

will be forwarded to the National Appeals Board for consideration.

These rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission is amending 28 CFR Part 2 as follows:

1. In § 2.19, paragraphs (a) (4) and (5) are revised and paragraph (a)(6) is added to read as follows:

§ 2.19 Information considered.

- (a) * * *
- (4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge and prosecuting attorney;
- (5) reports of physical, mental, or psychiatric examination of the offender; and
- (6) a statement, which may be presented orally or otherwise, by any victim of the offense for which the prisoner is imprisoned about the financial, social, psychological, and emotional harm done to, or loss suffered by such victim.
- * * *

§ 2.25 [Removed]

2. Section 2.25 is removed.

3. In § 2.26, paragraphs (a) through (c) are revised and (d) and (e) are added to read as follows:

§ 2.26 Appeal to National Appeals Board.

(a) A prisoner or parolee may submit to the National Appeals Board a written appeal of any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to § 2.17 shall be pursuant to § 2.27. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision.

(b) The National Appeals Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing, except that a modification or reversal resulting in a decision below the guidelines shall require the concurrence of three members. Split decisions requiring additional votes shall be referred to the Chairman; and, if necessary, to other

Regional Commissioners on a rotating basis as established by the Chairman.

(c) The National Appeals Board shall act within sixty days of receipt of the appellant's papers, to affirm, modify, or reverse the decision. Decisions of the National Appeals Board shall be final.

(d) If no appeal is filed within thirty days of the date of entry of the original decision, such decision shall stand as the final decision of the Commission.

(e) Appeals under this section may be based upon the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

- (i) Severity rating;
- (ii) Salient factor score;
- (iii) Time in custody;

(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

4. In § 2.28, paragraphs (a) and (f) are revised to read as follows:

§ 2.28 Reopening of cases.

(a) *Favorable information.* Notwithstanding the appeal procedures of § 2.26, the appropriate Regional Commissioner may, on his own motion, reopen a case at any time upon the receipt of new information of substantial significance favorable to the prisoner. The Regional Commissioner may then order a new institutional hearing on the next docket, or reverse or modify the decision. The following actions require the concurrence of two out of three Commissioners:

(1) Any modification resulting in a reduction of more than 180 days (other than a modification that brings a decision from above the appropriate guideline range closer to, or to, the nearer limit of the appropriate guideline range);

(2) Any modification resulting in a decision below the appropriate guideline range;

(3) Reversal of a decision (i.e., any modification of a fifteen-year reconsideration hearing decision to a presumptive or effective parole date). Decisions requiring a second or additional vote shall be referred to the National Commissioners under the procedures of 28 CFR 2.24(a). Original jurisdiction cases may be reopened upon the motion of the appropriate Regional Commissioner under the procedures of § 2.17.

* * *

(f) *New adverse information.* Upon receipt of new and significant adverse information that is not covered by paragraphs (a) through (e) of this section, a Commissioner may refer the case to the National Commissioners with his recommendation and vote to schedule the case for a special reconsideration hearing. Such referral shall automatically retard the prisoner's scheduled release date until a final decision is reached in the case. The decision to schedule a case for a special reconsideration hearing shall be based on the concurrence of three out of five votes, and the hearing shall be conducted in accordance with the procedures set forth in §§ 2.12 and 2.13. The entry of a new order following such hearing shall void the previously established release date.

5. In § 2.40, paragraph (g) is revised to read as follows:

§ 2.40 Conditions of release.

(g) A parolee may appeal an order to impose or modify parole conditions under § 2.26 not later than thirty days after the effective date of such conditions.

* * *

6. In § 2.43, paragraph (c)(3) is revised to read as follows:

§ 2.43 Early termination.

(c) * * *

(3) A parolee may appeal an adverse decision under paragraphs (c)(1) or (2) of this section pursuant to §§ 2.26 or 2.27 as applicable.

* * *

Dated: October 24, 1984.

Benjamin F. Baer,
Chairman, U.S. Parole Commission.

[FR Doc. 84-28931 Filed 11-1-84; 8:45 am]

BILLING CODE 4410-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Categories of Administrative Separation

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration (VA) is amending its adjudication regulations concerning character of discharge from military service. This action is required because the Department of Defense (DOD) has created three new categories of administrative separation for enlisted personnel that will not include a characterization of the individual's service. For VA purposes the term "veteran" requires a discharge characterized as under conditions other than dishonorable. Since DOD is no longer required to characterize service in certain circumstances, the VA must determine "veteran" status based on the facts and circumstances of service when a claim for benefits is filed. The intended effect of this regulatory amendment is to provide a uniform rule for determination of status in cases of uncharacterized administrative separations.

DATES: These changes are effective October 1, 1982 and apply to uncharacterized administrative separations resulting from separation proceedings initiated on or after October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Compensation and Pension Service, Department of Veterans Benefits (211B), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-3005.

SUPPLEMENTARY INFORMATION: On pages 28267 and 28268 of the Federal Register of July 11, 1984, the VA published a proposed amendment to 38 CFR 3.12 concerning uncharacterized administrative separations from military service. Interested persons were given 30 days to submit comments, suggestions or objections to the proposed amendment. Since no comments, suggestions or objections were received, the amendment has been adopted as proposed.

The Administrator hereby certifies that this regulatory amendment will have no significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly

affect any small entities. Only claimants for VA benefits could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that this regulatory amendment is non-major for the following reasons:

- (1) It will not have an effect on the economy of \$100 million or more.
- (2) It will not cause a major increase in costs or prices.
- (3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110)

Approved: October 16, 1984.

Harry N. Walters,
Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, Adjudication, § 3.12 is amended as follows:

§ 3.12 [Amended]

1. In paragraphs (a), the introduction of (c) and (c)(5), the word "veteran" is changed to "former service member".

2. In paragraph (b) the words "or unless otherwise specifically provided." are added to follow the word "release" at the end of the sentence.

3. A new paragraph (k) is added to read as follows:

§ 3.12 Character of discharge.

* * * * *

(k) *Uncharacterized separations.* Where enlisted personnel are administratively separated from service on the basis of proceedings initiated on or after October 1, 1982, the separation may be classified as one of the three categories of administrative separation that do not require characterization of service by the military department concerned. In such cases conditions of discharge will be determined by the VA as follows:

(1) *Entry level separation.* Uncharacterized administrative separations of this type shall be

considered under conditions other than dishonorable.

(2) *Void enlistment or induction.* Uncharacterized administrative separations of this type shall be reviewed based on facts and circumstances surrounding separation, with reference to the provisions of § 3.14 of this title, to determine whether separation was under conditions other than dishonorable.

(3) *Dropped from the rolls.* Uncharacterized administrative separations of this type shall be reviewed based on facts and circumstances surrounding separation to determine whether separation was under conditions other than dishonorable. (38 U.S.C. 210(c))

2. The cross-reference following § 3.12 is amended by adding "Minimum active-duty service requirement. See § 3.12a."

[FR Doc. 84-28824 Filed 11-1-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-2709-5]

Revisions to the State of New Mexico Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This action approves revisions to the State of New Mexico Implementation Plan (SIP) which were submitted to the Environmental Protection Agency (EPA) on August 11, 1983, in order to satisfy requirements of 40 CFR 51.11, Plan Content and Requirements (Legal Authority) and sections 110, 111, 112, and 119 of the Clean Air Act as amended in 1977. EPA proposed approval of these revisions on April 25, 1984 [49 FR 17776], and no relevant comments were received during the comment period.

EFFECTIVE DATE: Effective on December 3, 1984.

ADDRESSES: Incorporation by reference material is available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency,
Region 6, Air Branch, 1201 Elm Street,
Dallas, Texas 75270

New Mexico Environmental
Improvement Division, Crown
Building, 725 St. Michael's Drive,
Santa Fe, New Mexico 87504-0968

U.S. Environmental Protection Agency,
Public Information Reference Unit,
EPA Library, 401 M Street, SW.,
Washington, D.C. 20460
The Office of the Federal Register, 1100
L Street, NW., Room 8401,
Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT:
Tim Glasco, State Implementation Plan
Section, Air and Waste Management
Division, U.S. EPA, Region 6, 1201 Elm
Street, Dallas, Texas 75270, (214) 767-
1518.

SUPPLEMENTARY INFORMATION: On
September 26, 1979, the Governor of
New Mexico submitted various
revisions to the New Mexico Air Quality
Control Act in response to the Clean Air
Act Amendments of 1977. The New
Mexico Act has subsequently been
revised several times, but the revisions
have not been acted upon by EPA. On
April 22, 1983, the New Mexico
Environmental Improvement Board
submitted the Air Quality Control Act
amendments of 1983. These amendments
allow the Board to assume full authority
for New Source Performance Standards
(NSPS) and National Emission
Standards for Hazardous Air Pollutants
(NESHAPS). On August 11, 1983, the
New Mexico Secretary for Health and
Environment submitted the complete
New Mexico Air Quality Control Act
with all applicable amendments from
1979 through 1983 for inclusion in the
SIP. EPA has reviewed those
amendments made from 1979 to 1983
and developed an Evaluation Report.¹
The review is based on the requirements
established in 40 CFR 51.11 and sections
110, 111, 112, and 119 of the Federal
Clean Air Act. This evaluation report is
available for review during normal
business hours at the addresses listed
above.

The revisions to the New Mexico Air
Quality Control Act involve
administrative and other substantive
changes. These include clarification of
definitions, adoption of duties and
powers of the Board, adoption of
regulations, procedures for obtaining
permits, judicial review of variances,
limitations on regulations, assurance of
discontinuance, and primary nonferrous
smelter orders.

One change in particular involved
confidential information. This section,
as it read prior to 1979, was cited in 40
CFR 52.1632 as not meeting the
requirements of § 51.11(a)(6), which says
that emissions data must be made
available to the public by the state. On

¹ Evaluation Report for New Mexico Air Quality
Control Act Revisions, submitted on August 11,
1983, of New Mexico State Implementation Plan,
January, 1984.

September 26, 1974, EPA disapproved
this section of the New Mexico Air
Quality Control Act, citing that it could
possibly prohibit the disclosure of
emissions data to the public [39 FR
34537]. Revisions were added in 1979 to
Section 74-2-11, stating that it would not
prohibit the release of information
concerning emissions from any source.
However, Air Quality Control
Regulations 702.E and 703.D need to be
revised by the state in accordance with
this particular revision of the Air
Quality Control Act. These regulations
are under the sections entitled Permits
(702) and Registration of Air
Contaminant Sources (703). The content
of both regulations is identical and
concerns the unavailability of
confidential information by an applicant
for public record.

The revision of the definition of
modification in the Air Quality Control
Act, in its present form, raised a
question with respect to the scope of
exceptions allowed. The last clause
posed a potential problem concerning
permit requirements. A letter was
received from the state on September 28,
1984 which clarified this definition. The
letter contained an opinion from their
counsel that the regulatory definition of
modification, while different from the
statutory definition, could be supported
by the New Mexico Air Quality Control
Act.

The revised definition of
"nonattainment area" contains language
which suggests that two criteria must be
met to qualify an area as nonattainment
for a particular pollutant; the area must
be Federally designated as
nonattainment, and there must be a
continuing violation of a national
ambient air quality standard. The New
Mexico Air Quality Bureau agrees,
however, that any area designated by
EPA under section 107 of the Clean Air
Act as nonattainment for a particular
pollutant, will retain nonattainment
status until redesignation by EPA to
attainment. Based upon this
understanding, EPA is approving the
definition of "nonattainment area" in
the Air Quality Control Act.

Section 110 of the CAA sets forth
requirements for Implementation Plans
and subsequent revisions. Sections 111
and 112 of the CAA cite procedures and
applications for establishing NSPS and
NESHAPS. Section 119 describes
procedures for issuance and
enforcement of primary nonferrous
smelter orders. As referenced
previously, the regulations establishing
state authority and general requirements
for plan content are listed in 40 CFR
51.11. The New Mexico Air Quality
Control Act revisions meet all

applicable requirements contained in
the aforementioned sections of the CAA
and 40 CFR 51.11.

A series of decisions by the New
Mexico state courts has raised a
question regarding the adequacy of
variance provisions of the New Mexico
Air Quality Control Act to support a
state plan to implement the national
ambient air quality standards (NAAQS).
The New Mexico Supreme Court in an
opinion filed on April 4, 1984, *Duke City
Lumber Co. v. New Mexico
Environmental Improvement Board and
New Mexico Environmental
Improvement Division*, S. Ct. No. 15,078,
stated that the Air Quality Control Act
"does not permit the denial of a
variance upon a mere showing that a
condition 'tends to cause harm.'"
[Emphasis in original.] The Court
indicated that "tends to cause harm" is
not the same as "a condition injurious to
health or safety," and it appeared to
adopt the position that unless the Board
found that such a condition existed, it
had no alternative to granting a
variance. Other provisions in the Act
which would also deny the Board the
authority to grant a variance were not at
issue. In addition, the Supreme Court
made the following statement:

In this opinion we have not addressed the
question of whether the Duke City burner
emissions exceeded the NAAQS. Neither
have we made a determination as to whether
violation of this standard alone, or in
conjunction with medical evidence presented
at trial, justifies denial of a variance.

The Supreme Court then remanded the
case to the New Mexico Court of
Appeals. The Court of Appeals'
decision, *Duke City Lumber Co. v. New
Mexico Environmental Improvement
Board and New Mexico Environmental
Improvement Division*, No. 5954/6066
(May 31, 1984), made a determination
regarding the NAAQS.

Therefore, we hold that violation of the
NAAQS for particulate matter, as established
by substantial evidence in this case, not only
justified but mandated denial of Duke City's
application for a variance. In so holding we
determine that violation of the NAAQS for
particulates establishes per se injury to
health.

A petition for Writ of Certiorari was
filed with the New Mexico Supreme
Court on July 5, 1984, but no decision
has yet been rendered. Until a final
decision by the New Mexico Supreme
Court, EPA cannot determine the effect,
if any, of the Duke City case on the SIP.

During the comment period for the
proposal, one comment was received. It
concerned permitting in nonattainment
areas [Subpart GG of 40 CFR 52.1620
[18]]. The state has not developed

regulations pertaining to stationary source permits in nonattainment areas, although a commitment was made by the Governor to not issue such permits. Once regulations are developed and implemented, permits may be issued in nonattainment areas; thereby making the New Mexico SIP consistent with Federal Regulations. However, this does not affect any of the revisions of the Air Quality Control Act being approved today as a final rulemaking.

Based on the Agency's review, EPA has determined that the revisions meet the requirements of 40 CFR 51.11 and sections 110, 111, 112, and 119 of the Clean Air Act, and is hereby approving these revisions to the New Mexico SIP.

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 February 4, 1985. This action may not be challenged later in proceedings to enforce its requirements [See 307(b)(2)].

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

This notice of final rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

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

Dated: October 30, 1984.

William D. Ruckelshaus,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart GG—New Mexico

1. In § 52.1620, paragraph (c) is amended by adding paragraph (35) as follows:

§ 52.1620 Identification of plan.

(c) * * *

(35) Revisions to Sections 74-2-2 (9/79, 2/82, 4/83); 74-2-5 (9/79, 2/82, 4/83); 74-2-6 (2/82); 74-2-7 (9/79, 2/82, 4/83); 74-2-9 (9/79); 74-2-11 (9/79); 74-2-11.1 (9/79); 74-2-15 (9/79); and 74-2-15.1 (9/79) of the State's Air Quality Control Act

were submitted by the New Mexico Secretary for Health and Environment on August 11, 1983.

§ 52.1632 [Reserved]

2. Section 52.1632 is removed and reserved.

[FR Doc. 84-28811 Filed 11-1-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[Gen. Docket No. 80-739; FCC 83-511]

Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979

Correction

In FR Doc. 84-1300, beginning on page 2358, in the issue of Thursday, January 19, 1984, make the following correction:

§ 2.105 [Corrected]

On page 2377, in the second column in § 2.105, add footnote 7 at the end of the column, to read as follows:

"7 Definitions of the various radio services used are contained in § 2.1."

BILLING CODE 1505-01-M

47 CFR Part 73

[MM Docket No. 84-74; RM-4669]

FM Broadcast Station in Blue Hill, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein denies the assignment and reservation of Class B Channel 258 for Blue Hill, Maine. It has been determined that there is a channel available in the noncommercial band. The petition for rule making was filed by the Word Corporation.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations

(Blue Hill, Maine); MM Docket No. 84-74; RM-4669.

By the Chief, Policy and Rules Division.

Adopted: October 18, 1984.

Released: October 25, 1984.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 5631, published February 14, 1984, in response to a petition filed by the Word Corporation ("petitioner") proposing the assignment of Class B FM Channel *258 to Blue Hill, Maine, and reservation of that channel for noncommercial educational use. Supporting comments were filed by a successor to the petitioner¹ in which it restated its intent to apply for the channel, if assigned. No oppositions to the proposal were received.

2. As the *Notice* pointed out, commercial channels are generally not reserved for noncommercial educational use. Exceptions to this policy have fallen into one of two categories, either (1) channels in the noncommercial educational band are not available because of Canadian or Mexican allocations; or, (2) the use of channels in the noncommercial band may result in potential interference to television operations on VHF Channel 6. See, *Comobabi, Arizona*, 47 FR 32717, published July 29, 1982; and *Burlington and Newport, Vermont*, 45 R.R. 2d 786 (1979). The Commission indicated in its *Notice* that exceptions to this policy would not be made unless "the assignment and reservation of a commercial channel is the only way to establish a noncommercial educational station to serve the Blue Hill area." A review of petitioner's submissions in support of its request reveals insufficient data to demonstrate that either Canada allocations have severely restricted the availability of the noncommercial band or that a Channel 6 station is in operation nearby. Further, a Commission engineering study indicates that Class B Channel 210 may be available in the Blue Hill, Maine, area with a site restriction of 11.8 kilometers southeast. In view of the above, the request to reserve a commercial channel for noncommercial use must be denied.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That the petition for rule making (MM Docket No. 84-74, RM-4669) to assign

¹ Salt Pond Community Broadcasting Company.