-M

Proposed Rules

Federal Register
Vol. 47, No. 27
Tuesday, February 9, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1701

REA Bulletins 181-1, Uniform System of Accounts Prescribed for Electric Borrowers and 181-3, Accounting Interpretations for Rural Electric Borrowers

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: REA proposes to revise REA Bulletins 181-1, Uniform System of Accounts Prescribed for Electric Borrowers, and 181-3, Accounting Interpretations for Rural Electric Borrowers, to include the criteria, as specified in Financial Accounting Standard No. 43, for accuring the borrower's liability arising from compensated employee absences. A previous proposal was issued in the May 5, 1981, **Federal Register** (Vol. 46, No. 86, p. 25096). In response to questions concerning the accounting procedures necessary to implement that proposal, we are revising our rulemaking to include an accounting interpretation on that topic.

DATE: Public comments must be received by REA no later than April 12, 1982.

ADDRESS: Persons interested in the proposed revision may submit written data, views, suggestions, or comments to the Director, Accounting and Auditing Division, Rural Electrification Administration, Room 4063, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon Chazin, Director, Accounting and Auditing Division, above address, telephone number (202) 382-9550. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A to 7 CFR 1701 be revising REA Bulletins 181-1, Uniform System of Accounts, and 181-3, Accounting Interpretations for Rural Electric Borrowers. This proposed action has been issued in conformance with Executive Order 12291, Federal Regulation. Since no significant effect on the economy will occur, since no significant increase in cost for consumers, industries or government will result, and since no significant impact on economic conditions will be caused, this action has been determined to be "not major."

The Regulatory Flexibility Act (Pub. L. 96-354) is not applicable to this action, therefore a Regulatory Flexibility Analysis will not be prepared.

Current accounting procedures prescribed by REA in Bulletin 181-1, Uniform System of Accounts Prescribed for Electric Borrowers, provide for the accrual of vacation and holiday leave. It states that the employer has no obligation to the employee for sick leave unless sickness occurs. Accrued sick leave, therefore, is only a contingent liability and as such, is not recorded on the general books.

The Financial Accounting Standards Board recently issued Financial Accounting Standard (FAS) No. 43, Accounting for Compensated Absences, in which four criteria were established for the accrual of employee compensation for future absences (vacation, holiday, sickness). They are as follows:

1. The employer's obligation for payment for future absences is attributable to employees' services already performed;

2. The obligation relates to employee rights which vest or accumulate; (Vested rights are considered those for which the employer is obligated to make payment even if the employee terminates. Rights which accumulate are those earned but unused rights to compensated absences which may be carried forward to one or more periods subsequent to the period in which they are earned.)

3. Payment of the compensation is probable; and

4. The amount can be reasonably estimated.

The obligation related to employees' accumulating rights (nonvested) to receive compensation for future absences that are contingent on the absences being caused by an employee's future illness may be excluded from the accrual if they cannot be reasonably estimated.

We are proposing to revise Account 242.3, Accrued Employees' Vacations and Holidays, in REA Bulletin 181-1 to adopt the principles of FAS No. 43 as outlined above. The revision is detailed below.

Proposed Revision to REA Bulletin 181-1—Uniform System of Accounts

Page REA-9

242.3 Accrued Compensated Absences

All borrowers shall account for compensated absences. Accordingly, borrowers shall accrue a liability for employee's compensation costs covering absences from employment for vacation, holiday, sickness or other personal activities for which it is expected that an employee will be paid. Accumulated rights to receive compensation for future absences (those rights that are contingent on the absences being caused by an employee's future illness and for which the employee will receive no benefit upon termination) may be excluded from the accrual if they cannot be reasonably estimated.

In addition, we are proposing to establish a new account 435.1, Cumulative Effect on Prior Years of a Change in Accounting Principle, to account for the non-restated cumulative effect of this change and other changes in accounting principles.

Page REA-13

435.1 Cumulative Effect on Prior Years of a Change in Accounting Principle

This account shall include the cumulative effect on prior years' earnings of a change in accounting principle.

This account is closed to operating margins at year's end.

We are also proposing the following accounting interpretation to provide the necessary accounting procedures.

Proposed Accounting Interpretation—REA Bulletin 181-3

I. *General:* Financial Accounting Standard (FAS) #43, Accounting for Compensated Absences, requires employers to accrue a liability for certain costs of employees' paid absences. Under accural accounting, the employer's expense for compensated absences should be recorded when they are earned rather than when they are paid.

FAS #43 goes on to state that the obligations related to employees' accumulating rights to receive compensation for future absences that are contingent on the absences being caused by an employee's future illness may be excluded from the accrual if they cannot be reasonably estimated.

The provisions of the Statement do not, however, apply to severance or termination pay, post-retirement benefits, deferred compensation, stock or stock options, long-term disability pay, group insurance or other long-term fringe benefits.

The following questions and answers are designed to provide uniformity in accounting for employees' compensated absences.

II. *Questions and Answers:*

1. *Question:* What criteria have been established for accruing compensated absences?

Answer: The following criteria have been established:

a. The employer's obligation for payment for future absences is attributable to employees' services already performed;

b. The obligation relates to employee rights which vest or accumulate; (Vested rights are considered those for which the employer is obligated to make payment even if the employee terminates. Rights which accumulate are those earned but unused rights to compensated absences which may be carried forward to one or more periods subsequent to the period in which they are earned.)

c. Payment of the compensation is probable; and

d. The amount can be reasonably estimated.

All four criteria must be met.

2. *Question:* How should the liability for compensated absences be calculated?

Answer: A company's liability should be estimated (using current labor costs) based on the payments it expects to make for employees' work already performed. This estimate should be updated yearly to account for changes in employee leave patterns and labor costs.

3. *Question:* How should the monthly liability be recorded in the utility's accounting records?

Answer: The following journal entry should be made: Dr. Account 926, Employee Pensions and Benefits, Cr. Account 242.3, Accrued Compensated Absences. Account 926 should then be credited for the amounts directly attributable to plant construction and retirement activities if a direct distribution to those accounts was not made.

4. *Question:* What entry in the accounting records is necessary to account for the cumulative effect of the unrecorded liability from previous years?

Answer: The cumulative effect of this accounting change should be applied retroactively. In the year it is first applied, the financial statements should disclose the nature of any restatement and its effect on income before extraordinary items and net income for each year restated. If retroactive restatement of all years presented is not practicable, the financial statements presented should be restated for as many consecutive years as practicable and the cumulative effect should be included in determining net income of the earliest year restated. If it is not practicable to restate any prior year, the cumulative effect should be included in the net income of the current period. Account 435.1, Cumulative Effect on Prior Years of a Change in Accounting Principle, should be charged with the cumulative amount. The balance in this account is closed, at year's end, to operating margins.

(Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees)

Dated: February 1, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-3298 Filed 2-8-82; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-83-80]

Partial Exclusion of Dividends and Interest; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the partial exclusion of dividends and interest from gross income. The applicable law was amended by the Crude Oil Windfall Profit Tax Act of 1980 and the Economic Recovery Tax Act of 1981. The statutory amendments expanded the scope of the exclusion to include interest in addition to dividends and increased the amount of the exclusion for taxable years beginning in 1981. The regulations would provide individuals and certain payors of interest and dividends with guidance in determining what portion of dividends and interest received during an individual's taxable year beginning in 1981 is eligible for the exclusion.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 12, 1982. The amendments are proposed to be effective for dividends and interest received by an individual in the individual's taxable year beginning in 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-83-80), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Phoebe A. Mix of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 202-566-3297, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 116, 854, 857, and 1232 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 404 of the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96-223, 94 Stat. 305) and section 302(b)(1) of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 272). The amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Explanation of Amendments

Section 116 of the Internal Revenue Code prior to amendment by the Crude Oil Windfall Profit Tax Act provided an exclusion from gross income of $100 of dividends received by an individual. A married couple filing a joint return could exclude $200 if each spouse received at least $100 of dividends. For taxable years beginning in 1981 and 1982, section 404 of the Crude Oil Windfall Profit Tax Act increased the amount of the exclusion to $200 for individuals ($400 for married couples filing joint returns, without regard to which spouse received the dividends) and expanded the exclusion to apply to certain types of interest received by individuals from domestic corporations. Section 302(b)(1) of the Economic Recovery Tax Act of 1981 limited these amendments to taxable years beginning in 1981.

Section 116(c)(1) lists five categories of indebtedness interest on which qualifies for the exclusion; it also provides that the list may be expanded through regulations to include other evidences of indebtedness issued by a domestic corporation of a type offered by corporations to the public. The proposed regulations add commercial paper and repurchase agreements to the list and provide that original issue discount with respect to any listed category of indebtedness shall be treated as qualifying interest. In addition, the proposed regulations would provide that original issue discount excluded under section 116 would be considered included in gross income under the basis adjustment provisions of section 1232(a)(3)(E). The result would be that even though original issue discount is excluded from gross income under section 116 it would be added to the bondholder's basis in the obligation under section 1232(a)(3)(E).