necessary label changes, OSHA is making this amendment effective January 9, 1986. Between October 11, 1985 and January 9, 1986, either the current or revised labeling will be acceptable.

Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

Pursuant to sections 4(b)(1), 6(b) and 8 of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), and 5 U.S.C. 553, 29 CFR 1910.1047 is amended as set forth below.

List of Subjects in 29 CFR Part 1910

Ethylene oxide, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, D.C., this 1st day of October 1985.

Patrick R. Tyson,
Acting Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is therefore amended as follows:

1. The authority for Part 1910 continues to read as follows:

Authority: Secs. 4, 6 and 8 of the Occupational Safety and Health Act of 1970. (29 U.S.C. 653, 655, 657); 5 U.S.C. 553; Secretary of Labor's Order 9–83 (48 FR 35736); 29 CFR Part 1911.

2. By revising paragraph (j)(1)(i)(A) of § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(j) * * *
(1) * * *
(i) * * *
(A) Danger
Contains Ethylene Oxide
Cancer Hazard and Reproductive Hazard; and

* * * * *

3. By adding a new paragraph (j)(1)(iii) to § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(j) * * *
(1) * * *

(iii) The labeling requirements under this section do not apply where EtO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when it is labeled pursuant to that Act and regulations issued under that Act by the Environmental Protection Agency.

* * * * *

4. By adding a new paragraph (m)(3) to § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(m) *Dates.*

* * * * *

(3) Labeling. (i) Paragraph (j)(1)(i)(A) of this section as amended is effective January 9, 1986.

(ii) Paragraph (j)(1)(iii) of this is effective October 11, 1985.

* * * * *

[FR Doc. 85-23844 Filed 10-10-85; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 51

[CGD 81-104]

Discharge Review Board (DRB) Regulations

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is revising the regulations governing the establishment and operation of the Coast Guard Discharge Review Board. The existing regulations in Part 51 of Title 33 Code of Federal Regulations (CFR) were promulgated in 1947 and provided for a Board for Review of Discharges and Dismissals. Since that time, Congress enacted Pub. L. 85–857, (10 U.S.C. 1553) which provided a new statutory basis for discharge review boards. These regulations will update the existing regulations and establish the Coast Guard Discharge Review Board to more accurately reflect current law and policy.

EFFECTIVE DATE: November 12, 1985.

FOR FURTHER INFORMATION CONTACT: LT Dave Shippert, Office of Chief Counsel, Room 3314, Coast Guard Headquarters, Washington, D.C. 20593, (202) 426–1534.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM) concerning these regulations was published on January 29, 1985 (50 FR 3922). The public comment period closed on March 15, 1985. No comments were received and these regulations are identical in substance to those proposed in the NPRM. Minor editorial changes were made to § 51.3 to clarify that applications must be received by the DRB within 15 years of the date of discharge as provided in § 51.9(b).

Discussion

The Secretary of Transportation is responsible for the establishment of the Coast Guard Discharge Review Board (DRB) to review the administrative discharge of any former member. (10 U.S.C. 1553). These regulations supplant the existing regulations in Part 51 of Title 33, Code of Federal Regulations (CFR) which had operated in conjunction with Department of Defense DRB Regulations. The result of this revision is to completely sever the Coast Guard DRB from the Department of Defense regulations to emphasize its operation under the Secretary of Transportation.

These regulations are also promulgated in consideration of laws and regulations governing the Veterans Administration. Since October 8, 1977, actions by DRBs cannot remove any of a number of statutory bars to eligibility for benefits administered by the VA. (38 U.S.C. 3103(a)). However, DRB actions upgrading discharges to "honorable" or "general under honorable conditions" may otherwise give rise to eligibility that did not previously exist (38 CFR 3.12(a)(g)). This revision of the Coast Guard's DRB regulations is consistent with law and regulations governing eligibility for veterans' benefits.

Section-By-Section Analysis

Section 51.1 Basis and Purpose. This part provides an overview and description of the Coast Guard DRB.

Section 51.2 Authority. This section states the statutory authority for the establishment of the Coast Guard DRB and outlines the authority of the Secretary and the delegations to the Commandant of the Coast Guard.

Section 51.3 Applicability and Scope. This section provides that any former member, administratively discharged from the Coast Guard, may initiate DRB review of the discharge. In accordance with the Military Justice Act of 1983, discharges resulting from the sentence of a court-martial cannot be reviewed by the DRB except for purposes of clemency. (Pub. L. 98–209, 97 Stat. 1407, 10 U.S.C. 1553(a)). A former member may apply to the DRB for clemency only after exhausting all appellate remedies.

Section 51.4 Definitions. This section defines the operative terms within the proposed rule to provide a clear meaning of the various components of the discharge review process.

Section 51.5 Discharge Review Objectives. This section outlines the basis for effecting a change in an applicant's discharge.

Section 51.6 Propriety Standard of Review. This section defines the standard of propriety as applied by the DRB.

Section 51.7 Equity Standard of Review. This section defines the standard of equity as applied by the DRB.

Section 51.8 Relevant Considerations. This section provides a list of factors normally considered by the DRB in determining the propriety and equity of an applicant's discharge.

Section 51.9 Discharge Review Procedures. This section gives a step-by-step procedural guideline for the discharge review process.

Section 51.10 Decisions. This section requires written findings and conclusions to be issued by a majority of the DRB.

Section 51.11 Records. This section requires that a record of each DRB proceeding be completed and preserved; and made available to the public through the Armed Forces Reading Room.

Economic Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary. The Coast Guard receives approximately eighty (80) applications for discharge review each year. Although an applicant may spend considerable time and effort, and incur attorney fees in presenting his or her application to the DRB, these regulations require only a written application on a two page form (application for Review of Discharge or Separation from the Armed Forces of the United States—DD Form 293). The costs of preparing the application that are a result of these requirements are so minimal that they cannot be quantified to any extent practicable. Since the impact of this rule 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. In addition, this rule falls under the section 3518(c)(1)(b) exception to the Paperwork Reduction Act of 1980. (92 Stat. 2824; 44 U.S.C. 3501 et. seq.)

Drafting Information

This document was drafted by LT Dave SHIPPERT, Project Attorney, Office of the Chief Counsel.

List of Subjects in 33 CFR Part 51

Discharge Review Board (DRB) regulations, Administrative practice and procedure, Military personnel.

Regulations

In consideration of the foregoing, Part 51 of Title 33, Code of Federal Regulations, is amended by revising the entire part to read as follows:

PART 51—COAST GUARD DISCHARGE REVIEW BOARD

Authority: 10 U.S.C. 1553.

§ 51.1 Basis and purpose.

This part establishes the procedures for review of administrative discharges from the Coast Guard by a Discharge Review Board (DRB) or by the Secretary of the Department, and for the compilation of the record of the DRB determination, made available for public inspection, copying and distribution through the Armed Forces Discharge Review/Correction Board Reading Room.

§ 51.2 Authority.

(a) The Secretry of Transportation has the authority to establish a Discharge Review Board (DRB) to review the discharge of a former member of the United States Coast Guard under the provisions of 10 U.S.C. 1553. This part prescribes the establishment and outlines the procedures of the Coast Guard Discharge Review Board. The Secretary retains the authority to review and take final action on the DRB's findings in the following cases:

(1) Those cases in which a minority of the board requests that their written opinion be forwarded to the Secretary for consideration;

(2) Those cases selected by the Commandant to inform the Secretary of aspects of the board's functions which may be of interest to the Secretary;

(3) Any case in which the Secretary demonstrates an interest;

(4) Any case which the President of the board believes is of significant interest to the Secretary.

(b) The Commandant of the Coast Guard is delegated the authority to:

(1) Appoint members to serve on the Discharge Review Board;

(2) Appoint alternates to serve on the DRB in the event that a regularly appointed member is unavailable;

(3) Designate a member as the President of the DRB; and

(4) Review and take final action on all DRB decisions which are not reviewed by the Secretary

§ 51.3 Applicability and scope.

The provisions of this part apply to the United States Coast Guard including reserve-components and all former members who have been discharged within 15 years of the date upon which application for review is received by the DRB. A former member may apply to the DRB for a change in the character of, and/or the reason for, the discharge. The Coast Guard DRB review is generally applicable only to administrative discharges, however, the DRB may review the discharge of a former member by sentence of a court-martial for the purpose of clemency. A petition for clemency will not be considered by the DRB unless the applicant has exhausted all appellate remedies. Upon a petition for clemency, the DRB shall consider only the equity of the discharge awarded.

§ 51.4 Definitions.

(a) *Applicant.* A former member of the Coast Guard who has been discharged from the service but excluding those discharged by sentence of a court-martial, except as provided in § 51.3. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member.

(b) *Counsel.* An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. It includes, but is not limited to: A lawyer who is a member of the bar of a federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a state agency concerned with veterans affairs; or a representative from private organizations or local government agencies.

(c) *Discharge.* Any formal separation of a member from the Coast Guard which is not termed "honorable".

including dismissals and "dropping from the rolls". This term also includes the assignment of a separation program designator, separation authority, the stated reason for the discharge, and the characterization of service.

(d) *Discharge Review.* The process by which the reason for separation, the procedures followed in accomplishing separation, and the characterization of service are evaluated. This includes determinations made under the provisions of 38 U.S.C. 3103(e)(2).

(e) *Discharge Review Board.* A board consisting of five members of the U.S. Coast Guard, appointed by the Commandant of the Coast Guard and vested with the authority to review the discharge of a former member. The board is empowered to change a discharge or issue a new discharge to reflect its findings, subject to review by the Commandant or the Secretary.

(f) *Hearing.* A proceeding which, upon request of the applicant, is utilized in the discharge review process enabling the applicant and/or the applicant's representative to appear before the DRB and present evidence.

(g) *President.* An officer of the United States Coast Guard appointed by the Commandant as President to preside over the DRB. The President will convene the board and may also serve as a member. If the President does not serve as a member of the DRB, the President shall designate a presiding officer for the board to serve as President.

§ 51.5 Objective of review.

The objective of the discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes if necessary. The DRB will utilize its discretion to reach a fair and just resolution of the applicant's claim. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established which require automatic change, or denial of change, in a discharge.

§ 51.6 Propriety standard of review.

A discharge is deemed to be proper except that:

(a) A discharge may be improper if an error of fact, law, procedure, or discretion was associated with the discharge at the time of issuance which prejudiced the rights of the applicant.

(b) A discharge may be improper if there has been a change in policy by the Coast Guard made expressly retroactive to the type of discharge under consideration.

§ 51.7 Equity standard of review.

(a) A discharge is presumed to be equitable and will not be changed under this section unless the applicant submits evidence sufficient to establish, to the satisfaction of the DRB that:

(1) The policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of that type, provided that current policies or procedures represent a substantial enhancement of the rights afforded a party in such proceedings, and there is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration; or

(2) At the time of issuance, the discharge was inconsistent with standards of discipline in the Coast Guard; or

(3) The applicant's military record and other evidence presented to the DRB, viewed in conjunction with the factors listed in § 51.8 and the regulations under which the applicant was discharged, do not fairly justify the type of discharge received.

(b) If the applicant was discharged with a characterized discharge before June 15, 1983, a change from the characterized discharge to an uncharacterized discharge will not be considered under the provisions of (a)(1) of this section unless specifically requested by the applicant. A determination that a discharge is inequitable according to the provisions of (a)(2) or (a)(3) of this section shall entitle the applicant to a discharge of a type to which the applicant was entitled at the time the original discharge was issued.

§ 51.8 Relevant considerations.

In determining the equity and propriety of a former member's discharge, the DRB shall consider all relevant evidence presented by the applicant. The DRB review will include, but is not limited to, consideration of the following factors:

(a) The quality of the applicant's service. In determining the quality of the applicant's service, the DRB may consider the applicant's dates and periods of service; rate or rank achieved; marks and evaluations received; awards, decorations and letters of commendation; acts of merit; combat service and wounds received; promotions and demotions; prior military service and type of discharge; records of unauthorized absence; records of non-judicial punishment; convictions by court-martial; records of conviction by civil authorities while a member of the Coast Guard; and any other relevant information respecting the applicant which is brought to the board's attention.

(b) The applicant's capability to serve. In determining the applicant's capability to serve, the DRB considers such factors as the applicant's age and education; qualification for reenlistment; capability to adjust to military service; and family or personal problems.

(c) Any evidence of arbitrary, capricious or discriminatory actions by individuals in authority over the applicant.

(d) Any other information respecting the applicant considered by the DRB to be relevant and material to the review of the applicant's discharge.

§ 51.9 Discharge review procedures.

(a) *Preliminary.* Prior to a review, applicants or their representatives may obtain copies of military records by submitting a Standard Form 180, Request Pertaining to Military Records, to the National Personnel Records Center (NPRC), 9799 Page Boulevard, St. Louis, MO. 72132. The request to the NPRC should be submitted prior to submitting the application for review, so that relevant information from the record can be included with the application.

(b) *Initiation of Review.* Review may be initiated by an applicant or by the DRB. The applicant may apply for DRB review of discharge by submitting DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, along with any other statements, affidavits or documentation desired by the applicant. The application must be received by the DRB within fifteen (15) years of the date of the discharge. The application form can be obtained, along with explanatory matter, from Commandant, (G–PE/44) U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593, any regional VA office, or by writing to the Armed Forces Review/Correction Board Reading Room, Pentagon Concourse, Washington, DC 20310.

(c) *Notice.* (1) The DRB will provide notification advising the former member of—

(i) Receipt of the applicant's request;

(ii) The right to appear before the board in person or by counsel; and

(iii) The date of review.

If the former member is deceased, written notice of DRB review will be sent to the surviving spouse, next of kin or legal representative of the former member. If the review is initiated by the

DRB, notification will be sent to the last known address of the former member.

(2) Prior to the initiation of the decision process, the DRB will notify the former member of the date by which requests to examine the documents to be considered by the board must be received. This notice will also state the date by which a request for a hearing must be made and the deadline for filing responses to the board.

(3) An applicant who requests a hearing will be notified of the time and place of the hearing. All expenses incurred by the applicant in DRB proceedings and hearings are the sole responsibility of the applicant and are not obligations of the U.S. Coast Guard or the Department of Transportation. If the applicant fails to appear, except as provided in § 51.9(f), the DRB will review the discharge and reach a decision based upon the evidence of record.

(d) *Withdrawal of Application.* An applicant may withdraw an application without prejudice at any time before the scheduled review. An application which is withdrawn will not stay the running of the 15 year statutory limitation imposed on the authority of the DRB to review the discharge.

(e) The DRB will consider the records and other data submitted by the applicant. The DRB may consider other probative evidence provided that all materials relied on by the DRB, except classified documents, are made available to the applicant and applicant's representative prior to the hearing date (or review date if no hearing is requested). The DRB shall not consider a classified document in the review of a discharge unless a summary of, or extract from, the document (deleting all reference to sources of information and other matters, the disclosure of which would, in the opinion of the classifying authority, be detrimental to the security interests of the United States) is made available to the applicant.

(f) *Postponement of Review or Hearing.* At any time before the date of scheduled review or hearing, an applicant may be granted a continuance, provided the applicant or the applicant's counsel makes a written request for additional time to the DRB which shows good cause to justify the postponement.

(g) *Hearing Procedures.* The following procedures apply to DRB hearings:

(1) DRB hearings are not public. Presence at hearings is limited to persons authorized by the Commandant or expressly requested by the applicant, subject to reasonable limitations based upon available space.

(2) The Federal Rules of Evidence are not applicable to DRB proceedings. The presiding officer rules on matters of procedure and ensures that reasonable bounds of relevancy and materiality are adhered to in the taking of evidence.

(3) An applicant is permitted to make a sworn or unsworn statement. Witness testimony will only be taken under oath or affirmation. An applicant or witness who makes a statement may be questioned by the DRB.

(4) An applicant may make oral or written argument personally or through his or her representative.

(h) *Reconsideration.* The decision of the DRB may not be reconsidered unless—

(1) The only previous consideration of the case was on the motion of the DRB;

(2) Changes in discharge policy occur; or

(3) New, substantial, relevant evidence, not available to the applicant at the time of the original review, is submitted to the DRB.

§ 51.10 Decisions.

(a) The DRB will make written findings and conclusions with respect to all disputed facts and issues. The decision of the DRB is governed by the vote of a majority of the board.

(b) A decision document is prepared for each review conducted by the DRB. This document contains—

(1) The date, character of, and reason for the discharge including the specific authority under which the discharge was issued;

(2) The specific change(s) requested by the applicant;

(3) A list of the issues raised by the applicant;

(4) The circumstances and character of the applicant's service, as extracted from the service record, health record and other evidence presented to the DRB;

(5) References to documentary evidence, testimony or other material relied on by the DRB in support of its decision;

(6) A statement of the DRB's findings with respect to each issue raised by the applicant;

(7) A summary of the rationale and a statement of the DRB's conclusions as to whether any change, correction or modification should be made in the type or character of the discharge or the reason and authority for the discharge; and

(8) A statement of the particular changes, correction, or modification made by the DRB.

§ 51.11 Records.

(a) The record of the discharge review will include—

(1) The application for review;

(2) A summarized record of the testimony and a summary of evidence considered by the DRB other than information contained in the service records;

(3) Briefs or written arguments submitted by or on behalf of the applicant;

(4) The decision of the DRB;

(5) Advisory opinions relief upon for the final action; and

(6) The final action on the DRB decision by the Commandant or Secretary.

(b) The record of the discharge review is incorporated into the service record of the applicant.

(c) A copy of the decision of the DRB and the final action thereon is made available for public inspection and copying promptly after a notice of the final decision is sent to the applicant. However, to the extent required for the protection of privacy rights, identifying details of the applicant and other persons are deleted from the public record.

(1) DRB documents made available for public inspection and copying are located in the Armed Forces Discharge Review/Correction Board Reading Room. The documents are indexed so as to enable the public to determine why relief was granted or denied. The index includes the case number, the date, character of, reason for, and authority for the discharge and is maintained at Coast Guard Headquarters and the Armed Forces Reading Room. The Armed Forces Discharge Review/Correction Board Reading Room publishes indexes quarterly for all boards.

(2) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) should be addressed to: Armed Forces Discharge Review/Correction Board Reading Room, The Pentagon Concourse, Washington, DC 20310.

Issued in Washington, DC on October 4, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85-24289 Filed 10-10-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest Timber; Downpayment and Bid Monitoring

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements those provisions of the Federal Timber Contract Payment Modification Act requiring: (1) Purchasers to make a cash downpayment for the sale of National Forest timber and (2) the Secretary of Agriculture to monitor bidding patterns on timber sale contracts and to take action to discourage speculative bidding. This rule requires a midpoint payment on sales with contract periods exceeding 1 year. A proposed rule implementing periodic payments in timber sale contracts, as required by the Act, will be published in the near future.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Questions about this final rule may be addressed to: David M. Spores, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 447-4051.

SUPPLEMENTARY INFORMATION:

Background

Section 2(d) of the Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat. 2213; 16 U.S.C. 618) requires that "[e]ffective January 1, 1985, in any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash downpayment at the time the contract is executed and periodic payments to be made over the remaining period of the contract." (16 U.S.C. 618(d)).

Section 2(c) requires the Secretary of Agriculture to "monitor bidding patterns on timber sale contracts and take action to discourage bidding at such a rate as would indicate that the bidder, if awarded the contract, would be unable to perform the obligations as required, or that the bid is otherwise for the purpose of speculation." (16 U.S.C. 618(c)).

Current Forest Service policy requires a downpayment equivalent to 10 percent of the bid value of advertised sales. On scaled sales, once 25 percent of the bid value is cut and scaled, a purchaser may apply the downpayment toward payments due for timber being cut and removed under the contract. On tree measurement sales, the downpayment may be used to initiate cutting, but the purchaser must deposit an equivalent amount after cutting begins until 25 percent of the advertised volume is shown on the timber sale statement of account to have been cut, removed, and paid for.

Sales with longer than 3 years between bid date and termination date currently require a midpoint payment equal to 25 percent of the contract value, including required deposits, or 50 percent of the amout of bid premium, whichever is greater. This is the only periodic payment currently required. Sales of less than 3 years do not now require a midpoint payment. All Forest Service timber sale contracts require that before timber is cut purchasers make payments, or provide payment guarantees, to cover the value of the estimated volume of timber to be cut.

The Forest Service timber sale contract establishes purchaser credits as the method for purchasers to recover costs incurred in constructing roads specified by the contract. The contract also provides that effective purchaser credit shall be considered equivalent to cash for advance deposits under the contract. In 1975, Congress further authorized the transfer of unused effective purchaser credit from one timber sale to another timber sale held by the same purchaser on the same national forest (16 U.S.C. 535). The legislative intent was to permit unused credit earned from road construction to be applied toward charges for timber on another sale on the same Forest. Currently, effective purchaser credit earned on the same national forest may be used for required downpayments for timber sales and for midpoint payments.

The Forest Service currently monitors bidding patterns that indicate competitive and noncompetitive bid situations. Reports are generated through a central computer system and sent to the Regional Foresters. These reports show bid patterns by individual Forests. On April 15, 1982, the Forest Service implemented revised National Forest timber sales procedures (47 FR 16178-16182). The purpose of the new procedures was to encourage a regular flow of products manufactured from National Forest timber, to encourage purchasers to harvest timber early in the National Forest timber contract period, and to help ensure financial responsibility of bidders.

Analysis of Public Comment

The Department of Agriculture published a proposed rule to implement a new cash downpayment and periodic payment requirement in the Federal Register on January 17, 1985, at 50 FR 2591. Public comment was requested by February 19, 1985.

The Forest Service received comments on the proposed rule from 102 individuals and entities. Comments were received from timber sale purchasers (72%), trade associations (12%), private citizens (8%), and Forest Service employees (8%). About half of the respondents were from the Northwest.

General Comments

About one-third of the responses opposed the proposed changes in both the down payment and periodic payment. These reviewers felt that the current requirements already met the intent of the new law. Another third felt that more time was needed to study and evaluate the changes and the impact of the current 10 percent downpayment and midterm payment. About 30 percent of the responses supported the proposal with some changes.

Comments by Section of the Proposed Rule

1. *Downpayment.*

a. The proposed rule would have changed the timing of the downpayment from 30 days after notification of the high bidder to the time when the contract is executed and returned by the purchaser. Several reviewers expressed concern about possible confusion on when the downpayment would be due. The time allowed the purchaser to execute and return a timber sale contract is normally 30 days following award date, unless a purchaser is granted additional time to secure a performance bond. For sales where a purchaser elects the Forest Service to build the specified roads, the final award date may be delayed 120 days or more. Some felt that this will encourage small business purchasers to elect to have the Forest Service build the timber sale roads and, thus, provide an unwarranted advantage over other purchasers who would have to pay the downpayment within 30 days. One suggestion was to require the downpayment within 45 days of the notification of apparent high bid where the purchaser opts to have the Forest Service build the road. The Act states, however, that the "Secretary of Agriculture shall require a cash downpayment at the time the contract is executed." Therefore, the final rule retains the requirement that the purchaser make the downpayment at the time the contract is executed. As noted, this is generally within 30 days of notification of the acceptable high bid.

b. Under the proposed rule, the downpayment could not be applied toward payment for timber or toward the midpoint payment until 25 percent of the advertised volume had been scaled in log-scale sales or shown as cut, removed, and paid for on the timber sale statement of account on tree measurement sales. Some respondents want the downpayment applied when timber removal starts, rather than after 25 percent removal. However, if the downpayment were available to cover stumpage payments when cutting begins, the purpose for the downpayment is defeated, since the transaction would then be a pay-as-you-cut proposition. Several reviewers asked for equity in the timing of release between scaled and tree-measured sales. In our view, the timing of the release of the downpayment is equitable under the proposed systems; therefore, this provision is not changed in the final rule.

c. Under the proposed rule, the amount of the downpayment would increase as the bid value increases. When the average bid premium (the amount a purchaser bids in excess of the advertised value) exceeds 50 percent of the advertised bid value and $25 per thousand board feet (or equivalent), the downpayment would increase from the current requirement of 10 percent of the total bid value to 15 percent. If the average bid premium exceeds 100 percent of the advertised bid value and $50 per thousand board feet (or equivalent), the downpayment would increase to 20 percent of the total bid value. Many reviewers stated that the current requirement of 10 percent downpayment, in conjunction with shorter contract periods and periodic payment requirements, was adequate to provide incentives for early operation of timber sales and a deterrent for bidding sales with the intent of holding the timber for extended periods of time, anticipating market price increases.

Many respondents also felt that the proposed downpayment requirement will cause cash flow problems, will result in lower bid prices and revenue loss to the public and should not be applied to all Regions of the country. Many felt that bidders on deficit sales will bid up the price to eliminate ineffective purchaser road credits, and that this bid premium should not be penalized with a higher downpayment requirement. A few felt that bid premiums may not be solely speculation and should not be penalized. A few reviewers recommended higher percentages for the downpayments, while many felt that other parts of the country should not be penalized for West Coast problems.

Suggestions received from reviewers included applying average advertised values to species bid; making allowance for tranferring effective purchaser credit to deficit sales for downpayments; requiring a 1 percent increase in downpayment for every 5 percent increase in bid; and requiring a downpayment based on 10 percent of appraised value and 30 percent of bid premiums. Some felt that the rule, as proposed, would encourage bid increases to the threshold of the next highest percentage category, thus encouraging large bid premiums.

The downpayment provision has been revised to address these concerns. The final rule includes the following major provisions:

(1) The current requirement of a downpayment equal to 10 percent of the total bid value will be retained.

(2) On Forests where bid ratios have exceeded 1.6 and $25 per thousand board feet (or equivalent) on a significant number of timber sales, as determined by the Regional Forester, the downpayment will be equal to 10 percent of the advertised value, plus 20 percent of the bid premium.

(3) Only the portion of the bid premium above the amount of the ineffective purchaser credit will be used for determining bid ratios and bid premiums for determining the downpayment requirement.

2. *Midpoint Payments.*

Current Forest Service policy requires a midpoint payment on sales of more than 3 years duration between bid date and termination date. Purchasers must have paid an amount equal to 25 percent of the contract value, including required deposits, or 50 percent of the amount of the bid premium, whichever is greater, by the end of the normal operating season that follows the midpoint of the timber sale contract. The midpoint of the timber sale contract is determined on the basis of the timber sale contract period remaining after the specified road completion date. All timber sale contracts require payments or payment guarantees in advance of cutting timber.

In consideration of comments received, the Forest Service will retain the existing requirement for midpoint payments, but the Agency will extend this requirement to all timber sale contracts of one year or more duration between bid date and termination date. Sales of less than a year's duration are generally paid for when issued or have sufficient payments by midpoint. Monitoring these sales for midpoint payments would not be cost-effective.

The midpoint payment was originally implemented to deter speculative bidding and is expanded to implement section 2(c) of the Act until periodic payments under section 2(d) become effective. There are many issues related to annual payments that should be considered before implementing periodic payments. The Forest Service will review the use of annual periodic payments, along with a method of pooling these payments for two or more timber sales a purchaser may hold, and a provision for market related contract term adjustments. A proposed rule covering these items will be published in the Federal Register for public review and comment.

3. *Monitoring to Determine Speculative Bidding.*

The Chief of the Forest Service will require Regional Foresters to monitor bidding patterns on timber sale contracts to determine if speculative bidding is occurring or if the bidding is at such rates that purchasers would be unable to perform their obligations under the contract. The Regional Foresters will report their recommendations to the Chief if any changes are needed in the timber sale procedures to discourage speculative bidding. This provision is necessary to fully comply with section 2(c) of the Act, requiring the Secretary of Agriculture to monitor bidding patterns on timber sales.

4. *Other Comments on Speculative Bidding.*

There were several comments about implementing bidder responsibility requirements to discourage speculative bidding. One person suggested that 50 percent of the offered timber sales be sold only to those companies which can process within their own facilities 50 percent of the advertised volume within the contract period.

Some respondents felt that the proposed changes will fail to curtail speculative bidding but will accelerate harvesting and maximize cash flow to the Treasury. Suggestions from reviewers included allowing purchasers to use Treasury Bills to guarantee payment; increasing deposits if prompt harvest does not occur; extending time to complete purchaser credit roads; and applying the downpayment and periodic payment changes to resales of defaulted sales.

Bidders responsibility and other suggestions will be considered further in development of additional rules. The Forest Service will continue to offer resales with conditions and requirements as close to the original offering as possible to help mitigate damages and to facilitate the determination of the actual damages from the default.

Regulatory Impact

The Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this regulation is not a major rule. It implements those requirements of the Federal Timber Contract Payment Modification Act requiring the Secretary of Agriculture to provide for downpayments for Forest Service timber sale contracts, to monitor timber sale bidding patterns, and to take action to discourage speculative bidding.

This rule exclusive of the statutory requirements, will not have an annual effect on the economy of $100 million or more and will not result in a major increase in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have significant adverse effect on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The final rule should strengthen the United States forest products industry by deterring speculation and, thereby, should help preserve the structure of industry and the employment generated by it.

There are no alternatives to the issuance of some form of regulation since this is required by the Federal Timber Contract Payment Modification Act.

Small Entity Impact

After analysis of the alternatives, the Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this rule will not have a significant economic impact on a substantial number of small entities. The requirement for a minimum downpayment of 10 percent of the bid value follows current Forest Service policy (48 FR 48661), and satisfies section 2(d) of the Federal Timber Contract Payment Modification Act. The provisions for a larger downpayment will affect only those sales where past bidding has resulted in a significant increase over advertised rates on the National Forests. The mid-point payment will not affect those small entities who harvest their national forest sales in a timely manner.

Other Impacts

Based on environmental analysis, this final rule, individually or cumulatively, will not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. Futhermore, this rule will not result in additional procedures or paperwork not already required by law.

List of Subjects in 36 CFR Part 223

Exports, Forests and forest products, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

For the reasons set forth above, Part 223 of Chapter II of Title 36 of the Code of Federal Regulations is amended as follows:

PART 223—[AMENDED]

1. Revise the authority for Part 223 to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, unless otherwise noted.

2. Add new §§ 223.49, 223.50 and 223.51 before the centerheading "appraisal and pricing" to read as follows:

§ 223.49 Downpayment.

(a) The terms listed in this paragraph have the following meaning:

(1) *Total bid value* is the sum of the products obtained by multiplying the rate the purchaser bid for each species by the estimated volume for that species.

(2) *Bid ratio* is the result of dividing the total bid value, minus the amount of the ineffective purchaser credit, by the total advertised value of the sale. *Average bid ratio* is the weighted average of the bid ratios of timber sales on a National Forest.

(3) *Ineffective purchaser credit* is that portion of the credit earned pursuant to a specific Forest Service timber sale contract for construction of specified roads, or as otherwise provided in such contract, that exceeds the current contract value, minus base rate value as defined in that contract.

(4) *Bid premium* is the amount a purchaser bids in excess of the advertised value.

(b) Timber sale contracts shall include provisions that require purchasers to make a downpayment in cash or by application of earned effective purchaser credit at the time a timber sale contract is executed.

(c) The minimum downpayment shall be the equivalent of 10 percent of the total bid value of each sale, except in those areas where the Chief of the Forest Service determines that it is necessary to increase the amount of the downpayment in order to deter speculation.

(1) For sales on National Forests where the average bid ratio has exceeded 1.6 in the previous fiscal year or where the bid ratio on a significant number of timber sales exceeds a 1.6 ratio and the average bid premium on those sales is at least $25 per thousand board feet or equivalent, the amount of the downpayment will be equal to 10 percent of the advertised value, plus 20 percent of the total bid premium, unless increased by the Chief of the Forest Service where the Chief determines it is necessary to deter speculation. In calculating bid ratios and bid premiums for the downpayment requirement the Forest Service will not use the portion of the bid premium that offsets ineffective purchaser credit.

(2) To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustments.

(d) A purchaser cannot apply the amount deposited as a downpayment to cover other payments due on that sale until 25 percent of the advertised timber volume has been scaled and paid for on scaled sales, or until 25 percent of the advertised timber volume is shown on the timber sale statement of account to have been cut, removed, and paid for on tree measurement sales.

§ 223.50 Midpoint payment.

(a) Timber sale contracts shall include provisions requiring a midpoint payment for all timber sales with 1 year or more between the bid date and termination date. Midpoints shall be determined on the basis of the timber sale contract period remaining after the specified road completion date.

(b) The amount of payments or deposits at the midpoint of the contract term must equal at least 25 percent of the total contract value, including required deposits, at bid date, or 50 percent of the amount of the bid premium, whichever is greater.

§ 223.51 Bid monitoring.

Each Regional Forester shall monitor bidding patterns on timber sales to determine if speculative bidding is occurring or if Purchasers are bidding in such a way that they would be unable to perform their obligations under the timber sale contract. A Regional Forester shall propose to the Chief changes in servicewide timber sale procedures, as they appear necessary, to discourage speculative bidding.

Dated: September 18, 1985.

Peter C. Myers,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 85-24389 Filed 10-10-85; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC-007, -011; A-4-FRL-2910-3]

Approval and Promulgation of Implementation Plans; North Carolina; Miscellaneous Regulatory Changes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today, EPA is approving a number of minor regulation changes which North Carolina submitted as State Implementation Plan (SIP) revisions on January 24, 1983, and April 17, 1984. The effect of these changes is to clarify and update the regulations.

EFFECTIVE DATE: This action is effective November 12, 1985.

ADDRESSES: Copies of the materials submitted by North Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20005

Division of Environmental Management, North Carolina Department of Natural Resources & Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

FOR FURTHER INFORMATION CONTACT: Janet Hayward of EPA Region IV's Air Management Branch, at the above address and telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: Following notice and public hearing in conformity with Federal requirements, the North Carolina Environmental Management Commission has adopted numerous changes in the State's air pollution control regulations. These have been submitted to EPA for approval as SIP revisions.

Submittal of January 24, 1983

EPA proposed action on North Carolina's January 24, 1983, submittal in the December 21, 1983, issue of the **Federal Register** (48 FR 56412). In that notice, EPA proposed to approve revisions in the following regulations: 15 NCAC 2D.0501, 2D.0503, 2D.0504, 2D.0505, 2D.0518, 2D.0530, 2D.0531, 2D.0532, 2D.0606, 2D.0902, 2H.0603, and 2D.0536. EPA is now taking final action on all of these regulation changes, with the exception of 2D.0505 (Control of Particulates from Incinerators), 2D.0518 (Miscellaneous Volatile Organic Compound Emissions), and 2D.0536 (Particulate Emissions from Electric Utility Boilers). Significant comments were received on these three rules and the issues will be addressed in a separate notice. No comments were received on the rule changes being approved today.

The revisions are now described in the order that the affected rules appear in the North Carolina Administrative Code.

15 NCAC 2D.0501, Compliance with Emission Control Standards. Language added to paragraph (g), The Bubble Concept, allows the State to relax requirements for bubbles to the extent allowed by EPA's policy statement of April 7, 1982 (47 FR 15076). EPA notes that any change in SIP requirements resulting from an emission trade must be approved by EPA except for changes under the generic rule for volatile organic compounds previously approved for North Carolina.

15 NCAC 2D.0503, Control of Particulates from Fuel Burning Sources. Language is added to clarify the treatment of residential and institutional facilities where fuel is burned for comfort heat and combustion units are dispersed among several buildings. It is also made clear that waste by-products burned as fuel are subject to this regulation; if burned as refuse, particulate emissions are limited by regulation NCAC 15 2D.0505 dealing with refuse burning equipment.

15 NCAC 2D.0503, Control of Particulates from Fuel Burning Sources, and *15 NCAC 2D.0504, Particulates from Wood Burning Indirect Heat Exchangers.* Both these regulations are amended to clarify the determination of allowable particulate emissions when a new boiler is added to the plant site. Total heat input from all units at the site will be used to determine the allowable emissions from the new unit, but the allowable for the existing units will remain the same. Also, language is added to clarify the determination of allowable emissions for boilers which burn both wood and fossil fuels. It should be noted that the control requirements of these regulations would be superseded by applicable new source performance standards or new source review requirements.

15 NCAC 2D.0530, Prevention of Significant Deterioration. The short-term nitrogen dioxide significance level in paragraph (k) is removed. This makes the regulation consistent with Federal requirements.

15 NCAC 2D.0531, Sources in Nonattainment Areas, and *15 NCAC 2D.0532, Sources Contributing to an Ambient Violation.* The applicability date in these regulations is changed to take into account the change in the attainment status designation of the Spruce Pine area.

15 NCAC 2D.0606, [Monitoring and Reporting Required of] Other Coal or Residual Oil Burners. North Carolina requires certain sources with capacity factors of over 30% to monitor sulfur dioxide emissions. Under this revision, the basis for determining if monitoring is required is no longer the capacity factor reported to the Federal Power Commission (FPC) in 1974, but the average of the capacity factors reported to the FPC in the three most recent calendar years.

15 NCAC 2D.0902, Applicability. The State's RACT regulations for VOC are amended by making methyl chloroform and methylene chloride exempt compounds throughout. They were previously exempt only for the regulations based on EPA's second set of Control Techniques Guidelines.

15 NCAC 2H.0603, Applications. Paragraph (h) of this permit regulation, allowing certain exemptions from the requirements of the RACT regulations for VOC without public hearing, is repealed since it does not accord with EPA policy on the enforceability of state permits. In EPA's view, such permits must be handled as SIP revisions to be federally enforceable. It was noted in the final rule published on July 26, 1982 (47 FR 32118), that the State was planning to repeal ¶ (h) to make the regulation consistent with EPA policy.

Submittal of April 17, 1984

On October 17, 1984, (49 FR 40607) EPA proposed to approve all the revisions submitted on April 17, 1984, except the revision in the malfunction regulation (15 NCAC 2D.0535: Malfunction, Startup and Shutdown). The latter regulation was discussed in another notice, published on August 28, 1985, at 50 FR 34864. The revision to 2H.0603 will also be addressed in a separate notice as the changes are tied