work only restores the general condition of the riding surface and will not significantly affect the structural integrity and durability characteristics of the original deck.

§ 650.609 Protective system.

In view of the recognized need for protective systems, the following policies have been established for Federal-aid participation.

(a) The contract plans, specifications, and estimate (PS&E) for the construction, rehabilitation, and/or reconstruction of all concrete bridge decks that are likely to be subjected to potentially damaging applications of deicing salts, saltwater, or other hostile environments shall provide for durable concrete as well as a protective system that is cost effective.

(b) *Federal-aid approval.* Approval of the protective system will be required as part of the approval of the PS&E.

(1) Protective systems which, based on local field experience, have not been demonstrated to be cost effective must be considered experimental. These systems are to be surveyed and evaluated on an experimental basis under the Federal Highway Administration (FHWA) Experimental Projects Program.

(2) Proprietary products, when used as bridge deck protective systems, must be used in accordance with Federal regulations on the use of proprietary products.

[FR Doc. 84-536 Filed 1-9-84; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7934; EE-11-78]

Income Tax; Taxable Years Beginning After December 31, 1953; Early Termination of Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the limitation on benefits in the event of the early termination of certain tax qualified retirement plans providing defined benefits for employees. Changes in the applicable law were made by the Employee Retirement Income Security Act of 1974. The regulations would provide the public with additional guidance needed to comply with that Act and would affect employers maintaining such plans and employees covered by such plans subject to Title IV of that Act.

DATES: The regulations are effective for plan terminations occurring on or after March 12, 1984.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1982, the **Federal Register** published a proposed amendment to the Income Tax Regulations (26 CFR Part 1) under section 401 of the Internal Revenue Code of 1954 (47 FR 3562). The amendment reflects certain provisions of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 1003) related to plan termination insurance. No public hearing was requested or held. After consideration of all comments regarding the proposed amendment, that amendment is adopted as revised by this Treasury decision.

Statutory Provisions

Section 401(a)(4) of the Code prescribes certain discrimination standards which are qualification requirements for employee retirement plans (and related trusts) described in sections 401(a), 403(a), and 405 of the Code. Section 411 (d)(2) and (d)(3) of the Code prescribe additional vesting-discrimination standards which are also qualification standards for these retirement plans.

Specific Rules Concerning Plan Provisions

In general, this amendment, which is applicable to certain retirement plans covered by section 4021(a) of ERISA, raises the limits on the amount of employer contributions to such plans which can be used for the benefit of each of the 25 highest paid employees without violating the provisions of section 401(a)(4) of the Code. As a result of the interaction of sections 401(a) and 411, these new limits for plans, allowing additional employee benefits attributable to employer contributions, must be used where applicable in order for the plan to remain qualified. The limits on the use of employer contributions for the benefit of the 25 highest paid employees are an exception to the requirements of section 411(a) which prohibit the forfeiture of vested benefits. Section 411(d)(2) provides that section 411(a) does not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4). This amendment is such a regulation. By implication, any vested benefits that may be provided based on this amendment must be nonforfeitable in accordance with section 411(a).

The increased amount available to substantial owners from plans covered by section 4021(a) of ERISA is equal to the present value of the benefit guaranteed for substantial owners under section 4022 of ERISA upon termination of the plan or, if the plan has not terminated, the present value of the benefit that would be guaranteed if the plan terminated on the date the benefit commenced. The increased amount available to employees of such plans other than substantial owners is equal to the present value of the maximum benefit described in section 4022(b)(3)(B) of ERISA. These new limits are only to be used when they produce an amount higher than the old limit in § 1.401-4(c)(2)(iii) of the regulations.

In response to the comments received, certain revisions have been made to the amendment proposed. First, the effective date has been clarified. These new limits are effective for plans terminating on or after March 12, 1984. Plan amendments would be required for these terminating plans. For plans not terminating, plan amendments incorporating these new limits must be adopted that are effective for plan years beginning after December 31, 1983. However, in the interim these new limits may be elected without a plan amendment on or after [the date final regulations are published in the Federal Register]. No formal election need be filed with the Service. An election will be deemed to have been made if the new limits are used in an applicable distribution.

Also, the regulation is clarified to specify that the present value of the maximum benefit described in section 4022(b)(3)(B) of ERISA is to be determined in accordance with the regulations of the Pension Benefit Guaranty Corporation (PBGC).

Some commentators inquired as to the effect of the regulation on Rev. Rul. 80-229, 1980-2 C.B. 133, regarding distribution upon termination of assets in a plan in which the value of plan assets as of the date of termination is not less than the present value of all accrued benefits (whether or not forfeitable). Those guidelines may still be applied as indicated in that revenue ruling, whether or not the termination would otherwise invoke the early termination restrictions of this amendment.

It should also be noted that nonforfeitable benefits for purposes of Title IV of ERISA are determined under the definition of that term in Title IV and implementing PBGC regulations.

Drafting Information

The principal author of these final regulations was Marjorie Hoffman of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Lists of Subjects in 26 CFR 1.401-0—1.425-1

Income taxes, Employee benefit plans, Pensions.

PART 1—[AMENDED]

Adoption of Amendments to the Regulations

Accordingly, the proposed amendment to 26 CFR Part 1 is hereby adopted subject to the changes set forth below:

Section 1.401-4(c)(7) (iii) and (vi) as set forth in the notice of proposed rulemaking, is amended to read as follows:

§ 1.401-4 Discrimination as to contributions or benefits.

* * * * *

(c) * * *

(7) * * *

(iii) A plan satisfies this paragraph (c)(7) by providing that employer contributions which may be used for the benefit of all employees described in paragraph (c)(2) (other than an employee who is a substantial owner as defined in section 4022(b)(5) of ERISA) shall not exceed the greater of the dollar amount described in paragraph (c)(2)(iii) or a dollar amount which equals the present value of the maximum benefit described in section 4022(b)(3)(B) of ERISA (determined on the date the plan terminates or on the date benefits commence, whichever is earlier, and determined in accordance with regulations of PBGC) without regard to any other limitations in section 4022 of ERISA.

* * * * *

(vi) Paragraph (c)(7) of this section applies to plan terminations occurring on or after March 12, 1984. For distributions not on account of plan terminations, paragraph (c)(7) applies to distributions in plan years beginning after December 31, 1983. However, a plan may elect to apply that paragraph to distributions not on account of plan termination on or after January 10, 1984.

This Treasury decision is issued under the authority contained in sections 411(d) (2) and (3) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 88 Stat. 912; 26 U.S.C. 411(d) (2) and (3) and 7805).

Philip E. Coates,

Acting Commissioner of Internal Revenue.

Approved: December 19, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Section 1.401-4 is amended by adding three new sentences at the end of paragraph (c)(1) and by adding a new paragraph (c)(7). These added provisions read as follows:

§ 1.401-4 Discrimination as to contributions or benefits.

* * * * *

(c)(1) * * * Any pension plan containing a provision described in this paragraph shall not fail to satisfy section 411(a), (d)(2) and (d)(3) merely by reason of such a plan provision. Paragraph (c)(7) of this section sets forth special early termination rules applicable to certain qualified defined benefit plans for plan years affected by the Employee Retirement Income Security Act of 1974 ("ERISA"). Paragraph (c)(7) of this section does not contain all the rules required by the enactment of ERISA.

* * * * *

(7)(i) A qualified defined benefit plan subject to section 412 (without regard to section 412(b)(2)) shall not be required to contain the restriction described in paragraph (c)(2)(ii)(*c*) of this section applicable to an employee in a plan whose full current costs for the first 10 years have not been funded.

(ii) A qualified defined benefit plan covered by section 4021(a) of ERISA ("qualified Title IV plan") shall satisfy the restrictions in paragraph (c)(2) of this section only if the plan satisfies this paragraph (c)(7). A plan satisfies this paragraph (c)(7) by providing that employer contributions which may be used for the benefit of an employee described in paragraph (c)(2) of this section who is a substantial owner, as defined in section 4022(b)(5) of ERISA, shall not exceed the greater of the dollar amount described in paragraph (c)(2)(iii) of this section or a dollar amount which equals the present value of the benefit guaranteed for such employee under section 4022 of ERISA, or if the plan has not terminated, the present value of the benefit that would be guaranteed if the plan terminated on the date the benefit commences, determined in accordance with regulations of the Pension Benefit Guaranty Corporation ("PBGC").

(iii) A plan satisfies this paragraph (c)(7) by providing that employer contributions which may be used for the benefit of all employees described in paragraph (c)(2) of this section (other than an employee who is a substantial owner as defined in section 4022(b)(5) of ERISA) shall not exceed the greater of the dollar amount described in paragraph (c)(2)(iii) of this section or a dollar amount which equals the present value of the maximum benefit described in section 4022(b)(3)(B) of ERISA (determined on the date the plan terminates or on the date benefits commence, whichever is earlier and determined in accordance with regulations of PBGC) without regard to any other limitations in section 4022 of ERISA.

(iv) A plan provision satisfying this paragraph (c)(7) may be adopted by amendment or by incorporation at the time of establishment. Any allocation of assets attributable to employer contributions to an employee which exceeds the dollar limitation in this paragraph (c)(7) may be reallocated to prevent prohibited discrimination.

(v) The early termination rules in the preceding subparagraphs (1) through (6) apply to a qualified Title IV plan except where such rules are determined by the Commissioner to be inconsistent with the rules of this paragraph (c)(7), § 1.411(d)-2, and section 4044(b)(4) of ERISA. The early termination rules of this paragraph (c)(7) contain some of the rules under section 401(a)(4) and (a)(7), as in effect on September 2, 1974, and section 411(d) (2) and (3). Section 1.411(d)-2 also contains certain discrimination and vesting rules which are applicable to plan terminations.

(vi) Paragraph (c)(7) of this section applies to plan terminations occurring on or after March 12, 1984. For distributions not on account of plan terminations, paragraph (c)(7) applies to distributions in plan years beginning after December 31, 1983. However, a plan may elect to apply that paragraph to distributions not on account of plan termination on or after January 10, 1984.

[FR Doc. 84-643 Filed 1-9-84; 8:45 am]
BILLING CODE 4830-01-M

PANAMA CANAL COMMISSION

35 CFR Part 111

Revised Shipping and Navigation Rules for the Panama Canal

Correction

In FR Doc. 83-31205 beginning on page 52703 in the issue of Tuesday, November 22, 1983, make the following correction:

On page 52711, § 111.37(a)(4) in the third line from the top of the middle column of the page, the Morse Code should have read "...----...".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

Conveyance of Small Tracts

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations establish standards and procedures for implementing the Act of January 12, 1983 (96 Stat. 2535), commonly known as the Small Tracts Act, which enables the Secretary of Agriculture to sell, exchange, or interchange certain limited and specific categories of National Forest System lands. The proposed regulations will help resolve title conflicts for small parcels of land, facilitate the rapid resolution of certain encroachment problems, reduce the number of decisionmaking levels previously involved in resolving title claims problems, and provide for more efficient management of the National Forests. In addition, the regulation provides for disposal of narrow strips of land held for right-of-way purposes, but no longer needed, and disposal of small, irregular-shaped parcels of National Forest System lands intermingled with patented mining claims.

EFFECTIVE DATE: February 9, 1984.

FOR FURTHER INFORMATION CONTACT: George Liddicoatt, Jerry Sutherland, or Paul Haarala, USDA, Forest Service, Lands Staff, (703) 235-8188.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking to implement the Small Tracts Act was published on May 19, 1983, 48 FR 22589-91. By notice of July 29, 1983, 48 FR 34481, the public comment period was extended to September 16, 1983. Comments were received from 33 sources including individuals, businesses, and local governments. The major comments and actions taken in response to these comments are summarized below and keyed to section headings of the proposed rule.

Response to Public Comments

Section 254.30 Purpose.

No comments were received on this section; however, on advice of counsel, the section has been amended to clarify that application of these regulations does not constitute authorization of, or consent to, adverse possession of lands administered by the Secretary of Agriculture.

Section 254.31 Definitions.

This section received the largest number of comments, most of which concerned a better definition of "color and claim of title", "the applicant", and "improvements". In response, we have redefined the terms "claim of title" and "applicant" to clarify their meaning. The term "improvements" has many meanings. The one proposed is considered to be the most inclusive of those meanings; therefore, it has not been changed. Other respondents suggested adding definitions for the terms "survey" and "actual and constructive notice." Survey, as used by these respondents, was more restrictive than that intended in the enabling legislation; therefore, those comments were not adopted. We have deleted the words "actual and constructive notice" to eliminate the problems with their meaning. Other minor changes were also made to these definitions to adopt language used in the enabling legislation and to clarify or create a more precise definition. These changes included replacing the word "person" for "landowner" in the definition of applicant, and the use of "person" in other definitions; "very" replaces "substantially" and the word "adjacent" was deleted in the definition of "Approximately Equal Value"; "odd-shape" is deleted in the definition of "mineral survey fractions", and "business entity" was added in the definition of "person". The definition of "Lands" was considered not necessary to the regulations and was deleted.

Section 254.32 Encroachments.

Section 254.33 Road Rights-of-Way.

No Major comments were received on these sections. Minor changes were made from the proposed rule to improve sentence structure and the noted deletion of the words "actual or constructive" in § 254.32(b)(3).

Section 254.34 Mineral Survey Fractions.

Several comments were made concerning the consistency of language in this section with the language of the Small Tracts Act, and concerning how interests of unpatented mining claims would be protected. In response to those comments, we have made minor word changes to incorporate language of the Small Tracts Act. The other concerns are procedural in nature and where instructions are not already in place to protect valid third party interests, such as grazing permittees and holders of unpatented mining claims, instructions will be issued in the Forest Service Manual. The Small Tracts Act does authorize the Secretary of Agriculture to sell mineral interests. The coordination of these actions with the Bureau of Land Management and their record system is recognized.

Section 254.35 Limitations

Most respondent's comments on this section dealt with granting the abutting landowner the first right of acquisition. Questions were raised about the procedure to be followed, and the basis for granting first right of acquisition to abutting landowners. It was also suggested that local governments should have first right of acquisition. There are simply too many different situations involving abutting landowners to attempt to define a single set of simple procedures to be applied in all situations; therefore, procedures for handling multiple abutting landowner situations will be left to local Forest Service personnel to work out with abutting owners. The primary use of the mineral survey fraction sales authority will be directed at disposing of small parcels of land that create management problems for both the federal land manager and the adjoining private party owners. It should also be recognized that the Small Tracts Act is not a general disposal authority but is to be used only in those limited and specific categories of cases for which it has been designed.

Section 254.36 Determining Public Interest

Most respondents commenting on this section suggested adding "other land use rules and regulations" to item (g). That time was rewritten to include the suggested meaning. Other comments suggested a lead-in paragraph, and the expansion of items (b), (c), and (e). We agree with these suggestions and have rewritten and added to items (a), (b), and (c) to clarify this section.

Section 254.40 Applications

No major comments were received. Minor changes were made in sentence structure. Item (d) was deleted as unnecessary and "administrative" in item (c) was changed to "incidental" to be consistent with language in the Act.

Section 254.41 Public Sale or Exchange in Absence of Application

Most comments addressed the need to clarify or define reasonable notice. We have rewritten this provision to more fully describe the public notice and sale procedure.

Section 254.42 Valuation of Tracts

Some changes in wording were made to clarify this section. One respondent suggested that value be established as of the date the encroachment began. This suggestion is not consistent with the intent of the Small Tracts Act. The date of value will be current with the date of sale or exchange under this authority. This has been clarified in the final regulation.

Section 254.43 Surveys

Some changes were made to this section to clarify survey standards and requirements.

Section 254.44 Document of Conveyance

Several comments made either a recommendation to add or delete the need for terms and convenants in the deed; others concerned clarifying the recording process. It is our intent to keep the conveyance document as free as possible of terms, conditions, and convenants; however, we cannot eliminate the opportunity for their use if necessary. Changes were made to clarify the recording process and to provide a more descriptive title.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined this is not a major rule. The result from this regulation will have little or no effect on the economy. The proposed procedures provide a streamlined, simplified mechanism of resolving small claims and disputes over small parcels of land, which will significantly reduce time and costs to the Federal Government and private parties in resolving these cases. There are no alternatives to issuance of these regulations which are required by the Small Tracts Act.

The Assistant Secretary of Agriculture for Natural Resources and Environment has determined this action will not have a significant economic impact on a substantial number of small entities. Furthermore, it does not directly result in additional procedures or paperwork. The regulation does not significantly affect the environment; therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969. Individual environmental assessment reports will be made on a case-by-case basis.

List of Subjects in 36 CFR Part 254

National forests, Public lands—acquisitions and exchanges, Permits, Sales.

PART 254—LANDOWNERSHIP ADJUSTMENTS

Therefore, for the reasons set forth in the preamble, Part 254 of Title 36 of the Code of Federal Regulations is amended as follows:

(1) Change the title of Part 254 from "LANDOWNERSHIP" to "LANDOWNERSHIP ADJUSTMENTS";

(2) Add a new Subpart C to read as follows:

Subpart C—Conveyance of Small Tracts

Sec.

Authority: Pub. L. 97–465; 96 Stat. 2535.

Subpart C—Conveyance of Small Tracts

§ 254.30 Purpose.

These regulations set forth procedures by which the Secretary of Agriculture may resolve land disputes and management problems pursuant to Pub. L. 97–465, commonly called the Small Tracts Act, by conveying, through sale, exchange, or interchange, three categories of tracts of land: Parcels encroached on, road rights-of-way, and mineral survey fractions. Implementation of these regulations does not constitute authorization of nor consent to adverse possession against lands administered by the Secretary of Agriculture.

§ 254.31 Definitions.

For the purpose of this subpart,

An "applicant" is a person who occupies or has improvements on National Forest System land under claim of title or color of title, or who owns land abutting or underlying a road right-of-way, or who owns land interspersed with or adjacent to mineral survey fractions.

"Approximately Equal Value" is a comparative estimate of value of lands involved in an interchange where elements of value, such as physical characteristics and other amenities, are readily apparent and substantially similar.

"Claim of Title" is a claim of land as a person's own, based on any reasonable evidence which establishes the person's actual use of the land as though the person had full title thereto from the time the person obtained ownership of abutting land.

"Color of Title" arises from an instrument purporting to convey title to a tract of land.

"Encroachments" are improvements occupied or used on National Forest System land under claim of title or color of title.

"Exchange" is a discretionary, voluntary transaction involving mutual transfers of land or interests in land between the Secretary of Agriculture acting by and through the Forest Service and a nonfederal entity.

"Good Faith" is honesty of intention and freedom from knowledge of circumstances which ought to put a prudent person upon inquiry.

"Improvements" mean an addition to property costing labor or capital which affects its value. The term generally includes fixtures, structures and attendant facilities, or buildings.

"Interchange" is a land transfer in which the Secretary and another person exchange lands or interests in lands of approximately equal value without a formal appraisal.

"Mineral survey fractions" are small parcels of National Forest System lands interspersed with or adjacent to lands transferred out of Federal ownership under the mining laws.

"Person" includes any nonfederal entity such as a State or any political subdivision as well as any individual or business entity.

"Secretary" refers to the Secretary of the United States Department of Agriculture.

§ 254.32 Encroachments.

(a) Conveyances under this subpart are limited to tracts of 10 acres or less to resolve encroachments by persons:

(1) To whom no advance notice was given that the improvements encroached or would encroach, and

(2) Who in good faith relied on an erroneous survey, title search, or other land description which did not reveal such encroachment.

(b) Forest Service officials shall consider the following factors when determining whether to convey lands upon which encroachments exist:

(1) The location of the property boundaries based on historical location and continued acceptance and maintenance,

(2) Factual evidence of claim of title or color of title,

(3) Notice given to persons encroaching on National Forest System lands,

(4) Degree of development in the encroached upon area, and

(5) Creation of an uneconomic remnant.

§ 254.33 Road rights-of-way.

(a) Reserved or acquired road right-of-way parcels subject to conveyance under this subpart are limited to those which are substantially surrounded by lands not owned by the United States.

(b) Forest Service officials shall consider public road system right-of-way needs based on National Forest transportation planning and State and local law before making any conveyance of rights-of-way.

(c) Reimbursement will be required for the value of any improvements made by the United States or other highway authorities, unless waived by the Chief of the Forest Service.

§ 254.34 Mineral survey fractions.

(a) Mineral survey fractions subject to conveyance under this subpart are limited to those tracts which:

(1) Cannot be efficiently administered because of size, shape, or location;

(2) Are occupied or could be occupied or used by adjoining owners; and

(3) When sold separately or aggregated in one transaction, do not exceed 40 acres.

(b) Forest Service officials shall consider the following criteria in determining whether to convey mineral survey fractions under this subpart:

(1) The mineral survey fractions are interspersed among and are more or less an integral part of private land holdings;

(2) The feasibility and cost of surveying the parcels in order to manage them effectively;

(3) The size, shape, and location of the parcels as they affect management, utility, access, occupancy or use of the parcels or the lands with which they are interspersed.

§ 254.35 Limitations.

(a) Lands within the National Wilderness Preservation System, the National Wild and Scenic Rivers System, the National Trails System, and National Monuments are excluded from any conveyance under these provisions.

(b) Lands within National Recreation Areas may not be conveyed by sale under this subpart.

(c) The value of Federal lands conveyed in any transaction, pursuant to this subpart, shall not exceed $150,000.

(d) Compensation for loans conveyed shall be of at least equal value, or in the case of interchange, of approximately equal value, and may be in the form of land, interest in land (including minerals), or cash, or any combination thereof.

(e) The sale, exchange, or interchange of lands or interest in lands under these rules are discretionary and shall be made only if found to be in the public interest.

(f) The abutting landowner(s) shall have the first right of acquisition.

(g) The area of land conveyed shall be limited to the minimum necessary to resolve encroachment or land management problems.

§ 254.36 Determining public interest.

(a) The requirements of § 254.35 and of one of §§ 254.32, 254.33, or 254.34 must be met before a determination of public interest can be made.

(b) Before a conveyance is made under this subpart, such conveyance must be determined to be in the public interest.

(c) Forest Service officials shall consider the following criteria in determining when the public interest will be served:

(1) Sale, exchange, or interchange of the affected lands is not practicable under any other authority of the Secretary;

(2) Administration and management of National Forest System lands will be more efficient and will result in improved utilization;

(3) Access to and use and enjoyment of National Forest System lands by the general public will not be unduly impeded or restricted;

(4) New or extensive inholdings which would create management problems will not be established;

(5) Scenic, wildlife, environmental, historical, archaeological, or cultural values will not be substantially affected or impaired;

(6) Existence of structures authorized under a special use permit or easement, and

(7) Applicable Federal, State, and local laws, rules, regulations, and zoning ordinances will not be violated.

§§ 254.37–254.39 [Reserved]

§ 254.40 Applications.

(a) A request for conveyance of National Forest System land must be made in writing to the District Ranger or the Forest Supervisor who has administrative jurisdiction over the land.

(b) The applicant shall bear all reasonable costs of administration, survey, and appraisal incidental to the conveyance.

(c) Costs incidental to the conveyance may be waived at the discretion of the Chief of the Forest Service.

§ 254.41 Public sale or exchange in absence of application.

(a) Mineral survey fractions or road rights-of-way which have not been applied for by an abutting landowner may be offered to the public for sale or exchange at not less than fair market value.

(b) Public notice of a proposed sale of land for which there is no applicant shall be published once a week for four consecutive weeks in a local newspaper prior to the date of sale.

(c) The public notice shall describe the lands to be sold, minimum acceptable price, conditions of sale, sealed or oral bid procedures, date and location of sale.

§ 254.42 Valuation of tracts.

(a) Approximately equal value shall be determined by comparing and evaluating the elements of value on the lands or interest in lands to be interchanged. Elements of value to be considered include size, shape, location, physical attributes, functional utility, proximity of other similar sites, and amenities in the immediate environs of the parcel. Findings that tracts are approximately equal in value shall be documented. An applicant must signify acceptance of the value determination by signing the documented findings prior to the interchange.

(b) Equal value in sale or exchange transactions shall be developed by recognized appraisal methods following Forest Service appraisal procedures and the Uniform Appraisal Standards for Federal Land Acquisition. The date of the value estimate will be current with the date of sale or exchange.

(c) Improvements to National Forest System land made by any persons other than the Government may be excluded from the property value determinations.

§ 254.43 Surveys.

All necessary tract surveys of National Forest System land shall be conducted by a licensed private surveyor under Forest Service instructions, contracted by the person applying for the conveyance, or by a Forest Service surveyor. The person will also be required to have all Federal property boundaries resulting from a conveyance marked and posted to Forest Service standards.

§ 254.44 Document of conveyance.

(a) Title to the United States may be conveyed by quitclaim or warranty deed. The United States will convey title only by quitclaim deed.

(b) Deeds shall be free of terms, conditions, and convenants except those deemed necessary to ensure protection of the public interest.

(c) A copy of all documents of conveyance will be transmitted after recordation, where applicable, to the appropriate State Office of the Bureau of Land Management.

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources and Environment.

December 16, 1983.

[FR Doc. 84-535 Filed 1-9-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. MA-936; A-1-FRL 2504-6]

Approval and Promulgation of Implementation Plans; Massachusetts New Source Review Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part a revision to the Massachusetts State Implementation Plan (SIP) which incorporates into the Massachusetts SIP preconstruction review requirements for major new sources locating in an area where the air quality is worse than levels set to protect public health and welfare. These new Massachusetts regulations meet the Clean Air Act requirements for review of new sources and modifications in nonattainment areas.

EFFECTIVE DATE: February 9, 1984.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2111, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408 and Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, State Air Programs Branch, EPA, Region I, Room 2111, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5130.

SUPPLEMENTARY INFORMATION: On May 9, 1983 (48 FR 20766) we published a Notice of Proposed Rulemaking (NPR) on revisions to the Massachusetts SIP submitted on May 27, 1982 and September 9, 1982 by the Massachusetts Department of Environmental Quality Engineering (DEQE). The revisions contain changes to preconstruction review requirements for new major sources or modifications locating in a nonattainment area. We received one letter of comment on our proposed approval. Except as noted below, the revisions and the rationale for EPA's proposed action are explained in the May 9, 1983 proposed rulemaking, and will not be restated here.

I. Changes Since Publication of Proposed Rulemaking

In the NPR EPA proposed to take no action on the definition of source and the provision for granting emission reduction credits for source shutdowns and production curtailments submitted by the DEQE. These two provisions are affected by a court decision and settlement agreement, respectively. We have not changed our decision to take no action on these two provisions in this final rulemaking. Recent developments, explained below, may affect our decision in the future, however.

Plantwide v. Dual Definition of Source

DEQE submitted for EPA approval, a definition of source consistent with EPA's October 14, 1981 (44 FR 50766) rulemaking in which source was redefined to mean an entire plant rather than as both an entire plant and an identifiable piece of process equipment (the "dual" definition). The dual definition of source is currently in effect in the Massachusetts SIP. On August 17, 1982 the U.S. Court of Appeals for the Washington, D.C. Circuit issued an opinion in *Natural Resources Defense Council* v. *Gorsuch*, 685 F.2d 718 (D.C. Circuit, 1982) which, if finalized, will vacate EPA's October 14, 1981 rulemaking. After we published our proposed action on the DEQE new source review plan, the Supreme Court granted review of the Court of Appeals decision. The Supreme Court will hear the case sometime next year. Thus, the definition of source as it applies to new source review in nonattainment areas will be uncertain until the Supreme Court renders its decision. Because of the uncertainty regarding the definition of source, we are taking no action on the plantwide definition of source submitted by the DEQE. The dual definition already in the Massachusetts SIP will remain in effect.

Emission Reduction Credit for Source Shutdowns and Production Curtailments

As explained in the NPR, the DEQE provision regarding emission reduction credits for source shutdowns and production curtailment does not meet current federal requirements because it does not limit such credits to replacement units. On August 25, 1983 (48 FR 38751) EPA proposed a regulation which would remove the replacement unit restriction. If this regulation is finalized, we will determine if the DEQE provision is approvable.

II. Renumbering of 310 CMR 7.02(2)(b)(5) and 7.02(2)(b)(6)

DEQE revised Regulations 7.02(2)(b)(5) and 7.02(2)(b)(6) to replace references to the Emission Offset Interpretative Ruling with references to 310 CMR Appendix A in its May 27, 1982 submittal. In its September 9, 1982 submittal DEQE removed Regulation 7.04(2)(b)(4), which is not related to new source review, and renumbered subsequent regulations accordingly. At the time of our proposed approval of the new source review plan it was uncertain if we would approve the removal of Regulation 7.02(2)(b)(4). Therefore, we proposed approval of the numbering in the May 27, 1982 submittal.

On July 7, 1983 (48 FR 31197) EPA approved the removal of Regulation 7.02(2)(b)(4) in an action unrelated to new source review. In today's final action we are approving the renumbering of Regulations 7.02(2)(b)(5) and 7.02(2)(b)(6) to 7.02(2)(b)(4) and 7.02(2)(b)(5).

III. Comments

The Monsanto Company commented on EPA's proposed decision to take no action on the plantwide definition of source and the provision submitted by the DEQE regarding emission reduction credits from source shutdowns and production curtailments.

Comment on Definition of Source

The Monsanto Company (Monsanto) believes that EPA should approve the plantwide definition of source because the October 14, 1981 rulemaking is technically still in effect and because EPA continues to support the validity of that rulemaking. Monsanto stated that the plantwide definition should be removed only at such time as the Supreme Court renders a decision upholding the Court of Appeals decision. Monsanto also urged EPA to include a "grandfather" provision for the use of the plantwide definition in the Massachusetts SIP which would allow sources which applied for a permit on the basis of the plantwide definition to proceed with its construction or modification even if the "dual" definition is reinstituted.

Response

Massachusetts now has a federally approved definition of source for nonattainment areas—the dual definition contained in the Emission Offset Interpretative Ruling of January 16, 1979. Because the Supreme Court granted review of the Court of Appeals decision, which ruled against the use of a plantwide definition of source in nonattainment areas, it is uncertain which definition, dual or plantwide, will eventually be in effect. We believe that it is best to make no changes to the definition of source contained in the SIP until the Supreme Court renders its decision. If the Supreme Court rules in favor of the plantwide definition, Region I will initiate action to approve the definition submitted by the DEQE.

Comment on Emission Reduction Credits From Source Shutdowns or Production Curtailments

The Monsanto Company does not believe that it is necessary for EPA to wait for final implementation of the settlement agreement reached in *EPA* v. *CMA* to approve 310 CMR Appendix A, Paragraph 5(q).

Response

As stated above EPA proposed regulations on August 25, 1983 to implement the settlement agreement reached in *EPA* v. *CMA*. Until these regulations are finalized, the requirement found at 40 CFR 51.18(j)(3)(ii)(*c*) limiting the use of emission credit from prior shutdowns or curtailments to replacement facilities will remain in effect. EPA will determine whether the DEQE provision regarding emission reduction credit from source shutdowns to production curtailments is approvable when the implementation of the setttlement agreement is finalized.

Final Action

EPA is approving:

1. The renumbering of Regulations 310 CMR 7.02(2)(b)(5) and 7.02(2)(b)(6) to 7.02(2)(b)(4) and 7.02(2)(b)(5).

2. The addition of 310 CMR, Appendix A, "Emission Offsets and Nonattainment Review" to the Massachusetts SIP.

3. Revisions to 310 CMR 7.00 "General Definitions" with the exception of the definitions of "source" and "building, structure, facility or installation" insofar as they apply to 310 CMR, Appendix A.

4. A revision to 310 CMR 7.02(2)(b)(4) which states that major sources locating in a nonattainment area must meet the requirements of 310 CMR, Appendix A, "Emission Offsets and Nonattainment Review" with the exceptions noted below.

Exceptions:

(a) The definitions of "source", "facility", "reconstruction" and "fixed capital cost" now in the Massachusetts SIP will remain in effect.

(b) The provision limiting the use of emissions reduction credit resulting from source shutdowns or curtailments in production or operating hours, Paragraph IV(c)(3) of the Emission Offset Interpretative Ruling, published on January 16, 1979 (44 FR 3274), will remain in effect.

5. A revision to 310 CMR 7.02(2)(b)(5) which replaces the reference to the EOIR with a reference to 310 CMR, Appendix A.

EPA is taking no action on:

1. The definitions of "source" and "building, structure, facility or installation" found at 310 CMR 7.00, "General Definitions" insofar as these definitions apply to the review of new sources in nonattainment areas.

2. Paragraph 4 of 310 CMR Appendix A which requires the installation of RACT at modifications at sources in nonattainment areas where there is no overall increase in emissions. This provision is unnecessary because the dual definition of source applies.

3. Paragraph 5(q) of 310 CMR Appendix A which pertains to source shutdowns and production curtailments.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at Room 2111, JFK Federal Building, Boston, MA 02203.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons and Intergovernmental relations.

Authority: Sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Dated: January 4, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

PART 52—[AMENDED]

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

Subpart W—Massachusetts

Section 52.1120, paragraph (c) is amended by adding paragraph (60) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(60) On May 27, 1982 and September 9, 1982 the Commissioner of the Massachusetts Department of Environmental Quality Engineering submitted a revised plan for new source review in nonattainment areas. The submittal included 310 CMR Appendix A, "Emission Offsets and Nonattainment Review," additions to 310 CMR 7.00, "General Definitions," and revisions to 310 CMR 7.02(2)(b)(4) and 7.02(2)(b)(5), "Plan Approval and Emission Limitations."

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40 CFR Parts 66 and 67

[FRL 2479-4]

Air Pollution; Interpretive Rulemaking

AGENCY: Environmental Protection Agency.