Commerce Union Bank acting as trustee under any of such indentures.

The Applicant waives notice of hearing and waives hearing and waives any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to the application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than November 29, 1983 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary

[FR Doc. 83-30151 Filed 11-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20339; SR-BSE-83-8]

The Boston Stock Exchange, Inc. ("BSE"); Order Approving Proposed Rule Change

November 1, 1983.

On August 8, 1983, the Boston Stock Exchange, Inc. ("BSE") filed a proposed rule change under the Securities Exchange Act of 1934 ("the Act"),[1] concerning member processing of customer trades. The Commission solicited comment on the proposed rule change.[2] However, no comments were filed.

The proposed rule change requires certain member organizations to use a registered securities depository for the confirmation, acknowledgement and book-entry settlement of the depository-eligible transactions. Transactions that would be covered by the proposed rule change include: (1) A purchase by the customer where its agent is to receive the securities against payment ("COD"); and (2) a sale by the customer where its agent is to deliver the securities against payment ("POD").[3] The proposed rule change would not apply to COD/POD transactions when both the customer and its agent do not particpate in a registered securities depository.

The proposed rule change is similar to rules adopted by the other major securities exchanges and the National Association of Securities Dealers, Inc. ("NASD"). These rules, however, also exempt COD/POD transactions when the member organization and its agent do not participate in a registered securities depository. Since the BSE requires its members to participate in a registered securities depository, the BSE believes this exemption is unnecessary.

As indicated in the Commission's Order approving the similar proposed rule changes of various stock exchanges and the NASD,[4] the Commission believes that the proposed rule change will reduce the frequency with which trades fail-to-settle because of delays in communicating settlement instructions. Use of depository facilities for electronic confirmation, acknowledgement, and book-entry settlement will provide for more efficient settlement of COD/POD transactions and will thus facilitate more cost-efficient securities industry operation, during both normal and high volume periods. The Commission further believes that the proposed rule change will reduce the costs and delays associated with the unnecessary physical movement of stock certificates.

For these reasons and the reasons set out in Securities Exchange Act Release No. 19227,[5] the Commission finds that the proposed rule change is consistent with the requirements of the Act. In addition, the proposed rule change represents a further step toward fulfillment of the Commission's goal of promoting increased usage of clearing agencies for the clearance and settlement of securities transactions.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-30150 Filed 11-7-83; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* 15 U.S.C. 78s(b)(2) and 17 CFR 240.19b-4 (1982).

[2] *See* Securities Exchange Act Release No. 20199 (September 20, 1983), 48 FR 43751 (September 26, 1983).

[3] *See, e.g.*, New York Stock Exchange Rule 387, NYSE Manual (CCH) ¶2387 (1983).

[4] *See* Securities Exchange Act Release No. 19227 (November 9, 1982), 47 FR 51568 (November 16, 1982).

[5] *Id.*

[Release No. 20340; File No. SR-PSDTC-83-09]

Pacific Securities Depository Trust Co.; Filing of Proposed Rule Change

November 2, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), on September 8, 1983, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments from persons interested in the proposal.

The proposal would enable PSDTC to establish a link with Midwest Securities Trust Company's ("MSTC") Municipal Bond Processing Service ("MBPS").[1] This link would make available to PSDTC participants automated depository services relating to municipal bonds in bearer form.[2] Consistent with this link, the proposal also would amend PSDTC Rule 3, § 1 to expand the list of depository eligible securities issues to include municipal bearer bonds. Currently, bearer bonds are ineligible for PSDTC depository services.

Under the proposal, PSDTC would agree to become a MSTC MBPS participant by executing a written agreement. As an MBPS participant, PSDTC would have on-line access to MBPS. PSDTC participants choosing to use the link would need to sign a written agreement with PSDTC. This agreement between PSDTC and its participants would be similar to the MSTC/PSDTC agreement.[3]

[1] MBPS is a network of regional custodian and depository satellites offering deposit, safekeeping and withdrawal of, and other services related to, municipal bearer and registered bonds. *See* Securities Exchange Act Release No. 19888 (June 20, 1983), 48 FR 29083 (June 24, 1983), approving expansion of MBPS to municipal bearer bonds.

[2] To gain operational experience with the MBPS link, PSDTC currently is operating a limited pilot municipal bearer bond processing service.

[3] PSDTC is examining the draft agreements filed as part of the proposed rule change. The Commission expects PSDTC, during this proceeding, to complete that re-examination and to file with the Commission appropriately amended agreements.

Operationally, the proposal contemplates that PSDTC participants would deposit their municipal bearer bonds directly in a MSTC "depository satellite" ("DS"). The DS then would credit each PSDTC participant's account at MSTC. Each PSDTC participant account at MSTC would be coded to identify it as a PSDTC, rather than a MSTC, participant account. PSDTC participants would relay their bond transfer and withdrawal requests to PSDTC, and PSDTC would send this information to MSTC through its PSDTC/MSTC terminal. MSTC similarly would relay information to PSDTC and its participants through the terminal. For example, MSTC would track interest payable dates for issues deposited in MBPS by PSDTC participants. MSTC would inform PSDTC of those dates through the terminal, and PSDTC would print-out and distribute hard copy reports relaying that data to its MBPS participants. On interest payable date, MSTC would determine the aggregate interest amount payable to PSDTC participants, and would calculate the amount due each PSDTC participant. MSTC, through its custodian bank, would then wire the appropriate aggregate amount of interest funds to PSDTC, with instructions to PSDTC on how to distribute the funds to its participants. In accordance with those instructions, PSDTC would issue checks to each of its MBPS participants.

In its filing, PSDTC states that the proposal would reduce the physical delivery of municipal bearer bonds and therefore would improve the safeguarding of securities. Further, PSDTC believes, the proposal would enhance current interface arrangements between registered securities depositories. Thus, PSDTC believes that the proposed rule change is consistent with Section 17A of the Act.

Persons interested in the proposal can submit written comments on the proposal within 21 days after this notice is published in the **Federal Register**. Please file six copies of your comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Please refer in your comments to File No. SR-PSDTC-83-09.

Copies of the filing submission, any amendments, all written comments on the proposed rule change, and all related written correspondence between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, can be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any amendments also can be inspected and copied at PSDTC.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-30140 Filed 11-7-83; 8:45 am]

BILLING CODE 8010-01-M

Public Availability of Certain Staff Manuals

AGENCY: Securities and Exchange Commission.

ACTION: Notice of public availability of certain staff manuals.

SUMMARY: The Commission is announcing the public availability of certain staff manuals prepared by the Division of Corporation Finance concerning the statutes, rules and regulations administered by the Division and particular situations encountered in connection therewith. These manuals have been prepared by the Division for staff training purposes and do not necessarily represent the views or policies of the Commission. The manuals are subject to updating and revision. The manuals in question (Proxy Rules Reference Book; Disclosure Practices Manual; 1933 Act Training Manual; Compilation of Telephone Interpretations; and certain portions of Enforcement Liaison Reference Book) will be available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C., beginning Tuesday, November 8, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas M. Horton or June W. McCulloch at (202) 272-7450.

George A. Fitzsimmons,

Secretary.

November 3, 1983.

[FR Doc. 83-30182 Filed 11-7-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 04/04-0226]

First Tampa Capital Corp., Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1983)) by First Tampa Capital Corporation, 4600 N. Dale Mabry Highway, Tampa, Florida 33614 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors and shareholders are:

Name and address	Title and relationship	Initial percent of ownership
Trevor A. Rolfe, 4410 Hudson Lane, Tampa, FL 33609.	President and Director	5.9
Frank L. Morsani, 1048 Frankland Road, Tampa, FL 33609.	Chairman, Treasurer, and Director.	11.8
Thomas L. duPont, 204 Palmetto Road, Belleair, FL 33516.	Secretary and Director	29.4
Alfred S. Austin, 4617 San Miguel, Tampa, FL 33609.	Director	5.9
Carl W. Lindell, Jr., 2525 Bayshore Blvd., Tampa, FL 33629.	Director	5.9
W.R.B. Enterprises, Inc., 1219 N. Highway 301, Tampa, FL 33619.		23.5
Stephens, Inc., 114 East Capitol Ave., Little Rock, Ark 772201.		17.6

W.R.B. Enterprises, Inc. has two shareholders, G. Robert Blanchard (64.7%) and Jack W. Winter (35.3%).

Stephens, Inc. has two shareholders, Jackson T. Stephens (50%) and Wilton R. Stephens (50%).

Securities are expected to be offered to business associates and friends of the foregoing persons and entities. The number of offerees are to be less than thirty-five.

The Applicant will begin operations with a capitalization of $766,000 and will be a source of equity capital and long term loan funds for qualified small business concerns whose needs might not be met by traditional funding sources.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this Notice submit written comments on the proposed SBIC to the Deputy Associate Adminstrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Tampa, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 3, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-30218 Filed 11-7-83; 8:45 am]

BILLING CODE 8025-01-M

[Pub. Notice 883]

Proposed UNEP Ozone-Layer Convention; Report of U.S. Delegation; Meeting

At this meeting Members of the U.S. Delegation to the Third Session (October 17–21, 1983) of the UNEP *Ad Hoc* Working Group of Legal and Technical Experts for Elaboration of a Global Framework Convention of the Ozone Layer will report to the public on the results of the Third Session.

Members of the public are urged to comment as time permits and may attend up to the seating capacity of the room.

The meeting is scheduled for two hours on Tuesday, November 22, 1983 starting at 10 a.m. The location of the meeting is Room 1406 in the Department of State, 21st and C Streets, NW., Washington, D.C. 20520.

The public should use the Diplomatic Entrance on "C" Street to enter the building.

For further information, please contact Mr. Tom Wilson, Deputy Director, State's Office of Environment and Health, telephone (202) 632-9312.

Dated: November 2, 1983.

Mary Rose Hughes,

Deputy Assistant Secretary, Environment, Health and Natural Resources.

[FR Doc. 83-30136 Filed 11-7-83; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Public Meetings

The National Highway Traffic Safety Administration (NHTSA) will hold a meeting on January 11, 1984, to answer questions from the public and industry regarding the Agency's rulemaking, research and enforcement programs. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m. if necessary. It will be held in the Federal Aviation Administration's Auditorium, Building FOB-10A, 800 Independence Avenue, SW., Washington, D.C.

At the January 11 meeting, representatives of DOT will answer questions received from the industry and the public relating to NHTSA's rulemaking, research and enforcement programs (including defects). The purpose of this is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. (Questions regarding the Agency's fuel economy program will continue to be addressed at the EPA's meetings on vehicle emissions).

Questions for the January meeting should be submitted in writing by December 9 to Kennerly H. Digges, Acting Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, D.C. 20590. If sufficient time is available, questions received after the December 9 date may be answered at the meeting. The individual, group, or company submitting a question does not have to be present for the question to be answered.

A consolidated list of the questions submitted by December 9 and the issues to be discussed will be mailed to interested persons on or before January 6, 1984, and will be available at the meeting. This list will serve as the agenda.

A Transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C., within five weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA, Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590.

This meeting will be followed by the opening session of a previously announced Workshop for Modeling Human Kinematics and Vehicle Structural Responses.

Issued in Washington, D.C. on November 2, 1983.

Kennerly H. Digges,

Acting Associate Administrator for Rulemaking.

[FR Doc. 83-30106 Filed 11-7-83; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Technical Hazardous-Liquid Pipeline Safety Standards Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the Technical Hazardous-Liquid Pipeline Safety Standards Committee on December 7, 1983, at 9 a.m. in Room 3442, Nassif Building, 400 Seventh, Street SW., Washington, D.C. 20590.

The purpose of the meeting is to develop a report on the technical feasibility, reasonableness, and practicability of two proposed safety standards and discuss a regulatory project as follows:

Part I: Proposed Amendments to 49 CFR Part 195

1. Regulation of Intrastate Pipeline Facilities Used in the Transportation of Petroleum, Petroleum Products, or Anhydrous Ammonia.
2. New Criteria for Isolated Corrosion Pitting.

Part II: Regulatory Project

1. Qualification of Pipeline Welders.

Attendance is open to the public, but limited to the space available. With approval of the chair of the Committee, members of the public may present oral statements on any items scheduled for discussion. Due to the limited time available, each person who wants to make an oral statement is requested to notify Betty Clark, Room 8101, Nassif Building, 400 Seventh, Street, SW., Washington, D.C. 20590, telephone 202-426-1640, of the topics to be addressed and the time requested to address each topic. The chair may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: November 3, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Material Transportation Bureau.

[FR Doc. 83-30205 Filed 11-7-83; 8:45 am]

BILLING CODE 4910-60-M

Technical Pipeline Safety Standards Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the

Technical Pipeline Safety Standards Committee on December 13, 1983, at 9 a.m. in Room 3442, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The purpose of the meeting is to discuss and develop a report on the technical feasibility, reasonableness, and practicability of the following proposed amendment to safety standards:

1. Design of Pipeline Components, General Requirements

The Committee will also discuss the following regulatory projects:

1. Monitoring external corrosion control
2. Requirements for reporting gas incidents
3. Interior piping, adequacy of existing standards
4. Qualification of pipeline welders.

Attendance is open to the public, but limited to the space available. With approval of the chair of the Committee, members of the public may present oral statements on any items scheduled for discussion. Due to the limited time available, each person who wants to make an oral statement is requested to notify Betty Clark, Room 8101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, telephone 202-426-1640, of the topics to be addressed and the time requested to address each topic. The chair may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements of the Committee before or after any session of the meeting.

Dated: November 3, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

FR Doc. 83-30204 Filed 11-7-83; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 217
Tuesday, November 8, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

DEPARTMENT OF EDUCATION

AGENCY: National Council on Educational Research.

ACTION: The Search Committee, a subcommittee of the N.C.E.R. will hold a closed meeting on November 13 and 14, 1983.

MATTERS TO BE DISCUSSED: Discussion of Internal Personnel; specifically, the selection of an Executive Director (interviewing and discussion of qualifications/resumes).

DATED: November 13, 1983 and Novermber 14, 1983.

ADDRESSES:

Nov. 13, 1983—Ramada Renaissance, 1143 New Hampshire Ave., NW., Washington, D.C.

Nov. 14, 1983—National Council on Educational Research office, 2000 L St., NW., Washington, D.C. 20036 (Suite 617B

TIME: Nov. 13, 1983—7:00 p.m. to 11:00 p.m. and Nov. 14 from 8:00 a.m. to 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: Reneé Trent, N.C.E.R. Associate, N.C.E.R. 2000 L St., NW., Suite 617B, Washington, D.C. 20036, 202-254-7490.

SUPPLEMENTARY INFORMATION: The N.C.E.R. Search Committee meeting will be closed.

The agenda includes discussion of internal personnel matters; namely, selection of an Executive Director.

The meeting will be closed on Nov. 13 and 14, 1983 to review applications and to conduct interviews for the position of Executive Director of the Council. The meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) and under exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c) (2) and (6). Discussion of the applications will include consideration of the qualifications and fitness of the candidates and will touch upon matters which would constitute a serious invasion of privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Patricia Hines,
Authorizing Offical, N.C.E.R. Associate.

[S-1568-83 Filed 11-4-83; 8:45 am]

BILLING CODE 4000-01-M

2

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 am, Monday, November 14, 1983.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 4, 1983.

James McAfee,
Associate Secretary of the Board.

[S-1567-83 Filed 11-4-83; 8:45 am]

BILLING CODE 6210-01-M

3

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 9-83

Announcement in Regard to Commission Meetings and Hearings.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Thurs., Nov. 17, 1983 at 10:30 a.m.: Consideration of Proposed Decisions in the Second Czechoslovakian Claims Program and proposed Decisions in the Vietnam Prisoner of War Claims Program.

Thurs., Nov. 17, 1983 at 2 p.m.: Oral Hearing on Claim No. CZ-2-0244-Claim of Peter Vicko.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All Meetings are held at the Foreign Claims Settlement Commission, 1111-20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111-20th Street, NW., Room 409 Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, D.C., November 3, 1983

Judith H. Lock
Administrative Officer.

[S-1565-83 Filed 11-4-83; 2:54 pm]

BILLING CODE 4410-01-M

4

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:30 a.m., Tuesday November 15, 1983.

PLACE: Eight floor, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. *Herbert E. Ziegeldorf* v. *Action*, MSPB Docket No. CH03308210346, *Coral Rizzolo* v. *Action*, MSPB Docket No. CH03308210179.
2. *Mamoru Ishikawa* v. *Department of Labor*, MSPB Docket No. DC03518210473.
3. *Harold A. Albert* v. *Department of Transporation*, MSPB Docket No. BN075281F0229.
4. *Charles F. Behensky, Jr.* v. *Department of Transportation*, MSPB Docket No. CH075281F0979.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Secretary, (202) 653-7200.

For the Board.

Dated : November 3, 1983, Washington, D.C.

Robert E. Taylor,

Secretary.

[S-1562-83 Filed 11-4-83; 9:16 am]

BILLING CODE 7400-01-M

5

NATIONAL CREDIT UNION ADMINISTRATION

CHANGE IN SUBJECT OF MEETING

The National Credit Union Administration Board has determined that its business requires that the previously announced open meeting on November 10, 1983 include an additional item.

Proposed Rule: Payout Priorities For Involuntary Liquidation of Federally Insured Credit Unions.

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Modification of CLF Credit Agreements with all Borrowers to Include a "Prepayment Penalty."
4. Central Liquidity Facility Reserving Policy For Fiscal Year 1984.
5. Central Liquidity Facility Agent Reimbursement Policy Modification.
6. Interpretive Ruling and Policy Statement, Federal Credit Unions Engaging in Leasing Programs.
7. Proposed Deregulation of Lending Regulation, Part 701.21, NCUA Rules and Regulations.
8. Consideration of the Operating Fee for Calendar Year 1984.
9. Report on Status of National Credit Union Share Insurance Fund.
10. Report on NCUA Amendments to Senate Banking Committee.

The meeting will be held at 2:00 p.m. in the Birmingham Hilton, 808 South 20th Street, Birmingham, AL 35205.

FOR MORE INFORMATION CONTRACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[S-1561-83 Filed 11-3-83; 4:28 pm]

BILLING CODE 7535-01-M

6

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-26]

TIME AND DATE: 9 a.m. Tuesday, November 15, 1983.

PLACE: NTSB Board Room, 8th Floor, 800 Indepndence Ave., S.W., Washington, D.C. 20594.

STATUS: The first two items will be open to the public; the remainder will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Rear End Collision Between Two Burlington Northern Railroad Company Freight Trains, Pacific Junction, Iowa, April 13, 1983.
2. *Highway Accident Report:* Humboldt County Dump Truck/Klamath-Trinity Unified District Schoolbus Collision, State Route 96, near Willow Creek, California, February 24, 1983.
3. *Opinion and Order:* Petition of Fox, Dkt. SM-3096; disposition of repondent's appeal.
4. *Opinion and Order:* Commandant v. Foedisch, Dkt. ME-95; disposition of applellant's appeal.

CONTRACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

November 4, 1983.

[S-1564-83 Filed 11-4-83; 1:34 pm]

BILLING CODE 4910-58-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, November 10, 1983 (Revised).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED: *Thursday, November 10:*

9:30 a.m.

Discussion of Treatment of Management Issues in TMI-1 Resart Proceeding (Public Meeting) (As Announced)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (Items Revised)

a. Amendments to 10 CFR 50 Related to Hydrogen Control
b. Proposed Final Rule—Deletion of Exception Filing Requirement for Appeal from Initial Decisions
c. Final Rulemaking Concerning Fitness for Duty for Personnel (*Postponed* from November 3)
d. Final Immediate Effectiveness Order for San Onofre 2 and 3 (*Postponed* from November 3)

2:00 p.m.

Discussion/Possible Vote on SECY-83-293—Amendments to 10 CFR 50 Related to Anticipated Transients Without Scram (ATWS) Events (Public Meeting) (New Item)

ADDITIONAL INFORMATION: On November 3 the Commission voted 5-0 to hold "Meeting on Classified, Export-Related Matters", held that day; the meeting is to be continued at 4:00 p.m., Wednesday, November 9 (Closed—Ex. 1).

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

November 3, 1983.

Walter Magee

Office of the Secretary.

S-1566-83 Filed 11-4-83; 3:29 pm]

BILLING CODE 7590-01-M

8

POSTAL SERVICE (BOARD OF GOVERNORS)

Vote to Close Meeting

At its meeting on October 31, 1983, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting, scheduled for December 5, 1983, in Washington, D.C. The meeting will involve: (1) Consideration of the August 26, 1983, Recommended Decision of the Postal Rate Commission on third-class bulk rates for nonprofit mail in Docket No. R-80-1; (2) consideration of a proposed new approach to the delivery of expedited mail; and (3) a discussion of possible streategies in anticipated collective bargaining negotiations, pursuant to chapter 12 of title 39 United States Code, involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which are scheduled to expire in July 1984.

The meeting is expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, McKean, Ryan, Sullivan and Voss; Postmater General Bolger; Deputy Postmaster General Finch; Secretary of the Board Harris; General Counsel Cox; Senior Assistant Postmasters General Coughlin, Jellison and Morris; and Counsel to the Governors Califano.

As to the first two of these agenda items, the Board is of the opinion that public access to the discussions would be likely to disclose information that will become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, these portions of the meeting are exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b[b]), because they are likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted

from disclosure by section 410(c)(4) of title 39, United States Code. The Board has determined further, that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussions are exempt, because they are likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

As to the third agenda item, the Board is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the Gereral Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to section 552b (c)(3), (9)(B) and (10) of title 5 and section 410(c) (3) and (4) of title 39, United States Code, and section 7.3 (c), (i) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

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Part II

Environmental Protection Agency

Water Quality Standards Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35, 120, and 131

[WH-FRL 2466-3]

Water Quality Standards Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This Regulation revises and consolidates in a new Part 131 the existing regulations now codified in 40 CFR Parts 120 and 35 that govern the development, review, revision and approval of water quality standards under Section 303 of the Clean Water Act (the Act). The Regulation was revised to reflect the experiences gained in the program by both EPA and the States. More explicit information is included in the Regulation on what EPA expects as part of State water quality standards reviews. The Regulation also clarifies that in promulgating Federal standards, EPA is subject to the same requirements as the States.

EFFECTIVE DATE: December 8, 1983.

FOR FURTHER INFORMATION CONTACT: David K. Sabock, Environmental Protection Agency, Chief, Criteria Branch (WH-585), 401 M Street SW., Washington, 20460 (202) 245-3042.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) proposed changes to 40 CFR 120 and 35 on October 29, 1982 (47 FR 49234) and invited comments until February 10, 1983. Eleven public meetings were held nationwide on the proposed revisions. Nine hundred twenty people attended those meetings. EPA received 1405 letters and statements on the proposal prior to the closing of the public comment period. Comments received on the proposed Regulation may be inspected at the Environmental Protection Agency, Room 2818M, 401 M Street, SW., Washington, D.C. 20460 during the Agency's normal working hours of 8:00 a.m. to 4:30 p.m. For further information contact the individual listed above.

Information in this preamble is organized as follows:

A. Major changes made in the Proposed Rule
B. Regulatory Impact Analyses, Regulatory Flexibility Act and Paperwork Reduction Act Requirements
C. List of Subjects in 40 CFR 131
Appendix A—Response to Public Comments

A. Major Changes Made in the Proposed Regulation

The major additions and deletions made in the proposed Rule are discussed in this section. We have also included a table summarizing all the changes.

Commitment to the Goals of the Clean Water Act

Several changes were made in the Regulation to reassure the public that EPA is committed to achieving the goals of the Act. EPA accepted the recommendations for including regulatory language explicitly affirming EPA's commitment to have standards move toward the Section 101(a)(2) goals of the Act and to use standards as a basis of restoring and maintaining the integrity of the Nation's waters.

A "Purpose" section (§ 131.2) has been added to the Regulation. The Purpose states that standards are to protect public health or welfare, enhance the quality of water and provide water quality for the protection and propagation of fish, shellfish and wildlife and recreation in and on the water, as well as for agricultural and industrial purposes and navigation. In addition, this section describes the dual role of water quality standards in establishing the water quality goals for a specific water body and in serving as the regulatory basis for the establishment of water quality based treatment controls and strategies beyond that level of treatment required by sections 301(b) and 306 of the Act.

The final regulation also clarifies that when a State changes the designated uses of its waters such that the uses of the water body do not include the uses specified in the Section 101(a)(2) goals of the Act (i.e., the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water), the State will have to demonstrate, through a use attainability analysis, that these uses are not attainable based on physical, chemical, biological or economic factors. This use attainability analysis is required for future changes that the State may make and for previous actions that the State took to designate uses for a water body which did not include the uses specified in Section 101(a)(2). Where water quality improvements result in new uses, States must revise their standards to reflect these new uses (See § 131.10(i)). This provision continues an existing EPA requirement although it was omitted from the proposed Regulation.

In addition, as discussed below, we have revised the proposed Antidegradation Policy to provide special protection for high quality waters and waters which constitute an outstanding National resource (See § 131.12) and we have eliminated the benefit-cost analysis.

We believe that these and other changes and clarifications in the Final Rule demonstrate EPA's commitment to the objectives, goals and spirit of the Clean Water Act.

Changes in Uses

The provisions included in § 131.10(h)(1)-(6) of the proposed Regulations, which dealt with circumstances under which uses could be changed, received substantial comment. Many commenters objected that the change in the phrase "States must demonstrate" to "States must determine" that certain conditions exist would mean that EPA would require less rigorous analyses for changing a use. They indicated that "determine" merely connotates a political process whereas "demonstrate" implies substantial proof supported by exacting analyses. EPA believes that structured scientific and technical analyses should be required to justify removing or modifying designated uses that are included in Section 101(a)(2) of the Act or to justify continuation of standards which do not include these uses. EPA agrees that the word "demonstrate" better reflects Agency policy and has made that change (see § 131.10(g)).

Some commenters asked whether modifications in water quality standards, such as defining a level of protection for aquatic life or setting seasonal standards, were changes in standards subject to the public participation requirements of § 131.20(b) of the regulation. Yes, any modification or change that a State makes in its standards is subject to those requirements.

Many commenters also objected to the inclusion of a benefit-cost assessment in justifying changes in uses. Historically, economic considerations have been a part of water quality standards decisions. Senate Report No. 10 on the Federal Water Pollution Control Amendments of 1965, 89th Congress, 1st Session, included the statement that "Economic, health, esthetic, and conservation values which contribute to the social and economic welfare of an area must be taken into account in determining the most appropriate use or uses of a stream". Section 303(c)(2) of the Act provides that ". . . standards shall be established taking into consideration their use and value for . . ." various water uses. Under the 1975 regulation governing the establishment of standards in Part § 35.1550(c)(1), States were to ". . . take into consideration environmental,

technological, social, economic, and institutional factors" in determining the attainability of standards for any particular water segment. In addition, there is and has been an economic consideration in the antidegradation policy. The Agency recognizes that there are inherent difficulties in a balancing of the benefits of achieving the Section 101(a)(2) goals of the Act with the costs. As a result, the Agency was persuaded that the provision in the existing rule allowing changes in designated uses where there would be substantial and widespread economic impact better reflected the process required by the Act. For these reasons, the wording of the existing regulation has been retained.

Several commenters objected to proposed § 131.10(h)(5) which allowed States to remove or to modify designated uses which are not attainable based on physical factors. After considering the comments, the Agency decided to limit the reference to physical factors to aquatic life protection uses and to clarify the existing policy.

Physical factors may be important in evaluating whether uses are attainable. However, physical limitations of the stream may not necessarily be an overriding factor. Common sense and good judgment play an important role in setting appropriate uses and criteria. In setting criteria and uses, States must assure the attainment of downstream standards. The downstream uses may not be affected by the same physical limitations as the upstream uses. There are instances where non-water quality related factors preclude the attainment of uses regardless of improvements in water quality. This is particularly true for fish and wildlife protection uses where the lack of a proper substrate may preclude certain forms of aquatic life from using the stream for propagation, or the lack of cover, depth, flow, pools, riffles or impacts from channelization, dams, diversions may preclude particular forms of aquatic life from the stream altogether. EPA recognizes that while physical factors also affect the recreational uses appropriately designated for a water body, States need to give consideration to the incidental uses which may be made of the water body. Even though it may not make sense to encourage use of a stream for swimming because of the flow, depth or the velocity of the water, the States and EPA must recognize that swimming and/or wading may occur anyway. In order to protect public health, States must set criteria to reflect recreational uses if it appears that recreation will in fact occur in the stream.

In keeping with the purposes of the Act, the wording of § 131.10(h)(4) of the proposed Rule (now § 131.10(g)(4)) was modified so that changes in uses could only occur if dams, diversions or other types of hydrologic modifications *preclude* rather than just interfere with the attainment of the designated uses. It should also be pointed out that if physical limitations of the water body were used as the basis of not including uses for a water body that are specified in Section 101(a)(2) of the Act, those physical factors must be reviewed every three years.

While many commenters objected to the number of reasons the States could use in justifying changes in uses, the Agency decided to keep the six factors, with the changes described above, because they better explain when changes may be made. The terse wording of the existing Rule does not adequately explain when changes can be made.

A number of comments related to use attainability analyses. In demonstrating that a use is not attainable, States will be required to prepare and submit to EPA a use attainability analysis. A use attainability analysis is a multi-step scientific assessment of the physical, chemical, biological and economic factors affecting the attainment of a use. It includes a water body survey and assessment, a wasteload allocation, and an economic analysis, if appropriate.

A water body survey and assessment examines the physical, chemical and biological characteristics of the water body to: identify and define the existing uses of that water body; determine whether the designated uses in the State water quality standards are impaired, and the reasons for the impairment; and assist States in projecting the potential uses that the water body could support in the absence of pollution. A wasteload allocation utilizes mathematical models to predict the amount of reduction necessary in pollutant loadings to achieve the designated use. Economic analyses are appropriate in determining whether the more stringent requirements would cause substantial and widespread economic and social impact. These analyses should address the incremental effects of water quality standards beyond technology-based or other State requirements. The Agency's guidance suggests that States consider effects due to compliance by private and municipal dischargers. If the requirements are not demonstrated to have a substantial and widespread impact on the affected community, the standard must be maintained or made compatible with the goals of the Act.

There was considerable comment on whether the use attainability analyses should be required, and if so when. In keeping with section 510 of the Act, EPA is *not* requiring States to conduct and submit a use attainability analysis if adding a use specified in Section 101(a)(2) of the Act or a use requiring more stringent criteria. In the final rule, EPA is requiring that States conduct and submit to EPA a use attainability analysis if the State (a) is designating uses for the water body such that the water body will not have all uses which are included in Section 101(a)(2) of the Act, (b) maintaining uses for the water body which do not include all of the uses in Section 101(a)(2) of the Act, (c) removing a use included in Section 101(a)(2) of the Act or (d) modifying a use included in Section 101(a)(2) of the Act to require less stringent criteria. A State need only conduct a use attainability once for a given water body and set of uses. During subsequent triennial review, States will be required to review the basis of not including uses for the water body that are specified in Section 101(a)(2) of the Act to show that circumstances have not changed and that protection and propagation of fish, shellfish and wildlife and/or recreation in and on the water remain unattainable. If such uses have become attainable, the standard must be revised accordingly (See § 131.20(a)). However, States may wish to conduct a use attainability analysis, even where not required, if they believe that there will be questions as to whether the protection and propagation of fish, shellfish and wildlife and recreation in and on the water is, in fact, attainable.

The guidance on conducting the water body survey and assessment is included in the *Water Quality Standards Handbook*. The earlier draft of the Handbook has been revised and expanded. Test cases illustrating the water body survey and assessment guidance have been completed and are included in the Handbook. In addition, the Agency has published a *Technical Support Manual: Water Body Surveys and Assessments for Conducting a Use Attainability Analyses*. These publications may be obtained by writing or calling David K. Sabock at the address and phone number listed under **FOR FURTHER INFORMATION CONTACT.**

By publishing guidance on conducting use attainability analyses, EPA is not requiring that specific approaches, methods or procedures be used. Rather, States are encouraged to consult with EPA early in the process to agree on

appropriate methods and procedures for conducting any of the analyses before the analyses are initiated and carried out. States will have the flexibility of tailoring the analyses to the specific water body being examined as long as the methods used are scientifically and technically supportable.

EPA will review the adequacy of the data, the suitability and appropriateness of the analyses and how the analyses were applied. In cases where the analyses are inadequate, EPA will identify how the analyses need to be improved and will suggest the type of evaluation or data needed. When the State has initially consulted EPA on the analyses to be used, EPA will be able to expedite its review of the State's analyses of any new or revised State standard.

Criteria

EPA has revised the section on criteria (§ 131.12 in the proposal; renumbered to § 131.11 in the final rule) in several respects. First, EPA has accepted the recommendation that the phrase "criteria are compatible with" protecting a designated use is confusing and unnecessary and should be removed. The provision now reads: "States must adopt those water quality criteria that protect the designated use."

In addition, EPA consolidated parts of the provisions and stated more concisely the basis of EPA's review of the appropriateness of State criteria. Section 131.11(a) now reads: "Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use," eliminating the need for proposed § 131.12(c) (1)–(3).

A number of comments concerned criteria for toxic pollutants. Some questioned EPA's commitment to controlling toxic pollutants based on the fact that EPA was not "requiring" States to adopt specific *numerical* toxic pollutant criteria. EPA has made a number of changes to more clearly reflect our commitment. For example, EPA has tried to restructure § 131.11(a)(2) on toxic pollutants to assist States in providing the most effective control of toxic pollutants as possible. All States have a requirement in their standards that their waters be free from toxic pollutants in toxic amounts. States are to review their water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely impacting water quality or the designated uses or where the level of a toxic pollutant in the water is at a level to warrant concern. States are expected to conduct such reviews beginning with an in-depth analysis of water bodies with known toxic pollutant problems. States are to adopt numerical or narrative criteria for those toxic pollutants of concern. Numerical criteria are appropriate where a few specific pollutants have been identified as the concern, or where human health rather than aquatic life is the controlling factor. To implement such criteria, models are used to translate the specific criterion on a chemical-by-chemical basis into a wasteload allocation to obtain a specific permit limit.

However, where the effluent or ambient conditions are complex, due to multiple dischargers or multiple pollutants, toxic pollutant limits may be more appropriately set through narrative criteria (such as the "free from statements"). Where narrative criteria are adopted, the State should indicate as part of its water quality standards submission, how it intends to regulate the discharge of the toxic pollutants. Biological monitoring is one mechanism to test compliance with "free from" narrative criteria. Biological monitoring may include periodic sampling of the ecosystem, trend monitoring and/or periodic bioassays using the effluent. Acute and chronic toxicity testing methods have been developed that enable a permit writer to ensure that the discharge will not be toxic to aquatic life. When using biological monitoring to test compliance with narrative criteria, reference should be made to the maximum acceptable levels of toxicity and the basic means by which these levels are to be measured or otherwise determined.

Both the pollutant-by-pollutant and biological methods are being refined and need to be applied in a conservative fashion. They hold great promise and are relatively inexpensive. In many cases a combination of biological monitoring and a chemical-by-chemical approach will provide the best toxic pollutant control.

Finally, a number of comments dealt with site-specific criteria. It was apparent from the comments that some commenters had the mistaken impression that EPA was advocating that States use site-specific criteria development procedures for setting all criteria as opposed to using the national Section 304(a) criteria. Site-specific criteria development procedures are not needed in all situations. Many of the procedures are expensive. Site-specific criteria development appears most appropriate on water quality limited water bodies where:

- Background water quality parameters, such as pH, hardness temperature, suspended solids, etc., appear to differ significantly from the laboratory water used in developing the Section 304(a) criteria; or
- The types of local aquatic organisms in the region differ significantly from those actually tested in developing the Section 304(a) criteria.

The protocols for establishing site-specific criteria, as well as the test cases illustrating use of the protocols, are included in the *Water Quality Standards Handbook*. EPA also has a limited number of copies of *Recalculation of State Toxic Criteria* using the family recalculation procedure. These publications may be obtained by writing or calling David K. Sabock at the address and phone number listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this Rule.

Antidegradation Policy

The preamble to the proposed rule discussed three options for changing the existing antidegradation policy. Option 1, the proposed option, provided simply that uses attained would be maintained. Option 2 stated that not only would uses attained be maintained but that high quality waters, i.e. waters with quality better than that needed to protect fish and wildlife, would be maintained (that is, the existing antidegradation policy minus the "outstanding natural resource waters" provision). Option 3 would have allowed changes in an existing use if maintaining that use would effectively prevent any future growth in the community or if the benefits of maintaining the use do not bear a reasonable relationship to the costs.

Although there was support for Option 2, there was greater support for retaining the full existing policy, including the provision on outstanding National resource waters. Therefore, EPA has retained the existing antidegradation policy (Section 131.12) because it more accurately reflects the degree of water quality protection desired by the public, and is consistent with the goals and purposes of the Act.

In retaining the policy EPA made four changes. First, the provisions on maintaining and protecting existing instream uses and high quality waters were retained, but the sentences stating that no further water quality degradation which would interfere with or become injurious to existing instream uses is allowed were deleted. The deletions were made because the terms "interfere" and "injurious" were subject to misinterpretation as precluding any activity which might even momentarily

add pollutants to the water. Moreover, we believe the deleted sentence was intended merely as a restatement of the basic policy. Since the rewritten provision, with the addition of a phrase on water quality described in the next sentence, stands alone as expressing the basic thrust and intent of the antidegradation policy, we deleted the confusing phrases. Second, in § 131.12(a)(1) a phrase was added requiring that the level of water quality necessary to protect an existing use be maintained and protected. The previous policy required only that an existing use be maintained. In § 131.12(a)(2) a phrase was added that "In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully". This means that the full use must continue to exist even if some change in water quality may be permitted. Third, in the first sentence of § 131.12(a)(2) the wording was changed from ". . . significant economic or social development . . ." to ". . . important economic or social development. . . ." In the context of the antidegradation policy the word "important" strengthens the intent of protecting higher quality waters. Although common usage of the words may imply otherwise, the correct definitions of the two terms indicate that the greater degree of environmental protection is afforded by the word "important."

Fourth, § 131.12(a)(3) dealing with the designation of outstanding National resource waters (ONRW) was changed to provide a limited exception to the absolute "no degradation" requirement. EPA was concerned that waters which properly could have been designated as ONRW were not being so designated because of the flat no degradation provision, and therefore were not being given special protection. The no degradation provision was sometimes interpreted as prohibiting *any* activity (including temporary or short-term) from being conducted. States may allow some limited activities which result in temporary and short-term changes in water quality. Such activities are considered to be consistent with the intent and purpose of an ONRW. Therefore, EPA has rewritten the provision to read ". . . that water quality shall be maintained and protected," and removed the phrase "No degradation shall be allowed. . . ."

In its entirety, the antidegradation policy represents a three-tiered approach to maintaining and protecting various levels of water quality and uses. At its base (Section 131.12(a)(1)), all existing uses and the level of water quality necessary to protect those uses must be maintained and protected. This provision establishes the absolute floor of water quality in all waters of the United States. The second level (Section 131.12(a)(2)) provides protection of actual water quality in areas where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water ("fishable/swimmable"). There are provisions contained in this subsection to allow some limited water quality degradation after extensive public involvement, as long as the water quality remains adequate to be "fishable/swimmable." Finally § 131.23(a)(3) provides special protection of waters for which the ordinary use classifications and water quality criteria do not suffice, denoted "outstanding National resource water." Ordinarily most people view this subsection as protecting and maintaining the highest quality waters of the United States: that is clearly the thrust of the provision. It does, however, also offer special protection for waters of "ecological significance." These are water bodies which are important, unique, or sensitive ecologically, but whose water quality as measured by the traditional parameters (dissolved oxygen, pH, etc.) may not be particularly high or whose character cannot be adequately described by these parameters.

General Policies

Except for a general statement that States may adopt policies affecting the application and implementation of standards and that such policies are subject to EPA review and approval, all other elements of proposed Section 131.13 have been deleted, including the detailed statements on mixing zones, low flow exemptions, and variances.

Specific subsections on mixing zones, low flow exemptions and variances were deleted because, as the public comments suggested, they were not regulatory in nature and therefore were more appropriately addressed in guidance. More detailed information on these subjects is included as guidance in the *Water Quality Standards Handbook*.

Many objected to the temporary variance policy because it appeared to be outside the normal water quality standards setting process and because the test for granting a variance was different from that applied to changing a designated use. While a variance does not change a standard *per se*, there was concern that such a policy would stimulate "pollution shopping" or would unfairly penalize firms that had managed their operations to maintain a profit while installing pollution control equipment, to the advantage of those that had not.

EPA has approved State-adopted variances in the past and will continue to do so if: each individual variance is included as part of the water quality standard, subject to the same public review as other changes in water quality standards and if each individual variance is granted based on a demonstration that meeting the standard would cause substantial and widespread economic and social impact, the same test as if the State were changing a use based on substantial and widespread social and economic impact. EPA will review for approval individual variances, not just an overall State variance policy. A State may wish to include a variance as part of a water quality standard rather than change the standard because the State believes that the standard ultimately can be attained. By maintaining the standard rather than changing it, the State will assure further progress is made in improving water quality and attaining the standard. With the variance provision, NPDES permits may be written such that reasonable progress is made toward attaining the standards without violating Section 402(a)(1) of the Act which states that NPDES permits must meet the applicable water quality standards.

State Review

Section 131.20(a) was changed from the proposal in several respects. These changes were made in response to the public's concern that the language in the proposed regulation either removed or diluted the Act's requirement to review all standards every three years and that EPA's proposed regulatory language did not provide adequate recognition of the goals of the Act. First, the language on the 3-year review requirement was changed to read exactly as the Act. It now reads that "the State shall, from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards."

Second, a mandatory review and upgrading requirement has been added. On segments with water quality standards that do not include all of the uses specified in Section 101(a)(2) of the Act, States must reexamine the basis of that decision every three years to determine whether any new information, technology, etc. has become available that would warrant adding the protection and propagation

of fish, shellfish and wildlife and/or recreation in and on the water.

Third, EPA has retained the concept of allowing a State to select specific water bodies for an in-depth review of the appropriateness of the water quality standard. This was done in order to make maximum use of limited resources and ensure that the most critical environmental problems are addressed. This review could include an examination of the use, the existing water quality criteria, and the need for revised or additional criteria on segments where the standards are not projected to be achieved with implementation of the technology-based requirements of the Act. Factors which may cause a State to select a water body for review include areas where advanced treatment and combined sewer overflow funding decisions are pending, major water quality-based permits are scheduled for issuance or renewal, toxic pollutants have been identified or are suspected of precluding the attainment of water quality standards. This list is not meant to be all inclusive, and a State may have other reasons for examining a particular standard. The procedures established for identifying and reviewing such water bodies should be incorporated into the State's Continuing Planning Process.

There were numerous comments either advocating mechanisms to ensure the right of dischargers to petition the State to review particular standards or advocating the burden of proof be on the discharger to justify any changes in standards. EPA does not believe that it should dictate particular administrative mechanisms that States use to initiate the review of standards on particular water bodies. However, we do believe that whatever mechanism the State uses, it should be made known to the public and included in the State's Continuing Planning Process document.

SUMMARY OF THE CHANGES MADE IN THE PROPOSED REGULATION

Section No. in the proposed regulation	Section No. in the final regulation	Title	Summary of changes
131.1	131.1	Scope	No change made.
	131.2	Purpose	New section *Purpose*. Defines the dual purpose of water quality standards. Standards establish the water quality goals for a specific water body and serve as a regulatory basis for the establishment of water quality based controls beyond the technology required under the Act consistent with Section 101(a)(2) and 303(c) of the Act.
131.2	131.3	Definitions	Minor changes made in the definitions of "criteria", "Section 304(a) criteria" and "water quality standards". Definition of "uses" and "attain" were removed. A definition of a "Use Attainability Analysis" was added.
131.3	131.4	State Authority	Word "reviewing" added to sentence "States are responsible for reviewing, establishing and revising water quality standards.
131.4	131.5	EPA Authority	The wording of this section has been slightly revised to show that EPA makes a determination of "whether" State standards meet the five criteria.
			Subsection (c) revised to read "whether the State has followed its legal procedures for revising or *adopting* standards.
			Subsection (d) modified to read "whether the State standards are based on appropriate technical and scientific data and analyses" rather than "whether the decision making process is based on appropriate technical and scientific data and analyses.
			Subsection (e) added to include minimum requirements for State submission.
131.5	131.6	Minimum Requirements for Water Quality Stds. Submissions.	Under (d) the statement now reads: "An Antidegradation policy consistent with § 131.12."
			Under (e) after Attorney General the phrase "or other appropriate legal authority within the State" was added.
131.10	131.10	Designation of Uses.	Statement added to (a) prohibiting designating a stream for waste transport or assimilation.
			Added a new (b) that in designating uses of a water body and the appropriate criteria, States are to ensure the attainment and maintenance of downstream standards.
			Removed (c). The Antidegradation Policy is now described in § 131.12.
			Section (b) renumbered (c), removed (e), Section (f) renumbered (e), and Section (g) renumbered (f).
			Paragraph (h) now (g) has been changed. It now requires that a State must *demonstrate* that the designated use, which is not an existing use, is not attainable. Items 4 and 6 were also reworded. Item 4 now reads that changes in uses can be justified if dams, diversions or other types of hydrologic modifications *preclude* the attainment of a use rather than just interfere with the attainment of a use. Item 5 limits the consideration of physical factors to aquatic life protection uses. Item 6 has been totally changed. It now reads that changes in uses can be made if controls more stringent than those required by Section 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.
			In paragraph (i) now (h), (2) and (3) are consolidated. Subparagraph (4) has been eliminated because of the revision to the Antidegradation Policy (see § 131.12). Subparagraph (5) now appears in § 131.6(b).
			New paragraph (i) requires States to revise their standards to reflect improvements in water quality.
			In paragraph (j), EPA has defined that States must conduct a Use Attainability Analysis if designating uses not specified in Section 101(a)(2) of the Act, when removing a use specified in Section 101(a)(2) or if modifying uses specified in Section 101(a)(2) by requiring less stringent criteria. Paragraph (k) clarifies that States are not required to conduct a Use Attainability Analysis when designating uses specified in Section 101(a)(2) of the Act.
131.11		Analyses for Changing or Modifying Uses.	Eliminated.
131.12	131.11	Criteria	Eliminated.
			Under (a)(1) the phrase "are compatible with" has been removed and following the first sentence the following has been added: "Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For water with multiple use designations, the criteria shall support the most sensitive use."
			Subparagraph (a)(2) has been revised to read that States *must* review water quality data and information and where toxic pollutants may be adversely affecting the attainment of the water quality or the attainment of the designated use or where the levels of toxic pollutants are at a level to warrant concern must adopt criteria for the toxic pollutants. Where States adopt narrative criteria for toxic pollutants, the State must adopt a policy indentifying the method by which the State intends to regulate point source discharges based on such narrative criteria.
			Subparts (b)(2) and (3) were combined.
			Paragraph (c) has been removed because the concepts are now included in paragraph (a).
	131.12	Antidegradation Policy.	The Antidegradation Policy found in the former 40 CFR 35.1550(e) has been adopted into the final Regulation with several modifications. The phrase "interfere with or become injurious to" was removed, a phrase was added in (a)(1), (2), and (3) to maintain and protect instream water quality to protect existing uses, in (a)(2) "important" replaces "significant" in the phrase on economic and social development, and "no degradation" was deleted from (a)(3).
131.13	131.13	General Policies	Paragraph (a) revised to clarify that General Policies if adopted are to be included in a State's water quality standards and are subject to EPA review and approval.
			Subsections (b)(c)(d) removed.
131.20	131.20	State Review and Revision of Water Quality Standards.	Paragraph (a) State Review has been rewritten to track the wording in the Act on the three year review of water quality standards. States are required to review every three years State standards on segments that do not include uses specified in Section 101(a)(2) of the Act to determine whether these standards are still appropriate. Finally a statement has been added that procedures States use to identify water bodies for review should be incorporated into their Continuing Planning Process document.
			Under paragraph (c) after 30 days we added a phrase, "of the final State action to adopt and certify" to clarify when the 30 day time period starts.

SUMMARY OF THE CHANGES MADE IN THE PROPOSED REGULATION—Continued

Section No. in the proposed regulation	Section No. in the final regulation	Title	Summary of changes
131.21	131.21	EPA Review and Approval of Water Quality Standards.	No Change.
131.22	131.22	EPA Promulgation of Water Quality Standards.	Paragraphs (a) and (b) were clarified to indicate Administrator may promulgate as well as just propose standards. Under paragraph (c), a requirement was added that EPA in promulgating water quality standards is also subject to the public participation requirements of this Regulation.

B. Regulatory Impact Analysis and Regulatory Flexibility Analysis and Paperwork Reduction Act Requirements

Under Executive Order 12291, EPA must judge whether a Regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. It is difficult for EPA to assess the likely net cost of this Regulation because of the offsetting character of its basic provisions. The Regulation does establish new obligations on the States for control of toxic pollutants. However, the Regulation also increase the ability of the States to determine the attainability of stream uses, to set site-specific criteria sufficient to protect those uses, and to focus limited State and Federal resources on reviewing standards for priority water quality limited segments. These changes are designed to enable States to better use water quality standards as a pragmatic tool in improving water quality where necessary to protect water uses. For these reasons the Agency judges this not to be a major Regulation under Executive Order 12291.

This notice was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection through contracting the person listed at the beginning of this notice.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 601 et seq., EPA must prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. EPA has determined that, for reasons discussed above, this Rule does not have significant adverse impact on small entities.

The information collection provisions in this rule have been approved by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned control number 2040-0049.

List of Subjects

40 CFR Part 35

Water pollution control.

40 CFR Part 120

Water pollution control.

40 CFR Part 131

Water pollution control, Intergovernmental relations, Administrative practices and procedures, Reporting and record keeping.

Dated: November 2, 1983.

William D. Ruckelshaus,

Administrator.

PART 35—STATE AND LOCAL ASSISTANCE

§ 35.1550 [Removed]

1. Section 35.1550 is removed.

PART 120—WATER QUALITY STANDARDS

§§ 120.1-120.3 [Removed]

2. Sections 120.1 through 120.3 are removed.

§§ 120.27 and 120.43 [Removed]

3. Sections 120.27 and 120.43 are removed.

4. Part 131 is added as set forth below:

4A. Subparts A, B, and C are added as follows:

PART 131—WATER QUALITY STANDARDS

Subpart A—General Provisions

Sec.
131.1 Scope.
131.2 Purpose.
131.3 Definitions.
131.4 State authority.
131.5 EPA authority.
131.6 Minimum requirements for water quality standards submission.

Subpart B—Establishment of Water Quality Standards

131.10 Designation of uses.
131.11 Criteria.
131.12 Antidegradation policy.
131.13 General policies.

Subpart C—Procedures for Review and Revision of Water Quality Standards

Sec.
131.20 State Review and Revision of Water Quality Standards.
131.21 EPA Review and Approval of Water Quality Standards.
131.22 EPA Promulgation of Water Quality Standards.

Authority: Clean Water Act, P.L. 92-500, as amended; 33 U.S.C. 1251 *et seq.*

Subpart A—General Provisions

§ 131.1 Scope.

This part describes the requirements and procedures for developing, reviewing, revising and approving water quality standards by the States as authorized by Section 303(c) of the Clean Water Act. The reporting or recordkeeping (information) provisions in this rule were approved by the Office of Management and Budget under 3504(b) of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* (approval number 2040-0049).

§ 131.2 Purpose.

A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act). "Serve the purposes of the Act" (as defined in Sections 101(a)(2) and 303(c) of the Act) means that water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value of public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.

Such standards serve the dual purposes of establishing the water

quality goals for a specific water body and serve as the regulatory basis for the establishment of water-quality-based treatment controls and strategies beyond the technology-based levels of treatment required by sections 301(b) and 306 of the Act.

§ 131.3 Definitions.

(a) *The Act* means the Clean Water Act (Public Law 92-500, as amended, (33 U.S.C. 1251 *et seq.*)).

(b) *Criteria* are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

(c) *Section 304(a) criteria* are developed by EPA under authority of Section 304(a) of the Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on particular aquatic species and/or human health. This information is issued periodically to the States as guidance for use in developing criteria.

(d) *Toxic pollutants* are those pollutants listed by the Administrator under Section 307(a) of the Act.

(e) *Existing uses* are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

(f) *Designated uses* are those uses specified in water quality standards for each water body or segment whether or not they are being attained.

(g) *Use Attainability Analysis* is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).

(h) *Water quality limited segment* means any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-bases effluent limitations required by Sections 301(b) and 306 of the Act.

(i) *Water quality standards* are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

(j) *States* include: the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 131.4 State authority.

States are responsible for reviewing, establishing and revising water quality standards. Under Section 510 of the Act, States may develop water quality standards more stringent than required by this regulation.

§ 131.5 EPA authority.

Under Section 303(c) of the Act, EPA is to review and to approve or disapprove State-adopted water quality standards. The review involves a determination of: (a) Whether the State has adopted water uses which are consistent with the requirements of the Clean Water Act; (b) whether the state has adopted criteria that protect the designated water uses; (c) whether the State has followed its legal procedures for revising or adopting standards; (d) whether the State standards which do not include the uses specified in Section 101(a)(2) of the Act are based upon appropriate technical and scientific data and analyses, and (e) whether the State submission meets the requirements included in Section 131.6 of this part. If EPA determines that State water quality standards are consistent with the factors listed in (a)—(e) of this subsection, EPA approves the standards. EPA must disapprove the State water quality standards and promulgate Federal standards under Section 303(c)(4) of the Act, if State adopted standards are not consistent with the factors listed in (a)—(e) of this subsection. EPA may also promulgate a new or revised standard where necessary to meet the requirements of the Act.

§ 131.6 Minimum requirements for water quality standards submission.

The following elements must be included in each State's water quality standards submitted to EPA for review:

(a) Use designations consistent with the provisions of Sections 101(a)(2) and 303(c)(2) of the Act.

(b) Methods used and analyses conducted to support water quality standards revisions.

(c) Water quality criteria sufficient to protect the designated uses.

(d) An antidegradation policy consistent with § 131.12.

(e) Certification by the State Attorney General or other appropriate legal authority within the State that the water quality standards were duly adopted pursuant to State law.

(f) General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include the uses specified in Section 101(a)(2) of the Act as well as information on general policies applicable to State standards which may affect their application and implementation.

Subpart B—Establishment of Water Quality Standards

§ 131.10 Designation of uses.

(a) Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

(b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

(c) States may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses, for instance, to differentiate between cold water and warm water fisheries.

(d) At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under Sections 301(b) and 306 of the Act and cost-effective and reasonable best management practices for nonpoint source control.

(e) Prior to adding or removing any use, or establishing sub-categories of a use, the State shall provide notice and an opportunity for a public hearing under § 131.20(b) of this regulation.

(f) States may adopt seasonal uses as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent water quality criteria. If seasonal uses are adopted, water quality criteria should be adjusted to reflect the seasonal uses, however, such criteria shall not preclude the attainment and maintenance of a more protective use in another season.

(g) States may remove a designated use which is *not* an existing use, as defined in § 131.3, or establish sub-categories of a use if the State can

demonstrate that attaining the designated use is not feasible because:

(1) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

(6) Controls more stringent than those required by Sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

(h) States may not remove designated uses if:

(1) They are existing uses, as defined in Section 131.3, unless a use requiring more stringent criteria is added; or

(2) Such uses will be attained by implementing effluent limits required under Sections 301(b) and 306 of the Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(i) Where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained.

(j) A State must conduct a use attainability analysis as described in § 131.3(g) whenever:

(1) The State designates or has designated uses that do not include the uses specified in Section 101(a)(2) of the Act, or

(2) The State wishes to remove a designated use that is specified in Section 101(a)(2) of the Act or to adopt subcategories of uses specified in Section 101(a)(2) of the Act which require less stringent criteria.

(k) A State is not required to conduct a use attainability analysis under this Regulation whenever designating uses which include those specified in Section 101(a)(2) of the Act.

§ 131.11 Criteria.

(a) Inclusion of pollutants:

(1) States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.

(2) Toxic Pollutants—States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use. Where a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be included as part of the standards or may be included in documents generated by the State in response to the Water Quality Planning and Management Regulations (40 CFR Part 35).

(b) Form of criteria: In establishing criteria, States should:

(1) Establish numerical values based on:

(i) 304(a) Guidance; or

(ii) 304(a) Guidance modified to reflect site-specific conditions; or

(iii) other scientifically defensible methods;

(2) establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria.

§ 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

§ 131.13 General policies.

States may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances. Such policies are subject to EPA review and approval.

Subpart C—Procedures for Review and Revision of Water Quality Standards

§ 131.20 State review and revision of water quality standards.

(a) State Review: The State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Any water body segment with water quality standards that do not include the uses specified in Section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available. If such new information indicates that the uses specified in Section 101(a)(2) of the Act are attainable, the State shall revise its

standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

(b) *Public Participation:* The State shall hold a public hearing for the purpose of reviewing water quality standards, in accordance with provisions of State law, EPA's water quality management regulation (40 CFR 130.3(b)(6)) and public participation regulation (40 CFR Part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.

(c) *Submittal to EPA:* The State shall submit the results of the review, any supporting analysis for the use attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard, or if no revisions are made as a result of the review, within 30 days of the completion of the review.

§ 131.21 EPA review and approval of water quality standards.

(a) After the State submits its officially adopted revisions, the Regional Administrator shall either:

(1) notify the State within 60 days that the revisions are approved, or

(2) notify the State within 90 days that the revisions are disapproved. Such notification of disapproval shall specify the changes needed to assure compliance with the requirements of the Act and this regulation, and shall explain why the State standard is not in compliance with such requirements. Any new or revised State standard must be accompanied by some type of supporting analysis.

(b) The Regional Administrator's approval or disapproval of a State water quality standard shall be based on the requirements of the Act as described in §§ 131.5, and 131.6.

(c) A State water quality standard remains in effect, even though disapproved by EPA, until the State revises it or EPA promulgates a rule that supersedes the State water quality standard.

(d) EPA shall, at least annually, publish in the **Federal Register** a notice of approvals under this section.

§ 131.22 EPA promulgation of water quality standards.

(a) If the State does not adopt the changes specified by the Regional Administrator within 90 days after notification of the Regional Administrator's disapproval, the Administrator shall promptly propose and promulgate such standard.

(b) The Administrator may also propose and promulgate a regulation, applicable to one or more States, setting forth a new or revised standard upon determining such a standard is necessary to meet the requirements of the Act.

(c) In promulgating water quality standards, the Administrator is subject to the same policies, procedures, analyses, and public participation requirements established for States in these regulations.

§§ 120.12 and 120.34 [Redesignated as §§ 131.31 and 131.33]

4B. Sections 120.12 and 120.34 are redesignated as §§ 131.31 and 131.33 respectively and constitute Subpart D, of new Part 131. The heading of new § 131.31 is revised to read "§ 131.31 Arizona". The table of contents for new Subpart D is set forth below:

Subpart D—Federally Promulgated Water Quality Standards

131.31 Arizona
131.33 Mississippi.

Authority: Clean Water Act, Pub. L. 92-500, as amended; 33 U.S.C. 1251 *et seq.*

5. The heading for Part 120 is removed and reserved.

[Note.—Appendix A will not appear in the CFR.]

Appendix A—Response to Public Comments

The public comments and statements submitted to EPA on the proposed Water Quality Standards Regulation before the close of the comment period are summarized in a separate publication, "Summary of Public Comments on the Proposed Water Quality Standards Regulation," March 11, 1983. Limited numbers of the Summary are available from David K. Sabock at the address listed under **FOR FURTHER INFORMATION CONTACT.**

This appendix describes EPA's response to the recommendations for changes in the proposed Regulation. Similar recommendations have been grouped together. Major additions and deletions made in the Rule in response to public comments are described in greater detail in the Preamble. Subjects discussed in the Preamble, along with EPA's rationale for accepting or rejecting the public's suggestions include: commitment to the goals of the Clean Water Act, changes in uses (including comments on benefit-cost assessments), criteria, the antidegradation policy, general policies, and State review.

Definitions

Several commenters asked what waters were included in the Standards program. We changed the term "navigable waters" to "waters of the United States" in the Regulation to avoid confusion. The CWA defines "navigable waters" as "waters of the United States," a broader class of waters than considered "navigable" under some other statutes.

A number of recommendations were made to improve the series of definitions relating to uses. The terms "uses" and "attain" were removed from the list of definitions as being unnecessary to define. A definition of "Use Attainability Analysis" was added as a means of providing a common basis for understanding this analysis. This definition is derived from the language of the existing Regulation. The recommendation that the definition of "water-quality limited segment" be moved from the Preamble of the proposed Rule to the definition section of the final Rule was accepted. The definition is important to understanding certain provisions of the Rule and is, therefore, logically part of the Rule.

Several suggestions were offered regarding the definition of "criteria" which resulted in the addition of "or narrative statement" after "concentration or level" and the deletion of the final sentence to remove the erroneous implication that only numerical values may be established. However, we rejected the suggestion that we include in the definition of criteria a statement that criteria are purely scientific determinations and do not consider the availability of treatment technology or the costs or economic impact of such treatment requirements, because to do so would be misleading. Section 304(a) criteria developed by EPA are purely scientific determinations, published as guidance for the State's use. They are not enforceable. Criteria adopted as part of State water quality standards are set taking into consideration the protection of a particular designated use, and thus may indirectly reflect a judgment as to the availability of treatment technologies needed to attain that use and the associated economic impacts. Such criteria, adopted as part of a State standard, are enforceable.

State Review of Water Quality Standards

There was considerable public comment on the subject of *State Review*

of Water Quality Standards, primarily directed to the apparent lack of EPA's commitment to the goals and philosophy of the Clean Water Act and the substitution of a review of standards for a limited number of priority water bodies in lieu of a Statewide review of standards at least once every 3 years. These concerns were addressed in detail in the Preamble and will only be briefly discussed here.

Because of the overwhelming support for the Section 101(a)(2) goals of the Act, EPA added a requirement that any stream segment with uses not specified in Section 101(a)(2) of the Act be re-examined every 3 years by the State to determine if new information has become available. If such new information indicates that the uses specified in Section 101(a)(2) are attainable, the State shall revise its standards accordingly. This provision in effect established a mandatory requirement to "upgrade" water quality standards as a balance to the provisions allowing the "downgrading" of standards. This policy also removes problems dealing with equity considerations among competing dischargers. Dischargers on a stream with an unduly "low" designated use should not be given an advantage over dischargers on streams whose designated uses and criteria were properly set to reflect attainable uses.

We have retained the statutory 3-year review requirement. The proposed regulation was intended to implement that requirement, but subsequent statements on priority water bodies in that subsection of the proposal and discussions in the Preamble and *Water Quality Standards Handbook* tended to confuse the issue. Many commenters thought EPA was attempting to delete or minimize that requirement. This is not EPA's intention.

EPA has changed the language in part 131.20 to emphasize the statutory nature of the 3-year review of all State standards. However, EPA continues to believe that the concept of focusing limited State resources on specific water bodies is an appropriate management technique to ensure that the most critical environmental problems are adequately addressed. The Preamble discusses this in more detail.

In addition, many commenters erroneously assumed that EPA was proposing a rigid system for determining priority water bodies. EPA has no rigid priority system in mind other than assuming the States will address known problems first. Rather, EPA views setting priorities as a basic management tool and a necessary step for States to make the best use of limited resources. Priority lists are viewed as flexible working documents, not as mandatory lists. Public involvement in developing these lists is encouraged.

Although there were suggestions that EPA define for States the processes that should be used in establishing the list of priority water bodies, the Act does not require such guidance and EPA does not believe it is appropriate to do so. However, whatever procedures States establish should be incorporated into the States Continuing Planning Process document and be made known to the public-at-large.

Antidegradation Policy

EPA's proposal, which would have limited the antidegradation policy to the maintenance of existing uses, plus three alternative policy statements described in the preamble to the proposal notice, generated extensive public comment. EPA's response is described in the Preamble to this final rule and includes a response to both the substantive and philosophical comments offered. Public comments overwhelmingly supported retention of the existing policy and EPA did so in the final rule.

EPA's response to several comments dealing with the antidegradation policy, which were not discussed in the Preamble are discussed below.

Option three contained in the Agency's proposal would have allowed the possibility of exceptions to maintaining existing uses. This option was either criticized for being illegal or was supported because it provided additional flexibility for economic growth. The latter commenters believed that allowances should be made for carefully defined exceptions to the absolute requirement that uses attained must be maintained. EPA rejects this contention as being totally inconsistent with the spirit and intent of both the Clean Water Act and the underlying philosophy of the antidegradation policy. Moreover, although the Agency specifically asked for examples of where the existing antidegradation policy had precluded growth, no examples were provided. Therefore, wholly apart from technical legal concerns, there appears to be no justification for adopting Option 3.

Most critics of the proposed antidegradation policy objected to removing the public's ability to affect decisions on high quality waters and outstanding national resource waters. In attempting to explain how the proposed antidegradation policy would be implemented, the Preamble to the proposed rule stated that no public participation would be necessary in certain instances because no change was being made in a State's water quality standard. Although that statement was technically accurate, it left the mistaken impression that all public participation was removed from the discussions on high quality waters and that is not correct. A NPDES permit would have to be issued or a 208 plan amended for any deterioration in water quality to be "allowed". Both actions require notice and an opportunity for public comment. However, EPA retained the existing policy so this issue is moot. Other changes in the policy affecting ONRW are discussed in the Preamble.

Designation of Uses

The question of whether there is a hierarchy of uses generated much discussion. Many indicated there is no hierarchy of uses since none of the uses mentioned in Section 303(c) of the Clean Air Water Act are ranked or were put into any order of priority. However, others believed that fish, wildlife and recreation or potable water supply clearly have precedence. The short answer is that Congress, in setting the goals in Section 101(a)(2), established that, where attainable, water quality "shall provide for the protection of fish, shellfish, wildlife and recreation in and on the water. . ." Therefore, EPA has revised the proposed regulation to better emphasize the uses specified in the Section 101(a)(2) goals of the Act. Under the final regulation, wherever States have set or set uses for a water body which do not include all of the uses specified in Section 101(a)(2) of the Act, they must conduct a use attainability analysis to demonstrate that these uses are not attainable. Of course, if they are not attainable, the State must select one or more of the other uses included in 303(c)(2). While the States need only conduct a use attainability analysis once, every three years States will have to review the basis of prior decisions to designate uses a water body which do not include uses specified in Section 101(a)(2) of the Act to determine if there is any information which would warrant a change in the standards. This change responds positively to the criticism that the proposed regulation settled for the status quo and did not adequately support the improvement of water quality.

The provision in the proposal allowing States to designate subcategories of aquatic use (Section 131.10(b)) has been changed slightly in the final rule (Section 131.10(c)) in response to suggestions made by various commenters. EPA is attempting to convey the concept that some use classifications included in the Act and

in State standards are so broad that they do not adequately describe to the public the actual use to be protected. The final rule provides that a State may, because of physical, chemical, biological, and economic factors, wish to adopt sub-categories of a use and set criteria appropriate to protect a particular use sub-category. The alteration of the language from the proposal to the final rule specifically follows suggestions that uses other than aquatic life protection should be covered, and that factors other than economics should be considered, in designating particular sub-categories of uses.

Many of the comments on setting sub-categories of uses levels of aquatic protection, and seasonal uses were similar, focusing primarily on the availability of guidance and the adequacy of information on how to establish levels of protection or seasonal uses. Guidance is available in the *Water Quality Standards Handbook* on what considerations are involved in determining levels of protection and seasonal uses to designating appropriate uses for a water body. The availability of information will vary depending on the site involved. EPA intends to continually improve the scientific and technical basis of the guidance and to revise such guidance from time to time. Moreover, EPA will not approve standards unless they are based on sound scientific and technical analysis. Establishing sub-categories of uses and seasonal uses are optional considerations on the part of the State.

Several commenters suggested that EPA establish a minimum level of protection. EPA believes it provides the basic scientific information on various levels of protection with the water quality criteria recommendations under Section 304(a) of the Act. However, for EPA to mandate certain levels of aquatic life protection within a use would override the primary authority of the State to adopt use classifications and supporting criteria through public hearings. EPA does not believe as being valid the concern expressed by the public that when establishing various levels of protection that the most sensitive species will not be protected. The degree of protection may vary depending upon what life stage of the most sensitive species the public wishes to protect. For example, water quality criteria necessary to protect spawning of aquatic life generally requires more stringent water quality criteria than does protection of the species during other stages of its life cycle. If spawning is not part of a designated use for a specific water body, then less stringent criteria levels may be established and they will be adequate to protect the use fully.

The public also was concerned that uses or sub-categories of uses would not be based on original habitat conditions. It has never been the intention of the water quality standards program to bring all waters to a pristine condition or necessarily to set standards based on original habitat conditions. In the first instance, some waters are naturally of "poor" quality, and in the second, man has changed the environment and there are instances where an attempt to correct or control some sources of pollution either simply cannot be effected or would cause more environmental damage to correct than to leave in place.

In response to comments that the provision on seasonal uses was too loose, we revised the wording to clarify that the criteria may not be adjusted in a way that precludes a more protective use in another season.

A basic policy of the standards program throughout its history has been that the designation of a water body for the purposes of waste transport or waste assimilation is unacceptable. At the public's suggestion, an explicit statement of this policy has been added to § 131.10(a). The objective is to prevent water bodies from being used as open sewers. Thus, this "no waste transport" policy does not mean that wastes cannot be conveyed by barge or boat; such activity is encompassed by the navigation use designation.

Use Attainability Analysis

Because of the wide range of comments on the use attainability analysis, EPA revised the regulation to better define when such an analysis is appropriate. The changes were described in the Preamble.

EPA also reworded the proposed concept of the use attainability analysis to include, where appropriate, an analysis of the economic impacts of attaining a use consistent with or more stringent than the Section 101(a)(2) goals of the Act. EPA agrees with the comments that attainability and affordability are integral components of the same analyses. This is consistent with the previous regulation, which provided that, in determining attainability, States were to consider economic factors [§ 35.1550(c)(1)].

In the proposed Rule, EPA recommended conducting a benefit-cost assessment in determining whether the benefits of attaining a use bear a reasonable relationship to the costs. That concept has been removed from the final Rule. As explained in the preamble, the Agency was persuaded by the arguments that there are inherent conceptual and procedural difficulties in *balancing* the benefits of achieving the Section 101(a)(2) goals versus the costs. The final regulation avoids these problems while still recognizing the relevance of economic factors in determining attainability. The Agency has retained the concept that economic analysis be judged on substantial and widespread economic and social impact.

Defining Attainable Uses

Several recommendations were made to delete references to Section 301(c) from the definition of the minimum baseline technology defining when a use is considered attainable and cannot be modified or removed. They also suggested making 301(c) waivers subject to the requirements of proposed § 131.13(c). The Agency believes that it is appropriate to use all applicable sections of the Act in defining the minimum technology based requirements of the Act; section 301(c) is one such section. In addition, Section 301(c) prescribes the eligibility requirements for a Section 301 waiver. Therefore, EPA has not made the suggested changes relating to Section 301(c).

Others pointed out that the proposed rule did not, but should, allow a mix of point and nonpoint source controls in determining whether a use is attainable. It was not EPA's intent to prevent that type of analysis, and the final regulation has been clarified by combining the two paragraphs on point and nonpoint source controls with the word "and" in § 131.10(h)

Other comments on nonpoint sources focused on the use of the terminology "cost effective and reasonable best management practices." EPA used the term "cost effective and reasonable best management practices" to cover the development of nonpoint source controls with Section 205(j) funding. We believe generally that nonpoint source controls developed as part of a State's water quality management plan are cost effective and reasonable. If a designated use can be attained through such BMPs; it would be inconsistent to allow a change in the use. Some comments also expressed concern that the Agency was forcing a mandatory regulatory program for nonpoint source controls through the Water Quality Standards Regulation. The Agency does not believe that the wording will impose any new requirements for the development of regulatory programs for nonpoint source controls; rather, the regulation simply

takes into account those programs which exist in ascertaining the minimum requirements. States are still free to review and revise their non-point source requirements in accordance with 208, 303(e), and 205(j).

One commenter recommended that the Agency include in the section on use attainability a discussion of the relationship between best management practices and water quality standards similar to that in *U.S. EPA, State and Areawide Memorandum*, Number 32, Nov. 14, 1978. EPA has included that memorandum in the chapter on "Water Body Survey and Assessments for Conducting Use Attainability Analyses" in the *Water Quality Standards Handbook*.

Changes in Uses

EPA received substantial comment on § 131.10(h)(1)–(6) and (i)(1)–(6) of the proposed regulation, which deal with the circumstances under which changes may (or may not) be made in designated uses. These sections have been revised; the changes are discussed in Section A of the Preamble.

Criteria

We accepted the comment that the added test of criteria being "compatible with" protecting a designated use might raise the possibility of unnecessary debate over what is compatible with protecting a designated use. The sentence was revised to read "States must adopt water quality criteria that protect a designated use." In response to several comments, EPA also added language to clarify that criteria must be based on sound scientific rational and must contain sufficient parameters or constituents to protect the designated use. Some commenters apparently believe that the Agency continues to have a policy of "presumptive applicability" applied to the Federal water quality criteria or that the proposed Regulation recreated that policy. That policy existed from July 10, 1978 to Nov. 28, 1980, when it was rescinded. No such policy now exists nor is intended in the final rule. While States are free to draw on EPA's 304(a) criteria as support for State criteria, they are equally free to use any other criteria for which they have sound scientific support.

Comments received from the public clearly indicated concern that the proposed rule did not appear to provide sufficient emphasis on the control of toxic pollutants. The proposed paragraph on toxic pollutants was therefore strengthened to provide that States "must" review water quality data and information on dischargers to identify where toxic pollutants may be adversely affecting the attainment of designated water uses and "must" adopt criteria to ensure the protection of the designated uses. Furthermore, where States adopt narrative statements for toxic pollutants, EPA is requiring that States submit along with their standards submission information identifying the method by which the State intends to regulate point source discharges of toxic pollutants based on the narrative provisions. For example, States may require biological monitoring of dischargers' effluents such that a particular tolerance or LC_{50} value is not exceeded. EPA made these changes because it agrees that more emphasis needs to be placed on the control of toxic dischargers. Information on implementing methods will ensure that EPA and State have a common understanding of what the narrative criteria really mean, and will facilitate permit writing on water quality limited streams.

The regulation provides several ways of establishing water quality criteria, including criteria development based on site-specific characteristics. EPA's field tests of the proposed guidance supporting the concept of developing site-specific criteria, the comments received during the public review, and the review conducted by the Agency's Science Advisory Board identified difficulties with the proposed guidance. The final guidance has been carefully revised to reflect the concerns and comments received to ensure that the mechanisms used to develop site-specific criteria are scientifically credible. Research will also continue on improved techniques, and as validated they will be made available to the States.

General Policies

While many commenters supported including the General Policies provision (Section 131.13) in the framework of the Regulation, others recommended deleting the General Policies section from the Regulation and including it in guidance documents. Since much of the language in that proposed part was in fact guidance, EPA decided to delete paragraphs (b)–(d). Only the first part of the section which recognizes that States do adopt policies that impact on the implementation and application of water quality standards and that such policies, if adopted, are subject to EPA review and approval was retained.

EPA believes that it is important for the public to understand that while the adoption of these policies is optional, if adopted they are subject to EPA review and approval. EPA will continue to include a discussion of mixing zones, low flows, variance and other general program policies in a guidance document, as has been done since 1975. Detailed guidance on these optional policies is included in the *Water Quality Standards Handbook*.

Resource Capabilities

The issue of resources was of concern to many. While some States over the years have collected the scientific and technical information to set appropriate water quality standards, others have done significantly less data collection. EPA recognizes that use attainability analyses and site specific criteria studies may require some States to program more resources for setting their water quality standards than in the past. However, the use attainability analyses apply only to water quality limited segments—segments where standards will not be attained even with implementation of technology-based controls of the Act, where the State wishes to justify uses less than "fishable/swimmable". Moreover, nothing in the guidance or in the requirement for conducting use attainability analyses suggests that every analysis be similar in scope and detail or that they must be intrinsically expensive and difficult. EPA expects quite the opposite to be true; the analyses only need to be sufficiently detailed to support the specific standards decision in question. Consequently, when attempting to establish appropriate aquatic protection uses it will, for example, be relatively simple to demonstrate to EPA that certain aquatic life forms will be unable to exist in an area because of physical factors regardless of the level of water quality attained, i.e., no level of water quality will induce fish to spawn in areas where the bottom strata are not what the particular species requires for spawning. In other instances, given the environmental problems, number of people involved, the cost of pollution control to municipalities and industries, and the political aspects of the situation, the use attainability analyses may be quite costly. Because resources are and will likely continue to be a problem, EPA recommends that States set priorities for conducting these analyses. The Agency also believes that it is appropriate for States to enlist the cooperation and resources of dischargers in conducting these analyses. EPA continues to believe that there is considerable expertise and data available from various State agencies that can be tapped to assist in establishing attainable standards. This

expertise does, of course, vary from State to State but that situation exists under any regulation EPA may promulgate.

In addition to the technical concerns on the development of site-specific criteria addressed earlier in both the Preamble and this Appendix, the public expressed concern with the cost of the procedures and the availability of State personnel to conduct and manage such procedures. Because it is a new concept in terms of application in a regulation, the Preamble to the proposed rule discussed the procedures in detail. This conveyed the impression that site-specific criteria development would be the basic method of setting water quality criteria. EPA believes the States will continue to base most of their standards on EPA developed Section 304(a) criteria because of the resource question and because of the fact that site-specific criteria will not be necessary in most water bodies. The Final Rule allows States to develop site-specific criteria; it does not require them to do so. As with use attainability analyses, States should set priorities and enlist the assistance of dischargers in conducting site specific criteria. EPA will be providing training seminars for State personnel in applying site-specific criteria development procedures. EPA is also developing simpler and improved techniques.

State/Federal Roles

There were a number of diverse comments on the sections of the proposed rule dealing with "State Review and Revision of Water Quality Standards", "EPA Review and Approval of Water Quality Standards" and "EPA Promulgation of Water Quality Standards".

Several comments on § 131.20 of the proposed regulation "State Review and Revision of Water Quality Standards", requested specific mechanisms be included in the regulation on how States should generate data and information, how to involve local government and industry in the data collection and decision making, how permittees could request a review of inappropriate water quality standards and how the public participates in the water quality standards revision process. All of these comments were evaluated but few changes were made other than those in § 131.20 which were described earlier. States are responsible, within the guidelines of Section 303(c) of the Act and the Water Quality Standards Regulation, for setting water quality standards. EPA does not believe it is appropriate to specify particular administrative mechanisms States must use in that process. Ensuring such administrative uniformity would be disruptive to the States without yielding any significant environmental benefit.

There was also a recommendation to include in the rule the policy statement that was in the preamble to the proposal on the relationship of Section 24 of the "Municipal Waste Water Treatment Construction Grant Amendments of 1981" (Pub. L. 97-117, December 29, 1981, 33 U.S.C. 1313(a)), to water quality standards reviews. The Agency chose not to do so because, for the purposes of Section 24, water quality standards reviews are synonymous with the water quality standards reviews under Section 303(c) of the Act and the one final rule.

A number of letters and statements expressed concern that the various EPA Regional Offices will interpret the regulation differently. It is recognized that with 10 Regional Offices responsible for the review and approval of State water quality standards, there is potential for inconsistencies between Regions on recommended data and analyses. Of course, since water quality problems in different regions may vary considerably, the regions must also be able to respond to those problems in ways that make the most sense under the particular circumstances. However, it is believed that EPA's guidance and Headquarters evaluations of the Regional Offices will, to the extent possible, minimize inconsistencies in the interpretation of the Regulation by our Regional Offices.

There were suggestions that EPA change the rule to read that the State water quality standards go into effect only after EPA approval. Standards are adopted by States under State law. Consistent with the Clean Water Act, EPA's policy has always been that a State standard goes into effect when adopted by the State and remains in effect, even if disapproved, until the State revises its standards or EPA promulgates a Federal standard. This interpretation is necessary because otherwise there would be no standard at all until Federal action was completed. A State rescinds its prior standard whenever it adopts a revised standard. In addition, EPA approval of a standard should not be interpreted as superseding the State's right to amend its own laws. By the same token, if EPA promulgates a Federal standard, the State is obliged to apply that standard in its pollution control programs or until the State adopts a State standard identical to or more stringent than the Federal standards.

EPA proposed to publish a notice of approvals of State water quality standards in the **Federal Register** at least annually. One letter requested that EPA publish the notice of approvals at the time the Agency take action. EPA believes that this action is unnecessary since publication of these notices (or any delay in publishing them) in no way affects the legal standing of the standards or the status of EPA's approval action. When a State adopts a standard, it publishes a notice under State law. This should be sufficient to ensure that the regulated community is informed of any changes in State water quality standards. EPA's annual publication will serve as a convenient check.

A number of respondents recommended that in promulgating State standards, EPA move expeditiously to avoid excessive delays. EPA's approach in disapproving State standards is to work with the State to assist the State in revising its standard to meet the Act's requirements. Only as a last resort will EPA promulgate Federal standards. In working with a State to revise its standard, EPA will try to do so within the timeframe of the Act. However, this may not always be possible depending on State administrative and/or legislative procedures. However, we intend to try harder to eliminate unnecessary delay.

In response to a number of questions raised, the final rule clearly states that in promulgating State standards, the Administrator will be subject to the same public participation policies and procedures established for States.

Interstate/International Water Quality Standards Issues

In the Preamble to the proposed water quality standards regulation, EPA discussed its role in interstate and international water quality standards issues. There were those that believed that EPA should include in the regulation specific procedures for resolving interstate/international conflicts and require States to adopt standards that meet treaty requirements. Since these issues have been associated with the standards program since its inception and have been adequately resolved previously without the need for regulatory language, EPA sees no need to include such language in the Final Rule.

When interstate/international conflicts arise, EPA will play a stronger role in the standards process in addition to the ordinary review and approval procedures described in the regulation. First, if an interstate conflict occurs between States in the same EPA region, the EPA Regional Administrator is in a

position to help resolve the dispute through the ability to review and approve each State's standards and by participating in the standards development process.

Interstate and interregional organizations can also play a positive role in this situation. Second, if the issue involves more than one EPA region and the EPA regions are unable to resolve the issues, then the EPA Administrator can be requested to render a judgment. While it is theroretically possible that two States might have incompatible standards, both of which meet the requirements of the Act and this regulation, such as situation is likely to be rare. If it occurs, EPA will assist the States in resolving the inconsistency. The exact procedures will depend upon the specific circumstances. Therefore, we do not believe it is appropriate to include specific procedures in the Water Quality Standards Regulation to resolve interstate conflicts.

Any specific treaty requirements have the force of law. Therefore, State water quality standards will have to meet any treaty requirements.

Finally, in response to commenters' suggestions, we have made some editorial and format changes to clarify the regulation. In addition, the substantive changes made to demonstrate the Agency's commitment to the goals of the Act should also help clarify the regulation.

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Part III

Department of Transportation

Federal Aviation Administration

Carpools on Dulles Access Highway; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 159

[Docket No. 23655; Amdt. No. 159-28]

Carpools on Dulles Access Highway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Regulations for the Dulles Airport Access Highway are amended to allow vehicles carrying two or more persons to use the Access Highway with a decal during peak commuter hours via the carpool entrances and exits at Reston Avenue and Trap Road. Prior to these amendments the highway has been restricted to airport users and 4-person carpools. The amendment allows single occupant vehicles, as well as carpools, with a decal to use the highway by "backtracking" through Dulles Airport.

DATES: Effective November 21, 1983, and will terminate on January 1, 1985, or on the date that the Dulles Toll Road is opened by the Commonwealth of Virginia, whichever is earlier. FAA will publish the termination date.

FOR FURTHER INFORMATION CONTACT:

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Edward S. Faggen, Legal Counsel, AMA-7, Hangar 9, Washington National Airport, Washington, D.C. 20001, Telephone: (703) 557-8123.

SUPPLEMENTARY INFORMATION: Interested persons were invited to participate in the making of the policy for carpool use of the Dulles Airport Access Highway by a Notice of Proposed Rulemaking published by the FAA on June 6, 1983. (Notice No. 83-5, 48 FR 25215). A supplemental notice was published on August 18 (48 FR 37430, Notice 83-5A). An environmental assessment was prepared by the FAA and the Federal Highway Administration and placed in the public docket for review. Written comments were received from area citizens who use or want to use the Access Highway for commuting between their residences and workplaces. Comments were received from the Commonwealth of Virginia and elected representatives of the public at both the Federal and local levels. Comments were also received from the United States Department of Interior, the National Capital Planning Commission, the Metropolitan Washington Council of Governments, the Air Transport Association and other organizations.

Action

Upon consideration of the comments and other pertinent information, FAA is adopting a regulation that lowers the carpool requirement from 4 or more persons per vehicle to 2 or more persons for vehicles entering and exiting the Access Highway via the carpool ramps at Reston Avenue and Trap Road. Single occupant vehicles (driver only) as well as carpools will be permitted to enter the Access Highway at all westbound entrances and proceed west to the airport, turn around at a designated point and proceed back eastbound. Two and 3-person carpools and single occupant vehicles must display a carpool decal in order to use the Access Highway. The decal will be easily identifiable and will have to be permanently affixed to the vehicle bumpers. The decals will be readily available at Dulles Airport and other locations in the Dulles Corridor.

Airport users will continue to have use of the Access Highway without restriction. The rule is interim in nature. Except for emergencies carpool and other non-airport uses of the Access Highway will be discontinued on January 1, 1985, or on the day the Dulles Toll Road opens, whichever is earlier.

Background

The Dulles International Airport Access Highway (Access Highway) is owned by the United States and maintained by the Department of Transportation (DOT), Federal Aviation Administration (FAA). The Administrator of the FAA, in accordance with a delegation of authority from the Secretary of Transportation, has the responsibility for the care, operation, maintenance, improvement and protection of Dulles Airport, including the Access Highway, and the Administrator has the authority to make and amend regulations in order to carry out this responsibility.

The Access Highway was built to provide rapid ground access from Washington, D.C., to Dulles Airport, which is located near Chantilly, Virginia, 26 miles from the downtown metropolitan center. The Access Highway was built in 1962 to accommodate airport traffic. To achieve this, the airport traffic was to be separated from commuter and local traffic. Since it has been open, the Access Highway has been restricted in general to airport-related traffic. The entrances and exits facilitate traffic to and from the west, that is, to and from the airport. There are only two restricted entrances, other than at the airport itself, for vehicles traveling eastbound away from the airport. These are at Reston Avenue and Trap Road. These ramps were built for special, not general, access. Similarly, with the same two limited exceptions, the only westbound exit is at Dulles Airport.

FAA regulations have permitted non-airport uses by emergency vehicles, vehicles bound to or from the Wolf Trap Farm Park for the Performing Arts, buses being operated in common carriage, and Fairfax County school buses. Since April, 1980, vehicles occupied by four or more persons have also been permitted to use the Access Highway via the ramps at Reston Avenue and Trap Road during the morning and afternoon peak commuter periods. Four-person carpools are also permitted to enter the highway at Route 28 to travel to the airport, turn around, and use the highway eastbound. The reverse movement is allowed for carpools exiting at Route 28.

It is the FAA's intention that all non-airport uses of the Access Highway (other than emergencies) will cease when the high capacity, parallel roadway is completed. The Commonwealth of Virginia is presently constructing the lanes parallel to the Access Highway known as the Dulles Toll Road. The new highway is scheduled to open late in 1984 or early in 1985.

In addition to airport users, many residents and employees in the area use the Access Highway for commuting by proceeding west to the airport for the purpose of making a U-turn and then proceeding back eastbound. This has come to be known as "backtracking" and it enables commuters to avoid congested alternate routes. The practice is widespread. A detailed study in 1981 indicated that 6,400 cars entered Dulles Airport each day solely to reverse their direction of travel. Recent FAA police studies indicate that the number of daily commuter vehicles has increased to approximately 8,000. The practice has resulted in congestion on the airport roadways, particularly on the portion of the Access Highway between Route 28 and the Dulles terminal.

The Access Highway—I-66 Connection

FAA is completing the construction of an extension to the Access Highway from its present terminus at Route 123 to join I-66 near West Falls Church. The extension is to be completed and open to traffic at the end of October 1983. Travelers driving between Dulles and downtown Washington via the Access Highway and I-66 will have the use of a

free-flowing highway for the entire length of the trip. This will produce a 10-15 minute savings compared to the present routing and should be a significant benefit to Dulles Airport users.

Since its opening in December, 1982, traffic on I-66 between I-495 and the Theodore Roosevelt Bridge over the Potomac River has been restricted to high occupancy vehicles with 4 or more persons (HOV-4) during morning and afternoon peak commuter hours in the peak direction. The restrictions on I-66 were developed based on environmental studies and were incorporated into the January 5, 1977 decision by Secretary of Transportation Coleman as a response to the controversy over the environmental impact of I-66. The HOV-4 restrictions are enforced by Virginia Commonwealth and local police.

When the Access Highway connection to I-66 is completed this year, airport traffic will commingle with other traffic on I-66. During peak hours, legitimate airport traffic will be exempt from the HOV-4 restrictions as set forth by Secretary Coleman's decision. Other users of the Access Highway, including commuters, would also be able to gain access to I-66, which could be a violation of the HOV-4 restrictions. FAA has recognized from the time of the I-66 decision in 1977 that, when the connection of the Access Highway to I-66 was completed in 1983, commuter use of the Access Highway would have to be controlled. FAA, therefore, must now take action to control commuter use of the Access Highway to ensure that only airport-related traffic and HOV-4 vehicles enter I-66 by way of the Access Highway. It would have been ideal if the parallel lanes of the Dulles Toll Road were available to receive the local and commuter traffic that must be regulated after the Access Highway/I-66 connection is open. While the construction of the parallel lanes is progressing at a rapid pace, they will not be open until late 1984. Accordingly, FAA undertook this rulemaking action to determine the appropriate course to take in the interim period.

In Notice 83-5, FAA proposed to reduce the carpool requirement on the Access Highway (between the Airport and Route 123) from 4 or more persons to 2 or more persons per vehicle until January 1, 1985. The intent was to allow more commuters to gain lawful access to the Access Highway at the ramps now used by 4-person carpools until the toll road was open. Commuter vehicles would have to display a permanently affixed decal. Those vehicles with fewer than 4 occupants would not be permitted to use I-66 when HOV-4 was in effect.

The comments received on Notice 83-5 indicated that the proposal for 2-person carpools, while welcome, did not go far enough in addressing the problem for commuters in the Dulles corridor. Many of the 8,000 persons would be unable to form carpools and would have to alter their driving habits by using other roads. These roads are already congested. It was contended that in the short period remaining to the opening of the Dulles Toll Road, the Dulles Access Highway could continue to accept commuter vehicles and maintain an acceptable level of service without backups and delays to airport users. FAA was urged to consider alternative policies that would permit backtracking in single occupancy vehicles to continue until the toll road is opened.

FAA responded by issuing supplemental Notice 83-5A where the following was stated:

> FAA has been urged to consider * * * the alternative of authorizing all commuter vehicles to use the Access Highway with a decal regardless of the number of occupants in the vehicles. This alternative has several variations. Essentially, vehicles with a decal would be permitted to enter the Access Highway at one or more locations but could not use the connector road or I-66 without complying with the I-66 restrictions. This approach, it is urged, would keep thousands of vehicles that currently use the Access Highway from having to travel on already congested alternate routes. Also, it would be the least disruptive of established commuting patterns during the period that the Dulles Toll Road is under construction.
>
> With this Notice, FAA is clarifying to parties interested in Notice 83-5 that although the proposed rule was drafted in terms of 2-and 3-person carpools, the scope of alternatives before FAA includes the option of adopting a commuter vehicle rule without an occupancy requirement in some form as well as the alternative of retaining the 4-person carpool requirements. Interested persons should consider this range of alternatives in presenting their comments.

Issues Presented

The comments overwhelmingly supported the proposal to lower carpool requirements from 4 persons to 2 persons at the Reston Avenue and Trap Road entrance to the Access Highway. There was also considerable support for the continuation of backtracking through Dulles by persons driving alone. From the context of the comments, it is clear that the supporters of greater commuter access understand that the non-airport use of the Access Highway will be temporary, that is, until the toll road opens, that airport users must not be detrimentally impacted, and that the I-66 policies must not be compromised.

The rules adopted by FAA today accomplish each of these objectives.

FAA has protected the Dulles Access Highway for airport use for the entire twenty-one years of the highway's existence. It has been, and remains, the FAA's obligation to preserve the Federal Government's interest in the Access Highway. That interest is to provide access at a high level of service to Dulles Airport. The Access Highway was not built to accommodate local traffic needs. Commuter arteries are the responsibility of the state and local jurisdictions.

Today FAA is modifying the longstanding policy only because the Commonwealth of Virginia is now irrevocably committed to the construction and operation of a local service road in the Dulles Corridor. The Dulles Toll Road, which is being built parallel to the Access Highway in an easement from the FAA, is under construction and will be completed in approximately 15 months. At that time, all non-airport use, except emergency uses, will be excluded from the Dulles Access Highway. The Commonwealth of Virginia "strongly supports" FAA's intention to prohibit all non-airport use of the Access Highway when the parallel lanes are completed. The Commonwealth is concerned that if local traffic is permitted to use the Access Highway after the parallel lanes are completed the viability of those lanes would be jeopardized. FAA agrees, and in view of the Federal interest identified above, FAA will not permit non-airport uses of the Access Highway to continue after the parallel lanes are open.

For the interim period, opening the Access Highway as we do today will not undermine the Federal interest. In this regard, the FAA disagrees with the National Capital Planning Commission (NCPC) and the Transportation Planning Board (TPB) of the Metropolitan Washington Council of Governments. In its written comments, NCPC reiterated its longstanding policy in favor of maintaining the Access Highway "as a limited access roadway for the exclusive use of airport users." The NCPC and the TPB are concerned that additional carpool use will cause congestion on the Access Highway and at the interchanges of the Access Highway and Reston Avenue, the Access Highway and I-495 and at Route 123.

The traffic studies performed for FAA by the Federal Highway Administration do not project unacceptable delays and congestion at any point along the Dulles

Access Highway during the approximately 15 months that this rule will be in effect. The total number of backtracking vehicles should decrease, under the rule, from the present high levels since 2-and 3-person carpools will not have to backtrack to gain access to the highway. Traffic volumes are not expected to cause traffic backups at the exits to I-95 and Route 123.

The level of service on Reston Avenue at the interchange will decline somewhat from the present level. Increased activity on Reston Avenue was expected to occur at this interchange when the toll road opened. Today's rule moves up this use of Reston Avenue by approximately 15 months. The Reston Avenue ramps can accommodate the additional traffic and signal light timing adjustments by local authorities can reduce congestion. The delays and level of service on Reston Avenue will remain at acceptable levels. Many Reston residents favor the adopted rule because of the increased commuting options it provides.

In their comments, the Reston Commuter Bus, Inc., was concerned about possible loss of ridership and potential safety of bus patrons who get on and off the buses at the ramp locations. No safety-related problem is anticipated at these bus stops. The shoulder area on the right side of the ramp serves as a bus transfer point and a drop-off point for bus riders. There is no need for the pedestrian traffic that is transferring between buses, or persons who are waiting for a bus, to cross the lanes of automobile traffic. If it is necessary, normal traffic management techniques can be employed to assure continued pedestrian safety. As for transit ridership, only a slight decrease is expected due to a shift to 2-person carpools. There will be a greater incentive to use the bus after the Access Highway is connected to I-66 because the buses, and 4-person carpools which already use the Reston ramps, but not 2- and 3-person carpools, will be able to use I-66 during the peak commuter hours for rapid travel into the District of Columbia. Two- and 3- person carpools will have to exit the Access Highway at either I-495 or Route 123 as commuter vehicles do today.

FAA had traffic projections prepared for the proposal adopted today and for the alternative for allowing single occupant vehicles to use the carpool ramps to enter and exit at Reston Avenue and Trap Road. At present, in the morning peak hour the total volume of traffic using the Reston Avenue Ramps (eastbound and westbound) is approximately 620 vehicles. The rule adopted today is expected to increase that total by 400 vehicles. The alternative of allowing single occupant vehicles to use the carpool ramps would increase the total by more than 1,100 vehicles to more than 1,700 vehicles on the ramps. The afternoon peak hour totals would similarly increase. At Trap Road in the existing morning peak hour the carpool ramps are used by only 20 vehicles. This is expected to increase under the rule adopted today to 200 vehicles. Under the alternative of single occupant usage the total expected would be 755 vehicles.

The projected single occupant vehicle use of the carpool ramps would lead to congestion on both Reston Avenue and Trap Road. Also, under the single occupant alternative there would be a possible detrimental impact on Wolf Trap Farm Park from the congestion on Trap Road. No negative impact on Wolf Trap Park results from the rules adopted today. Further, unlike the rule adopted today, the proposal to allow single occupant vehicles to use the carpool ramps did not receive strong support from the community. For these reasons, among others, FAA is not allowing single occupant vehicles to use the carpool ramps.

In all, the advantages to the local commuters from the rule adopted today are greater than under the other alternatives. The Governor of the Commonwealth of Virginia, the Fairfax County Board of Supervisors and the Northern Virginia Transit Commission have all urged the adoption of these rules. Under these rules, existing commuters on the Access Highway will not have to be added to already congested alternative routes because the Access Highway and crossroads can accommodate the expected commuter traffic.

Because the Federal interest is not disserved by allowing commuters to use the Access Highway for a short term, FAA has decided to allow such usage in consideration of the Commonwealth of Virginia's construction of the parallel lanes. The FAA retains the power to change these rules, as necessary, if the interests of Dulles Airport are jeopardized in any way.

Decals and Enforcement

Although one of FAA's objectives is to accommodate commuter traffic on the Access Highway until the Dulles Toll Road is open, FAA is also particularly sensitive to the Commonwealth of Virginia's responsibility to enforce the use restrictions on I-66 as required by Secretary of Transportation Coleman in 1977. In commenting in support of increased commuter use on the Access Highway, Virginia Governor Charles Robb stated:

> We would also like to emphasize the importance of the FAA enforcement strategy being fully operational upon the opening of the Dulles Connector. If the FAA does not prevent non-HOV-4/non-airport traffic from utilizing the Dulles Connector, the Commonwealth will be unable to enforce the peak-hour HOV-4 restrictions now imposed on I-66 by the Coleman Decision.

FAA agrees with the Commonwealth of Virginia and with Virginia Congressman Frank Wolf that there is a need to distinguish commuter vehicles from the airport traffic that is allowed to use the connector to I-66.

The rule adopted protects the policies on I-66. Commuter vehicles will be distinguished from the vehicles of airport users. Authorized carpools and single occupant vehicles will display permanantly affixed decals. The decals will allow the vehicles onto the Access Highway as commuter vehicles, but these vehicles will not be able to use I-66 without complying with the HOV-4 or other I-66 requirements. State Police will be enforcing the I-66 restriction on the portion of Access Highway between I-66 and Route 123. Vehicles with a decal will be treated as commuter vehicles and may be stopped and the driver fined if the vehicle is not in compliance with the I-66 requirements. Legitimate airport traffic can use I-66 regardless of the number of vehicle occupants and the vehicles without a decal will normally be deemed to be legitimate airport traffic by the State Police. However, these vehicles will not be permitted to use the carpool ramps which will be manned or to use the commuter turning points at the airport. FAA police will be enforcing the Federal regulations at the airport and the driver of a vehicle without a decal that backtracks through the airport is subject to ticketing for unauthorized use of the Access Highway. FAA and the Commonwealth of Virginia are prepared to take all the appropriate enforcement action that is necessary against violators of the Access Highway and I-66 regulations.

Loudoun County, Virginia, while otherwise supporting the easing of carpool occupancy requirements, did not endorse the decal aspect of the proposal. The FAA has concluded, however, that the decal is necessary to distinguish between commuter vehicles and airport traffic.

FAA will try to make the decal available in a way that imposes only a minimal burden on the public. The decal will be obtainable for a nominal one time fee to offset costs. The FAA will

announce how and where decals may be obtained sufficiently in advance of the effective date of the regulation. No application forms will be required nor will any record be maintained of who obtains a decal.

Environmental Assessment

FAA, in conjunction with the Federal Highway Administration, has prepared an environmental assessment of this change to the carpool regulation. The assessment contains the traffic projections for the Access Highway, Route 28, Centerville Road, Reston Avenue, and Trap Road under each of the alternatives considered by the FAA. In 1980, the FAA prepared a detailed assessment of opening the Access Highway to 4-person carpools. At the time, the FAA concluded that the proposal would not have significant primary or secondary impacts upon the environment. The updated assessment of the change to the rules reveals no significant impact. The principal impacts relate to traffic flow and are secondary. Many persons who currently backtrack in single occupant vehicles to I-495 or Route 123 will form carpools to gain access to the same highways. Therefore, under the adopted rule, traffic on the Access Highway near the airport will decrease. There will be a slight increase in traffic volume east of Trap Road. There will be an increase in congestion at the Reston Avenue interchange. While reordering the flow of traffic somewhat in Fairfax and Loudoun Counties, the 2-person carpool is not likely to affect the volume or type of traffic passing through Arlington County, Virginia or other communities between the District of Columbia and Dulles Airport. The environmental impact statement on the Dulles Toll Road dealt extensively with the impacts of opening the corridor to increased traffic. Some of the traffic impacts will be brought on by this carpool regulation. There will be no significant increase in noise or air pollution from the amendment. There will be no impact on Wolf Trap Farm Park or other park lands.

The assessment is available for review and comment at the public docket at 800 Independence Avenue, SW., Room 916, at the Dulles Airport Manager's Office; and at Washington National Airport, Office of the Director, (Hangar 9). A copy may be obtained by writing to: Mr. Henry L. Mahns, Engineering Division, West Lab Building, AMA-32, Washington National Airport, Washington, D.C. 20001.

List of Subjects in 14 CFR Part 159

Airports, Access highway, and Carpools.

Effective Date

The FAA has found that good cause exists to have this amendment become effective in less than 30 days after its publication. The amendment relieves restrictions on the Dulles Access Highway that would otherwise remain in effect. Further, the Dulles Access Highway extension is scheduled to open in less than 30 days after publication of this amendment. At that time this amendment prescribing the manner in which non-airport traffic can use the Access Highway must be effective to assure that the Access Highway, the extension and I-66 are used by authorized traffic only. For these reasons, under the Administrative Procedures Act, 5 U.S.C. 553(d), the amendment will be effective on November 21, 1983.

Amendment

In consideration of the above and of the material in Public Docket No. 23655, FAA is amending Part 159 of the Federal Aviation Regulations to permit carpools of two or more persons and single occupant vehicles to have access to the Dulles Airport Access Highway at designated locations until January 1, 1985, or until the parallel roadway being constructed by the Commonwealth of Virginia is open for traffic, whichever occurs first. FAA will publish the termination date.

PART 159—NATIONAL CAPITAL AIRPORTS

Section 159.35 of Part 159 of the Federal Aviation Regulations (14 CFR 159.35(b)), is amended by revising paragraph (b)(3), adding paragraph (b)(4) to read as follows and the introductory text of (b) is set out for the convenience of the reader:

§ 159.35 Use of access highway to Dulles International Airport.

* * * * *

(b) *Exceptions.* Any person may enter upon and travel over the Access Highway in the following vehicles:

* * * * *

(3) Until January 1, 1985, or until the opening of the highway in the Dulles Access Highway right-of-way parallel to the Access Highway in both directions between Route 28 and Route 123, whichever is earlier:

(i) A vehicle occupied by 4 or more persons,

(ii) A vehicle occupied by 2 or 3 persons displaying a decal that bears an FAA approval permanently affixed to the front and rear bumpers of the vehicle, or

(iii) A vehicle occupied by the driver only and displaying a decal that bears an FAA approval permanently affixed to the front and rear bumpers of the vehicle.

(4) A vehicle described in (b)(3) (i) and (ii) of this section shall be an authorized carpool and a vehicle described in (b)(3)(iii) of this section shall be an "authorized vehicle." The driver of such a carpool or vehicle shall operate in compliance with the requirements of road signs pertaining to the Access Highway erected or posted upon the Access Highway or the approaches thereto.

(Secs. 3 and 4 of the Second Washington Airport Act, 64 Stat. 770; sec. 313 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a); (49 U.S.C. 106(g)), (Revised, Pub. L. 97-449, January 12, 9830))

Note.—It is certified under the criteria of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small entities. Only a few small entities are affected and the cost of implementation and compliance is deemed minimal. Based on the above, the FAA has also determined that the regulation is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A detailed economic evaluation is not required because the economic impact of the regulation is judged to be minimal.

Issued in Washington, D.C., on September 30, 1983.

J. Lynn Helms,

Administrator, Federal Aviation Administration.

[FR Doc. 83-30064 Filed 11-7-83; 8:45 am]

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federal register

Tuesday
November 8, 1983

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

Highly Pathogenic Avian Influenza; Interim Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 83-114]

Highly Pathogenic Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: Because of the finding of highly pathogenic avian influenza, this document establishes regulations quarantining portions of Berks, Dauphin, Lancaster, and Lebanon Counties in Pennsylvania and prohibiting the interstate movement from the quarantined area of poultry and certain other articles. This action is necessary to help prevent the interstate spread of this highly contagious and pathogenic viral disease of poultry.

DATES: Effective date is November 4, 1983. Written comments must be received on or before January 9, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William W. Buisch, Chief, National Emergency Field Operations Staff, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION:

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that a emergency situation exists which warrants publication of this interim rule without prior opportunity for public comments. Immediate action is necessary to prevent the spread of highly pathogenic avian influenza.

Further, pursuant to the administrative procedure provisons in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found making this interim rule effective upon signature. Comments have been solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

This document establishes an interim rule on an emergency basis because of the recent finding of highly pathogenic avian influenza in poultry in areas of Pennsylvania. This desease is not otherwise known to occur in the United States.

Highly pathogenic avian influenza is a highly contagious and pathogenic viral disease of poultry. It is defined as a disease of poultry caused by any highly pathogenic influenza virus that results in not less than 75 percent mortality within 8 days in at least eight healthy susceptible chickens, 4 to 8 weeks old, inoculated by the intramuscular, intravenous, or caudal airsac route with bacteria-free infectious allantoic or cell culture fluids and using standard operating procedures to assure specificity. Clinical signs of the disease are evidenced by high morbidity, facial swelling, high mortality, and cessation of egg production.

Highly pathogenic avian influenza has been found to occur in poultry on five premises in the northwestern portion of Lancaster County in Pennsylvania. These areas remain infected at this time. These findings have been confirmed by laboratory tests at the National Veterinary Services Laboratory, Ames, Iowa.

The provisions in 9 CFR Part 81 currently regulate the movement of certain articles because of European Fowl Pest and Similar Poultry Diseases. This document revises this part and changes the heading to "Highly Pathogenic Avian Influenza and Similar Poultry Diseases" to more accurately reflect the nomenclature used by the scientific community.

Prior to the effective date of this document the regulations contained provisions concerning the interstate transportation of affected or exposed live poultry or materials and contained provisions concerning infected cars, premises, containers, and other accessories. These provisions are retained.

The interim rule provides that the following area in portions of Berks, Dauphin, Lancaster, and Lebanon Counties in Pennsylvania is quarantined because of highly pathogenic avian influenza:

That portion of Pennsylvania beginning at the eastern bank of the Susquehanna River at Interstate Highway 81; then northeasterly along Interstate Highway 81 to its intersection with Interstate Highway 78; then northeasterly along Interstate Highway 78 to its intersection with PA Highway 61; then southerly along PA Highway 61 to its intersection with U.S. Highway 222; then southwesterly along U.S. Highway 222 to its intersection with U.S. Highway 30; then southwesterly along U.S. Highway 30 to the eastern bank of the Susquehanna River; then northerly along the eastern bank of the Susquehanna River to Interstate Highway 81.

This area is within easily understood boundary lines and includes the premises in Lancaster County where the disease has been found and provides at least a five mile buffer zone in every direction. It is necessary to prohibit the movement of articles from the areas in the quarantined area in order to adequately protect against spread of the disease.

The interim rule designates the following articles as prohibited articles:

(1) Live poultry,

(2) Eggs from poultry,

(3) Poultry carcasses or parts thereof,

(4) Manure from poultry, and

(5) Used poultry litter.

The interim rule provides that prohibited articles are prohibited from moving interstate from a quarantined area.

The Department is considering whether the interim rule can be amended to allow the interstate movement of the articles designated as prohibited articles without a significant risk of spread of highly pathogenic avian influenza. When it is determined that the regulations can safely be made less restrictive without danger of the spread of highly pathogenic avian influenza, the regulations will be so amended.

Executive Order and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 with respect to this interim rule. Immediate action is necessary to help prevent the interstate spread of highly pathogenic avian influenza.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required will address the issues required in section 604 of the Regulatory Flexibility Act.

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

Under the circumstances referred to above 9 CFR Part 81 is revised to read as follows:

PART 81—HIGHLY PATHOGENIC AVIAN INFLUENZA AND SIMILAR POULTRY DISEASES

Sec.

81.1 Definitions.
81.2 Interstate transportation of affected or exposed live poultry or materials prohibited.
81.3 Infected cars, premises, containers, and other accessories; not to be used for interstate movement of healthy animals until cleaned and disinfected.
81.4 Prohibited articles and quarantined areas.

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4–8, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792 as amended; secs. 1–4, 33 Stat. 1264, 1265; 41 Stat. 699; sec. 2, 65 Stat. 693; secs. 3 and 11, 76 Stat. 130 and 132; 21 U.S.C. 111–113, 114a–1, 115–117, 119–126, 130, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 81.1 Definition

Highly pathogenic avian influenza. A disease of poultry caused by any highly pathogenic influenza virus that results in not less than 75 percent mortality within 8 days in at least 8 healthy susceptible chickens, 4–8 weeks old, inoculated by the intramuscular, intravenous, or caudal airsac route with bacteria-free infectious allantoic or cell culture fluids and using standard operating procedures to assure specificity.

§ 81.2 Interstate transportation of affected or exposed live poultry or materials prohibited.

No live chickens, turkeys, or geese affected with or directly exposed to the contagious disease known as highly pathogenic avian influenza or other similar contagious poultry disease, and no carcasses of such animals which have died from any such disease, or manure or litter from such diseased animals, shall be shipped, transported, or moved from one State or the District of Columbia into another State or the District of Columbia.

§ 81.3 Infected cars, premises, containers, and other accessories; not to be used for interstate movement of healthy animals until cleaned and disinfected.

No cars or premises which have contained shipments of any of the animals named in § 81.2 which have been found infected with highly pathogenic avian influenza or other similar contagious poultry disease, and no coops, containers, troughs, or other accessories used in the handling of such infected animals, shall be used in connection with the interstate movement of healthy animals of the same kind until the said cars, premises, coops, containers, troughs, or other accessories have been cleaned and disinfected under the supervision of the Veterinary Services unit of the Animal and Plant Health Inspection Service of the United States Department of Agriculture with a permitted disinfectant, as provided in §§ 71.4, 71.6, 71.7, 71.10, and 71.11 of this subchapter, with a 3 percent solution cresol compound, U.S.P.

§ 81.4 Prohibited articles and quarantined areas.

(a) The following area in Pennsylvania is designated as a quarantined area: That portion of Pennsylvaina beginning at the eastern bank of the Susquehanna River at Interstate Highway 81; then northeasterly along Interstate Highway 81 to its intersection with Interstate Highway 78; then northeasterly along Interstate Highway 78 to its intersection with PA Highway 61; then southerly along PA Highway 61 to its intersection with U.S. Highway 222; then southwesterly along U.S. Highway 222 to its intersection with U.S. Highway 30; then southwesterly along U.S. Highway 30 to the eastern bank of the Susquehanna River; then northerly along the eastern bank of the Susquehanna River to Interstate Highway 81.

(b) The following articles are designated as prohibited articles:

(1) Live poultry,
(2) Eggs from poultry,
(3) Poultry carcasses or parts thereof,
(4) Manure from poultry, and
(5) Used poultry litter.

(c) No prohibited article shall be shipped, transported, or moved from a quarantined area to another state or the District of Columbia.

Done at Washington, D.C. this 4th day of November, 1983.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 83-30378 Filed 11-7-83; 11:10 am]

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