operations on this frequency are subject to the provisions of § 90.257(b).

* * * * *

3. Section 90.73(d)(7) is revised to read as follows:

§ 90.73 Special industrial radio service.

* * * * *

(d) * * *

* * * * *

(7) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial and Railroad Radio Services and interservice coordination is required. All communications must be conducted within the boundaries or confines of a plant, factory, shipyard, mill, mine, farm, ranch, or construction area. All operations on this frequency are subject to the provisions of § 90.257(b).

* * * * *

4. Section 90.79(d)(4) is revised to read as follows:

§ 90.79 Manufacturers radio service.

* * * * *

(d) * * *

(4) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial and Railroad Radio Services and interservice coordination is required. All communications must be within the boundaries or confines of plants, mills, yards, or other manufacturing areas. All operations on this frequency are subject to the provisions of § 90.257(b).

* * * * *

5. Section 90.91(c)(2) is revised to read as follows:

§ 90.91 Railroad radio service.

* * * * *

(c) * * *

(2) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, and Railroad Radio Services and interservice coordination is required. All communications must be within the boundaries or confines of railroad terminals or yards. All operations on this frequency are subject to the provisions of § 90.257(b)

* * * * *

6. Section 90.257(b) is revised to read as follows:

§ 90.257 Assignment and use of frequencies in the 72-76 MHz Band.

* * * * *

(b) The following criteria shall govern the authorization and use of frequencies within the band 72–76 MHz by mobile stations in the Special Industrial, Manufacturers, Forest Products, and Railroad Radio Services.

* * * * *

[FR Doc. 84-27612 Filed 10-19-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

Oversight of the Radio and TV Broadcast Rules; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This Erratum corrects an error in the Order regarding Oversight of the Radio and TV rules adopted September 13, 1984. 49 FR 38130, September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION:

Erratum

Released: October 18, 1984.

1. In the above captioned Order released September 18, 1984, and published in the **Federal Register** on September 27, 1984 at 49 FR 38130, item 7 of the Appendix *incorrectly* and *inadvertently* revised § 73.1735 to read as follows:

7. 47 CFR 73.1735 is revised to read as follows:

§ 73.1735 Pre-sunrise service authorization (PSRA) and Post-Sunset service authorization (PSSA).

Licensees of certain classes of AM stations are eligible to request pre-sunrise service authorization and post-sunset service authorization pursuant to the requirements of § 73.99.

It is corrected, as shown here, to restate the rule as it was adopted in the Report and Order in BC Docket 82–538, Hours of Operation of Daytime-Only AM Broadcast Stations. 48 FR 42944, September 20, 1983:

§ 73.1735 AM station operation pre-sunrise and post-sunset.

Certain classes of AM stations are eligible to operate pre-sunrise and/or post-sunset for specified periods with facilities other than those specified on their basic instruments of authorization. Such pre-sunrise and post-sunset operation is authorized pursuant to the provisions of § 73.99 of the Rules.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 84-27771 Filed 10-19-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 83

[PR Docket No. 84-139; FCC 84-469]

Allowing Radiotelegraph Officers To Perform Maintenance and Repair Duties While Keeping the Mandatory Watch on 500 kHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order allows radiotelegraph officers during their watch to perform maintenance and repair duties at locations away from the station's main transmitter provided they keep a listening watch using headphones, loudspeaker, or a remote receiver. This action was recommended by the Department of Transportation's Maritime Administration and was supported by all the parties that filed comments. This rule allows the master to enhance the radiotelegraph officer's value as a member of the ship's crew.

EFFECTIVE DATE: November 20, 1984.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, 202–632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 83

Communications equipment, Marine safety, Radio, Telegraph vessels.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of Part 83 of the Commission's rules to allow radiotelegraph officers to perform maintenance and repair duties while keeping the mandatory watch on 500 kHz. (PR DOCKET NO. 84–139 RM–4575).

Adopted: September 28, 1984.
Released: October 11, 1984.

By the Commission.

1. This Report and Order amends the rules to allow merchant ship radio officers to service electronic equipment while keeping an uninterrupted watch on 500 kHz.

2. The existing rules require radiotelegraph-equipped vessels to keep watch on the international distress frequency, 500 kHz, during the ship's hours of service. The radiotelegraph officer may interrupt this watch to transmit or receive messages from other stations, or to perform urgent repairs of navigational or safety-related equipment.

3. The U.S. Department of Transportation's Maritime Administration (MARAD) requested that the rules be modified to allow the radio officer to perform maintenance and repair duties at the request of the

master at locations away from the station's main transmitter, provided a listening watch is kept on 500 kHz. The watch would be maintained by headphones, loudspeakers remote receivers, or other suitable means. However, the officer would have to maintain the "silence period" watch (twice each hour for three-minute periods)[1] from the radiotelegraph room. In a *Notice of Proposed Rule Making*, adopted February 7, 1984, the Commission proposed to amend the rules in accordance with MARAD's request.[2]

4. Comments were filed by the following parties:

—David B. Popkin, Englewood, N.J. (Popkin)
—The American Institute of Merchant Shipping (AIMS)
—Council of American-Flag Ship Operators (CASO)
—Radio Officers Union District 3 of the National Marine Engineers' Beneficial Association, AFL–CIO (ROU)

Reply comments were filed by the following parties:

—American Radio Association, Communications and Electronics Membership of the International Organization of Masters, Mates and Pilots, ILA, AFL–CIO (ARA)
—ROU and ARA, jointly

5. All of the comments favored amending the rules as proposed and stated that the watch on 500 kHz would in no way be impaired. Some raised issues which are outside the scope of this proceeding, such as AIMS' comments regarding PR Docket 84–141 (future amendments to the Safety of Life at Sea Convention). The only germane change specifically requested was raised in Popkin's comments. He suggested that the auto alarm be placed into operation each time the radiotelegraph officer leaves the radio room. Popkin's recommendation is a prudent measure which radiotelegraph officers may wish to follow. However, we are not convinced it should be a requirement. We are not changing the key elements of the watch in this proceeding. We are providing an opportunity to improve the radio officer's productivity without diminishing the effectiveness of the watch. The international Radio Regulations do not require the use of an auto alarm during the watch. Use of headphones, loudspeakers, remote receivers or other similar equipment is technically reliable and will not infringe on safety. For these reasons, we are not requiring use of the auto alarm during the watch situation described in the new rule.

6. Popkin's comments do however raise concerns over how the new rule might be interpreted. In the *Notice*, we proposed that headphones, speakers or portable receivers could be used to maintain the watch. The term "portable receiver" was intended to mean a receiver connected to the ship's main installation, but carried to the location where work would normally be performed. Likewise, headphones and loudspeakers would be connected to the same site. However, Popkin interprets "portable receiver" to mean a self-contained unit, with its own antenna, which would not have "the same sensitivity and selectivity as either the main or reserve receiver." To remove such ambiguities, we are rephrasing § 83.204(e) to specify that the equipment used must be connected to the ship's main installation.

7. Pursuant to Section 605 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we certify that the new rule will not have a significant economic impact on a substantial number of small entities. This rule enhances the radiotelegraph officer's productivity aboard ship by allowing that person to assume duties which could not previously be carried out during the eight-hour watch. Wiring and loudspeakers, headphones, or remote receivers will be necessary to take advantage of the new rule; however, no vessels will be required to make the investment or to operate in this fashion, although many are already equipped to do so. There are approximately 800 radiotelegraph-fitted vessels of U.S. registry. The operation of a single such vessel typically runs into the millions of dollars per year.

8. Accordingly, it is ordered, that under the authority contained in Sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c) and (r), the Commission's rules ARE AMENDED as set forth in the attached Appendix, effective November 20, 1984.

9. It is further ordered, that a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

10. It is further ordered, that this proceeding is terminated.

11. Regarding questions on matters covered in this document contact Maureen Cesaitis (202) 632–7175.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Section 83.204 is amended by adding new paragraph (e), to read as follows:

§ 83.204 Provisions governing radiotelegraph watch.

* * * * *

(e) When authorized by the master, the radio officer may perform maintenance or repair of communications, navigation or other electronic equipment inside or outside of the radiotelegraph room, provided that the listening watch on 500 kHz can be maintained by headphones, loudspeakers, remote receivers or other suitable means. Any listening watch device used must be electrically connected to the ship's main installation. The watch on 500 kHz must be maintained in the radiotelegraph room during the silence periods.

[FR Doc. 84–27769 Filed 10–19–84; 8:45 am]
BILLING CODE 6712–01–M

[1] In order to increase the safety of life at sea, the international Radio Regulations (See Nos. 3038–3246) require that all stations in the maritime mobile service utilizing frequencies beween 425 and 535 kHz maintain a watch on 500 kHz for three minutes twice each hour beginning at 15 minutes and 45 minutes past the hour. During these "silence periods" transmissions must cease on frequencies between 485–515 kHz.

[2] PR Docket No. 84–139, released February 10, 1984, 49 FR 6114 (February 17, 1984).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE 78–01; Notice 6 and No. Fe-84–01; Notice 2]

Light Truck Average Fuel Economy Standards Model Years 1985–86

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the light truck average fuel economy standard for model year 1985 and establishes a new standard for model year 1986. These standards are required to be established at the maximum feasible level, under section 502(b) of the Motor Vehicle Information and Cost Savings Act. It is anticipated that there will not be any loss of potential fuel savings associated with the revised 1985 standards. The

1986 light truck fleet will consume 510 million gallons less than that which would have occurred if fuel economy levels remained at those now projected for 1985. Light truck fuel economy standards for model year 1987, proposed at the same time as the model year 1986 standards, will be issued at a later date.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective November 21, 1984. The standards are applicable to the 1985 and 1986 model years.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, D.C. 20590 (202–426–1740).

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1984, NHTSA published a notice of proposed rulemaking (NPRM) on the establishment of light truck average fuel economy standards for model years 1986 and 1987. See 49 FR 8637. The issuance of the 1986 standard 18 months before model year 1986 is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2002(b). That provision requires the Secretary of Transportation to set light truck standards at the "maximum feasible average fuel economy level" for each model year after 1978. In determining the "maximum feasible" level, the Secretary is directed to consider four factors: technological feasibility, economic practicability, the need of the nation to conserve energy, and the effects of other Federal motor vehicle standard on fuel economy. See 15 U.S.C. 2002(e).

The agency's March NPRM proposed ranges of possible standards for all types of light trucks, with the 1986 composite standard to be set within the range of 20.0 to 21.5 mpg and the 1987 composite standard to be set within the range of 20.0 to 22.5 mpg. Ranges of standards were also proposed for two-wheel drive and four-wheel drive light trucks. These separate standards were proposed as optional means of compliance, consistent with the agency's practice in previous proceedings, and are intended to account for the fact that different manufacturers' fleets contain significantly different proportions of four-wheel drive trucks, which tend to have lower fuel economy.

Due to a continuing shift in consumer demand for light trucks, the agency anticipated that downward revisions to the standards would be necessary. The demand shifts, which are due primarily to the recent trend of stable and diminishing gasoline prices, are manifested in higher levels of sales of larger light trucks and larger displacement engines than were previously anticipated by either the manufacturers or the agency.

The market trends toward larger light trucks and larger displacement engines led Ford Motor Company to petition the agency on November 21, 1983, to reduce the existing 1984 and 1985 light truck standards. Ford also argued that changes in light duty truck emissions standards and related procedures had led to a loss in fuel economy for those years. Ford requested that NHTSA reduce the 1984 composite light truck fuel economy standard from 20.0 to 19.0 mpg and the 1985 composite standard from 21.0 to 19.5 mpg, with corresponding changes to the optional two and four-wheel drive standards. On May 30, 1984, in 49 FR 22516, the agency proposed to grant Ford's request for the 1985 model year. However, the agency also proposed at that time to deny Ford's request for the 1984 model year, based on the agency's conclusion that the petition had not been timely filed for that model year. In its comments on this notice, Ford indicated that it would not pursue the issue of the 1984 standards since it had succeeded in assuring compliance with the standards for that year.

Summary of Decision

Based on the agency's analysis of sales data for the 1984 model year and the manufacturers' most recent projections for future sales, market trends toward large vehicles and engines have continued and are likely to continue through at least 1986. Projected fuel economy levels for 1985 domestic light truck fleets have declined on the order of 1.5 mpg since establishment of the standard, due almost entirely to mix shifts in vehicle size and engine displacement. These market trends are expected to continue through at least the 1986 model year. Our analysis leads us to establish composite average fuel economy standards of 19.5 mpg for light trucks manufactured in the 1985 model year and 20.0 mpg for 1986 model year light trucks. Equivalent standards for two-wheel drive and four wheel drive light trucks are also established. A decision has not yet been reached with respect to the proposed 1987 model year standards. The agency has concentrated its efforts on analyzing issues relating to the 1985–86 standards, which must be issued at this time. There is a considerable period of time before the agency is required to issue 1987 model year standards. The agency needs additional time to complete its analysis of issues relating to such standards. Some of these issues, particularly those relating to market trends, are characterized by uncertainty and complexity.

Basis for the Final Standards

a. 1985 Standards

The basis for the agency's original 1985 standards is summarized at 45 FR 81593, December 11, 1980.

The fuel economy gains projected by the agency in that notice were due primarily to the introduction of new compact pickup, utility, and van models and progressively higher sales levels for these models. The new models were projected to employ smaller, more efficient engines and other fuel economy-improving technology. However, in its May 30, 1984 notice, the agency indicated that a number of its projections had not been borne out in terms of current consumer preferences in the marketplace. In particular, the agency's May 30 notice stated that market demand for light truck performance as reflected in engine mix and axle ratio usage, did not materialize as anticipated when the agency initially established the 1985 standards. These and certain other less significant effects produced a 1.5 mpg loss in Ford's 1985 light truck average fuel economy. The original 1985 standards were based primarily upon Ford's maximum fuel economy capability, since that company had the lowest projected fuel economy, accounted for a substantial share of light truck sales, and faced serious risk of economic harm if standards were set at levels above its capability to achieve with a product mix reflecting market demand. As the agency has consistently stated in the past, the agency has a responsibility to set standards at a level that can be achieved by manufacturers having a substantial share of light truck sales.

The agency has refined its analysis of Ford's 1985 fuel economy capability for purposes of this final rule, and has performed analyses of the capability of Chrysler and General Motors as well. Other light truck manufacturers have significantly higher average fuel economy capabilities than the three large domestic manufacturers and account for a minority share of light truck sales. These other fleets have not been analyzed for this proceeding, since

it is clear that because of their small size they would not influence ultimate standards levels. The agency has concluded that there has been a market-related 1.5 mpg loss in Ford's model year 1985 fuel economy capability.

Increases in demand for larger displacement engines compared to levels anticipated at the time 1985 standards were originally established caused 0.9 mpg of the drop in Ford's model year 1985 capability. Increases in average vehicle weight principally resulting from higher than anticipated demand for larger vehicles produced a 0.5 mpg drop, while a drop in demand for diesel engines caused a further 0.1 mpg loss. Several minor effects combined to produce an additional 0.2 mpg loss, but were more than offset by a 0.4 mpg fuel economy gain due to the use of fuel injection in certain light truck engines.

A 0.2 mpg loss in fuel economy was experienced by Ford coincident with the imposition of more stringent emissions regulations. Although the agency has concluded that a 0.2 mpg fuel economy loss will occur for Ford in 1985, EPA has advised the agency that, in their opinion, this loss is due to efforts to improve engine performance through engine calibration and is not an inherent effect of the emissions standards. However, NHTSA has treated this effect as equivalent to the engine mix change effects described above since it appears to result from market demand for increased vehicle performance at a time of stable gasoline prices.

A decline in General Motors 1985 fuel economy is also projected by the agency to a level of 20.0 mpg. The magnitude of this reduction is similar to that experienced by Ford, and is also due to market demand factors. The major factors causing the decline in GM's 1985 fuel economy were found to be an increase in average vehicle weight and engine displacement due to higher than anticipated demand for larger vehicles and engines, a decline in demand for diesel engines, reduced demand for manual transmissions, and increased demand for vehicles with four-wheel drive capability.

Chrysler's 1985 fuel economy is estimated to be 20.3 mpg. The other domestic and foreign manufacturers were not assessed in detail in this analysis, for the reasons noted above.

b. 1986 Standards

Based primarily on technology, the agency anticipates that Ford can achieve a fuel economy gain of 0.9 mpg over the 1985 standard of 19.5 mpg. This fuel economy gain is due predominantly to the introduction of engines using more efficient lean burn/fast burn technologies (0.5 mpg) and also to the elimination of the engine calibration/emissions effect described above (0.2 mpg) and gradual growth in demand for new small vans (0.2 mpg). However, the agency believes these gains will be somewhat offset by continued market shifts, as discussed below. The emissions standards effects are also discussed below.

The agency also projects that GM can achieve fuel economy gains of the same magnitude through engine efficiency improvements as projected for Ford (0.5 mpg). Through a variety of other minor improvements, the agency projects that GM can achieve an additional 0.1 mpg improvement. Taken together, these improvements will enable GM to achieve a composite average fuel economy of 20.6 mpg in 1986.

Chrysler is capable of achieving the highest 1986 fuel economy levels of the "Big 3" domestic manufacturers, 21.5 mpg. This gain primarily results from the introduction of fuel efficient engine technology and the introduction of certain new light weight truck models.

For each of the two model years covered by this rule, the agency concluded that fuel economy improvements beyond those previously discussed are not feasible.

c. Economic Practicability

Economic factors have been of significance in the agency's standard-setting analysis, particularly the potential costs incurred by manufacturers should standards necessitate the sale of a "non-free market" model mix. As noted in the discussion of fleet technology above, virtually the entire fuel economy difference between the original 1985 standard and the lower standards promulgated herein reflects a change in anticipated market demand for larger light trucks and engines, resulting from lower than anticipated gasoline prices. The mix of vehicles and engines projected in this notice for the 1985–86 model years is an estimate of free market demand for light trucks under current market conditions.

It is possible that higher levels of fuel economy could be achieved by domestic manufacturers should they restrict their product offerings. For example, sales of particular larger light truck models and larger displacement engines could be limited or eliminated entirely. In its petition to reduce the 1984–85 light truck standards, Ford submitted an analysis of the potential effects of restricting product offerings in this manner. This analysis showed that to achieve a 1.5 mpg average fuel economy benefit, sales reductions of 100,000 to 180,000 units at Ford could occur, with resulting employment losses of 12,000 to 23,000 positions at Ford, its dealers and suppliers. To the extent that these sales restrictions merely shifted purchasers of larger trucks to other manufacturers, no net fuel economy benefit would be achieved. No commenter in the proceeding directly took issue with the Ford analysis. The agency believes this analysis to be a reasonable projection of the impacts of restricting the availability of larger trucks and engines in the current market. Impacts of this magnitude would go beyond the realm of "economic practicability" as contemplated in the Act, particularly in view of the uncertain energy benefits.

The agency has analyzed the economic impacts associated with the manufacturers' efforts to improve the fuel economy of individual light truck models in the 1985–86 time period. This analysis is set forth in a Regulatory Impact Analysis, copies of which are available in the agency's Docket Section. The agency projects an average retail price increase of $35 to result from these improvements. This price increase would be offset by operating cost savings of $176 for the average 1986 light truck, due to reduced lifetime gasoline consumption. Overall, the agency projects the domestic manufacturers' automotive operations to remain highly profitable over the 1985–86 period, based on current market trends.

d. Effects of Other Federal Standards on Fuel Economy

Three new light truck exhaust emission requirements were cited by several commenters as having possible adverse impacts on fuel economy. The first requirement is a change in stringency in hydrocarbon and carbon monoxide emission standards, which took effect in the 1984 model year. The second requirement extends the useful life period for which manufacturers must certify compliance with emissions standards beginning with the 1985 model year. The third requirement is an anticipated increase in stringency of light duty truck emission standards for oxides of nitrogen.

The agency has concluded that none of these regulatory changes will impact 1985–86 light truck fuel economy levels. With regard to 1984 emissions standards changes and the extended useful life regulation, the agency concurs in a technical analysis provided by the Environmental Protection Agency which indicates that there is no causal link between these regulations and any loss in fuel economy experienced by the

manufacturers. A Department of Transportation assessment of the 1984–85 emissions regulations supported the EPA conclusions. In the case of the possible change in the emission standards for oxides of nitrogen, EPA has yet to issue proposed standards. Given the need for EPA to conduct a rulemaking proceeding and provide adequate lead-time, NHTSA concludes that it is unlikely that any change in stringency of that standard would occur by 1986. If this judgment turns out to be incorrect, the agency will reassess the impact of such a change on light truck fuel economy.

General Motors argued that future light truck diesel particulate emission standards could effectively ban diesel engines in such vehicles, reducing fuel economy levels accordingly. EPA has indicated that these standards can be met with available technology. However for certain vehicles EPA concedes that the standards may require the use of particulate traps which could produce a fuel economy penalty of approximately 2 percent per affected vehicle. NHTSA is accepting the EPA analysis. Should the anticipated fuel economy penalty occur, the impact on the domestic manufacturers' average fuel economy levels would be much less than 0.1 mpg, and would therefore not impact fuel economy standards levels.

American Motors argued that changes in EPA test procedures will result in a fuel economy loss. American Motors did not provide an analysis of the quantitative impact of the proposed rule on American Motors' average fuel economy levels, and none of the other manufacturers argued for the existence of such an impact. In its comments, American Motors noted that the potential impact of the change in EPA procedures could be offset through testing additional vehicles, but pointed out that each testing might be too expensive for a smaller manufacturer. Should American Motors experience a fuel economy loss, its average fuel economy levels will still be high enough to easily comply with the standards promulgated herein. Therefore, the agency is not making a specific adjustment in the standards to account for this potential effect.

e. Need of the Nation To Conserve Energy

The United States imported fifteen percent of its oil needs at a cost of $1.1 billion in 1955. By 1977, the import share peaked at 46.4 percent at a cost of $42 billion. While the import share of total petroleum demand has been steadily declining since 1977 to a 1983 level of 28 percent, the cost continued to rise to a 1981 peak level of $75.8 billion. In 1983, the percentage of imported petroleum was the lowest it had been during the prior decade, and the cost was lower than in 1979. During most of this period price controls on petroleum were in effect, sending the wrong economic signals to consumers. It is during such a period that fuel economy standards are most effective.

The rapid transition from apparent worldwide surplus in 1978 to shortage in 1979, to surplus again today points out the instability of the world oil market. The U.S. is now dependent for about one third of its oil supplies on the actions and decisions of a few foreign governments. Although the concern over dependence on imported petroleum has lessened in the past few years, it is necessary to continue conservation efforts due to the uncertainty, especially in regard to the Middle East, of the future availability of petroleum.

f. Determining the Maximum Feasible Average Fuel Economy Level

In determining the level at which standards are to be set, the agency must take industrywide considerations into account. The Conference Report on Title V of the Motor Vehicle Information and Cost Savings Act provides in this regard as follows:

> * * * a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under Section 508(b) in situations where competition will suffer significantly if penalties are imposed. Senate report 94–516, 94th Cong. 1st Sess. (1975), at 154.5.

As in the proposals, NHTSA's analysis concludes for both years that Ford is the "least capable" manufacturer in regard to improving the average fuel efficiency of its light trucks. For the 1985 model year, the agency projects that Ford can achieve 19.5 mpg, while GM could achieve 20.0 mpg and Chrysler 20.3 mpg. Production of 1985 model year vehicles has begun, so there is little that the manufacturers can do at this point to change their 1985 average fuel economy through use of additional technology. Setting the 1985 standards significantly above Ford's level would not likely increase that company's fuel economy performance through greater use of technology, but might require drastic product restriction actions which would adversely affect employment at Ford. Such actions by Ford might also result in the shifting of sales of larger light trucks with larger engines to other manufacturers, thereby achieving no net fuel economy improvement for the industry as a whole. On the other hand, setting standards below the level attainable by GM and Chrysler would not likely cause those companies to reduce their fuel economy performance, since the agency's projected levels for those companies is based on the product mixes they plan to sell. Further, GM indicated in its comments that setting standards at a level below its planned levels would not cause GM to revise its plans. Therefore, the agency concludes that the risks associated with setting standards above Ford's maximum feasible level and possibly forcing that company to adopt severe product restrictions outweigh the potential benefits from setting standards at a higher level.

For the 1986 model year, the agency projects the maximum fuel economy Ford could achieve in 20.4 mpg, GM 20.6 mpg, and Chrysler 21.5 mpg. Data provided by Ford indicated that Ford's 1986 fuel economy could be as low as 19.6 mpg if consumers maintain a strong demand for larger vehicles. The agency also found that GM faces a number of technological risks involving certain engine efficiency improvements for 1986. If these technological actions became infeasible, NHTSA estimates the company's 1986 fuel economy would decline to 20.0 mpg.

There are additional factors to be considered selecting the 1986 standards. Major technological changes cannot be made in manufacturers' product plans for that year. New programs cannot be developed to compensate for market shifts or technological problems. Furthermore, as noted in the NPRM manufacturers' projections (and NHTSA's analyses) of their fuel economy improvement capabilities have declined over the past 1½ years due to market changes. For all the above reasons, the agency has decided to set the 1986 composite standard at 20.0 mpg. The agency believes the risks of reduced sales and employment resulting from attempts to achieve a higher level for MY 1986 outweigh the potential fuel savings.

The agency has decided to continue setting 4 x 2 and 4 x 4 standards for each

year as an alternative to the composite standard. Separate 4 x 2/4 x 4 standards allow manufacturers greater flexibility in planning their fuel economy improvements and do not discriminate against firms with truck fleets heavily weighted toward four-wheel drive or two-wheel drive models.

The final standards are:

Model year	Composite standard mpg	4 x 2 standard mpg	4 x 4 standard mpg
1985	19.5	19.7	18.9
1986	20.0	20.5	19.5

Other Comments on the NPRM

In its March 1984 NPRM, the agency raised the possibility of changing the structure and scope of the current standards in several ways, including establishing a number of additional standards for subclasses of the light truck fleet and limiting the scope of the standards with regard to vehicles in the 6001–8500 pound gross vehicle weight range. Those commenters taking a position on the merits of this issue generally argued in favor of retaining the present structure of standards, at least for this rulemaking, citing the additional complexity resulting from multiple standards. Ford pointed out that addressing the issue at this time could delay the rulemaking, which is subject to stringent time constraints. Therefore, the agency is making no changes in this area at the current time.

GM and Ford argued that the agency should revise the manner in which it evaluates the economic practicability of standards. Both companies argued that cost/benefit considerations should play a greater role in the agency's standard-setting, and Ford suggested a variety of additional factors the agency should consider. However, in this proceeding, none of the additional criteria suggested by Ford would affect the level at which the standards are set in this rule. Furthermore, the agency has always considered cost/benefit analysis results in setting fuel economy standards; indeed, the most stringent economic criterion for this rule has been the one the agency has traditionally relied upon: the risk of any substantial adverse economic impacts on the industry or the national economy. The standards are being set at the levels discussed above to avoid the risk of significant adverse employment impacts which could result if the manufacturers (and Ford in particular) restricted product offerings to comply with overly stringent standards.

A coalition of public interest organizations opposed the agency's proposed 1986 standard level, arguing that it was based on an assumption of the continuation of the current favorable energy supply and cost situation. The coalition recommended a standard of 22.5 mpg for model year 1986. No technical or economic analysis was provided to support the feasibility of a standard at this level. The agency agrees that the need of the nation to conserve energy remains strong and that the nation still faces the risk of energy problems in the future. However, section 502 of the Act requires the agency to set standards at the maximum feasible average fuel economy level, considering not just energy conservation needs but also technical and economic factors. As discussed above, the agency believes that requiring compliance with more stringent standards than provided herein would create a risk of serious adverse economic repercussions such as losses in employment in the automobile and related industries, without necessarily producing the contemplated fuel economy gains.

In its NPRM concerning the MY 1984–1985 standards, the agency concluded that Ford's petition to amend the 1984 light truck standards was not timely filed due to legal time constraints for amending standards. The agency presented its tentative conclusion that amendments reducing the stringency of standards for a particular model year may be made up until the beginning of the model year but not after that time. Several vehicle manufacturers disagreed with this conclusion. Ford, GM and Volkswagen argued that amendments reducing the stringency of standards may be made at any time, including during a model year. Chrysler, on the other hand, argued that amendments reducing the stringency of standards must be made 18 months prior to the beginning of a model year. As discussed below, the agency has decided that its tentative conclusion was correct. The following paragraphs provided a complete discussion of this issue both for purposes of this rulemaking and to provide future guidance to manufacturers as to the correct timing of petitions.

A model year is presumed to begin in the autumn of the preceding calendar year (see *Center for Auto Safety* v. *NHTSA*, 710 F.2d 842 (D.C. Cir. 1983)). Ford's petition to reduce the existing 1984 and 1985 light truck standards was filed on November 21, 1983, and amended on January 20, 1984. Since model year 1984 began in the fall of 1983, it is clear that the 1984 light truck standards could not have been amended in response to the Ford petition prior to the start of that model year.

Section 502(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(b)) requires that the Secretary of Transportation "shall, by rule, prescribe average fuel economy standards" for light trucks for each model year beginning with 1979. These standards must be prescribed at least "18 months prior to the beginning of" the model year to which they apply. *Id.*

Section 502(f)(1) of the Act provides that the "Secretary may, by rule, from time to time, amend" any light truck fuel economy standard "so long as such standard, as amended, meets the requirements" of section 502(b). Section 502(f)(2) provides that any amendment which makes standards more stringent must be promulgated "at least 18 months prior to the beginning of the model year to which such amendment will apply."

The Conference Report on the Energy Policy and Conservation Act (the statute which added the fuel economy provisions to the Motor Vehicle Information and Cost Savings Act) contains the following discussion:

> Average fuel economy standards prescribed by the ST (Secretary of Transportation) for passenger automobiles in model years after 1980, for non-passenger automobiles, and for passenger automobiles manufactured by manufacturers of fewer than 10,000 passenger automobiles may be amended from time to time as long as each such amendment satisfies the 18 month rule—i.e., any amendment which has the effect of making an average fuel economy standard more stringent must be promulgated at least 18 months prior to the beginning of the model year to which such amendment will apply. *An amendment which has the effect of making an average fuel economy standard less stringent can be promulgated at any time prior to the beginning of the model year in question.* See Sen. Rep. 94–516, 94th Cong., 1st Sess. (1975) at 157. [Emphasis added.]

As noted above, Ford, General Motors and Volkswagen argued that there is no time limitation on amendments reducing the stringency of standards and that such amendments may be made in mid-model year. GM read section 502(f)(1) and section 502(f)(2) to together imply that Congress concluded that it was not necessary or appropriate to set time limits on standards reduction rulemaking. GM argued that the statutory structure is unambiguous, citing Sands, *Sutherland Statutory Construction* Section 46.01 (Fourth Ed. 1973), for the plain meaning rule of statutory construction. Ford stated that the purpose of the leadtime provisions included in the Act is to protect manufacturers from not being given sufficient time to plan and implement compliance with a more stringent standard and that the provisions should not be construed to operate to manufacturers' detriment. Ford stated

that as a general rule of statutory construction, a distinction must be made between utilizing legislative history for purposes of illuminating Congressional intent with respect to express statutory language and using such history to write into the law that which is not otherwise there. Ford also argued that the language of the Conference Report was intended to emphasize the fact that, in contrast to the situation in which more stringent standards are established, there is no leadtime requirement with respect to less stringent standards.

Chrysler, however, argued that amendments reducing the stringency of standards must be made at least 18 months prior to the beginning of the model year and that, therefore, Ford's petition was too late with respect to both the 1984 and 1985 model years. Chrysler argued that section 502(b) calls for 18 months leadtime for any standards being prescribed and that changes in standards come within that requirement. Chrysler contended that this specific language of the law takes precedence over the Conference Report. Chrysler stated that the 18 month requirement of section 502(f)(2) is also applicable since granting Ford's request would in effect make the standards more stringent for Chrysler.

As suggested by the two very different views advanced by the commenters, the timing requirements applicable to amendments which make standards less stringent are not clear on the face of the statute. The language in section 502(f)(1) authorizing amendments "from time to time" could be interpreted to permit amendments at any time. Alternatively, the language in that paragraph requiring that amendments to standards must comply with requirements applicable to their original enactment could be interpreted to impose the 18 month rule, one of the requirements of section 502(b), on amendments to reduce standards.

Where a statutory provision is ambiguous on its face, rules of statutory construction dictate that the legislative history of the provision must be considered. See Sutherland, "Statutory Construction," 4th Ed., section 48.01. An Act's Conference Report has been considered the "most persuasive evidence of congressional intent" in this regard. *Demby* v. *Schweiker*, 671 F.2d 507, 510 (D.C. Cir. 1981).

The agency believes the language of the Conference Report is clear on this point. As indicated above, the Conference Report includes a statement that "(a)n amendment which has the effect of making an average fuel economy standard less stringent can be promulgated at any time prior to the beginning of the model year in question." While the discussion in the Conference Report does not expressly prohibit amendments after the start of a model year, the quoted sentence certainly implies that result. If no limit on the timing of relaxatory amendments had been intended, the sentence would have been ended after the words "* * * promulgated at any time * * *." The agency believes that Congress intended to provide certainty and finality for all parties concerned with regard to the levels of standards, to permit planning by the manufacturers and the agency through cutting off amendments once a model year has begun.

Ford has argued that a failure to permit amendments to fuel economy standards after the start of a model year places manufacturers in a difficult position, since unanticipated sales trends during the model year might impair its ability to comply. However, the agency is also concerned that amendments made after production has begun have some characteristics of *ex post facto* law.

On this point, the agency notes that, as quoted above, sections 502(b) and 502(f)(1) require that fuel economy standards and amendments to such standards be prescribed "by rule". The term "rule" ordinarily refers to prospective agency action. The Administrative Procedure Act's definition of rule incorporates the concept of "agency statement of general or particular applicability and *future effect*." See 5 U.S.C. 551(4) (emphasis added). Since an average fuel economy standard regulates overall production over an entire model year, a change to such a standard during the model year would represent, in part, retrospective agency action, with retroactive effect. On the issue of retroactive rules, Kenneth Culp Davis states that "* * * agencies have no powers except those conferred and courts are reluctant to imply power to issue retroactive rules * * *." Davis, *Administrative Law Treatise*, 2d ed., section 7.23. The agency does not believe that a court would imply such authority in this instance, particularly given the statement in the legislative history implying that Congress intended the opposite result.

The agency believes that Congress intended standards to be established before production begins, to encourage the achievement of particular fuel economy levels rather than simply ratifying past conduct. As noted above, Chrysler expressed similar concerns in its comments, noting that late changes in standards levels could adversely affect manufacturers who planned to meet the original levels. Therefore, the agency must reaffirm its previous position that petitions to amend fuel economy standards must be submitted in time to permit necessary rulemaking to be completed prior to the start of the model year.

With respect to Chrysler's suggested construction of section 502(f)(2), the agency sees no basis in the Act or its legislative history for construing "more stringent" amendments to mean anything other than its common meaning, i.e., numerically higher. Adopting Chrysler's proposed construction would mean that all amendments make standards "more stringent" regardless of the direction of the change, since any particular standards level will impact manufacturers unequally. In that case, the "more stringent" language of the Act would be rendered meaningless, a result to be avoided under normal rules of statutory construction. The agency rejects this argument.

The agency recognizes the general concern raised by Chrysler that standards reductions may adversely affect manufacturers which made good faith efforts to achieve the initially established standards level. However, the agency must consider the feasibility of its standards for the industry as a whole, as noted above. With regard to the 1985 standards, it appears that none of the domestic manufacturers, including Chrysler, will be able to meet the original standards. Therefore, the agency concludes that reducing the 1985 standards is necessary.

Ford has also requested that the agency specify the precise date by which petitions to amend fuel economy standards must be filed. As noted above, the single court to address the issue has stated only that a given model year begins in the fall of the preceding calendar year. (e.g., fall 1984 is the beginning of the 1985 model year). In its final rule establishing fuel economy reporting requirements, the agency took the position that, in the absence of any single "annual production period," the model year would be deemed to coincide with the calendar year, e.g., the 1985 model year would begin January 1, 1985. See 19 U.S.C. 2001(12) and 42 FR 62374 (December 12, 1977). Since any amendments to standards must be *promulgated* prior to the start of the model year, petitions must be filed in time to permit the agency to complete a rulemaking proceeding on the petition prior to the start of the model year. The time necessary for such a proceeding will vary greatly depending on the complexity and controversiality of the issues involved. A proceeding would

involve agency analysis of the petition, preparation and publication of the necessary supporting documentation, a minimum public comment period, analysis of comments, and preparation and publication of the documentation necessary to accompany the final decision. The various uncertainties affecting the duration of a proceeding make it impossible for the agency to specify a precise date after which petitions will not be accepted. However, it is clear that the Ford petition, which was filed in November of the preceding calendar year, was not timely. As a general matter, petitions regarding a particular model year's standards should be submitted no later than the early part of the preceding calendar year, and preferably before that time.

In accordance with section 502(j) of the Act, the agency has submitted this rule to the Department of Energy for review. The Department of Energy indicated that it had no comment on the rule.

Impact Analyses

I. Executive Order 12291

The agency considered the economic implications of the fuel economy standards established by this rule and determined that the rule is major within the meaning of the Executive Order 12291, and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in its regulatory impact analysis. The contents of that analysis are generally described above.

II. Environmental Impacts

The agency has analyzed the potential environmental impacts of these light truck fuel economy standards in accordance with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Copies of that analysis are available from the Docket Section. The agency's analysis quantifies the potential environmental impacts which could result from the establishment of these standards. The told impact on the environment is not expected to be large. The largest impact of the standards on the environment would be with regard to energy consumption.

III. Impacts on Small Businesses

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking action will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No light truck manufacturer would be classified as a "small business" under the Regulatory Flexibility Act. In the case of small organizations and governmental units which purchase light trucks, those entities purchasing a 1986 truck might achieve a gain in fuel savings resulting from the 1986 standard. Those choosing a 1985 truck should face no loss in fuel savings resulting from the reduction in the 1985 standard since, as discussed above, it is anticipated that there will not be any loss of potential fuel savings associated with the revised standard.

List of Subjects in 49 CFR Part 533

Energy conservation, gasoline, imports, motor vehicles.

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: October 16, 1984.

Diane K. Steed,

Administrator.

PART 533—LIGHT TRUCK FUEL ECONOMY STANDARDS

In consideration of the foregoing, 49 CFR Chapter V is amended by revising Table II in § 533.5(a) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE II

Model Year	Combined standard		2-wheel drive light trucks		4-wheel drive light trucks	
	Captive imports	Other imports	Captive imports	Other imports	Captive	Other imports
1982	17.5	17.5	18.0	18.0	16.0	16.0
1983	19.0	19.0	19.5	19.5	17.5	17.5
1984	20.0	20.0	20.3	20.3	18.5	18.5
1985	19.5	19.5	19.7	19.7	18.9	18.9
1986	20.0	20.0	20.5	20.5	19.5	19.5

[FR Doc. 84-27678 Filed 10-17-84; 11:44 am]

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Proposed Rules

Federal Register
Vol. 49, No. 205
Monday, October 22, 1984

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 81-054]

Importation of Certain Animal Embryos

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations governing the importation into the United States of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses. It appears that the proposed regulations would provide a mechanism to allow the importation of such embryos without presenting a significant risk of introducing infectious animal diseases.

DATE: Written comments must be received on or before December 21, 1984.

ADDRESSES: 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 Between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, Senior Staff Veterinarian, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8530.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to establish regulations in a new 9 CFR Part 93 concerning the importation of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses.

Technological developments with respect to such animals allow the collection and preservation of embryos from donor dams. These embryos can then be reimplanted in the wombs of recipient dams for carrying until birth, leaving the donor animals free to be reinseminated. It is common to have five or more transferable embryos per collection from a donor dam, and this embryo collection process can be repeated several times a year. Accordingly, through embryo transfer a selected donor dam can increase many-fold the number of offspring that would otherwise be produced naturally. Further, an industry has developed with the capability of transporting such embryos outside of the womb in a manner generally similar to that used for transporting animal semen.

The proposed rule defines an "embryo" as:

> The initial stage of an animal's development after collection from the natural mother, while it is capable of being transferred to a recipient dam, but not including an embryo that has been transferred to a recipient dam.

The regulations in 9 CFR Part 92, among other things set forth requirements concerning the importation of cattle, sheep, goats, other ruminants, swine, horses, and asses, and are designed to allow the importation of these animals only under conditions determined to be adequate to protect against the introduction into the United States of infectious animal diseases. However, regulations have not previously been established specifically concerning the importation of such embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses. Such embryos of these animals are referred to below as "embryos" (or "embryo" if in the singular).

Based on research it has been determined that embryos are capable of transmitting animal diseases from the donor sire and donor dam to other animals. There are no procedures available for testing embryos to determine their disease status. In order to protect against the introduction of infectious animal diseases from imported embryos, regulations to allow the importation of embryos must relate to the disease status of the donor sire and donor dam. Any disease present in the donor sire or donor dam would not necessarily be transmitted to an embryo. However, if a disease should be transmitted from the donor sire or donor dam to an embryo, such disease would be present in the donor sire at the time of collection of the semen or in the donor dam at the time of collection of the embryo. An embryo could also carry infectious animal diseases if the embryo became contaminated with disease organisms during or after collection.

Therefore, this document proposes to allow the importation of embryos only if certain determinations are made concerning the disease status of the donor sire at the time of collection of the semen and the donor dam at the time of collection of the embryo, and only if adequate measures are taken to prevent contamination of the embryo.

Definitions

In addition to other definitions explained in this document, proposed § 93.1 contains definitions of the terms "Animal," "Department," "Deputy Administrator," "Enter (entered, entry) into the United States," "Import (imported, importation) into the United States," "Inspector," "Person," "United States," and "Veterinary Services."

Prohibition

Proposed § 93.2 provides that an embryo shall not be imported or entered into the United States unless in accordance with the provisions of the proposed regulations.

General Conditions

Proposed § 93.3 provides that:

> An embryo shall not be imported into the United States unless:
>
> (a) The embryo is exported to the United States from the country in which it was conceived;
>
> (b) The embryo was conceived as a result of artificial insemination with semen collected from a donor sire at an approved artificial insemination center;
>
> (c) The donor dam conceived the embryo after being inseminated in an approved embryo transfer unit with semen collected at an approved artificial insemination center;
>
> (d) At the time of collection of the semen used to conceive the embryo, the donor sire met all requirements the donor site would have to meet under Part 92 of this chapter for a health certificate required as a condition of importation into the United States;
>
> (e) At the time of collection of the embryo from the donor dam, the donor dam met all requirements the donor dam would have to

meet under Part 92 of this chapter for a health certificate required as a condition of importation into the United States;

(f) There is no basis for denying and import permit for the donor sire or donor dam under § 92.4(a)(2) or (3) of this chapter; and

(g) The embryo is collected and maintained under conditions determined by the Deputy Administrator to be adequate to protect against contamination of the embryo with infectious animal disease organisms.

It appears that an embryo should not be allowed to be imported into the United States if there is a basis for denying an import permit for the donor sire or donor dam under 9 CFR 92.4(a)(2) or (3). It is provided, in relevant part, in 9 CFR 92.4(a)(2) and (3) that:

(2) An application for permit to import will be denied for domestic ruminants or swine * * * from any country where it has been declared, under section 306 of the Act of June 17, 1930, that foot-and-mouth disease or rinderpest has been determined to exist. * * *

(3) An application for permit to import ruminants, swine, horses from countries listed in § 92.2(i)(1) of the regulations * * * may also be denied because of: Communicable disease conditions in the area or country of origin * * *; deficiencies in the regulatory programs for the control or eradication of animal diseases and the unavailability of veterinary services in the * * * [country of origin]; the importer's failure to provide satisfactory evidence concerning the origin, history, and health status of the animals * * *; the lack of satisfactory information necessary to determine that the importation will not be likely to transmit any communicable disease to livestock or poultry of the United States; or an other circumstances which the Deputy Administrator believes require such denial to prevent the dissemination of any communicable disease of livestock or poultry into the United States.

It appears that an embryo from a donor sire or donor dam ineligible for an import permit under these provisions would present an unacceptable risk of causing the introduction of infectious animal diseases into the United States.

The provisions of 9 CFR Part 92 provide that an animal must be accompanied at the time of importation into the United States by a health certificate from the government of the country of origin. The determinations for issuance of such a health certificate are required to be based on specified factors concerning the disease status of the animal offered for entry and the disease status of other animals in the country of origin, and include examinations and tests. The health certificate provisions in proposed § 93.3 for the donor sire and donor dam set forth above would provide a means for determining with a high degree of accuracy the animal disease status of the donor sire at the time of collection of the semen and the donor dam at the time of collection of the embryo.

In addition, it appears that the proposed provisions set forth above concerning an "approved artificial insemination center" and an "approved embryo transfer unit" would provide added protection against the presence of animal diseases in either the donor sire at the time of collection of the semen or the donor dam at the time of collection of the embryo. The proposed regulations define an "approved artificial insemination center" as:

A facility approved or licensed by the government of the country in which the facility is located to collect and process semen under the general supervision of such government.

The proposed regulations further define an "approved embryo transfer unit" as:

A facility approved or licensed by the government of the country in which the facility is located to artificially inseminate donor dams and to collect and process embryos for export under the general supervision of such government.

These facilities use isolation, testing, and security measures to help ensure the disease-free status of donor sires and donor dams. Such facilities must also meet the legal requirements concerning disease prevention of the countries in which they are located.

Further, it appears that an embryo should be allowed to be exported to the United States only from the country in which it was conceived. This proposed requirement corresponds with the provisions of proposed § 93.5 which require an embryo to be accompanied by a health certificate which states how the provisions of proposed § 92.3 were met and which is issued or endorsed by a full-time salaried veterinarian of the national animal health service of the country of origin. It appears that allowing an embryo to be exported to the United States only from the country in which it was conceived would help ensure the accuracy of information on the certificate since the certificate would be issued or endorsed by a full-time salaried veterinarian of the national government bearing the responsibility for its accuracy.

The proposed contamination provisions to be necessary to protect against the possibility of the introduction into the United States of infectious animal diseases as a result of contamination of the embryo with animal disease organisms. Approval of these conditions would have to be made on a case-by-case basis since adequate methods for preventing contamination must be made based on the particular facts in each case.

It appears that embryos imported into the United States in compliance with the provisions set forth above in proposed § 93.3 would not present a significant risk of introducing infectious animal diseases into the United States.

Import Permit

Proposed § 93.4 provides that:

(a) An embryo shall not be imported into the United States unless accompanied by an import permit issued by Veterinary Services and unless imported into the United States within 14 days after the proposed date or arrival stated in the import permit.

(b) An application for an import permit must be submitted to Import-Export Animals and Products Staff, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. An application form for an import permit may be obtained from this staff.

(c) The completed application shall include the following information:

(1) The name and address of the person intending to export an embryo from the country of origin,

(2) The name and address of the person intending to import an embryo,

((3) The species, breed, and number of embryos to be imported,

(4) The purpose of the importation,

(5) The country in which the embryo is conceived,

(6) The port of embarkation,

(7) The mode of transportation,

(8) The route of travel,

(9) The port of entry in the United States,

(10) The proposed date of arrival in the United States,

(11) The name and address of the person to whom the embryo will be delivered in the United States, and

(12) The measures to be taken to ensure that the embryo is collected and maintained under conditions adequate to protect against contamination of the embryo with infectious animal disease organisms.

(d) After receipt and review of the application by Veterinary Services, an import permit indicating the applicable conditions under this part for importation into the United States shall be issued for the importation of embryos described in the application if such embryos appear to be eligible to be imported. Even though an import permit has been issued for the importation of an embryo, the embryo may be imported only if all applicable requirements of this part are met.

It appears that an import permit is necessary to ensure that the requirements for an importation of embryos would be understood and met by the importer. Further, providing that the importation must be within 14 days after proposed date of arrival stated in the permit would help Veterinary Services determine projected workloads

at ports of entry and still allow for reasonable delays during shipment.

The application would be submitted to the Import-Export Animals and Products Staff since this staff would be responsible for determining whether embryos would be eligible for an import permit.

The information required for completion of an application appears to be necessary to determine whether embryos would be eligible for an import permit, to respond to an applicant, to help identify the embryos at the port of entry, and to allow Veterinary Services to contact appropriate persons if any questions arise concerning the importation. Further, it appears that information concerning the purpose of the importation would be helpful for apprising the Department of any new uses for embryos that might require consideration of changes in the regulations.

Health Certificate

Proposed § 93.5 provides that:

An embryo shall not be imported into the United States unless accompanied by a health certificate issued or endorsed by a full-time salaried veterinarian of the national animal health service of the country of origin certifying:

(a) The dates, places, types, and results of all examinations and tests performed on the donor sire and donor dam as a condition for importation of the embryo, and the names and addresses of persons or laboratories conducting the examinations or tests, and a statement that any other requirements established by § 93.3 have been complied with,

(b) The name and address of the consignor and consignee.

(c) The name and address of the approved artificial insemination center where the semen for the embryo was collected,

(d) The name and address of the approved embryo transfer unit where the donor dam was inseminated and the embryo was collected, and

(e) The measures taken to ensure that the embryo was collected and maintained under conditions adequate to protect against contamination of the embryo with infectious animal disease organisms.

It appears that these health certificate provisions are necessary to help Veterinary Services personnel at the port of entry determine if the embryos offered for entry into the United States meet the provisions of proposed § 93.3 discussed above.

Ports of Entry

Proposed § 93.6 provides that an embryo shall not be imported into the United States unless at a port of entry listed in § 92.3. These ports of entry have inspectors on duty who would be able to take the necessary actions concerning the importation of embryos.

Declaration Upon Arrival

Proposed § 93.7 provides that:

Upon arrival of an embryo at a port of entry, the importer or the importer's agent shall notify Veterinary Services of the arrival by giving an inspector a document stating:

(a) The port of entry,

(b) The date of arrival,

(c) Import permit number,

(d) Carrier, and identification of the means of conveyance,

(e) The name and address of the importer,

(f) The name and address of the broker,

(g) The country of origin of the embryo,

(h) The number, species, and purpose of importation of the embryo, and

(i) The name and address of the person to whom the embryo will be delivered.

It appears that compliance with these provisions would be adequate to notify Veterinary Services of the arrival of embryos at a port of entry. Also, the declaration would provide sufficient information so that if questions arose concerning the importation, Veterinary Services would be able to contact persons in the United States who should have information relative to the importation.

Inspection

Proposed § 93.8 provides that any embryo offered for entry into the United States and documents accompanying the embryo shall be subject to inspection by an inspector at the time the embryo is offered for entry in order to determine whether the embryo is eligible for entry. It appears that these provisions are necessary to help ensure that only embryos eligible for entry into the United States are allowed to enter the United States.

Proposed § 93.8 also provides that the import permit and the health certificate shall be given to the inspector.

Embryos Refused Entry

Proposed § 93.9 provides that:

Any embryo refused entry into the United States for noncompliance with the requirements of this part shall be removed from the United States within a time period specified by the Deputy Administrator or abandoned by the importer for destruction, and pending such action shall be subject to such safeguards as the inspector determines necessary to prevent the possible introduction into the United States of infectious animal diseases. If such embryo is not removed from the United States within such time period, or abandoned for destruction, it may be seized, destroyed, or otherwise disposed of as the inspector determines necessary to prevent the possible introduction into the United States of infectious animal diseases.

These provisions appear to be necessary as precautionary measures against the introduction into the United States of infectious animal diseases.

Other Importations

Proposed § 93.10 provides that:

Notwithstanding other provisions in this part, the Deputy Administrator may in specific cases allow the importation and entry into the United States of embryos other than as provided for in this part under such conditions as the Deputy Administrator may prescribe to prevent the introduction into the United States of infectious animal diseases.

This appears to be necessary to allow the importation and entry of embryos in unforeseen circumstances when the Deputy Administrator determines that such action can be taken without a significant risk of introducing infectious animal diseases into the United States.

Currently, 9 CFR Part 93 contains provisions captioned "Rule of Practice Governing Proceedings Under Certain Acts". If the proposal to establish a new part captioned "Importation of Certain Animal Embryos" is adopted, the current provisions in 9 CFR Part 93 will be moved to another place in the Code of Federal Regulations.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, D.C. 20503. A duplicate copy of such documents should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not have any significant adverse

effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that if the proposed regulations were adopted almost all of the embryos imported would be embryos from cattle. Further, it is anticipated that the embryos from cattle would represent less than one percent of the total number of embryos, calves, and older cattle imported into the United States.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 93

Animal diseases, animal embryos, imports, livestock and livestock products, transportation.

Accordingly, it is proposed to establish a new 9 CFR Part 93 to read as follows (if the proposal is adopted the current provisions in 9 CFR Part 93 would be moved to another place in the CFR):

PART 93—IMPORTATION OF CERTAIN ANIMAL EMBRYOS

Sec.

Authority: Secs. 6 and 8, 26 Stat. 416, as amended, sec. 10, 26 Stat. 417, sec. 2, 32 Stat. 792, as amended, secs. 2, 3, 4, 5, and 11, 76 Stat. 129, 130, 132; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 93.1 Definitions.

The following terms, when used in this part, shall be construed as defined. Those terms used in the singular form in this part shall be construed as the plural form and vice versa, as the case may demand.

Animal. Any cattle, sheep, goats, other ruminants, swine, horses, or asses.

Approved Artificial Insemination Center. A facility approved or licensed by the government of the country in which the facility is located to collect and process semen under the general supervision of such government.

Approved Embryo Transfer Unit. A facility approved or licensed by the government of the country in which the facility is located to artificially inseminate donor dams and to collect and process embryos for export under the general supervision of such government.

Department. The United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator, Veterinary services, or any official in the Veterinary Services unit of the Animal and Plant Health Inspection Service of the Department to whom authority has been delegated or may hereafter be delegated to act in the deputy Administrator's stead.

Embryo. The initial state of an animal's development after collection from the natural mother, while it is capable of being transferred to a recipient dam, but not including an embryo that has been transferred to a recipient dam.

Enter (entered, entry) into the United States. To introduce into the commerce of the United States after release from governmental detention at the port of entry.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Inspector. An employee of Veterinary Services who is authorized to perform the function involved.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other legal entity.

United States. All of the several States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other territories and possessions of the United States.

Veterinary Services. The Veterinary Services unit of the Animal and Plant Health Inspection Service of the Department.

§ 93.2 Prohibition.

An embryo shall not be imported or entered into the United States unless in accordance with the provisions of this part.

§ 93.3 General conditions.

An embryo shall not be imported into the United States unless:

(a) The embryo is exported to the United States from the country in which it was conceived;

(b) The embryo was conceived as a result of artificial insemination with semen collected from a donor sire at an approved artificial insemination center;

(c) The donor dam conceived the embryo after being inseminated in an approved embryo transfer unit with semen collected at an approved artificial insemination center;

(d) At the time of collection of the semen used to conceive the embryo, the donor sire met all requirements the donor sire would have to meet under Part 92 of this chapter for a health certificate required as a condition of importation into the United States;

(e) At the time of collection of the embryo from the donor dam, the donor dam met all requirements the donor dam would have to meet under Part 92 of this chapter for a health certificate required as a condition of importation into the United States;

(f) There is no basis for denying an import permit for the donor sire or donor dam under § 92.4(a)(2) or (3) of this chapter; and

(g) The embryo is collected and maintained under conditions determined by the Deputy Administrator to be adequate to protect against contamination of the embryo with infectious animal disease organisms.

§ 93.4 Import permit.

(a) An embryo shall not be imported into the United States unless accompanied by an import permit issued by Veterinary Services and unless imported into the United States within 14 days after the proposed date of arrival stated in the import permit.

(b) An application for an import permit must be submitted to Import-Export Animals and Products Staff, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. An application form for an import permit may be obtained from this staff.

(c) The completed application shall include the following information:

(1) The name and address of the person intending to export an embryo from the country of origin,

(2) The name and address of the person intending to import an embryo,

(3) The species, breed, and number of embryos to be imported,

(4) The purpose of the importation,

(5) The country in which the embryo is conceived,

(6) The port of embarkation,

(7) The mode of transportation,

(8) The route of travel,

(9) The port of entry in the United States,

(10) The proposed date of arrival in the United States,

(11) The name and address of the person to whom the embryo will be delivered in the United States, and

(12) The measures to be taken to ensure that the embryo is collected and maintained under conditions adequate

to protect against contamination of the embryo with infectious animal disease organisms.

(d) After receipt and review of the application by Veterinary Services, an import permit indicating the applicable conditions under this part for importation into the United States shall be issued for the importation of embryos described in the application if such embryos appear to be eligible to be imported. Even though an import permit has been issued for the importation of an embryo, the embryo may be imported only if all applicable requirements of this part are met.

§ 93.5 Health certificate.

An embryo shall not be imported into the United States unless accompanied by a health certificate issued or endorsed by a full-time salaried veterinarian of the national animal health service of the country of origin certifying:

(a) The dates, places, types, and results of all examinations and tests performed on the donor sire and donor dam as a condition for importation of the embryo, and the names and addresses of persons or laboratories conducting the examinations or tests, and a statement that any other requirements established by § 93.3 have been complied with,

(b) The name and address of the consignor and consignee,

(c) The name and address of the approved artificial insemination center where the semen for the embryo was collected,

(d) The name and address of the approved embryo transfer unit where the donor dam was inseminated and the embryo was collected, and

(e) The measures taken to ensure that the embryo was collected and maintained under conditions adequate to protect against contamination of the embryo with infectious animal disease organisms.

§ 93.6 Port of entry.

An embryo shall not be imported into the United States unless at a port of entry listed in § 92.3 of this chapter.

§ 93.7 Declaration upon arrival.

Upon arrival of an embryo at a port of entry, the importer or the importer's agent shall notify Veterinary Services of the arrival by giving an inspector a document stating:

(a) The port of entry,

(b) The date of arrival,

(c) Import permit number,

(d) Carrier, and identification of the means of conveyance,

(e) The name and address of the importer,

(f) The name and address of the broker,

(g) The country of origin of the embryo,

(h) The number, species, and purpose of importation of the embryo, and

(i) The name and address of the person to whom the embryo will be delivered.

§ 93.8 Inspection.

Any embryo offered for entry into the United States and documents accompanying the embryo shall be subject to inspection by an inspector at the time the embryo is offered for entry in order to determine whether the embryo is eligible for entry. The import permit and the health certificate shall be given to the inspector.

§ 93.9 Embryos refused entry.

Any embryo refused entry into the United States for noncompliance with the requirements of this part shall be removed from the United States within a time period specified by the Deputy Administrator or abandoned by the importer for destruction, and pending such action shall be subject to such safeguards as the inspector determines necessary to prevent the possible introduction into the United States of infectious animal diseases. If such embryo is not removed from the United States within such time period, or abandoned for destruction, it may be seized, destroyed, or otherwise disposed of as the inspector determines necessary to prevent the possible introduction into the United States of infectious animal diseases.

§ 93.10 Other importations.

Notwithstanding other provisions in this part, the Deputy Administrator may in specific cases allow the importation and entry into the United States of embryos other than as provided for in this part under such conditions as the Deputy Administrator may prescribe to prevent the introduction into the United States of infectious animal diseases.

Done at Washington, D.C., this 18th day of October 1984.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-97-79]

Consolidated Return Regulations

Corrections

In FR Doc. 84-20057, beginning on page 30528 in the issue of Tuesday, July 31, 1984, make the following corrections:

1. On page 30528, five lines from the bottom of the third column, "TRA 175" should read "TRA '75".

2. On page 30529, in the first column, the fourth line of the paragraph headed **EFFECTIVE DATES**, "affect" should read "after".

3. On the same page, in the middle column 1 the third line of the paragraph headed **Consolidated WIN Credit**, "of" should read "for".

4. On page 30530, first column, ninth line, insert the word "year" after "return".

5. On page 30532, in the first column, in the eleventh and twelfth lines from the top, "(iii)" and "(ii)" should read "(ii)" and "(iii)" respectively.

6. On page 30533, four lines from the top of the third column, in § 1.1502-8(a)(3), "§ 101502-3" should read "§ 1.1502-3".

7. On the same page and column, nine lines from the bottom, insert ", and for example (*2*)(ii)" between "(ii)" and "(*a*)".

8. On page 30535, twelve lines from the top of the middle column, in § 1.1502-21(c)(5), insert "of" after "$1500".

9. On the same page, in § 1.1502-22(e)(1), in the third column, the eighth line of the first paragraph "transfer or" should read "transferor".

10. On page 30537, in the last line of the third column, in § 1.1502-79(a)(5), insert "section, the acquisition fraction for the U" between "this" and "acquisition".

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26 CFR Part 1

[LR-69-84]

Energy Investment Credit for Leased Qualified Intercity Buses; Proposed Rulemaking

Correction

In FR Doc. 84-26658 beginning on page 39571 in the issue of Tuesday, October 9, 1984, make the following correction: