Walter Kidde and Overland Aviation Service Co.: Applies to Walter Kidde discharge cartridges Part Number (P/N) 873571, 876296, 897776 and 898558 manufactured prior to July 1984, and Overland Aviation Service Co. discharge cartridges P/N OA841155, OA873571, OA876296 and OA876299 manufactured prior to August 7, 1984.

Compliance: Required within thirty (30) calendar days or at installation on any aircraft, whichever occurs later, unless already accomplished.

To prevent hazards in flight associated with the non-operation of the fire extinguisher caused by non-firing of the discharge cartridge(s), accomplish the following:

(a) Pull the applicable circuit breakers and disconnect the fire extinguisher bottle electrical plugs from the discharge cartridge. Inspect the electrical receptacle of the cartridge for compressed aluminum foil, which may have the appearance of solder and remove if present. Reinstall the plug and reset the applicable circuit breaker.

(b) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, 1075 Innerloop Road, College Park, Georgia 30337; Telephone (312) 694–7357.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 as amended U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on September 21, 1984.

Issued in Kansas City, Missouri, on September 6, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84–24878 Filed 9–19–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Number 84–ACE–04]

Alteration of Transition Area; Fairfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Fairfield, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Fairfield Municipal Airport, Fairfield, Iowa, utilizing the Ottumwa, Iowa, VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules. (VFR).

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Fairfield, Iowa, Municipal Airport is being established utilizing the Ottumwa VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of the transition area at Fairfield, Iowa, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 21072 and 21073 of the **Federal Register** dated May 18, 1984, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Fairfield, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the proposed rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, by altering the following transition area:

Fairfield, Iowa

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Fairfield Municipal Airport (Latitude: 41°03'15"N, Longitude: 91°58'40"W); and within 3 miles each side of the 188° bearing from Fairfield Municipal Airport, extending from the 6-mile radius area to 11 miles south of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

This amendment becomes effective at 0901 g.m.t. December 20, 1984.

Issued in Kansas City, Missouri, on September 4, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84–24881 Filed 9–19–84; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemptions From Speculative Position Limits for Certain Spread Positions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission is amending certain of the previously adopted federal speculative position limits in domestic agricultural commodities. These amendments provide for a limited exemption from the federal speculative position limits for positions spread between options on a futures contract and the underlying futures contract pursuant to Commission-approved exchange rules.

DATE: These rules shall be effective October 22, 1984.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, at the above address. Telephone: (202) 254–6990.

SUPPLEMENTARY INFORMATION:

I. Background

On July 11, 1984, the Commodity Futures Trading Commission ("Commission") proposed amendments to the federal speculative limits in certain domestic agricultural commodities. These proposed amendments were made in light of the Commission's previously adopted amendments to its regulations governing a three-year pilot program which permitted the trading of commodity options in domestic agricultural commodities. 49 FR 2752.[1] Included in this pilot program for options on futures contracts in domestic agricultural commodities are those commodities enumerated in section 2(a)(1)(A) of the Act, 7 U.S.C. 2 (1983).[2] The pilot program for options on these contracts was included in the existing regulatory structure for exchange-traded options where possible.

Speculative position limits, either federal or exchange-set, are required for all designated contracts. Federal speculative position limits have long been established for many domestic agricultural commodities. *See*, Part 150 of the Commission Rules, 17 CFR Part 150 (1983). For those commodities which do not have federal limits, exchanges are required to establish speculative limits by exchange rule. *See*, Commission Rule 1.61, 17 CFR 1.61. Because the federal speculative limits were adopted during a period in which options on those contracts were statutorily barred, federal limits do not extend to options on domestic agricultural commodities.[3] Nor do the federal speculative limits provide specifically for futures/options spreads, as they do for spreading between certain futures contracts.

Commission Rule 1.61, 17 CFR 1.61, provides that exchanges must submit for Commission approval pursuant to Section 5a(12) of the Act, 7 U.S.C. 7a(12) (1983), exchange rules establishing speculative position limits for futures contracts and options not having federal or exchange-set speculative limits. In addition to exchange rules providing for limits on the net maximum long or short positions which any one person may hold or control, Rule 1.61 requires that contract markets describe an appropriate method of enforcement of speculative position limits, including procedures for determining the applicability of, and compliance with, rules concerning hedging or other exemptions.

II. Proposed Rules

The rules as proposed provided for a limited exemption from federal speculative position limits for positions spread between options on a futures contract and the underlying domestic agricultural futures contract pursuant to Commission-approved exchange rules. The Commission provided for a thirty-day comment period on these proposed rules. In response, the Commission received comments from a grain marketing cooperative, a large agri-business company and two commodity futures exchanges.

In general, the first two commentors opposed the rules as proposed. They reasoned that, in light of the pilot nature of the option program, a cautious approach not permitting any revisions to federal limits should be followed at this time. In particular, one commentor stated that the proposed rules would exacerbate the "depth of apprehension and mistrust which presently exists within the farming community and grain business regarding the futures exchanges in Chicago." This commentor opined that implementation of the proposal would increase the volatility of the futures markets. The second commentor stated that the federal speculative limits "were set in place in an effort to prevent market distortion and possible manipulation" and questioned the Commission's rationale that increased speculative position limits for spread positions are appropriate in light of the reduced net exposure from such positions. It continued that such spreads may have a distorting relationship on the various price differentials and on the flat prices of the contracts in each leg of the spread.

The Commission recognizes that generally spread positions are not entirely without risk or that they lack the ability to affect prices. In explaining the proposed rule, the Commission noted that each leg of a spread represents a "one sided" position in the market in which it is placed and that extraordinarily large spread relationships have the potential of distorting price relationships. 48 FR 28254. The Commission also noted that this concern was particularly relevant for agricultural commodities. Accordingly, the Commission stated that exemptions or higher speculative limits for spread positions should be established with caution and in that regard provided an explanation of the salient features of exchange exemptive procedures it contemplated would be approved by the Commission.

Moreover, although the main rationale for federal speculative limits is to prevent sudden or unreasonable or unwarranted price movements arising from excessive speculation, the Commission has recognized that the overall impact of excessively large speculative limits applies to both their initial market effect and to the subsequent impact from a speculator's possibly over-extended position. Thus, the Commission has maintained in reviewing currently extant exchange-set speculative limits that such limits should also take into account the net financial exposure of traders under such limits as well as the liquidity of the affected markets.

With respect to the argument that, because the options program is new, the Commission should not undertake this rulemaking at this time, the Commission notes that it has proceeded most cautiously in establishing the pilot option program. However, as discussed above, higher speculative limits for spread positions are a well accepted practice in both futures and options trading and existing federal regulations currently permit higher position limits for certain spread positions. Accordingly, the Commission does not view such a provision as experimental, particularly when viewed in the context of the stringent guidelines for Commission approval of proposed exchange spreading exemptions which are discussed below. Moreover, the Commission notes that the current federal speculative position limits for "outright" or "one-sided" positions in futures contracts are unaffected by these amendments in that such limits continue to apply to all outright futures positions including those which may result from the exercise of an option.

The futures exchange's comments were generally favorable to the Commission's initiative, supporting the concept of the exemption for futures/options spreads and the concept that the exemption would be made pursuant to Commission-approved exchange rules. The exchange took exception, however, to certain technical aspects of the proposed rules and of the guidelines

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[1] These amendments were adopted subsequent to the repeal of a statutory bar to such options trading found in Section 4c of the Commodity Exchange Act, 7 U.S.C. 6c (1978). *See*, Section 206 of the Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2204, 2301 (1983).

[2] These commodities are wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Irish potatoes, wool, wool tops, fat and oil (including lard, tallow, cotton seed oil, peanut oil, soybean oil, and all other fats and oils), cotton seed meal, cotton seed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

[3] Federal speculative position limits apply to grain, cotton, rye, soybeans, eggs, potatoes, corn, and wheat. Of these commodities, barley and flaxseed (grains), rye, and eggs are no longer actively traded.

provided by the Commission for the elements which should be included in acceptable exchange rules.

In this regard the exchange commentor questioned the Commission's guidelines involving what trading strategies are contemplated to be included as exempted spread or arbitrage positions. The Commission in its explanation of the proposed rules explained that exempted spread or arbitrage positions should be limited under exchange rules to futures/options positions on the same board of trade in the same commodity, which are, as a totality, offsetting. 49 FR 28254. The exchange commentor suggested that a spread and arbitrage exemption should nonetheless be permitted on a discretionary basis between inter-commodity and inter-exchange spreads and that positions which are delta-neutral should be included within the class of transactions for which an automatic, predetermined exemptive level is established. Delta-neutral option/futures spreads are positions on the opposite side of the market in which the number of option contracts is such that the total change in price of the option positions will closely offset the change in price of the futures position.

As explained below, the Commission has reconsidered the criteria listed in its explanation of the proposal and believes that a delta-equivalent system of evaluating futures/options spread positions and not an automatic one-to-one spread position exemption [4] is the more appropriate means to lessen any possible harmful market effects from these exemptions.[5]

In this connection, however, the Commission notes that in reviewing exchange rules submitted for its approval, it will rigorously scrutinize the exchanges submission under paragraph (d)(4) of Commission Rule 1.61 concerning the method of enforcement. The Commission believes that inclusion of any spread exemptions on a delta-equivalent basis must be pursuant to a specific, readily enforceable system for identifying and monitoring those positions which are delta-neutral. In addition, because delta relationships between futures and options vary over time and between specific combinations of instruments, the Commission will scrutinize carefully any proposed rules concerning the manner in which persons subject to such exemptions would be required to maintain compliance with the applicable limit.

With respect to inter-commodity spreads, the Commission does not necessarily disagree with the commentor's observation that such positions may result in less risk exposure than one-sided or outright positions. However, the Commission believes that such positions offer the potential for significantly more market exposure and impact than the limited, intra-commodity spread positions between instruments having the same delivery months contemplated under the proposed rules. Moreover, it should be noted that for the options pilot program for non-domestic agricultural commodities the Commission has not approved any exchange rules which would exempt or otherwise provide higher speculative limits for inter-commodity spread positions between options or between options and futures contracts. Accordingly, the Commission has determined not to amend the proposed rules to recognize inter-commodity spreading at this time. However, during the trading of the options pilot program for agricultural commodities the Commission staff will monitor the nature and potential impact of any intra-commodity spread exemptions granted pursuant to these amendments as a possible basis for the future consideration of permitting inter-commodity exemptions.

The Commission has also considered the exchange commentor's views on the advisability of spreads between futures and options traded on different boards of trade and determined not to incorporate those suggestions in these rules at this time. The Commission noted in proposing these rule amendments that:

> All position levels set by the exchange, whether a predetermined absolute level for all traders, or an individual level on a case-by-case basis, must take into account, where applicable, the size of each leg of a spread and its relationship to crop years as well as the relative financial exposure of the trader *and the liquidity of the affected markets.*

49 FR 28254 (emphasis added.)

Although federal speculative limits provide higher position limits for such inter-market spreads between grain contracts, they have been set in view of the liquidity of each of the relevant contract markets. In the case of exchange-set speculative limits, it is not clear that such considerations concerning the relative liquidity of a second contract market can, or should, be made by the exempting contract market. Accordingly, the Commission believes that exemptions from applicable existing federal limits in such instances are inappropriate, and therefore any possible anticompetitive effect from the lack of an inter-exchange spread exemption is more than outweighed, under Section 15 of the Act, by the objectives and policies of the Act furthered by this restriction.

The other exchange which commented on this proposal is not designated as a contract market in any domestic agricultural commodity. Its comments were more general, advocating that this approach be adopted for all commodities and that floor traders be exempt from speculative position limits. As the Commission noted above, the concepts underlying this rule are not novel and follow that which is already permitted for options under Commission Rule 1.61. Moreover, the Commission does not agree that a blanket exemption for floor traders' positions is warranted since the commentor failed to demonstrate that the impact of such positions is different from that of any other speculator.

III. Guidelines for Exchange Rules

In view of the issues raised by the commentors as well as its own further consideration of the rules as proposed, the Commission wishes to clarify further the strict criteria by which it will evaluate proposed exchange rules for spread exemptions during the pilot program for options on agricultural commodities. These guidelines are as follows.

First, the Commission contemplates that any exchange rules it approves for purposes of affording exemptions or higher position limits for futures/options spreads will be confined to those cases where both legs pertain to the same delivery month in the underlying futures contract. The Commission believes that this is necessary to ensure that the spread positions in fact will be as a totality, offsetting, and to minimize the possibility that the separate legs of the spread become economically independent and thereby exert an undesirable effect on the pricing in the futures and options markets. The Commission will rigorously review any proposed deviation from this guideline

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[4] In the explanation accompanying the proposal the Commission stated that for "predetermined and preapproved" spread or arbitrage exemptions, exchanges might include pursuant to this rule exemptions for conversions, reverse conversions and *one to one futures options spreads.* 45 FR 28254. (emphasis added) However, upon further consideration, the Commission believes that a nominal specification of one futures contract-to-one options contract is not sufficient to assure that futures/options spread positions are economically balanced and that a specification of delta-neutrality is more appropriate to achieve this objective.

[5] In this respect, one commentor pointed out that the guidelines in the proposal concerning one-to-one futures options spreads,

Applies a literal interpretation of its requirement that all exempted spreads be totally offsetting which ignores those trading strategies which result in real, instead of merely facial, offsetting.

to ensure that the proposal nonetheless meets the criteria that such spreads be offsetting.

Second, exchange rules approved by the Commission must provide exemptions or higher limits for only those positions which are economically balanced arbitrage or spread positions, *e.g.*, conversions, reverse conversions, or "delta neutral" spread positions. This will ensure that positions acquired under the exemption in fact will be offsetting, and not for the purpose of acquiring additional futures position which, because of the lack of economic balance, are essentially one-sided.

The requirement that such positions be ofsetting as a totality, through the use of a delta neutral system, for example, is necessary because these rules involve exemptions from speculative limits on futures as well as on options.[6] Thus, exchange rules which provide for exemptions based on their delta neutrality will be consistent with this guideline, but those for simple one-to-one positions will not be. The Commission is modifying the rules as proposed to reflect specifically the requirement that the legs of the spread or arbitrage positions be offsetting.

Third, as noted in the explanation of the rules as proposed, the Commission anticipates that the exchange rules which can be approved pursuant to these amendments to Part 150 will provide for a limitation on the size of futures positions which can be acquired in connection with a predetermined and preapproved futures/options spread or arbitrage exemption. The Commission will review these limitations in view of the liquidity of the relevant futures market. Those transactions not within the enumerated class must be approved by the exchange on a case-by-case basis taking into account, among other things, the liquidity of the affected markets and the relative financial exposure of the trader. In this connection, in considering whether to approve exchange rules which allow individual exemptions which are not specifically enumerated as to type or amount, the Commission will require exchange rules to detail the specific criteria to be considered by the exchange in determining the nature and amount of such exemptions. These criteria must be sufficiently specific to assure the Commission that the objectives of the position limits in Section 150 of the Regulations are met on a continuous basis.

[6] Among other things, one major objective of specifying speculative limits on options contracts is to ensure that trading activity in options do not undermine the primary market for futures contracts. 46 FR 50944. In this respect it should be noted that although the Commission has previously approved rules which provide for specific enumerated exemptions or higher speculative limits levels for options positions which are spread against futures contracts, none of these previous rules exempted positions from exchange specified speculative position limits on the futures side of the spread.

IV. Related Issue: Regulatory Flexibility Act.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in adopting rules, consider their impact on small businesses. The Commission has previously determined that large traders are not "small entities" for purposes of the RFA. 47 FR 18618–18621 (April 30, 1982). The requirements of the RFA therefore do not apply to traders who are trading at levels high enough to trigger these exemptions. Accordingly, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 150

Commodity exchange rules, Speculative position limits, Spreading exemptions from speculative position limits, Commodity futures.

In consideration of the foregoing and pursuant to the authority in Sections 4a, 4c(b), 4c(c), and 8a of the Commodity Exchange Act, as amended, 7 U.S.C. 6a, 6c(b), 6c(c), and 12a (1982), the Commission amends Part 150 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. Section 150.1 is amended by redesignating paragraph (a)(1) as paragraph (a) introductory text and revising it as follows; by redesignating paragraph (a)(2) as paragraph (a)(1), and by adding new paragraph (a)(2) follows:

§ 150.1 Limits on position in grain for futures delivery.

(a) Position limits. The limit on the maximum net long or net short position which any one person may hold or control under contracts for futures delivery for grain on or subject to the rules of any one contract market except as specifically authorized by paragraph (a)(1) of this section is 2,000,000 bushels in any one future or in all futures combined.

(1) * * *

(2) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraph (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this Chapter.

* * * * *

2. Section 150.2 is amended by adding new paragraph (a)(1) as follows:

§ 150.2 Limits on positions in cotton for future delivery.

(a) * * *

(a)(1) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and options contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraph (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this Chapter.

* * * * *

3. Section 150.4 is amended by adding new paragraph (a)(1) as follows:

§ 150.4 Limits on positions in soybeans for future delivery.

(a) * * *

(1) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraph (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this Chapter.

* * * * *

4. Section 150.10 is amended by adding paragraph (a)(2) as follows:

§150.10 Limits on positions in potatoes for future delivery.

(a) * * *

(2) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraphs (a) and (a)(1) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this chapter.

* * * * *

5. Section 150.11 is amended by adding paragraph (a)(1) as follows:

§ 150.11 **Limits on positions in corn for future delivery.**

(a) * * *

(1) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraph (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this chapter.

* * * * *

6. Section 150.12 is amended by adding paragraph (a)(1) as follows:

§ 150.12 **Limits on positions in wheat for future delivery.**

(a) * * *

(1) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraphs (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this Chapter.

* * * * *

Issued in Washington, D.C. on September 14, 1984.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84-24849 Filed 9-19-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM84-20-000; Order No. 396]

Delegation to the General Counsel

Issued: September 14, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Effective September 15, 1984, the Office of Opinions and Review (OOR) will be merged into the Office of the General Counsel (OGC). As a result of this reorganization, the functions previously delegated to the Director of OOR are redelegated to the General Counsel or his designee. The final rule amends the delegations of authority to reflect this reorganization.

EFFECTIVE DATE: September 15, 1984.

FOR FURTHER INFORMATION CONTACT: Albert J. Francese, Rulemaking and Legislative Analysis Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Summary

On August 27, 1984, the Chairman of the Federal Energy Regulatory Commission (Commission) announced the merger of the Office of Opinions and Review (OOR) into the Office of the General Counsel (OGC), effective on September 15, 1984. As a result of this reorganization, the functions previously delegated to the Director of OOR will be redelegated to the General Counsel.

This final rule codifies, in 18 CFR 375.309, this redelegation of authority to the General Counsel. This final rule also removes § 375.310 in its entirety. That section contains the now-superseded delegations of authority to OOR. In making these revisions, the Commission is not substantively changing the authorities that have been previously delegated by the Commission.

II. Effective Date

Pursuant to 5 U.S.C. 553(b) (1982), this rule is issued without prior notice and comment because it is a rule of agency organization, procedure or practice. Because the rules are necessary to conform the Commission's regulations to existing internal agency practices and to provide the public with essential guidance concerning Commission reorganization, the Commission finds good cause under 5 U.S.C. 553(d) (1982) to make this rule effective immediately upon issuance.

List of Subjects in 18 CFR Part 375

Authority delegations (Government Agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission amends Part 375 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 375—[AMENDED]

1. Part 375 ia amended as follows:

a. The authority citation continues to read as follows for Part 375:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

b. In § 375.309, paragraph (e) is revised and a new paragraph (f) is added to read as follows:

§ 375.309 Delegations to the General Counsel

* * * * *

(e) Designate presiding officers for proceedings under Subpart I and Subpart J of Part 385 of this chapter, who shall have all the authorities and duties vested in presiding officers by those rules and other applicable rules in conducting proceedings pursuant to section 503(c) and section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.* and section 502(c) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*

(f) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in §§ 381.303, 381.304, and 381.405 of this chapter in accordance with § 381.106 of this chapter.

§ 375.310 [Removed]

C. Section 375.310 is removed.

[FR Doc. 84-24886 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Sulfadimethoxine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of three new animal drug applications (NADA's), one held by Bayvet Division of Miles Laboratories, Inc., providing for use of Suldixine™ (sulfadimethoxine) Tablets for treating bacterial infections in dogs and two held by Beecham Laboratories, Division of Beecham, Inc., for use of Sudine® (sulfadimethoxine) Tablets and Symbio® (sulfadimethoxine) Injection for treating bacterial infections in dogs and cats. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of these NADA's.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of Bayvet's NADA 13-602 for Suldixine™ (sulfadimethoxine) Tablets and Beecham's NADA 13-526 for Sudine® (sulfadimethoxine) Tablets and NADA 13-527 for Symbio® (sulfadimethoxine) Injection. This document removes those portions of the regulations that reflect approval of these NADA's

List of Subjects

21 CFR Part 520

Animal drugs, oral use.

21 CFR Part 522

Animal drugs, injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C 360b(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), Parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.2220b [Amended]

1. In Part 520, § 520.2220b *Sulfadimethoxine tablets and boluses* is amended by removing paragraphs (b) (2) and (4) and (e)(2)(i) and designating paragraphs (b)(2) and (e)(2)(i) as [Reserved].

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. In Part 522, § 522.2220 *Sulfadimethoxine injection* is amended by revising paragraph (b)(2) and (3)(i) to read as follows:

§ 522.2220 Sulfadimethoxine injection.

* * * * *

(b) * * *

(2) *Sponsors.* See No. 000859 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) It is used or intended for use in the treatment of sulfadimethoxine-susceptible bacterial infections in dogs.

* * * * *

Effective date. October 1, 1984.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: September 7, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 301

[T.D. 7977]

Personal Services Income of Nonresident Alien Individuals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to exemptions from the withholding of income tax from the independent personal services income of nonresident alien individuals. The document also contains final regulations to clarify the procedure for obtaining, and the duty of a withholding agent when an alien individual requests, an exemption from withholding pursuant to a tax treaty. The changes are made because the existing regulations impose certain withholding requirements that may be reduced or eliminated without adversely affecting compliance with the tax laws. The regulations provide guidance to alien individuals who wish to take advantage of the liberalized rules and to withholding agents who will receive requests for treaty exemptions with respect to the personal services income of nonresident alien individuals.

DATE: The amendments are effective December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Carol T. Doran of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1983, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1441, 1461, and 1462, the Employment Tax Regulations (26 CFR Part 31) under section 3401, and the Regulations on Procedure and Administration (26 CFR Part 301) under section 7605 and 7701, all of the Internal Revenue Code of 1954. A public hearing was neither requested nor held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Discussion

Section 1441 of the Code requires that 30 percent of amounts paid to a nonresident alien individual as compensation for independent personal services be withheld by the person paying the amount (the withholding agent) to the individual. Section 1441(c)(4) of the Code gives the Service the authority to exempt, by regulations, compensation for personal services of a nonresident alien individual from 30 percent withholding. The final regulations revise existing exemptions and provide additional exemptions from withholding to alleviate overwithholding which results when tax is withheld at the 30 percent rate even though the taxpayer is subject to tax at an effective rate of less than 30 percent because the income is effectively connected with conduct of a U.S. trade or business.

The new exemptions from withholding may be obtained in two ways. Under one method, described in § 1.1441-4(b)(4), the 30 percent amount would initially be withheld in full from all payments of compensation except the final payment. Prior to receipt of the final payment, the individual may appear at an Internal Revenue Service district office and have his or her tentative income tax calculated. The individual would receive a letter from the Service stating the amount of income that is exempt from withholding and the amount, which would otherwise be withheld as tax from the final payment, that could be paid to the nonresident alien due to the exemption. Upon presentation of the letter, the withholding agent would be authorized to adjust the amount of tax withheld from the final payment. An income tax return must be filed at the usual time. A refund of any additional amounts of withheld tax in excess of the individual's liability could be obtained at that time.

Under the second method, described in § 1.1441-4(b)(3), the individual may enter into an agreement with the Service as to the amount of tax to be withheld, before actually receiving any payments. The agreement would take into account the anticipated gross income, personal exemptions, certain expenses of the alien individual, relevant income tax treaty provisions, and the appropriate rate of tax. The procedures for entering into this withholding agreement would be set forth by the Service.

The final regulations also revise and clarify existing procedure with respect to a request by a nonresident alien individual under § 1.1441–4(b)(2) for an exemption from withholding on compensation for independent personnel services because of an income tax treaty or personal exemption amount. The final regulations require the alien individual to use a form developed by the Internal Revenue Service. The withholding agent must be reasonably satisfied that, based on the information supplied on the form, the individual's compensation qualifies for the exemption. The withholding agent must indicate his or her acceptance on the form and forward a copy to the Director of the Foreign Operations District 10 days prior to the effective date of the exemption. If the withholding agent is not reasonably satisfied that the alien is entitled to a treaty exemption, the agent is not relieved of liability for withholding the full 30 percent. The regulation thus adopts the standard for withholding agents found in Rev. Rul. 76-224, 1976-1 C.B. 268.

The proposed regulations proposed to revise § 1.1441–3(f) to provide that domestic partnerships must withhold 30 percent on all actual distributions to nonresident alien partners. One commentor suggested that this expansion of the withholding obligation was too broad in that it required withholding on income that is effectively connected with the conduct of a U.S. trade or business. The commentor suggested that the withholding requirement be limited to those distributions which represent income items described in paragraphs (a) and (b) of § 1.1441–2. The suggestion was adopted.

Miscellaneous updating, clarifying, and corrective changes to the withholding regulations also are adopted.

Regulatory Flexibility Act and Executive Order 12291

The Secretary of the Treasury has certified that the regulations proposed herein will not have a significant economic impact on a substantial number of small entities. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6), and a Regulatory Flexibility Analysis is not required. The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Paperwork Reduction Act of 1980

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of this regulation is Carol T. Doran of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, Sources of income, United States investments abroad.

26 CFR 1.1441–1—1.1465–1

Income taxes, Aliens, Foreign corporations.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 31, and 301 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

§ 1.871–6 [Amended]

Paragraph 1. Paragraph (c) of § 1.871–6 is amended by removing "§ 1.1465.1" and inserting in its place "§ 1.1441–7".

§ 1.1441–2 [Amended]

Par. 2. Section 1.1441–2(c)(1) is amended by removing the phrase "as amended," in the first sentence and inserting in its place the phrase "as amended (8 U.S.C. 1101(a)(15)(F) or (J)).".

Par. 3. Paragraphs (f) and (h) of section 1.1441–3 are revised to read as follows:

§ 1.1441–3 Exceptions and rules of special application.

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(f) *Partnerships and fiduciaries.* Domestic partnerships are required to withhold the tax at source under § 1.1441.1 on items of income described in paragraphs (a) and (b) of § 1.1441–2 that are included in the distributive share (including amounts that are not actually distributed) of a member of such partnership who is a nonresident alien individual, nonresident alien or foreign fiduciary of a trust or estate, foreign partnership, or foreign corporation. Resident or domestic fiduciaries of trusts and estates are required to withhold the tax at source under § 1.1441–1 on all items of income described in paragraphs (a) and (b) of § 1.1441–2 that constitute gross income from sources within the United States (including amounts that are not actually distributed) of beneficiaries who are nonresident alien individuals, foreign partnerships, or foreign corporations. Because the gross income allocable to a partner and the income includable in the gross income of the beneficiary cannot be determined until the end of a taxable year of the partnership, trust, or estate, the partnership and the fiduciary of a trust or estate shall withhold under this section on all distributions to such partners and beneficiaries during the taxable years to the extent such distributions include items of income described in paragraphs (a) and (b) of § 1.1441–2. If the tax on actual distributions exceeds the tax on amounts includable in the gross income of the partner or beneficiary, the partner or beneficiary may file a claim for refund together with appropriate supporting evidence in accordance with paragraph (h) of this section. If a partnership or a fiduciary withholds under this section on a distributive partnership share or distributable net income of a trust or estate before the income is actually distributed to a partner or beneficiary, then withholding is not required when such income is subsequently distributed. Income described in paragraphs (a) and (b) of § 1.1441–2 that is paid to a foreign partnership or to a nonresident alien or foreign fiduciary is subject to withholding under § 1.1441–1 even though the members of the partnership or the beneficiaries of the trust or estate are individuals who are citizens or residents of the United States or are domestic corporations.

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(h) *Claims for refund.* A claim for refund referred to in paragraph (b) (1), (c) (3), (d) (1), or (f) of this section shall be made in accordance with the provisions of §§ 301.6402-2 and 301.6402-3 of this chapter (Regulations on Procedure and Administration).

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§ 1.1441-4 [Amended]

Par. 4. Section 1.1441-4 is amended as follows:

1. Paragraph (a)(1) is amended as follows:

a. The first sentence is amended by removing the word "his" and inserting in its place the phrase "the person's", removing the word "he" and inserting in its place the phrase "the person" and removing the phrase "subparagraph (2) of this paragraph" and inserting in its place the phrase "paragraph (a)(2) of this section".

b. The second sentence is amended by removing the word "subparagraph" and inserting in its place the words "paragraph (a)(1)".

c. The following sentences are added immediately before the last sentence: "In determining whether services are performed by a foreign corporation or by an individual, see Revenue Ruling 74-330, 1974-2 C.B. 278, and Revenue Ruling 74-331, 1974-2 C.B. 282. For rules with respect to compensation for personal services performed by an individual, see paragraph (b) of this section."

2. The first sentence of paragraph (a)(2) is amended by removing the phrase "subparagraph (1) of this paragraph" and inserting in its place the phrase "paragraph (a)(1) of this section".

3. Paragraphs (b)(1) and (b)(2) are revised and new paragraphs (b)(3), (b)(4), and (b)(5) are added, the revised and new paragraphs to read as set forth below.

4. Paragraph (f)(1) is amended by removing the words "International Operations" in the first sentence and inserting in their place the words "the Foreign Operations District", and by removing the words "International Operations" both times they appear in the last sentence and inserting in their place both times the words "the Foreign Operations District".

5. Paragraph (f)(2) is amended as follows:

a. The first sentence of subdivision (i) is amended by removing the phrase "subparagraph (1) of this paragraph" and inserting in its place the phrase "paragraph (f)(1) of this section", and by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District".

b. The last sentence of subdivision (i) is amended by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District".

c. The first sentence of subdivison (ii) is amended by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District", and by adding the words "or her" immediately after the word "his".

d. The second sentence of subdivision (ii) is amended by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District".

e. The first sentence of subdivision (iii) is amended by removing the words "International Operations" both times they appear and inserting in their place both times the words "the Foreign Operations District".

6. The second sentence of paragraph (g) is amended by adding the phrase "or her" immediately after the word "his", and by adding the phrase "or she" immediately after the word "he".

7. The heading of paragraph (i) is revised to read: *"Income of foreign central bank of issue or Bank for International Settlements."*

8. The first sentence of paragraph (i)(2) is amended by removing the phrase "subparagraph (1) of this paragraph" and inserting in its place the phrase "paragraph (i)(1) of this section".

§ 1.1441-4 Exemptions from withholding.

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(b) *Compensation for personal services of an individual*—(1) *Exemption from withholding.* Withholding is not required under § 1.1441-1 from salaries, wages, remuneration, or any other compensation for personal services of a nonresident alien individual if such compensation is effectively connected with the conduct of a trade or business within the United States and—

(i) Such compensation is subject to withholding under section 3402, relating to withholding of tax at source on wages, and the regulations thereunder.

(ii) Such compensation would be subject to withholding under section 3402 but for the provisions of section 3401(a) (other than paragraph (6) thereof) and the regulations thereunder.

(iii) Such compensation is for services performed by a nonresident alien individual who is a resident of Canada or Mexico and who enters and leaves the United States at frequent intervals.

(iv) Such compensation is, or will be, exempt from the income tax imposed by chapter 1 of the Code by reason of a provision of the Internal Revenue Code or a tax treaty to which the United States is a party or

(v) Such compensation is paid after January 3, 1979 as a commission or rebate paid by a ship supplier to a nonresident alien individual, who is employed by a nonresident alien individual, foreign partnership, or foreign corporation in the operation of a ship or ships of foreign registry, for placing orders for supplies to be used in the operation of such ship or ships with the supplier. See section 162(c) and the regulations thereunder for denial of deductions for illegal bribes, kickbacks, and other payments.

(2) *Manner of obtaining withholding exemption under tax treaty*—(i) *In general.* In order to obtain the exemption from withholding by reason of a tax treaty, provided by paragraph (b)(1)(iv) of this section, a nonresident alien individual must submit a statement (described in paragraph (b)(2)(ii) of this section) to each withholding agent from whom amounts are to be received. A separate statement must be filed for each taxable year of the alien individual. If the withholding agent is satisfied that an exemption from withholding is warranted (see paragraph (b)(2)(iii) of this section), the statement shall be accepted in the manner set forth in paragraph (b)(2)(iv) of this section. The exemption from withholding becomes effective for payments made at least ten days after a copy of the accepted statement is forwarded to the Director of the Foreign Operations District.

(ii) *Statement claiming withholding exemption.* The statement claiming an exemption from withholding shall be made on Form 8233. Form 8233 may be used for claiming exemption from withholding under tax treaties to which the United States is a party or with respect to the personal exemption amount described in § 1.1441-3(e)(2). Form 8233 shall be dated, signed by the person claiming the exemption from withholding, and verified by a declaration that the statements are made under the penalties of perjury. Form 8233 shall contain—

(A) The individual's name, address, United States taxpayer identification number, and United States visa number, if any,

(B) The country that issued the individual's passport and the number of such passport, or the individual's permanent address if a citizen of Canada or Mexico.

(C) The taxable year for which the statement is to apply, the compensation to which it relates, and the amount (or estimated amount if exact amount not known) of such compensation,

(D) A statement that the individual is not a citizen or resident of the United States,

(E) The number of personal exemptions claimed by the individual,

(F) A statement as to whether the compensation to be paid to him or her during the taxable year is or will be exempt from income tax and the reason why the compensation is exempt,

(G) If the compensation is exempt from withholding by reason of an income tax treaty to which the United States is a party, the tax treaty and provision under which the exemption from withholding is claimed and the country of which the individual is a resident, and

(H) Sufficient facts to justify the claim in exemption from withholding.

(iii) *Review by withholding agent.* The exemption from withholding provided by paragraph (b)(1)(iv) of this section shall not apply unless the withholding agent accepts (in the manner provided in paragraph (b)(2)(iv) of this section) the statement on Form 8233 supplied by the nonresident alien individual. Before accepting the statement the withholding agent must examine the statement. If the withholding agent knows or has reason to know that any of the facts or assertions on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption cannot be readily determined, the withholding agent may not accept the statement on Form 8233 and is required to withhold under this section. If the withholding agent accepts the statement and subsequently finds that any of the facts or assertions contained on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption can no longer be readily determined, then the withholding agent shall promptly so notify the Director of the Foreign Operations District by letter, and the withholding agent is not relieved of liability to withhold on any amounts still to be paid. If the withholding agent is notified by the Foreign Operations District that the eligibility of the individual's compensation for the exemption is in doubt or that such compensation is not eligible for the exemption, the withholding agent is required to withhold under this section. The rules of this paragraph are illustrated by the following examples.

Example 1. C, a nonresident alien individual, submits Form 8233 to W, a withholding agent. The statement on Form 8233 does not include all the information required by paragraph (b)(2)(ii) of this section. Therefore, W has reason to know that he or she cannot readily determine whether C's compensation for personal services is eligible for an exemption from withholding and, therefore, W must withhold.

Example 2. D, a nonresident alien, is performing services for W, a withholding agent. W has accepted a statement on Form 8233 submitted by D, according to the provisions of this section. W receives notice from the Internal Revenue Service that the eligibility of D's compensation for a withholding exemption is in doubt. Therefore, W has reason to know that the eligibility of the compensation for a withholding exemption cannot be readily determined, as of the date W receives the notification, and W must withhold tax under section 1441 on amounts paid after receipt of the notification.

Example 3. E, a nonresident alien individual, submits Form 8233 to W, a withholding agent for whom E is to perform personal services. The statement contains all the information requested on Form 8233. E claims an exemption from withholding based on a personal exemption amount computed on the number of days E will perform personal services for W in the United States. If W does not know or have reason to know that any statement on the Form 8233 is false or that the eligibility of E's compensation for the withholding exemption cannot be readily determined, W can accept the statement on Form 8233 and exempt from withholding the appropriate amount of E's income.

(iv) *Acceptance by withholding agent.* If after the review described in paragraph (b)(2)(iii) of this section the withholding agent is satisfied that an exemption from withholding is warranted, the withholding agent may accept the statement by making a certification, verified by a declaration that it is made under the penalties of perjury, on Form 8233. The certification shall be—

(A) That the withholding agent has examined the statement,

(B) That the withholding agent is satisfied that an exemption from withholding is warranted, and

(C) That the withholding agent does not know or have reason to know that the individual's compensation is not entitled to the exemption or that the eligibility of the individual's compensation for the exemption cannot be readily determined.

The exemption from withholding becomes effective for payments made at least ten days after a copy of the accepted statement is mailed in a proper manner by the withholding agent to the Director of the Foreign Operations District, pursuant to paragraph (b)(2)(v) of this section.

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted by him or her to the Director of the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225, within five days of his or her acceptance. The Director of the Foreign Operations District may review the forms so submitted. The withholding agent shall retain a copy of Form 8233.

(3) *Withholding agreements.* Compensation for personal services of a nonresident alien individual who is engaged during the taxable year in the conduct of a trade or business within the United States may be wholly or partially exempted from the withholding required by § 1.1441-1 if an agreement is reached between the Director of the Foreign Operations District and the alien individual with respect to the amount of withholding required. Such agreement shall be available in the circumstances and in the manner set forth by the Internal Revenue Service, and shall be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current taxable year.

(4) *Final payment exemption*—(i) *General rule.* Compensation for independent personal services of a nonresident alien individual who is engaged during the taxable year in the conduct of a trade or business within the United States may be wholly or partially exempted from the withholding required by § 1.1441-1 from the final payment of compensation for independent personal services. This exemption does not apply to wages. This exemption from withholding is available only once during an alien individual's taxable year and is obtained by the alien individual presenting to the withholding agent a letter in duplicate from a district director stating the amount of compensation subject to the exemption and the amount that would otherwise be withheld from such final payment under section 1441 that shall be paid to the alien individual due to the exemption. The alien individual shall attach a copy of the letter to his or her income tax return for the taxable year for which the exemption is effective.

(ii) *Final payment of compensation for personal services.* For purposes of this paragraph, final payment of compensation for personal services means the last payment of compensation, other than wages, for personal services rendered within the United States that the individual expects to receive from any withholding agent during the taxable year.

(iii) *Manner of applying for final payment exemption.* In order to obtain the final payment exemption provided by paragraph (b)(4)(i) of this section, the nonresident alien individual (or his or her agent) must file the forms and provide the information required by the district director. Ordinary and necessary business expenses may be taken into account if substantiated to the satisfaction of the district director. The alien individual must submit a statement, signed by him or her and verified by a declaration that it is made under the penalties of perjury, that all the information provided is true and that to his or her knowledge no relevant information has been omitted. The information required to be submitted includes, but is not limited to—

(A) A statement by each withholding agent from whom amounts of gross income effectively connected with the conduct of a trade or business within the United States have been received by the alien individual during the taxable year, of the amount of such income paid and the amount of tax withheld, signed and verified by a declaration that it is made under penalties of perjury;

(B) A statement by the withholding agent from whom the final payment of compensation for personal services will be received, of the amount of such final payment and the amount which would be withheld under § 1.1441-1 if a final payment exemption under paragraph (b)(4)(i) of this section is not granted, signed and verified by a declaration that it is made under penalties of perjury;

(C) A statement by the individual that he or she does not intend to receive any other amounts of gross income effectively connected with the conduct of a trade or business within the United States during the current taxable year;

(D) The amount of tax which has been withheld (or paid) under any other provision of the Code or regulations with respect to any income effectively connected with the conduct of a trade or business within the United States during the current taxable year;

(E) The amount of any outstanding tax liabilities (and interest and penalties relating thereto) from the current taxable year or prior taxable periods; and

(F) The provision of any income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of the individual's residence, and a statement of sufficient facts to justify an exemption pursuant to such treaty.

(iv) *Letter to withholding agent.* If the district director is satisfied that the information provided under paragraph (b)(4)(iii) of this section is sufficient, the district director will, after coordination with the Director of the Foreign Operations District, ascertain the amount of the alien individual's tentative income tax for the taxable year with respect to gross income that is effectively connected with the conduct of a trade or business within the United States. After the tentative tax has been ascertained, the district director will provide the alien individual with a letter to the withholding agent stating the amount of the final payment of compensation for personal services that is exempt from withholding, and the amount that would otherwise be withheld under section 1441 that shall be paid to the alien individual due to the exemption. The amount of compensation for personal services exempt from withholding under this paragraph (b)(4) shall not exceed $5,000.

Example 1. On July 15, 1983, B, a nonresident alien individual, appears before a district director with the information required by paragraph (b)(4)(iii) of this section. B has received personal service income in 1983 from which $3,000 has been withheld under section 1441. On August 1, 1983, B will receive $5,000 in personal service income from W. B does not intend to receive any other income subject to U.S. tax during 1983. Taking into account B's substantiated deductible business expenses, the district director computes the tentative tax liability on B's income effectively connected with the conduct of a trade or business in the United States during 1983 (including the $5,000 payment to be made on August 1, 1983) to be $3,300. B does not owe U.S. tax for any other taxable periods. The amount of B's final payment exemption is determined as follows:

(*1*) The amount of total withholding is $4,500 ($3,000 previously withheld plus $1,500, 30% of the $5,000 final payment);

(*2*) The amount of tentative excess withholding is $1,200 (total withholding of $4,500 minus B's tentative tax liability of $3,300); and

(*3*) To allow B to receive $1,200 of the amount which would otherwise have been withheld from the final payment, the district director allows a withholding exemption for $4,000 of B's final payment. W must withhold $300 from the final payment.

Example 2. The facts are the same as in Example 1 except B will receive a final payment of compensation on August 1, 1983, in the amount of $10,000 and B's tentative tax liability is $3,900. The amount of B's final payment exemption is determined as follows:

(*1*) The amount of total withholding is $6,000 ($3,000 previously withheld plus $3,000, 30% of the $10,000 final payment);

(*2*) The amount of tentative excess withholding is $2,100 (total withholding of $6,000 minus B's tentative tax liability of $3,900); and

(*3*) To allow B to receive $2,100 of the amount which would otherwise be withheld from the final payment, $7,000 of the final payment would have to be exempt from withholding; however, as no more than $5,000 of the final payment can be exempt from withholding under this paragraph (b)(4), the district director allows a withholding exemption for $5,000 of B's final payment. B must file a claim for refund at the end of the taxable year to obtain a refund of $600. W must withhold $1,500 from the final payment.

(5) *Requirement of return.* The tentative tax determined by the district director under paragraph (b)(4)(iv) of this section or by the Director of the Foreign Operations District under the withholding agreement procedure of paragraph (b)(3) of this section shall not constitute a final determination of the income tax liability of the nonresident alien individual, nor shall such determination constitute a tax return of the nonresident alien individual for any taxable period. An alien individual who applies for or obtains an exemption from withholding under the procedures of paragraphs (b) (2), (3), or (4) of this section is not relieved of the obligation to file a return of income under section 6012.

§ 1.1441-5 [Amended]

Par. 5. Section 1.1441-5 is amended as follows:

1. Paragraph (a) is amended by inserting the words "or she" following the word "he" in the first sentence.

2. Paragraph (c) is amended by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District", and by adding at the end: "The original statement shall be retained by the withholding agent.".

§ 1.1441-6 [Amended]

Par. 6. Section 1.1441-6 is amended by adding to the end of paragraph (c)(1) the following: "Form 1001 shall not be used to secure a reduced rate of, or exemption from, withholding on independent personal services income. See § 1.1441-4(b)(2).".

Par. 7. A new § 1.1441-7 is added immediately after § 1.1441-6 to read as follows:

§ 1.1441-7 General provisions relating to withholding agents.

(a) *Withholding agent defined*—(1) *In general.* For purposes of chapter 3 of the Code, the term "withholding agent" means any person who pays or causes to be paid an item of income specified in § 1.1441-2 to (or to the agent of) a nonresident alien individual, a foreign partnership, a nonresident alien or foreign fiduciary of a trust or estate, or a foreign corporation, and who is required to withhold tax under sections 1441, 1442, 1443, or 1451 from such item of income. Any person who meets the definition of a withholding agent is required to file the returns prescribed by § 1.1461-1. For example, an employer (as defined in § 31.3401(d)-1 of this chapter), to the extent the employer pays remuneration for services performed by a nonresident alien individual in the United States and such remuneration is excepted from the term "wages" under § 31.3401(a)(6)-(1) (c) or (e) of this chapter, must file a return as required by § 1.1461-2(c)(1).

(2) *United States obligations.* If the United States is a withholding agent for an item of interest, including original issue discount, on obligations of the United States or of any agency or instrumentality thereof, the withholding obligation of the United States shall be assumed and discharged by:

(i) The Commissioner of the Public Debt, for interest paid by checks issued through the Bureau of the Public Debt.

(ii) The Treasurer of the United States, for interest paid by him or her, whether by check or otherwise,

(iii) Each Federal Reserve Bank, for interest paid by it, whether by check or otherwise, or

(iv) Such other person as may be designated by the Commissioner.

(b) *Person designated to act for withholding agent*—(1) *Notice of duly authorized agent.* A withholding agent (including a state or possession of the United States or any agency or instrumentality thereof) that appoints a duly authorized agent to act on its behalf under the withholding provisions of chapter 3 of the Code is required to file a notice of such appointment with the Director of the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225. Such notice must be filed before the first payment with respect to which the authorized agent acts as such.

(2) *In general—liability of withholding agent.* If a duly authorized agent has become insolvent or for any other reason fails to make payment of money deposited with it by the withholding agent to pay tax required to be withheld under chapter 3 of the Code, or of money withheld under such chapter, the withholding agent is not discharged of its liability under such chapter since the authorized agent is merely the agent of the withholding agent.

(3) *Tax-free covenant bonds—liability of withholding agent.* If the duly authorized agent designated by a withholding agent to act for it has not withheld any tax from the income nor received any funds from the withholding agent to pay the tax which the withholding agent assumed in connection with its tax-free covenant bonds, then that authorized agent cannot be held liable for the tax assumed by the withholding agent merely by reason of the appointment as duly authorized agent. The withholding agent remains liable under chapter 3 of the Code since the duly authorized agent is merely the agent of the withholding agent.

(c) *Payments other than money.* In any case where income is payable in any medium other than money the withholding agent shall not release the property so received until the property has been converted into funds sufficient to enable the withholding agent to pay over in money the tax required to be withheld under chapter 3 of the Code with respect to such income.

§ 1.1461-1 [Amended]

Par. 8. Section 1.1461-1 is amended by removing the phrase "Director of International Operations, Internal Revenue Service, Washington, D.C. 20225," in paragraph (f)(3) and inserting in its place the phrase "Internal Revenue Service Center, Philadelphia, PA. 19255.".

Par. 9. Section 1.1461-2 is amended by revising paragraph (b) through (e) to read as follows:

§ 1.1461-2 Return of tax withheld.

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(b) *Form 1042*—(1) *Filing requirement.* Every withholding agent shall make on or before March 15 an annual return on Form 1042 of the tax required to be withheld under chapter 3 of the Code during the preceding calendar year. Form 1042 is required to be made in respect of a calendar year, even though no tax was required to be withheld under such chapter during such year, if the withholding agent is required by paragraph (c)(1) of this section to make an information return on Form 1042S with respect to any payments made during such year. Form 1042 shall be filed with the Internal Revenue Service Center, Philadelphia, PA. 19255. The return shall be prepared in duplicate and shall include such information as is required by the form and accompanying instructions. If an adjustment is required on Form 1042 because of repayments of withheld tax pursuant to paragraph (a)(1) of § 1.1461-4, only the aggregate amount of such adjustment shall be shown thereon and no itemized explanation of such aggregate amount shall be required to accompany such form. See paragraph (b) of § 1.1461-4. If, pursuant to paragraph (a)(2) of § 1.1461-3, any additional amount of tax is required to be paid to the Internal Revenue Service Center, Philadelphia, PA. for the preceding calendar year when filing Form 1042, no itemized explanation of such additional payment of tax shall be required to accompany such form. The duplicate copy of Form 1042 shall be retained by the withholding agent.

(2) *Summary of accompanying forms.* Form 1042 shall be accompanied by the original copies of all Forms 1042S which were prepared by the withholding agent during the previous calendar year, including such forms upon which income exempt from withholding of tax is reported. The forms so forwarded with Form 1042 are not required to be listed thereon; but they shall be summarized on Form 1042 in the manner prescribed thereon and in the instructions applicable thereto. The exemption and reduced rate certificates, such as Form 1001A-D or Form 1001A-J, referred to in paragraph (g)(2) of § 1.1461-1 are not required to accompany, or to be summarized on, Form 1042.

(c) *Form 1042S*—(1) *Filing requirement.* Every withholding agent shall make on or before March 15 an annual information return on Form 1042S of all items of income specified in § 1.1441-2 paid during the previous calendar year to nonresident alien individuals, foreign partnerships, nonresident alien or foreign fiduciaries of a trust or estate, or foreign corporations if such items consist of—

(i) Amounts upon which tax would have been required to be withheld under chapter 3 of the Code,

(ii) Amounts upon which tax would have been required to be withheld under such chapter but for an exclusion from gross income applicable under any income tax treaty to which the United States is a party,

(iii) Amounts upon which tax would have been required to be withheld under such chapter but for the provisions of any specific complete or partial exemption from withholding applicable under the authority of any regulation under this title or any ruling or procedure of the Commissioner, or

(iv) Amounts in respect of which tax withheld under such chapter has, pursuant to such authority, been released or refunded to the payee by the withholding agent.

All amounts shall be shown in U.S. currency. Notwithstanding subdivisions (i) through (iv) of this subparagraph (1), income paid to nonresident alien individual, foreign partnerships, nonresident alien or foreign fiduciaries of a trust or estate, or foreign corporations and required to be shown on Form W-2, or in the case of income paid prior to January 1, 1972, on Form 1001 (or on any special variation of Form 1001 referred to in paragraph (i) of

§ 1.1461-1, or the substitute thereof) is not required to be shown on Form 1042S. However, a return under this subparagraph is required on Form 1042S (rather than on Form W-2) in respect of amounts which otherwise would be required to be shown on Form W-2 solely by reason of § 1.6041-2 (relating to return of information as to payments to employees) or § 1.6052-1 (relating to information regarding payment of wages in the form of group-term life insurance). The original Form 1042S shall accompany Form 1042 and shall be filed with the Internal Revenue Service Center, Philadelphia, PA 19255.

(2) *Information to be furnished.* (i) Form 1042S shall include such information as is required by the form and accompanying instructions.

(ii) If a Form 1042S is prepared in respect of an item of income upon which tax has not been withheld under chapter 3 of the Code, a brief statment as to the authority for such failure to withhold shall be made upon the form itself. If necessary, however, a separate statement as to such authority may be attached to the original copy of the Form 1042S.

(iii) If a Form 1042S is prepared in respect of compensation from which the personal exemption is deducted in accordance with paragraph (e) of § 1.1441-3, the amount of the compensation allocable to labor or personal services performed within the United States, together with the amount of the deduction for the prorated personal exemption, shall be shown on a separate statement attached to the original copy of that form

(iv) If any certificate, statement, letter, or form relating to an exemption (as described in § 1.1441-4) is filed with or presented to a withholding agent, such certificate, statement, letter, or form shall be attached to each Form 1042S relating to the income subject to the exemption.

(3) *Manner of preparing Form 1042S.* (i) Form 1042S shall be prepared with respect to all payments of any item of income made during the calendar year to the same payee in the manner prescribed by the form and accompanying instructions. Payment of an item of income to a nominee or representative for the benefit of other persons in respect of whom Form 1042S are required may not be shown on a single Forms 1042S but must be identified with the ultimate recipients of the income if such information is known to the payer of the income.

(ii) The duplicate copy of Form 1042S shall be furnished to the payee indicated thereon, and a copy shall be retained by the withholding agent.

(4) *Alternative methods.* To the extent that the withholding agent's system of record keeping makes impractical the use of Form 1042S in the manner prescribed by paragraph (c)(3) of this section, he may devise and submit for the prior annual approval of the Commissioner a variation of Form 1042S which will include the information required by paragraph (c)(2) of this section and which will substantially comply with the requirements of paragraph (c)(3) of this section. Request for such approval shall be sent to: Internal Revenue Service, Attn: Substitute Forms Program, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 and shall be accompanied by an explanation as to why such variation is necessary.

(d) *Information to be furnished by Commissioner.* If a foreign country has entered into an income tax treaty with the United States which provides for the mutual exchange of information, the Commissioner shall, as soon as practicable after the close of a calendar year during which the treaty is in effect, transmit to the appropriate authority designated in the treaty with that country the information contained in Forms 1042S showing a payee with an address in the country. This information is not to be furnished to any such foreign country, however, if the Commissioner ascertains through appropriate channels that the information is not required by that country.

(e) *Penalties.* For penalties and additions to the tax attaching upon failure to comply with this section, see sections 6651, 6656, 6676, and 7203.

* * * * *

§ 1.1461-3 [Amended]

Par. 10. Section 1.1461-3 is amended by removing the phrase "Director, Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, PA 19155," in the first sentence of paragraph (a)(1)(i) and in paragraph (a)(2) and inserting in lieu thereof the phrase "Internal Revenue Service, Center, Philadelphia, PA 19255,".

§ 1.1462-1 [Amended]

Par. 11. Section 1.1462-1(b) is amended by moving the word "his" in the last sentence and inserting in its place the phrase "the taxpayer's".

§ 1.1465-1 [Removed]

Par. 12. Section 1.1465-1 is removed.

Employment Tax Regulations

PART 31—[AMENDED]

Par. 13. Paragraph (a) of § 31.3401(a)(6)-1(a) is revised to read to set forth below.

§ 31.3401(a)(6)-1 Remuneration for services of nonresident alien individuals paid after December 31, 1966.

(a) *In general.* All remuneration paid after December 31, 1966, for services performed by a nonresident alien individual, if such remuneration otherwise constitutes wages within the meaning of § 31.3401(a)-1 and if such remuneration is effectively connected with the conduct of a trade or business within the United States, is subject to withholding under section 3402 unless excepted from wages under this section. In regard to wages paid under this section after February 28, 1979, the term "nonresident alien individual" does not include a nonresident alien individual treated as a resident under section 6013 (g) or (h).

* * * * *

Regulations on Procedure and Administration

PART 301—[AMENDED]

§ 301.7605-1 [Amended]

Par. 14. Paragraph (b) of § 301.7605-1 is amended by adding a sentence at the end thereof to read as follows: "The inspection of a taxpayer's books of account pursuant to the procedures of § 1.1441-4(b) (3) and (4) is not an inspection of a taxpayer's books of account for purposes of section 7605(b) and this section."

Par. 15. Section 301.7701-16 is revised to read as follows:

§ 301.7701-16 Other terms.

For a definition of the term "withholding agent" see § 1.1441-7(a). Any other terms that are defined in section 7701 and that are not defined in §§ 301.7701-1 to 301.7701-15, inclusive, shall, when used in this chapter, have the meanings assigned to them in section 7701.

This Treasury decision is issued under the authority contained in sections 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954. Approved by the Office of Budget and Management under control number 1545-0795.

Approved: September 4, 1984.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-24980 Filed 9-19-84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Approval of Permanent Program Amendment From the State of West Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by West Virginia as an amendment to the State's permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes a program for blaster training, examination and certification.

West Virginia submitted the proposed program amendment on January 12, 1984. OSM published a notice in the Federal Register on January 31, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 3882–3883). The public comment period ended March 1, 1984. On June 18, 1984, the State submitted additional proposed regulations and other information to address certain issues raised during the review of the January 12, 1984, proposed amendment. These issues were presented to the State in letters from OSM dated March 9, April 5, and May 22, 1984 (Administrative Record Nos. WV 575, 579 and 580). A public comment period for this additional information was announced in the Federal Register on July 12, 1984 (49 FR 28418). The comment period for this additional information ended on July 27, 1984.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations, with certain exceptions and is approving it based on the correction of certain deficiencies. The Federal rules at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this action.

EFFECTIVE DATE: September 20, 1984.

FOR FURTHER INFORMATION CONTACT: John Heider, Acting Field Office Director, Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301; Telephone (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background

The West Virginia program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5915–5956). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the West Virginia program can be found in the January 21, 1981, **Federal Register.**

II. Submission of Revisions

On January 12, 1984, West Virginia submitted statute and regulations and other material which would establish requirements for the training, examination and certification of blasters working in surface coal mining operations. These materials were later supplemented by additional information submitted by the State on June 18, 1984. The proposed modifications include:

- Current surface mining law and regulations providing authority for a blaster training, examination and certification program;
- Proposed regulations governing the standards for certification of blasters, hereafter referred to as the June 18 proposed regulations;
- Current mining law providing authority and procedures for withdrawal of certification and penalties;
- Current regulations providing administrative procedures relating to appeals;
- Current mining regulations defining certain terms used throughout the proposed blaster program;
- Current regulations specifying safety training requirements for West Virginia miners;
- A proposed training outline for blaster training;
- A study guide for blaster training;
- A comparison of State and Federal regulations for blaster certification.

At the time of the Secretary's approval of the West Virginia program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the West Virginia program, the Secretary specified that West Virginia would be required to adopt such provisions following promulgation of the Federal standards (46 FR 5931, January 21, 1981).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training, examination and certification of blasters at 30 CFR Chapter M (48 FR 9486). The Federal rules require each State to design and implement its own blaster certification program. Under the Federal rules, each State must develop the method of training, examining, and certifying blasters which best meets local needs within the Federal regulatory framework. The Federal rules require training, field experience, and a written examination, and specify certain other requirements.

The Federal rules at 30 CFR 850.12 require the State regulatory authority to develop a program and submit it to OSM as a proposed program amendment within 12 months after the publication date of the Federal rules. The Federal rules at 30 CFR 816.61(c) further provide that no later than 12 months after the State's blaster certification program has been approved by OSM, all blasting operations in the State shall be conducted under the direction of a certified blaster.

On January 31, 1984, OSM, published a notice in the Federal Register announcing receipt of the West Virginia amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 3882–3883). The public comment period ended March 1, 1984. An opportunity to request a public hearing was provided, but none was requested.

On June 18, 1984, the State submitted additional proposed regulations and other information to address certain issues raised during the review of the January 12, 1984, proposed amendment. These issues were presented to the State in letters from OSM dated March 9, April 5, and May 22, 1984 (Administration Record Nos. WV 575, 579 and 580). A public comment period for this addtional information was announced in the Federal Register on July 12, 1984 (49 FR 28418). The comment period for this additional information ended on July 27, 1984.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by West Virginia on January 12, 1984, as modified on June 18, 1984, meets the requirements of SMCRA and 30 CFR Chapter VII, with certain exceptions, as discussed below.

A. General

The West Virginia submission provides that the West Virginia Department of Mines, in accordance with Section 20-6-34 of the West Virginia Surface Coal Mining and Reclamation Act, will be responsible for the training, examination and certification of blasters within the State.

In it's letter of June 18, 1984, the State proposed that mandatory training as required by 30 CFR 850.13(b) could be accomplished by way of any of three methods. The first would be to attend the classroom training sponsored by the West Virginia Department of Mines and provided through the facilities of the State Vocational Education office as specified in the State's proposed regulations. The second method of satisfying the training provisions would be to conduct a self-study program using the "Study Guide for West Virginia Surface Mine Blasters". The third method would be to attend a certified blaster training session conducted by an explosives manufacturer. The applicant for certification would indicate on the application for the blaster certification exam which type of training he or she had received.

The Director has carefully considered these three options and finds that only the first method of training will satisfy the provisions of 30 CFR 850.13(b) at this time. The second option, self-study, is a viable alternative to classroom training. However, the self-study program must utilize training materials which will provide instruction in all areas required by 30 CFR 850.13(b) and the State must develop a procedure to verify that the self-study has actually been conducted. The Study Guide for West Virginia Surface Mine Blasters was reviewed by OSM and determined to lack instruction in several areas required by 30 CFR 850. These areas were addressed by the State in a pre-submission letter dated July 21, 1983 (Administrative Record Number WV 592). This letter provided that the topics not addressed by the Study Guide would be provided by the training course to be conducted by the State. This action resolved the issue as it related to the classroom training to be provided by the State. However, before the Director can approve the use of the State's proposed self-study program using the Study Guide alone, the Study Guide must be revised to provide coverage of all the topics of 30 CFR 850.13(b). The second concern with the self-study concept relates to verification that the applicant for certification has actually completed the required study. The procedure proposed by West Virginia requires only that the applicant indicate that he has completed the study. The State must revise the Study Guide and develop a system for verifying that self-study has occurred prior to certification of an individual under this concept. West Virginia may not use the proposed self-study procedures until the Study Guide for West Virginia Surface Mine Blasters is revised to include all of the topics included in 30 CFR 850.13(b), procedures are developed to verify that the self-study has been conducted and both have been reviewed and approved by the Director.

The third method of training proposed by West Virginia relates to completion of a training course presented by an explosives manufacturer. West Virginia may not accept training conducted by an explosives manufacturer until procedures have been developed by the State to certify that the training meets the requirements of 30 CFR 850.13(b), a process for verifying completion of the course is developed and both have been reviewed and approved by the Director.

B. West Virginia Administrative Regulations, Department of Mines, Chapter 22-4, Series , Rules and Regulations Governing the Standards for Certification of Blasters, Submitted June 18, 1984

1. Section 3.01(A) of the June 18 proposed regulations provides that no later than one year after the effective date of the regulations, a certified blaster will be responsible for the handling and use of explosives for each and every blast in accordance with the blasting plan approved for the permit. The requirements for approval of a blasting plan are contained in Section 4C.01 of the West Virginia Surface Mining Reclamation Regulations, Chapter 20-6 Series VII (1983) as approved by the Secretary on November 16, 1983. These regulations inappropriately relate the blasting performance standards including the blasting plan requirements, to blasts of more than five pounds of explosives or blasting agent. In addition, the blasting plan requirements of Section 4C.01 relate only to blasting operations on surface mines. The requirements do not apply to blasting operations conducted on underground mining operations. Therefore, the provision of 3.01(A) could be interpreted to apply only to blasting conducted on surface operations. The Director finds that this provision is less effective than the Federal regulations at 30 CFR Part 850 and is requiring a program amendment to provide that blaster certification requirements will apply to all blasting operations required by 30 CFR 850.

2. Section 3.01(A) of the June 18 proposed regulations specifies that persons seeking to become certified blasters must complete such training as required by the regulations. Section 3.01(B) provides that training requirements shall include those subject areas set forth in Section 5.02(A)(1) and 5.03(A)(1). The Director finds that the West Virginia regulation includes all the topics required by 30 CFR 850.13(b) and therefore is no less effective than the Federal rule.

3. Section 3.01(A) of the June 18 proposed regulations set forth the requirements necessary for a person to become a certified blaster. The regulations require that a person must: (1) have had at least one year active blasting experience within the past three years; (2) hold a current permit issued by the State Fire Marshall's Office; and (3) have demonstrated his knowledge and skill of the use, handling and storage of explosives and all State and Federal laws pertaining thereto by completing such training and certification examinations as may be required by the State regulations. Applicants will be examined by the West Virginia Department of Mines as set forth in Section 5.03. The Director finds that these provisions are no less effective than 30 CFR 850.14 which sets forth the minimum requirements for examination of candidates for blaster certification.

4. Sections 6 and 7 of the June 18 proposed regulations set forth the requirements for certification and recertification. Section 7.01 provides that a blaster must be recertified every three years by submitting validated documentation to the Department of Mines of conformance with the requirements of Section 3.01. The requirements of Section 3.01 are discussed in Finding 3 above. In addition, validated proof of one shift of refresher training within the previous 12 months must be submitted unless the applicant has completed one year of active blasting experience within the previous 12 months. Applicants for recertification must also meet the conditions of certification specified in Section 6.01 of the regulations. Reexamination of a certified blaster is

required following the second consecutive certification. The Director finds that these provisions are no less effective than the Federal rules at 30 CFR 850.13(a) and 850.13(c).

5. Section 8.01 of the June 18 proposed regulations specifies that a blaster shall, upon request by an authorized representative of the Division of Reclamation, West Virginia Department of Natural Resources, the West Virginia Department of Mines or OSM, exhibit his or her certificate and that certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the Department of Mines. Section 8.02 specifies that a blaster's certification shall not be transferred or assigned. Section 8.03 specifies that blasters shall not delegate their authority or responsibility to any individual who is not a certified blaster. The Director finds these provisions to be no less effective than 30 CFR 850.15(d) and 850.15(e), which specify conditions of certification and requirements for the protection of certification.

6. Part 3 of West Virginia Administrative Regulations, Department of Mines, Chapter 22–4, Series 34 (1982) sets forth the provisions applicable to proceedings initiated to withdraw a blaster's certification. The regulation provides that the Board of Appeals of the West Virginia Department of Mines, following written notice and opportunity to respond, will evaluate all charges and, if appropriate, schedule a hearing. At the conclusion of the hearing, if the Board finds that the certification should be suspended or revoked, it shall enter an order to that effect. Section 8.04 of the June 18 proposed regulations provides that proceedings may be initiated to withdraw certification for neglect or failure to perform duties mandated by Articles 1 and 2 of Chapter 22 of the West Virginia Code, regulations promulgated thereto; Article 6, Chapter 20 of the West Virginia Code and regulations promulgated thereto or the June 18 proposed regulations. Section 22–1–20(d) of the West Virginia Code provides that whoever knowingly makes any false statement, representation or certification in any application shall be guilty of a misdemeanor. The conviction of any person under this provision shall result in the revocation of any certification. The Director finds these provisions no less effective than 30 CFR 850.15 (b)(1)(i), (h)(1)(iii), (b)(1)(ii), (b)(2), and (b)(3).

7. Section 6.01(B) of the June 18 proposed regulations provides that addiction to alcohol, narcotics or other dangerous drugs shall cause any blaster's certification already in force to be suspended or revoked. The Director finds that this provision is less effective than 30 CFR 850.15(b)(1)(ii) and is requiring a program amendment to provide for suspension or revocation of a blaster's certification for unlawful use of alcohol, narcotics or other dangerous drugs in the work place.

8. The West Virginia amendment fails to require that the blasting crew or others who assist in the use of explosives and are not certified blasters, receive direction and on-the-job training from a certified blaster as required by 30 CFR 850.13(a)(2). The Director finds that the lack of this provision is not as effective as 30 CFR 850 and is requiring a program amendment to include this provision.

IV. Public Comments

Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, acknowledgements were received from the Department of the Army, Office of the Chief of Engineers; the Department of Energy; the Department of the Interior, Bureau of Land Management and the National Park Service; and, the Department of Labor, Mine Safety and Health Administration. The comments were limited and did not identify any deficiencies in the proposed program amendment. The only additional public comment was received from the West Virginia Surface Mining and Reclamation Association. Their comment consisted of a copy of an article which appeared in an industry publication concerning an address made by Mr. Bill Raney of the Association. The address contained no substantive comments concerning the West Virginia blaster certification program.

The disclosure of Federal agency comments is made pursuant to Section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the January 12, 1984, amendment, as modified on June 18, 1984, to the West Virginia program. As indicated above, there are three provisions which are less effective than SMCRA and the Federal regulations and require revision. These provisions are discussed in Findings B.1., B.7. and B.8. above. These provisions must be corrected by the State and submitted as a program amendment by [60 days following publication]. In addition, two methods for satisfying the training provisions of 30 CFR Part 850, as discussed in Finding A. above may not be utilized until the State makes the necessary revisions and they are approved by the Director. The Director is amending Part 948 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exempt from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exemption from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1984.

John D. Ward,

Acting Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

1. 30 CFR Part 948 is amended by adding a new § 948.15 as follows:

§ 948.15 Approval of regulatory program amendments.

(a) The following amendment submitted to OSM on January 12, 1984, as modified on June 18, 1984, is approved effective September 20, 1984: West Virginia's blaster certification program, as contained in the proposed West Virginia Administrative Regulations, Department of Mines, Chapter 22–4 Series ——, submitted to OSM on June 18, 1984, and all other items as submitted by West Virginia on January 12, 1984, and modified on June 18, 1984. This approval is contingent on promulgation of the above referenced proposed regulations.

(b) [Reserved]

2. 30 CFR Part 948 is amended by adding a new § 948.16 as follows:

§ 948.16 Required program amendments.

Pursuant to 30 CFR 732.17, West Virginia is required to submit the following program amendments by November 19, 1984:

(a) Amend its program to require that all persons responsible for the use of explosives on or after 12 months following September 20, 1984, shall be certified in accordance with 30 CFR 850.12(b).

(b) Amend its program to provide that a blaster's certification may be suspended or revoked for unlawful use of alcohol, narcotics or other dangerous drugs in the work place as required by 30 CFR 850.15(b)(1)(ii).

(c) Amend its program to require that the blasting crew or others who assist in the use of explosives and are not certified blasters, receive direction and on-the-job training from a certified blaster as required by 30 CFR 850.13(a)(2).

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[FR Doc. 84-24913 Filed 9-19-84; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD3-84-37]

Special Anchorage Area; Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Superintendent, U.S. Coast Guard Academy, the Coast Guard is establishing a special anchorage area just north of the causeway leading to the Academy Sailing Center at Jacobs Rock, Thames River, New London, Connecticut. During the sailing season, the Academy has insufficient dock space to accommodate all of its boats. This situation has resulted in the mooring of some boats to mooring buoys in the area being designated as a special anchorage area. This area has been used for this purpose for the past four years. This area is well away from the navigational channel and not within the normal area of recreational navigation on the Thames River due to its position directly adjacent to the Jacobs Rock causeway. The establishment of this special anchorage area should not create any safety, security or environmental hazards. The effect of this action will eliminate the requirement for displaying anchor lights by Academy and Academy-related boats, which generally use this area as an anchorage or mooring area during the sailing season.

EFFECTIVE DATE: October 22, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. R.F. Valderrama, Ports and Waterways Specialist, Commander (mpv-p), Third Coast Guard District at (212) 668–7179.

SUPPLEMENTARY INFORMATION: On July 12, 1984 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (49 FR 28419). Interested persons were requested to comment and no comments were received. Accordingly, no changes have been made to the rule as proposed.

Drafting Information

The drafters of this regulation are Mr. R.F. Valderrama, Ports and Waterways Specialist, project officer for Commander (mpv-p), Third Coast Guard District, and Mrs. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The major purpose for the special anchorage area is to officially recognize the long-standing use of this area by Academy boats. Since primarily Academy or Academy-related boats will use this area, and since the location of the area is well out of the normal navigation area of the river, this special anchorage area will have little or no economic impact on the general public. It will have a slight economic impact on Academy operations, since the elimination of lighting requirements for boats at anchor will slightly reduce the cost of the Academy sailing program.

Since the impact is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

PART 110—[AMENDED]

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended by adding § 110.52(c) and Note to read as follows:

§ 110.52 Thames River, New London, Conn.

* * * * *

(c) Area No. 3. An area on the westerly side of the Thames River in the vicinity of Jacobs Rock, the location of the U.S. Coast Guard Academy Sailing Center, bounded as follows: Beginning at the point on the shore where the north side of the Jacobs Rock causeway meets the western shoreline; thence northerly along the western shore of the Thames River a distance of 200 yards; thence 090°, 240 yards; thence 180°, 200 yards to the Jacobs Rock causeway; thence westerly along the causeway to the point of beginning.

Note.—The area designated by paragraph (c) of this section is principally for the use of U.S. Coast Guard Academy and Academy-related boats. Temporary floats or buoys for marking anchors may be used. The anchoring of vessels and the placing of moorings will be under the jurisdiction and at the discretion of the Chief, Waterfront Branch, U.S. Coast Guard Academy, New London, Connecticut.

(33 U.S.C. 2030, 2035 and 2071; 49 CFR 1.46; and 33 CFR 1.05–1(g))

Dated: September 14, 1984.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

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33 CFR Part 117

[CGD 1-84-10R]

Drawbridge Operation Regulation; Acushnet River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the New Bedford Area Chamber of Commerce, the Coast Guard is changing the regulations for the Route 6 bridge over the Acushnet River, between New Bedford and Fairhaven. This change is being made because frequent openings of the drawspan result in a backup of vehicles along Route 6, a major roadway in the area. These backups have a