(i) A decision of a self-regulatory organization which cannot be further appealed within the self-regulatory organization, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or,

(ii) Any decision by an administrative law judge, a court of competent jurisdiction or the Commission which has not been stayed or reversed.

(6) *Settlement agreement* means any agreement consenting to the imposition of sanctions by a self-regulatory organization, a court of competent jurisdiction or the Commission.

(b) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission regulation 1.41 (§ 1.41) or, in the case of a registered futures association, pursuant to section 17(j) of the Act, that render a person ineligible to serve on its disciplinary committees, arbitration panels or governing board who:

(1) Was found within the prior three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense;

(2) Entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(3) Currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(i) A finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission that such person committed a disciplinary offense; or,

(ii) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

(4) Currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(5) Currently is subject to or has had imposed on him within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D) (ii) through (iv) of the Act;

(6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(c) No person may serve on a disciplinary committee, arbitration panel or governing board of a self-regulatory organization if such person is subject to any of the conditions listed in paragraphs (b)(1) through (b)(6) of this section.

(d) Any rule submitted pursuant to paragraph (b) of this section must include a listing of all those rules of the self-regulatory organization which if violated would not constitute a disciplinary offense under paragraph (a)(4)(i) of this section and, upon its effective date, such rule and accompanying list shall be posted in a public place and otherwise made available to the public.

(e) Each self-regulatory organization shall submit to the Commission within thirty days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels or governing board pursuant to the requirements of this regulation during the prior year.

(f) Whenever a self-regulatory organization finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that self-regulatory organization's disciplinary committees, arbitration panels or governing board, the self-regulatory organization shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either section 17(h)(1) of the Act or Commission regulation 9.11 (§ 9.11).

Issued in Washington, DC on February 27, 1990, by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 90-5012 Filed 3-5-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

RIN 1545-AM56

[T.D. 8287]

Treatment of Certain Losses Attributable to Periods After October 31 of a Taxable Year of a Regulated Investment Company; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document provides a correction to temporary regulations relating to the treatment by a regulated investment company of a net capital loss, a net long-term capital loss, or a net foreign currency loss attributable to periods after October 31 of a taxable year.

FOR FURTHER INFORMATION CONTACT: Lauren G. Shaw of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:FI&P:2) or telephone 202-566-3828 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (T.D. 8287) that are the subject of this correction were amended by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988.

Need for Correction

As published, the temporary regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations which were the subject of FR Doc. 90-2221, is corrected as follows:

Paragraph 1. On Page 3218, column 1, line 13 of S 1.852-11T (h) Example 12(i), the language "currency gain for the post-October period of" is corrected to read "currency loss for the post-October period of".

Dale D. Goode,

Federal Register Liaison Officer.

[FR Doc. 90-4958 Filed 3-5-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 251

RIN 0596-AB10

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the administrative appeal procedures at 36 CFR part 217 to require publication of legal notice of decisions subject to appeal and to clarify various appeal procedures which have given rise to questions since adoption of the current rules. Additionally, the rule makes several technical amendments to the Forest Service administrative appeal procedures at 36 CFR part 251, subpart C, to remove ambiguities and inconsistencies in the appeal procedures which have been brought to the agency's attention since the final rule became effective on February 22, 1989 (54 FR 3342, January 23, 1989). The intended effect is to assure that interested or affected parties receive constructive notice of a decision, to provide clear evidence of timely notice, and to improve efficiency and achieve consistency in administering the appeals process. In order to achieve uniformity in processing appeals and to avoid further complications resulting from the identified problems that this rule addresses, it is necessary to make this rule effective quickly. However, the Agency invites public comment on the interim rule, which will be considered in promulgating a final rule.

DATES: This amendment is effective April 5, 1990.

Comments on this rule must be in writing and postmarked by April 20, 1990.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1570), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this interim rule in the Office of the Staff Assistant for Operations, National Forest System, Room 4211, South Agriculture Building, 12th and Independence Avenue SW., Washington, DC, between the hours of 8 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead (382-9346) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kathryn Hauser, WO Appeals and Litigation Coordinator, National Forest System, (202) 382-9346.

SUPPLEMENTARY INFORMATION: On January 23, 1989, at 54 FR 3342, part VI, the Secretary of Agriculture gave notice of adoption of two new rules that provide a process for appeal of Forest Service decisions related to management of the National Forest System. The rules at 36 CFR part 251, subpart C, provide appeal procedures applicable to holders of or certain applicants for land use and occupancy authorizations. The rules at 36 CFR part 217 provide a revised process for appeal of National Forest System plan and project decisions. These new rules replaced the administrative appeal procedures at 36 CFR 211.18. Experience under the new rules indicates a need to revise 36 CFR part 217 with regard to requirements for giving notice of decisions and for proper filing of a notice of appeal. Certain technical amendments to 36 CFR part 251, subpart C are also needed. The nature of the amendments and their intended effect is discussed by topic or affected section of the rules.

Amendments to 36 CFR Part 217

1. *Legal Notice of Decisions.* The rule currently specifies at § 217.5 that the Deciding Officer shall promptly mail the appropriate decision document to those who have, in writing, requested it and to those who are known to have participated in the decisionmaking process. Additionally, at § 217.5(c), the Deciding Officer has the discretion to publish a legal notice of the decision in a newspaper of general circulation.

Initially, the Forest Service proposed that notice of decisions be given by publishing a legal notice in a newspaper of general circulation or in the **Federal Register**, rather than by mail (53 FR 17310). Under the proposed rule, the review period would have begun with the date of publication of the notice. Although the agency's intent was to bring clarity, uniformity, and legal certainty to how and when notice of decisions would be given, those responding to the **Federal Register** notice viewed the legal notice proposal as an attempt to maintain secrecy, to rush implementation of controversial projects, and to reduce the ability of the general public to appeal decisions. Respondents misinterpreted the proposal. While it was the agency's intent that the legal notice be in addition to mailing requirements, this was not stated in the proposal; thus, many respondents indicated that the proposal was not an effective way to notify the public of decisions and preferred direct notice by mail. Because of these reactions, the final rule retained the current requirement for mailing notices of decisions to persons known to have participated in decisionmaking and to those requesting it in writing and made legal notice discretionary.

However, inadvertent failure by Deciding Officers to identify interested or potentially affected individuals or organizations and then to notify them of a decision continues to be a problem. Moreover, delay between when a decision is signed (currently the start of the appeal period) and when a potential appellant either hears about or receives mailed notice of the decision often reduces, to the detriment of the potential appellant, the time available to file an appeal. Additionally, reliance on mail delivery makes it difficult to establish when notice is actually given. Therefore, this interim rule revises § 217.5(c) to make publication of legal notice in a newspaper of general circulation, or the **Federal Register** when the Chief is making an initial decision, a requirement rather than an option. The rule also requires that the published notice specify the date the appeal period begins, which will be the day following publication. Because most people interested in, or affected by, a Chief's decision do not reside in the Washington, DC area (where the Chief is headquartered), notice through publication in a newspaper of general circulation in the Washington area would not provide adequate public notice. Therefore, notice of all initial decisions made by the Chief that are subject to review (§ 217.3(a)(1)) shall be published in the **Federal Register**. This amendment eliminates the need for the current requirement in § 217.5 that a notice be published in the **Federal Register** for decisions considered to have effects of national concern. Accordingly, the interim rule removes this provision.

It needs to be emphasized that the mandatory legal notice requirement is in addition to the requirement that already exists that the Deciding Officer promptly mail the appropriate decision document to those who have, in writing, requested it and to those who are known to have participated in the decisionmaking process. It also should be noted that it is not the decision itself that Deciding Officers are required to publish. The cost of publishing the decisions would be prohibitive. Rather, what must be published is a legal notice which identifies the decision by title or subject matter, the date of the decision, the name and title of the official making the decision, and how to obtain copies of the decision. As previously noted, the legal notice must also specify that the date the appeal period begins is the day following publication of the notice.

In addition, § 217.5, is amended to require Deciding Officers to publish, at least twice yearly in the **Federal Register**—at the beginning of the Fiscal Year (October) and at mid-year (April)—a notice identifying which newspaper will be used for their legal notices of appealable decisions. Initially, this notice must appear within 30 days of the date of publication of this interim rule. The rule allows Deciding Officers to place notices in more than one newspaper. However, because of varying publication dates of small newspapers in rural areas where National Forest lands are located, the rule provides that the paper identified in the semiannual **Federal Register** notice shall be the source used to establish the appeal filing period and evidence of legal notice.

These revisions to the notice requirements respond to both public and agency concerns for ensuring timely notice of decisions. These revisions benefit those who wish to appeal decisions by providing an additional and reliable source of notice and by maximizing the time available for filing a notice of appeal. They also establish a uniform, Service-wide mechanism that provides convincing evidence that the agency has given timely and constructive notice of decisions to the public as required by the National Environmental Policy Act, the National Forest Management Act, and their implementing regulations, policies, and procedures. These revisions reflect the agency's continuing commitment to improve its handling of administrative appeals and to be responsive to public comments regarding the appeals process. To this end, the agency remains open to suggestions on improving the appeals process, including the manner of giving notice of decisions subject to appeal.

These changes in notice requirements require a corollary amendment to § 217.2 to add a definition of "legal notice." The change in the date that the appeal period begins requires conforming amendments to § 217.8(a) to replace the reference to filing appeals within 45 or 90 days of the "date of decision" to require filing of appeals within 45 or 90 days of the "date specified in the published legal notice."

2. *Dismissal Without a Decision.* The current rule (§ 217.8(a)) requires an appellant to file a timely Notice of Appeal with both the Deciding Officer and Reviewing Officer, a feature new to the appeal process. This filing requirement was added to expedite appeals by enabling Deciding Officers, upon receipt, to begin assembling the decision documentation required by 36 CFR 217.15(a). The rule limits the Deciding Officer to 30 days following receipt of the appeal to accomplish this task.

Since the effective date of the final rule, a question has arisen as to how the Forest Service should respond when an appellant fails to file the Notice of Appeal with both officers. If an appellant files a timely Notice of Appeal with the Deciding Officer, but fails to file a timely Notice of Appeal with the Reviewing Officer, the Reviewing Officer does not know about the appeal and so cannot initiate requisite procedures to process it in a timely fashion. Conversely, if an appellant files a timely Notice of Appeal with the Reviewing Officer, but fails to also file with the Deciding Officer, the Deciding Officer does not know to begin preparing the decision documentation, and, by being deprived of the time necessary to compile the documentation, may be unable to comply with the timeframes mandated in the rule. In either case, valuable time is lost and confusion is created when both officers do not receive a notice of appeal. As a result, the agency cannot administer the appeals process in a timely, efficient, and orderly manner.

Currently, untimely appeals are dismissable, but failure to file with both the Deciding Officer and Reviewing Officer is not a basis for dismissal. Because of the impact of simultaneous filing on timely processing of appeals within the timeframes specified in the regulation, the requirement to file Notices of Appeal with both the Reviewing Officer and the Deciding Officer is itself as important as timely filing, and failure to meet this requirement is appropriate grounds for dismissal. For these reasons, § 217.11(a) is revised to specifically state that failure to file an appeal with both Officers shall be grounds for dismissal without a decision on the merits. A corresponding cross-reference is added to § 217.8 Appeal Process Sequence to alert potential appellants early in the rule to the consequence of failing to simultaneously provide copies to the Reviewing Officer and the Deciding Officer.

3. *Evidence of Timely Filing.* Under the new notice requirements, there will be an interval of time between signing a decision and publication of a legal notice of that decision. Therefore, it is possible that a potential appellant could learn of a decision prior to publication of the legal notice and could file an appeal before the specified filing period. Because premature filing of appeals could cloud the determination of various timeframes under the rule, § 217.8(c) is amended to state that appeals received prior to the start of the appeal period shall be accepted, but time frames are tied to the date specified in the legal notice.

4. *Notice of Appeal.* Section 217.9 specifies the required content of a Notice of Appeal, an improvement over 36 CFR 211.18 which had ambiguous requirements. In adopting this provision, the Department did not anticipate receiving lengthy, cumbersome, or unclear Notices of Appeal. However, just the opposite has happened.

Since March 1989, the Forest Service has recived a number of appeal documents well in excess of 200 pages. The agency requires two copies of a notice of appeal—one each for the reviewing and deciding levels—in order to conduct a review and establish the appeal record. Both the Deciding and Reviewing Officers have a need to make additional copies of the Notice of Appeal available to Staff specialists assisting them in assembling and reviewing the record. Because the burden of reproducing additional copies of lengthy notices of appeal has been assumed by the agency, delays in processing appeals have occurred as well as an increase in duplicating costs. Accordingly, § 217.9(b) is amended to require that appellants submit two copies of a Notice of Appeal to each Officer when the Notice is more than 10 pages in length. This duplicating requirement is an appropriate responsibility for an appellant who files lengthy appeals to assume. It will not inconvenience individual appellants who may not have easy access to copier services. Agency experience shows that almost all appeals filed by individuals are less than 10 pages, while those filed by organized groups and entities—who do have ready access to copier services—often exceed 10 pages. By reducing the administrative time required to handle and process a notice of appeal, this requirement for additional copies will facilitate timely response by Deciding and Reviewing Officers to appeals, which benefits the appellant.

The agency also is encountering increasing failure by persons interested in Forest Service decisions to identify the nature of documents submitted regarding appealable decisions. To illustrate, on a recent decision two letters were received in the Chief's Office, about a month apart. The Chief acknowledged the first letter as a Notice of Appeal. However, by return mail the correspondent informed the Chief that they did not wish their letter to be considered an appeal, but rather as informal comments on the Final Environmental Impact Statement (FEIS). When a second letter was received, containing comments similar to those of the first correspondent, the agency considered it as informal comment on the FEIS. However, after not receiving any communication from the Chief, the correspondent called and learned that, contrary to their intention, the agency had considered the letter as comments on the FEIS, not an appeal. The word "appeal" was not used in either letter. This confusion could have been avoided if the correspondents had clearly identified whether or not the letters were notices of appeal. Therefore, in an effort to eliminate uncertainty or mishandling of written comments on decisions, § 217.9(b) is amended to require that an appellant state that a submission is a Notice of Appeal pursuant to 36 CFR part 217.

5. *Implementation and Stays of Decisions.* It is the Department's position that constructive notice has not been given unless the public has had the opportunity to learn about a decision prior to its implementation. Therefore, it is necessary to ensure that decisions are not implemented until legal notice of the decision is published. Moreover, the stated purpose of the appeal process is to "* * * provide a process by which a person or organization interested in the management of the National Forest System may obtain review of an intended action by a higher level official." (36 CFR 217.1(a)) It is incumbent on the agency to provide a reasonable period of time between publication of the legal notice and implementation of the decision to reduce the possibility of an appeal being mooted through implementation of the decision before someone could file an appeal and request for stay. Therefore, a period of 7 calendar days is provided. Accordingly, § 271.10 is revised to reflect this policy. This change necessitates a corollary change in the heading of this section; therefore, it has been changed to "Implementation and Stays of Decisions."

6. *Discretionary Review.* This interim rule also removes discretionary review of certain dismissal decisions. The current rule requires the Reviewing Officer to dismiss an appeal and close the appeal record without decision on the merits when an appellant withdraws an appeal (§ 217.11(6)) or when the Deciding Officer withdraws the appealed decision (§ 217.11(7)). Further, the rule subjects both of these dismissals to discretionary review. One of the stated objectives of the new appeal rule was to streamline the process and eliminate burdensome paperwork. To provide discretionary review of dismissals of these types of decisions serves no useful purpose. Thus, paragraph (b) of § 217.11 is revised to exclude these types of dismissal decisions from discretionary review. This change is consistent with established agency policy under the previous appeal rule, 36 CFR 211.18.

Section 217.17 provides one level of appeal with a discretionary second-level review by the next higher administrative level, except that, for decisions made at the District Ranger level, a two-level appeal process is provided. Additionally, this section provides for discretionary review of stay decisions rendered by Forest Supervisors and dismissal decisions rendered by Forest Supervisors, Regional Foresters, and the Chief. Some confusion has arisen with regard to § 217.17(b), which directs that within one day following the date of a Forest Supervisor's stay decision, a dismissal decision, or an appeal decision rendered by a Reviewing Officer, the appeal decision and decision documentation will be forwarded to the next higher administrative level. This could be construed as a contradiction to § 217.7(c), which specifies that a second-level appeal decision will not receive futher review. Therefore, to eliminate potential confusion, paragraph (b) of § 217.17 is revised to clearly state which appeal decisions are subject to discretionary review.

7. *Extension of Time.* Section 217.12 currently allows Reviewing Officers, on their own initiative, or at the Deciding Officer's request to extend the time periods for review for a specified period to allow for conduct of meaningful negotiations. Currently, if time is extended for negotiations, all specified time periods are put "on hold." If negotiations do not lead to an appeal being resolved, the review process will be continued for a duration of the unexpired timelines. This had led to debate and confusion within and outside the agency about whether timelines for intervention and Deciding Officer's decision documentation transmittal are or should be affected by extensions permitted under the rule. To end the confusion, § 217.12 is amended to specify that Reviewing Officers shall not extend the time periods for review prior to the end of the time period allowed for intervention. A conforming amendment is also made to § 217.15 stating that the 30 days provided for the Deciding Officer to transmit the record to the Reviewing Officer is not extendable under any circumstance.

Amendments to 36 CFR Part 251, Subpart C

8. *Section 251.92.* Consistent with the stated intent of having the two appeal rules consistent as appropriate, § 251.92(c) is revised in the same manner as 36 CFR 217.11 to remove discretionary review of certain dismissal decisions.

9. *Section 251.95.* This section gives the Reviewing Officer the authority to ask any party to an appeal for additional information as deemed necessary to decide the appeal, except in discretionary reviews. This could be construed as a contradiction when reading paragraph (c)(2) to § 251.87(c)(2) which states, in part, that a second level appeal of a District Ranger's initial decision "* * * shall be conducted on the existing record and no additional information shall be added to the file." Therefore, to avoid confusion, paragraph (c) is being revised to clarify that the Reviewing Officer cannot ask for or accept additional information in second level appeals of District Rangers decisions.

10. *Section 251.100.* Consistent with the stated intent of having the two appeal rules consistent as appropriate, § 251.100(b) is revised in the same manner as 36 CFR 217.17 to clearly state which appeal decisions are subject to discretionary review.

Public Comment

There is a compelling and immediate need to treat appeals uniformly and to minimize the confusion that has been generated by having two new, different rules apply to appeals. Moreover, the constructive notice of decisions provided by this rulemaking will be of immediate benefit to potential appellants and intervenors by guaranteeing that notice is available to anyone interested in decisions affecting national forest plans and projects. Delaying implementation of this rule to allow for comment on a proposed rule would deprive appellants and intervenors of the benefits of the notice and intervention mechanisms of this rulemaking. Therefore, good cause exists to make this rule effective without benefit of prior public comment. However, comments are invited on the interim rule and will be considered in adoption of a final rule.

Regulatory Impact

This interim rule has been reviewed under USDA procedures and Executive

Order 12291 of Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule governs administrative proceedings and, as such would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4, 7 CFR 1b.3(a)(1)).

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and therefore imposes no paperwork burden on the public.

List of Subjects

36 CFR Part 217

Administrative practice and procedure, National forests.

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—right-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, chapter II of title 36 of the Code of Federal Regulations is amended as follows:

PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS [AMENDED]

1. The authority citation for part 217 continues to read:

Authority: 16 U.S.C. 551, 472.

2. Amend § 217.2 by adding in proper alphabetical sequence a definition of "legal notice" to read as follows:

§ 217.2 Definitions.

* * * * *

"Legal notice". A notice of a decision appealable under this part published in the **Federal Register** or in the legal notices section of a newspaper of general circulation as required by § 217.5 of this part.

* * * * *

3. In § 217.5, revise paragraphs (b) and (c), and add new paragraph (d) to read as follows:

§ 217.5 Giving notice of decision subject to appeal.

(a) * * *

(b) The Deciding Officer shall also give notice of decisions appealable under this part as follows:

(1) For all initial decisions of the Chief, notice shall be published in the **Federal Register**.

(2) For all other decisions, legal notice of the decision shall be published in a newspaper of general circulation identified pursuant to the requirements of paragraph (d) of this section. Deciding Officers may, at their discretion, also publish notice of their decisions in additional newspapers. Where a Deciding Officer elects to publish such additional notices, they shall be published after an initial legal notice has been published in the principal newspaper identified in the biannual **Federal Register** notice provided for in paragraph (d) of this section. Any such additional newspaper notices shall indicate the date that the appeal period ends, which shall be calculated based on the date of publication of the initial notice in the principal newspaper identified in the biannual **Federal Register** notice.

(c) All notices published pursuant to this section shall include a concise description of the decision made by title or subject matter, the date of the decision, the name and title of the official making the decision, and information on how to obtain a copy of the decision, and shall specify that the appeal period begins the day following the notice's publication as provided for in § 217.8(b)(1).

(d) Initially within 30 days of March 6, 1990, and thereafter at least twice annually, in April and in October, each responsible Forest Service officer shall, through **Federal Register** notice, advise the public of the principal newspaper to be utilized for publishing legal notices required by this section. The **Federal Register** notice shall also list all additional newspapers which the Deciding Officer expects to use for purposes of providing additional notice pursuant to paragraph (b) of this section.

4. In § 217.8, revise paragraph (a), the first sentence of paragraph (b)(1), and the last sentence of paragraph (c) to read as follows:

§ 217.8 Appeal process sequence.

(a) *Filing procedures.* To appeal a decision under this part, a person or organization must:

(1) File a written notice of appeal with the next higher line officer in accordance with the provisions of § 217.9 of this part and simultaneously send a copy of the notice of the appeal to the Deciding Officer. As provided in § 217.11, failure to comply with the simultaneous filing requirement of this section shall result in dismissal of the appeal without a decision on the merits.

(2) File the notice of appeal within 45 days of the date specified in the published legal notice for project decisions or non-significant amendments to land and resource management plans documented in a Decision Memo, Decision Notice, or Record of Decision, or programmatic decisions documented in a Decision Notice.

(3) File the notice of appeal within 90 days of the date specified in the published legal notice for land and resource management plan approvals, significant amendments, or revisions, and for other programmatic decisions documented in a Record of Decision.

(b) *Computation of time periods.* (1) The day after the published notices required in § 217.5(b) is the first day of the appeal period provided for in paragraphs (a)(2) and (a)(3) of this section. * * *

(c) * * * Notices of appeal that are filed before the filing period specified in the published legal notice shall be accepted, but premature filing does not affect timeframes specified in this rule.

* * * * *

5. In § 217.9, redesignate paragraphs (b)(1)–(b)(6) as paragraphs (b)(2)–(b)(7), and add new paragraphs (b)(1) and (c) to read as follows:

§ 271.9 Content of a notice of appeal.

* * * * *

(b) * * *

(1) State that the document is a Notice of Appeal filed pursuant to 36 CFR part 217;

* * * * *

(c) When a Notice of Appeal is more than 10 pages in length, appellants must file two copies of a Notice of Appeal with the Reviewing Officer and simultaneously send two copies to the Deciding Officer.

6. In § 217.10 revise the section heading, redesignate paragraphs (a)–(h)

as (b)–(i), and add a new paragraph (a) to read as follows:

§ 217.10 Implementation and stays of decisions.

(a) Implementation of any decision subject to appeal pursuant to this part shall not occur for 7 calendar days following publication of the legal notice of the decision as required in this part.

* * * * *

7. In § 217.11, add a new paragraph (a)(7) and revise paragraph (c) to read as follows:

§ 217.11 Dismissal without review.

(a) * * *

(7) The appellant fails to file the notice of appeal with the Reviewing Officer and simultaneously send a copy to the Deciding Officer as required in § 217.8(a).

(b)* * *

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 217.7(d) of this part, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Deciding Officer.

8. In paragraph (a) of § 217.12, revise the last sentence and add a new sentence to read as follows:

§ 217.12 Resolution of issues.

(a) * * * At the request of the Deciding Officer, or on their own initiative, Reviewing Officers may extend the time periods for review to allow for conduct of meaningful negotiations after the Deciding Officer has transmitted the decision documentation and after the time period for intervention has elapsed. In granting an extension, the Reviewing Officer must establish a specific time period for the conduct of negotiations.

* * * * *

9. In § 217.15, add a new sentence at the end of paragraph (a) to read as follows:

§ 217.15 Appeal record.

(a) * * * The 30-day time period is not extendable under any circumstances.

10. In § 217.17 revise paragraph (b) to read as follows:

§ 217.17 Discretionary review.

* * * * *

(b) As provided for in §§ 217.7 (d) and (e), 217.10(h), and 217.11, stay decisions rendered by a Forest Supervisor, certain dismissal decisions rendered by Forest Service line officers, and first-level appeal decisions rendered by Regional Foresters and the Chief (§ 217.16) are subject to discretionary review at the next highest administrative level. Within one day following the date of any decision subject to such discretionary review, the Reviewing Officer shall forward a copy of the decision and the decision documents (§ 217.2) upon which the appeal was predicated to the next higher officer.

* * * * *

PART 251—LAND USES

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

11. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 472, 551.

12. In § 251.92, revise paragraph (c) to read as follows:

§ 251.92 Dismissal.

* * * * *

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 251.87(d) of this part, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Deciding Officer.

13. In § 251.95, revise the first sentence of paragraph (c) to read as follows:

§ 251.95 Authority of reviewing officer.

* * * * *

(c) *Requests for additional information.* Except in discretionary review conducted pursuant to § 251.100 and second level appeals of decisions made by the District Ranger pursuant to § 251.87(c) of this subpart, the Reviewing Officer may ask any party to an appeal for additional information as deemed necessary to decide the appeal. * * *

14. In § 251.100 revise paragraph (b) to read as follows:

§ 251.100 Discretionary review.

* * * * *

(b) As provided for in §§ 251.87 (d) and (e), 251.91(k), and 251.92, stay decisions rendered by a Forest Supervisor, certain dismissal decisions rendered by Forest Service line officers, and first-level appeal decisions rendered by Regional Foresters and the Chief (§ 251.99), are subject to discretionary review at the next highest administrative level. Within one day following the date of a decision subject to such discretionary review, the Reviewing Officer shall forward a copy of the decision and the initial decision upon which the appeal is predicated to the next higher officer.

* * * * *

Dated: February 24, 1990.

Clayton Yeutter,

Secretary.

[FR Doc. 90–5007 Filed 3–5–90; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL 3723-8]

New York; Final Authorization of State Hazardous Waste Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: New York has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New York's application and has made a decision, subject to public review and comment, that New York's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New York's hazardous waste program revisions. New York's application for program revision is available for public review and comment.

DATES: Final authorization for New York shall be effective May 7, 1990, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on New York's program revision application must be received by the close of business April 5, 1990.

ADDRESSES: Copies of New York's program revision application are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

New York State Department of Environmental Conservation, 50 Wolf Road, Room 204, Albany, New York 12233–0001; Phone (518) 457–3273

U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC, 20460; Phone (202) 382–5926

U.S. EPA Region II Library, Room 402, 26 Federal Plaza, New York, New York 10278; Phone (212) 264–2881.

Written comments should be sent to Mr. Conrad Simon, Director, Air and Waste Management Division, U.S. EPA, Region II, 26 Federal Plaza, Room 1011, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth E. Hamilton, Hazardous Waste Programs Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 1107, New York, New York 10278, 212/264–0548.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resources Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266 and 124 and 270.

B. New York

New York initially received final authorization on May 29, 1986. New York received final authorization for revisions to its program on July 3, 1989. On August 11, 1989, New York submitted a program revision application for additional program approvals. Today, New York is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed New York's application, and has made an immediate final decision that New York's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New York. The public may submit written comments on EPA's immediate final decision up until April 5, 1990. Copies of New York's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of New York's program revision shall become effective 60 days after the date of publication of this notice unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

New York is applying for final authorization of the following Federal hazardous waste requirements:

Federal requirement	State authority
Listing of Spent Pickle Liquor (51 FR 19320; 5/28/86), as amended (51 FR 33612; 9/22/86) RCRA Section 3001(b) (42 USC section 6921(b)).	Environmental Conservation Law (ECL) section 27–0903.
40 CFR 261.32	6 New York Code of Rules and Regulations (NYCRR) section 371.4(C).
Regulation of the Hazardous Components of Radioactive Mixed Waste (51 FR 24504; 7/3/86) RCRA sections 1006, 3001(b) (42 USC sections 6905 & 6921(b)).	ECL section 27–0903, 6 NYCRR section 371.1(c).
Liability Coverage—Corporate Guarantee (51 FR 25350; 7/11/86 and 52 FR 44314; 11/18/87) RCRA sections 2002, 3004, 3005, (42 USC sections 6912, 6924, 6925).	ECL sections 27–0703, 27–0911 & 27–0917.
40 CFR 264.147, 264.151, 265.147	6 NYCRR sections 373–2.8 (h), (j), 373–3.8(h).
Hazardous Waste Tank System (51 FR 25422; 7/14/86 and 51 FR 29430; 8/15/86) RCRA sections 1006, 2002, 3001-3007, 3010, 3014, 3017, 3018, 3019, 7004 (42 USC sections 6905, 6912, 6921–6927, 6930, 6935, 6938, 6939 & 6974).	ECL sections 23–2305, 27–0703, 3010, 27–0705, 27–0903, 27–0907, 27–0909, 27–0911, 27–0913, 27–0915.
40 CFR parts 260, 261, 262, 264, 265, 270	6 NYCRR sections 370.2(b), 371.1(e), 372.2(a), 373.1.1(d), 373–1.3(g), 373–1.5 (a) & (c), 373–2.2(g), 373–2.5(c), 373–2.7(a), 373–2.8(a), 373–2.10, 373–3.2 (d and f), 373–3.5(c), 373–3.7(a), 373–3.8(a) & 373–3.10.
Definition of Solid Waste Technical Corrections (52 FR 21306; 6/5/87), RCRA sections 3001, 3004 (42 USC sections 6921, 6924).	ECL section 27–0903.
40 CFR sections 261.33, 266.20(a) (2) and (3)	6 NYCRR sections 371.4(d), 374.3(a)(1) (ii) and (iii).
List (Phase 1) of Hazardous Constituents for Ground Water Monitoring (52 FR 25942; 7/9/87), RCRA sections 1006, 2002(a), 3001, 3004, 3005. (42 USC sections 6905, 6912(a), 6921, 6924, 6925.	ECL sections 27–0703, 27–0705, 27–0911, 27–0913.
40 CFR 264.98, 264.99 Appendix IX of part 264 and 40 CFR 270.14	6 NYCRR 373–1.5(a), 373–2.6 (i) & (j), appendix 33 of 373.
Identification and Listing of Hazardous Waste:	
● Container and inner liner residue	
● Technical Corrections to Appendix VIII	
52 FR 26012; 7/10/87; as amended (53 FR 13382; 4/22/88) RCRA section 3001(b) (42 USC section 6921(b))..	ECL section 27–0903.
● 40 CFR 261.33	● 6 NYCRR section 371.4(d).
● 40 CFR part 261, appendix VIII	● 6 NYCRR part 371 appendix 23.

New York is not authorized nor are they seeking to be authorized to operate the Federal Program on Indian Lands. This authorization shall remain with EPA.

C. Decision

I conclude that New York's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New York is granted final authorization to operate its hazardous waste program as revised. New York now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. New York also has primary enforcement responsibilities for the program revisions, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New York's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: sec. 2002(a), 3006 and 7004(b), Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: January 29, 1990.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 90-4813 Filed 3-5-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6770

[CA-940-00-4214-10; CACA 26064]

Partial Revocation of the Secretarial Order Dated January 14, 1927; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order dated January 14, 1927, insofar as it affects 50 acres of lands withdrawn for Powersite Classification No. 163. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 50 acres to surface entry. The lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 5, 1990.

FOR FURTHER INFORMATION CONTACT: Lavonia Silva, BLM California State Office, Room E-2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated January 14, 1927, which withdrew land for Powersite Classification No. 163 is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 22 N., R. 13 E.,
Sec. 8, N½SE¼NE¼ and W½W½ NW¼SE¼;
Sec. 9, W½NW¼NW¼.

The areas described aggregate 50 acres in Plumas County.

2. At 10 a.m. on April 5, 1990 the lands described in paragraph 1 shall be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, any segregation of record, and the requirements of applicable law.

Dated: February 27, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-5010 Filed 3-5-90; 8:45 am]

BILLING CODE 4310-40-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13 and 80

[General Docket No. 88-37; FCC 90-36]

Ship Radio Officer Qualifying Service Endorsements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order denies requests for reconsideration of the Commission's Rules that permits service on radiotelephone equipped ships and U.S. Government owned ships to be credited as service toward the ship radio officer qualifying endorsement. This action was initiated by a petition for reconsideration filed by the Radio Officers Union and the American Radio Association.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, General Docket No. 88-37, adopted January 22, 1990, and released February 15, 1990. The complete text of this Memorandum Opinion and Order, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Memorandum Opinion and Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In the Report and Order in this proceeding, 53 FR 46454, November 17, 1988, 3 FCC Rcd 6361 (1988), the Commission amended part 13 (Commercial Radio Operators) and part 80 (Stations in the Maritime Services) of the Rules, 47 CFR parts 13 and 80, related to the requirements for the ship radio officer qualifying service endorsement. The endorsement requires six months previous service in the aggregate on board a ship or ships of the United States.

2. The Report and Order, among other things, simplified the standards and documentation required that is used to measure the six months service time and permitted time served on any U.S. ship required by part II of title III of the Communications Act or a U.S. owned ship to count toward service time.

3. The Radio Officers Union and the American Radio Association (ROU/ARA) petitioned the Commission to reconsider the provision that permits service on radiotelephone ships to count toward the six months service endorsement. The ROU/ARA argue that the qualifying service must be on a ship equipped with a radiotelegraph station. The ROU/ARA also asked for reconsideration of the provision that permits service on a U.S. owned ship to count toward the six month endorsement. They argued that training of personnel aboard Navy ship and those aboard U.S. Merchant ships is sufficiently different to preclude the use of such personnel to maintain the safety watch required by the Communications Act.

4. The Commission noted that the intent of the requirement to have a six month service endorsement is to ensure that otherwise qualified radio officers are familiar with shipboard operations and concluded that experience on radiotelephone ships meets that requirement. The Commission further concluded that individuals with communications experience on U.S. Government ships have demonstrated the ability to function at sea.

5. The Commission affirmed the requirements for obtaining the six months qualifying service endorsement as adopted in the Report nd Order in