

§ 0.92 Units in the Bureau.

- (a) Office of the Bureau Chief.
- (b) Policy and Rules Division.
- (c) Tariff Division.
- (d) Facilities and Services Division.
- (e) Mobile Services Division.
- (f) Economics Division.
- (g) Accounting and Audits Division.
- (h) Hearing Division.

§ 0.93 Office of the Bureau Chief.

The Office of the Bureau Chief is composed of the Bureau Chief, the Deputy Bureau Chief, an Assistant Bureau Chief-International, an Assistant Chief-Management, a Program Evaluation Staff, an International Programs Staff and an Administrative Office. They assist the Chief of the Bureau in planning, directing, coordinating, executing, and evaluating the functions and programs of the Bureau.

§ 0.94 Policy and rules division.

Develops uniform and integrated policies for the regulation of domestic and international communication common carriers.

(a) Develops new policies to provide a framework for the orderly growth of the common carrier industry to meet future communications needs of the nation;

(b) Reviews existing policies and regulations to determine the need for modifications;

(c) Acts on petitions for rule making involving major policy questions;

(d) Prepares precedent setting rule interpretations;

(e) Participates in rule making proceedings and inquiries involving major changes to existing policies and regulations or the development of new policies.

§ 0.95 Tariff division.

Administers the tariff provisions of the Communications Act requiring that the charges, classifications, regulations, and practices of communications common carriers providing interstate and foreign services are just, reasonable and not unduly discriminatory.

(a) Examines tariffs to determine their lawfulness,

(b) Conducts formal or informal investigations of tariff matters.

(c) Establishes and enforces criteria concerning speed, quality, reliability and accuracy of communications services.

(d) Analyzes and disposes of formal and informal complaints regarding charges, adequacy and quality of service and other carrier practices.

§ 0.96 Facilities and services division.

Authorizes and regulates the facilities and services of domestic and international communications common carriers including domestic wireline and microwave, overseas cable and radio, and international and domestic satellites.

(a) Reviews proposals for new services or the modifications of existing services insofar as they impact on facilities.

(b) Examines applications for radio, cable or wireline facilities, through construction or acquisition, and for the con-

struction, launch and operation of space satellites and associated earth stations.

(c) Coordinates frequency assignments.

(d) Issues licenses and other authorizations.

(e) Acts on requests for temporary authority and rule waivers.

(f) Develops and recommends policy, rules, standards, procedures and forms for the authorization and regulation of interstate and foreign communication services.

(g) Participates in adjudicatory hearings on contested and mutually exclusive applications.

(h) Monitors compliance and initiates appropriate enforcement action.

(i) Keeps abreast of technological development and activities in the communications field, and maintains continuing surveillance over the evolution and performance of the domestic and international telecommunication networks.

§ 0.97 Mobile services division.

Authorizes and regulates the domestic common carrier mobile radio services including the domestic public land and aeronautical mobile radio service, the rural radio telephone service and the offshore radio transmission service.

(a) Examines applications from carriers or individuals for new or modified radio facilities;

(b) Coordinates frequency assignments;

(c) Issues licenses and other authorizations;

(d) Acts on requests for temporary or developmental authority, or rule waivers;

(e) Develops and recommends policy, rules, standards, procedures and forms for the authorization and regulation of these services;

(f) Participates in adjudicatory hearings on contested or mutually exclusive applications;

(g) Monitors compliance, acts on complaints and initiates appropriate enforcement action.

§ 0.98 Economics division.

Investigates the economic implications of common carrier regulatory policies and programs and the economic consequences of industry structure and practices. Collects, analyzes and publishes carrier financial operating and other statistical data. Studies and analyzes:

(a) Cost of capital, capital structure and financial policies of carriers;

(b) Customer demand;

(c) Methods for pricing public utility services;

(d) Carrier costs and expenses;

(e) Carrier rates, rate levels, rate bases and rate structures;

(f) Jurisdictional separations and division of revenues;

(g) Carrier depreciation practices.

§ 0.99 Accounting and audits division.

Develops and administers the FCC Uniform Systems of Accounts for communications common carriers, including

related Commission requirements for reporting and preservation of records. Monitors carrier compliance with Commission requirements through the review and approval of carrier accounting reports. Conducts a program of comprehensive and selective field audits and investigations of carriers' financial and operating practices, procedures and records.

Sections 0.100 and 0.101 are added to read as follows:

§ 0.100 Hearing division.

Serves as separated trial staff for the Bureau in adjudicatory and rule making proceedings, including rate investigations.

§ 0.101 Field offices.

Common Carrier Bureau field offices are located in Room 1309X, 90 Church Street, New York, New York 10007; and Room 546, 210 Twelfth Street, St. Louis, Mo. 63101.

[FR Doc. 77-24324 Filed 8-22-77; 8:45 am]

SPECTRUM MANAGEMENT IN THE LAND MOBILE SERVICES**Editorial Amendments**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes the requirement that permits the filing of applications in the Chicago Region without evidence of frequency coordination. The amendments will result in the Chicago Region operating under the same procedures as the rest of the continental United States.

EFFECTIVE DATE: September 1, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Richard Breen, Spectrum Management Division, Safety and Special Radio Services Bureau, 202-634-4970.

SUPPLEMENTARY INFORMATION:**ORDER**

Adopted: August 11, 1977.

Released: August 12, 1977.

In the matter of inquiry into the practices and procedures for spectrum management in the land mobile services governed by Parts 89, 91, 93 of the Commission's Rules, Docket No. 21229.

1. In its Notice of Inquiry released May 17, 1977, in the above entitled matter, the Commission stated its intention to return to frequency coordination in the Chicago Region. We further stated that an Order would be issued deleting those portions of the rules that permit the filing of applications in the Chicago Region without evidence of frequency coordination.

2. In view of the above, and for the reasons set forth in the Notice of Inquiry in Docket No. 20909, effective September 1,

1977, the Commission will no longer accept applications that are not accompanied either by evidence of frequency coordination or by a field survey in the Chicago Land Mobile Spectrum Management District.

3. Authority for this action is contained in Sections 4 (i) and (j) and 303 (r) of the Communications Act of 1934, as amended. Because the amendments are editorial and procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 do not apply.

4. Accordingly, *It is ordered*, effective September 1, 1977, That Parts 89, 91 and 93 of the Rules and Regulations are amended as set out below.

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

FEDERAL COMMUNICATIONS
COMMISSION,
R. D. LICHTWARDT,
Executive Director.

Parts 89, 91 and 93 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 89—PUBLIC SAFETY RADIO SERVICES

§ 89.81 [Amended]
1. Section 89.81(g) deleted.

PART 91—INDUSTRIAL RADIO SERVICES

§ 91.67 [Amended]
2. Section 91.67(g) deleted.

PART 93—LAND TRANSPORTATION RADIO SERVICES

§ 93.67 [Amended]
3. Section 93.67(g) deleted.
[FR Doc. 77-24268 Filed 8-22-77; 8:45 am]

[Docket No. 20547; RM-1773]

PART 91—INDUSTRIAL RADIO SERVICES Modifying Type Acceptance Requirements for Transmitters in Industrial Radiolocation Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Second correction.

SUMMARY: An errata to correct the appendix in the Report and Order in Docket 20547 so as to: (1) Specify the actual effective date in § 91.109(b) (2); (2) specify the field strength limitations for equipment in the frequency bands 10,500-10,550 MHz and 23,000-24,250 MHz; and (3) show the proper position of the unit "MHz" under the column heading "Frequency or band".

EFFECTIVE DATE: July 12, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Navarro C. Elliott, Research and Standards Division, Office of Chief Engineer, 202-832-7093.

In the Matter of amendment of Parts 89, 91, and 93 of the Commission's Rules

to modify the type acceptance requirements for transmitters in the Industrial Radiolocation Service, (Docket No. 20547 RM-1773).

SECOND ERRATA

Released: August 17, 1977.

In the Report and Order, FCC 77-358, adopted May 26, 1977, and released June 9, 1977, published at 42 FR 30509, the appendix is corrected as follows:

1. Section 91.109(b) (2) is amended so as to specify the actual effective date.

§ 91.109 Acceptability of transmitters for licensing.

(b) * * *
(1) * * *

(2) Transmitters used at radiolocation stations prior to January 1, 1978.

2. Sections 91.604 (a) and (b) are amended so as to specify field strength limitations for equipment operating in the frequency bands 10,500-10,550 MHz and 23,000-24,500 MHz and to show the proper position of the unit "MHz" under the column heading "Frequency or band".

§ 91.604 Frequencies available.

(a) * * *

Frequency or band (megahertz)	Class of station(s)	Limitation(s)
2450-2500	do.	A, 20, 21, 22
10,500-10,550	do.	12, 20, 21, 23, 24
23,000-24,250	do.	17, 20, 21, 23, 24

(b) * * *

(24) Devices designed to operate as field disturbance sensors on frequencies between 10,500 and 10,550 MHz and between 23,000 and 24,250 MHz, with a field strength equal to or less than 250,000 microvolts per meter at 30 meters, on the fundamental frequency, will not be licensed or type accepted for use under this part. Such equipment must comply with the requirements for field disturbance sensors as set forth in Subpart F of Part 15 of this Chapter.

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc. 77-24325 Filed 8-22-77; 8:45 am]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket RNE-1 Notice 2]

PART 210—RAILROAD NOISE EMISSION COMPLIANCE REGULATIONS

AGENCY: Federal Railroad Administration, DOT.

ACTION: Final rule.

SUMMARY: This rule sets forth procedures to insure compliance with the noise

emission standards prescribed by the Environmental Protection Agency (EPA) for locomotives and rail cars (40 CFR 201).

EFFECTIVE DATE: October 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Philip J. Brannigan, Office of Safety, 202-426-8686.

Principal Attorney: Anne-Marie Hyland, Office of the Chief Counsel, 202-426-8836.

Examination of written comments: All written comments received in this proceeding are available for examination, in the public docket RNE-1, during regular business hours in Room 5101, Nassiff Building, 400 Seventh Street SW., Washington, D.C.

SUPPLEMENTARY INFORMATION: On November 8, 1976, FRA published a notice of proposed rulemaking (NPRM, 41 FR 49183) setting forth proposed procedures to assure compliance with the EPA Railroad Noise Emission Standards ("EPA standards", 40 CFR 201). As stated in the proposed rule, the EPA standards were published by the EPA on January 14, 1976 (41 FR 2184). They became effective on December 31, 1976. Both the Standards and these compliance regulations are issued pursuant to section 17 of the Noise Control Act of 1972 ("Noise Control Act") (86 Stat. 1248, 42 U.S.C. 4916). In the development of this final rule, consultations were conducted with EPA as required by section 17(b) of the Noise Control Act.

FRA has received ten comments on the proposed rule, each of which urged significant changes. As a result of these comments, a number of changes have been made. A summary of the comments and FRA's responses follows.

DISCUSSION OF MAJOR COMMENTS

PRELIMINARY ISSUES

Time to Comment. Two commenters stated that the comment period was too short to complete detailed analysis of certain provisions and noted that they reserved the right to comment further. FRA provided the 45 day comment period which is established by Department of Transportation policy as the minimum time for comment on an NPRM. Because of the effective date of the EPA standards, FRA was unable to provide a more lengthy comment period. Two comments that were received after the close of the comment period were reviewed and have been considered fully. FRA's general rules of practice provide procedures for petitions for reconsideration as well as petitions for waiver or amendment of any rule issued by FRA (See 49 CFR 211, 41 FR 54181 (Dec. 13, 1976)). These additional procedures provide any interested party with the opportunity to express views as to the appropriateness of any FRA regulation, or the need for amendment or revision of any such regulation.

Inflationary Impact and Regulatory Analysis. Two commenters contended that FRA was required to issue an inflationary impact statement for the proposed rule under Executive Order 11821, Office of Management and Budget Circular No. A-107, and DOT Order 2050.4. The NPRM (at 41 FR 49185) stated that the inflationary impact had been considered pursuant to Executive Order 11821. It was determined that the additional impact resulting from the proposed procedures would not be so costly as to reach the \$50 million threshold that determines what actions are to be considered "major proposals" requiring inflationary impact evaluation. The major complaint raised by these commenters concerned testing for compliance with the stationary locomotive noise emission standard by use of a load cell as prescribed in the EPA standards (40 CFR 201.11 and Subpart C to 40 CFR 201). The requirement that locomotives be capable of operating within the prescribed decibel limits when connected to a load cell, and the measurement instrumentation, acoustical environment, and procedures which are to be used in determining such compliance have been established by the EPA. The FRA does not have the authority to alter any of these requirements. Several of the commenters have raised issues related to their ability to comply with the measurement criteria for conducting the load cell test. It was noted that many carriers do not presently have load cell facilities, and that the location of the majority of the load cells on those carriers that do have such facilities will not permit noise measurement in accordance with the measurement criteria established by EPA. These comments have raised several difficult issues which FRA has reviewed and considered in detail. Although this agency does not have the authority to alter any provisions of the EPA standards, in developing this final rule we have attempted to define a regulation which will insure compliance with the EPA standards without placing unreasonable or costly additional burdens on railroads. If existing load cell sites will not permit testing for compliance with the requirements prescribed by the EPA without substantial and costly modification, that issue should be addressed to EPA. FRA will provide the appropriate official of that agency with copies of the relevant comments submitted in this proceeding.

One commenter also contended that a regulatory analysis was required under the policy statement of the Secretary of Transportation published April 16, 1976 (41 FR 16200). Since the issuance of this rule is specifically required by section 17 of the Noise Control Act, the comprehensive regulatory impact evaluation normally required of all proposed rule-making actions undertaken by agencies comprising the Department of Transportation is not required by the Secretary's policies in this case.

Nevertheless, FRA feels that an appropriate application of the Secretary's policies in this case is to assess the rela-

tive costs of alternative means of achieving the results contemplated by the statute in an effort to develop an effective and reasonable implementing regulation. FRA believes that, as a result of changes made in response to the comments received in this proceeding, the final rule issued herein will ensure effective enforcement of the EPA standards without imposing on the railroad industry unreasonable costs in excess of the minimum costs necessary to comply with the statutory intent.

Environmental Impact. One commenter also contended that an environmental impact statement is required under the National Environmental Policy Act (NEPA), 42 USC 4332(2)(c). NEPA requires environmental impact statements on all proposals for "major Federal actions significantly affecting the human environment". The Administrator has determined that this rule making is not a major Federal action since the rule only prescribes additional compliance procedures to assure compliance with the substantive requirements of the EPA standards. In the issuance of those standards, the EPA has considered the environmental impacts of the overall railroad noise emission program.

EPA Standards. EPA suggested that the preamble of the final rule should clearly state that the EPA standards do not require that locomotive consists be composed entirely of locomotives manufactured either before 1980 or after 1979. EPA also suggested that the preamble should state clearly that the EPA standards do not apply to warning devices when operated for the purpose of safety. FRA believes that the wording of section 210.3(b)(3) adequately addresses this issue.

SECTION BY SECTION ANALYSIS

§ 210.3

Some question appears to have arisen as to the scope of applicability of these noise compliance rules. These rules are intended to be coextensive with the EPA standards and the Act. The scope of the EPA standards encompasses all common carriers by railroad, or partly by railroad and partly by water, within the continental United States, that are subject to the Interstate Commerce Act. Locomotives and rail cars used in industrial railroad operations that are conducted solely within an industrial complex would not be subject to these rules. The FRA does not have the authority to limit the applicability of the EPA standards, and cannot except any operations that are common carrier operations subject to the Interstate Commerce Act. Section 210.3 has been amended to reflect the statutory scope of applicability of the EPA standards.

§ 210.7

Who should be responsible for compliance? Three commenters recommended that an industrial railroad not be required to repair or remove from service noise defective equipment belonging to another railroad. The commenters operate and maintain some equipment

of their own, but they do not have the capacity or capability to repair and maintain the comparatively large number of cars involved in their interchange operations. A similar problem—lack of capability or adequate capacity to perform repairs on potentially large numbers of cars—exists with many short line railroads. In holding the operator, rather than the owner, responsible for compliance with the EPA standards, it was the intent of FRA to utilize present railroad industry practices concerning the repair of defective equipment.

Currently, when defects are found under the Freight Car Safety Standards or other safety regulations, repairs usually are made by the operating railroad. The car owner is then billed for the repair of defects that are not "handling line caused". In those cases in which correction of the defect would involve extensive repairs to the rail car, alternative procedures can be used to return the equipment to its "home shop" for repairs.

This system recognizes the nature of the rail car fleet which operates on the principle of free interchange of railroad cars among carriers. In addition, it assures the efficient freight car utilization which would be impossible if defective equipment had to be returned to its owner each time even minor repairs are required. The FRA believes that the use of this system for the repair and handling of noise defective equipment is the only practical approach to the enforcement of the EPA standards. Some relief may be provided by the procedures established under § 210.9 for the movement of noise defective equipment. If a car is discovered to be defective while being operated by an industrial railroad or short line carrier that does not have the repair facilities necessary to correct the defect, the car may be moved to the next forward location where the noise can be eliminated.

Must noise defective equipment be stopped en route for inspection? One commenter suggested clarification of whether the rule would require immediate stopping for inspection whenever the railroad has notice that a passby test has shown a noise emission in excess of the EPA standards. Stopping trains en route entails an unreasonable interference with interstate commerce and also could result in safety problems that FRA believes would be more serious than the continued excessive noise emission until the train reaches the next point where it is inspected in the normal course of operations. Section 210.25(c)(3) of the final rule provides that inspections on the basis of a passby test are to be performed at the next recognized inspection point, which would include an initial terminal, terminal, interchange, 500-mile, or crew change inspection point.

§ 210.9(a)

Where must noise defective equipment be repaired? Five commenters objected to the proposed restriction allowing noise defective equipment to be moved only to the nearest location where the noise defect can be eliminated, contending that it was unduly burdensome and unclear.

They noted that the procedure for moving cars with safety defects under the Freight Car Safety Standards is less restrictive.

FRA believes that it is reasonable to allow noise defective equipment to be moved in a defective condition to the next forward facility where repairs can be made. The authority for such movement is similar to that adopted when a highly visible rear end marking device becomes inoperative (see 49 CFR 221.17 (a), 42 FR 2321, January 11 1977) and to that included in a recent notice of proposed rulemaking governing movement of a locomotive with an inoperative wheel slip/slide indicator (see 42 FR 2994, January 14, 1977). This provision assures that movement of railroad equipment will not be impeded by a requirement to set out defective cars so as to move them to a closer repair point in the opposite direction. Nevertheless, since the rule prescribes the maximum distance defective equipment may be moved, a carrier also would have the option of moving the defective equipment to a closer facility to the rear. As adopted, the authority for movement of noise defective equipment is somewhat more restrictive than the authority for movement of defective equipment under the Freight Car Safety Standards (49 CFR 215). Under those standards a defective car could be tagged and sent to its "home shop for repairs". The more restrictive limitation in this rule is needed to minimize the noise impact after a violation of the EPA standards is found. We wish to point out that, consistent with the safety rules, movement to the home shop would be allowed after correction of the noise defect. Since equipment maintained in accordance with the Freight Car Safety Standards or the Locomotive Inspection rules also should comply with the noise standards, FRA believes that very few noise defects which are not also safety defects will be found. Accordingly, this rule generally is not expected to impose a significant added burden upon even very small repair facilities.

Should noise defective equipment be inspected before movement for repairs? Two commenters objected to the proposed requirement for an equipment inspection before the noise defective equipment is moved to the repair site. They stated that the requirement could seriously disrupt railroad operations because movement could not be made until after the inspection of each piece of equipment suspected of being noise defective.

One of the commenters contended that it is illegal for FRA to require any inspection under this part on the basis of safety considerations. The commenter argued that in fact there is no connection between noise and safety defects, that Congress intended by its reference to the safety statutes in section 17 of the Noise Control Act solely to provide for the use of available machinery to enforce compliance, and that EPA did not contemplate that compliance with its standards would cause any additional maintenance burden. Both commenters contended

that an inspection requirement is unnecessary. The first contended that noise often comes from conditions with no safety consequence, and if there is in fact a safety defect it would have been found and corrected under the equipment safety rules, 49 CFR 215 and 230. The second stated that its current practices would assure safety. The commenter instructs its employees to observe passing trains and report anything unusual, and it requires car inspections at each terminal and interchange.

The requirement for an inspection prescribed in this section is within the authority of FRA, based on the need to avoid exposure to possible safety problems as well as unlawful noise emissions. We disagree with the assertion that a noise violation does not imply existence of a safety problem. Certainly, there are a number of possible nonsafety-related causes for a sound level measurement above those prescribed in the EPA standards. However, the EPA standards were established after consideration of noise emission levels emitted by properly maintained equipment. Therefore, a measurement showing a noise emission in excess of the EPA standard indicates a possible safety problem may be present also. Even if equipment is maintained in accordance with the safety rules, there is no certainty that the previous inspection uncovered every problem or that a safety defect did not develop after the inspection. FRA believes that this inspection is necessary in the interests of railroad safety and the safety of the operating crew. In addition, the inspection is also intended to identify the sources of excess noise emissions for corrective action. A prompt, systematic, thorough inspection is necessary for that purpose alone.

Who should perform the inspection on noise defective equipment? Two other commenters argued that a person designated to inspect and test for noise defects is not the appropriate person to perform the inspection required under section 210.9 since the primary purpose of that inspection is to assure the safety of movement to the repair site.

The FRA agrees with these commenters, and has eliminated the reference to a person designated to inspect for noise defects. The railroad's duty under this provision is to determine that the equipment is safe to move to the repair point. Such a determination may be made by any railroad personnel available at the location where the railroad receives notice of the noise defect. It should be noted, however, that, if such an inspection involving equipment covered by the Freight Car Safety Standards (49 CFR 215) results in the identification of a defective component as defined in those standards, further movement of that equipment will also be governed by § 215.9 of title 49 of the Code of Federal Regulations.

§ 210.15

Section 210.15 of the proposed rule required each railroad that operates equipment to which the EPA standards apply to designate persons qualified to inspect

and test locomotives and rail cars for noise defects. The primary purpose for this designation was the need to identify those railroad employees who were to perform the inspection required under § 210.9 above and the load cell test required under § 210.31(g) of the NPRM. As stated earlier, on reconsideration, FRA has determined that the designation of specific railroad personnel under 210.9, to perform the inspection prior to movement of noise defective equipment, is unnecessary. In addition, as a result of the comments submitted concerning the present load cell facilities, and their inappropriate locations for conducting noise tests as specified in the EPA standards, FRA has decided to eliminate the requirement that a locomotive be subjected to a noise test each time it is subjected to a load cell test for whatever reason. Furthermore, it is the responsibility of the railroad to assure that equipment that it is operating is maintained in a manner which will assure compliance with the EPA standards. Similar noise compliance regulations issued under parallel provisions of the Act governing motor carrier operations (section 18 of the Act) do not require the designation of specialized "noise control" personnel (see 49 CFR 325). DOT has not experienced enforcement problems due to any lack of such a designation in the motor carrier area, and does not expect the experience to differ significantly in the railroad area. Therefore, the requirement for the designation of qualified railroad persons under section 210.15 of the NPRM has been eliminated from this final rule.

§ 210.17

Section 210.17 of the proposed rule required that State agencies wishing to participate in the enforcement of the EPA standards must designate qualified personnel who must be approved by FRA prior to the commencement of enforcement activities. This provision remains in the final regulation with slight modifications.

The purpose of such a provision is to encourage States to participate in the Federal railroad noise control program and thus minimize interference with the flow of interstate commerce. State and local governments may, under section 17(c)(1) of the Noise Control Act, enact and enforce their own standards identical to the Federal standards. DOT, however, encourages them to instead enforce the Federal standards by availing themselves of the provisions of § 210.17 of this regulation. To the extent State and local governments choose to enforce the Federal standards, enforcement of noise standards on rail cars and locomotives will be limited to certain designated and qualified State or local government officials, all of whom will follow the same rules contained in these regulations.

To further insure against unreasonable interferences with interstate commerce, § 210.25(c)(3) has been revised in this final rule to provide specifically that government inspectors enforcing the Federal standard may perform, or request the railroad to perform, inspection

tions and/or tests prescribed in this part only at recognized inspection points or scheduled stopping points. Train movements may not, under these regulations, be required to stop at other locations en route on the basis of an excessive noise emission noted in a random passby test.

How does State participation in noise enforcement differ from the FRA State Participation Program? From several comments submitted in response to the NPRM it appears that there is some confusion between State participation in the enforcement of the EPA standards and in the FRA "State Participation Program" under section 206 of the Federal Railroad Safety Act of 1970 (84 Stat. 972, 45 U.S.C. 435) and the regulations contained in 49 CFR 212.

The Federal Railroad Safety Act provides for a program of State participation in the investigative and surveillance activities prescribed by the Administrator for the enforcement of railroad safety regulations issued under that Act. Federal grants for up to 50 percent of the State's costs for such activities are also provided. The rules established in this part are issued under the Noise Control Act and the Secretary's authority under the Safety Appliance Acts, the Interstate Commerce Act and the Department of Transportation Act as provided in section 17 of the Noise Control Act. Therefore, the rules and regulations governing the State Participation Program for railroad safety do not apply to noise enforcement activities undertaken by a State under this part. In order to avoid further confusion of the two programs, § 210.17 has been redrafted to eliminate language referring to "participation". In addition, the scope of applicability of the section has been expanded to include not only State but also local jurisdictions that wish to enforce the Federal Railroad Noise Emission Standards.

How should State (local) inspectors be identified? One commenter stated that approved State inspectors should be required to carry appropriate credentials so that access to railroad property may not be denied on the basis of the lack of State authority. This commenter suggested that the FRA issue appropriate credentials to all approved State inspectors. As a result of these comments, FRA has reviewed the entire concept of prior FRA approval of each State or local noise compliance inspector and has determined that the administrative burden and additional paper work involved in such an approval process is unnecessary to accomplish the intent of this provision. As stated above that intent was twofold—to require qualified personnel and to identify such personnel for the railroads that are to be subject to their authority. FRA believes this can be accomplished by requiring the State or local jurisdiction to designate the personnel authorized to enforce the Federal standards, to certify that they are qualified to inspect and test locomotives and rail cars, that is that they have the knowledge and ability to detect the cause of noise defects, and to provide such persons with appropriate credentials to at-

test to their authority. FRA will continue to require the State or local jurisdiction to notify FRA that it is going to enforce the Federal standards so that we can accurately assess what the overall enforcement effort is at any given time. Section 210.17 of this final rule has been redrafted accordingly.

Should the regulation prescribe a level of effort to assure adequate State (local) effort? One commenter stated that, if State involvement would result in decreased Federal enforcement, the regulation should provide for a specified level of effort to assure that State involvement is adequate for effective enforcement. This comment apparently results from a confusion with the procedures of the State Participation Program as discussed above. Under that Program, once a State's inspection program is fully certified, the State effort replaces the routine Federal inspection effort in that State. Therefore, FRA has prescribed a specific level of State effort necessary before a program for a particular safety standard can be certified. This procedure does not apply to State or local involvement in enforcement of the EPA standards. State noise enforcement is not intended to substitute for, nor is it expected to reduce, the FRA efforts. Therefore, a prescribed level of State or local effort is not necessary.

Should inspectors be required to be qualified to inspect and test both locomotives and rail cars? Section 210.17(a) of the NPRM required the State to designate persons qualified to inspect and test locomotives or rail cars. One commenter suggested that the final rule should make it clear that any designated State inspector is authorized to inspect and test both locomotives and rail cars. The use of the word "or" rather than the word "and" in the proposed rule was purposeful. FRA does not agree that each State or local inspector enforcing the Federal standards must be qualified to inspect and test both locomotives and rail cars. The experience and knowledge necessary to adequately inspect a locomotive is substantially different from that necessary to perform a similar function with respect to rail cars because of the basic mechanical differences in the railroad equipment. FRA believes that an efficient and effective enforcement program must recognize these differences and provide the greatest degree of flexibility. Accordingly, while an individual inspector may be authorized to inspect and test both locomotives and rail cars if he is qualified to do so, the State or local jurisdiction is not limited to individuals with such dual qualifications.

§ 210.19

Two commenters recommended that the waiver provisions be eliminated or clarified. According to one, FRA's proposed rule contains no provision that is unduly burdensome, and all of the provisions are necessary for effective enforcement of the EPA standards. Therefore, any waiver would improperly interfere with enforcement. As an alternative the commenter stated that, if the

provision is retained, FRA should amend the regulation to clarify that all of the provisions of 49 CFR 211 apply, including those providing interested parties an opportunity to receive notice of, and to comment on, all waiver applications. The other commenter stated that the regulation should be clarified to state that FRA may not waive, directly or indirectly, any requirement prescribed in the EPA standards.

The suggested changes have not been adopted. First, despite FRA's endeavors to structure a reasonable rule of general applicability, the railroad industry is characterized by such diversity that differing individual circumstances may justify the waiver of some provisions of this rule. The term "waiver" as used here, and throughout FRA safety regulations, does not necessarily mean a total relaxation or exemption from compliance with the prescribed rule. The waiver procedure allows FRA to impose alternative requirements to accomplish the intended purpose of the regulation in those cases in which the general rule may not be appropriate. Second, the proposed rule makes it clear that all of the provisions of part 211 apply to waiver proceedings and that FRA may not, either directly or indirectly, waive a requirement of the EPA standards. FRA will notify the EPA whenever a petition for waiver is filed under this section and will consult with that agency prior to a final determination on such a petition.

One commenter stated that § 210.19 should specify both the period within which the Administrator must make a decision on an application for waiver and the period for which a waiver may be effective.

FRA has not adopted a time limit within which the Administrator must act upon any petition for waiver under this part because the complexity of the issues raised and the time between the filing dates and proposed effective dates will vary. However, to the extent practicable we will comply with the nine-month time limit applicable to waiver proceedings under the Federal Railroad Safety Act of 1970 (See 49 CFR 211.1, 211.41 (41 FR 54181, December 13, 1976)).

With respect to the period for which a waiver may be effective, FRA does not believe it is appropriate to specify a maximum duration for a waiver. A waiver may be temporary or permanent. Each petition is considered individually, on its own merits, and conditions that will assure the accomplishment of the intent of the general rule are tailored to the circumstances of each case.

§ 210.21

One commenter contended that the proposed penalty provision is inadequate because penalties would be provided only for knowing violations. The commenter stated that the EPA standards prohibit operation of any car or locomotive that violates the standards, and that only if money penalties are established for all violations will the railroads have the incentive to establish testing and main-

tenance programs that will eliminate excessive noise. The commenter contended that FRA has the authority under the various acts to establish the penalties.

FRA has considered the Noise Control Act, its legislative history, and the related statutes. We believe that Congress intended to set forth in section 11 all of the penalties applicable to violators of the EPA standards themselves. The criminal penalties (fines and imprisonment) may be assessed against willful or knowing violators of these regulations or the EPA standards.

Another commenter stated that the criminal penalty provision was unacceptable because it was unclear when a railroad would be liable because of a violation on equipment owned by someone else.

The EPA standards prohibit operation of noise defective equipment. In addition, as stated in the discussion of § 210.7, this rule imposes the responsibility for inspection and repair of noise defective equipment on the operating railroad rather than on the owner of the equipment because that is the only practical way to enforce the EPA standards. FRA cannot alter the criminal penalty provisions prescribed in the Noise Control Act. It should be noted, however, that the mere existence of a noise defect on operated equipment is not sufficient in itself to establish criminal liability since the penalties apply only for willful or knowing violations. The words "known or has notice" are included in § 210.7 to indicate that some evidence of willfulness or knowledge is necessary before a criminal action for enforcement of the EPA standards can be initiated under the Noise Control Act.

§ 210.25

Should railroads perform the tests? Some commenters stated that the FRA or State inspectors should conduct any noise emission tests since many railroads do not have instrumentation, trained personnel, or suitable test sites. Section 210.25 (b) of the final rule provides that the railroad carrier can be required to conduct the noise tests itself only if it has the capability to do so.

Should periodic noise inspections be required? Another commenter recommended that the section be strengthened to require the railroad to make periodic inspections of all cars and locomotives for noise violations and keep records of the results available for inspection. Since frequent, thorough inspections are required under 49 CFR Parts 215 and 230, and cars and locomotives maintained in accordance with those parts are expected to meet the EPA standards, FRA does not believe that an additional inspection requirement is warranted.

Should inspectors be empowered to conduct or request inspections or testing at random? The thrust of the other comments was that the FRA and State inspectors' authority to inspect, test, or require a railroad to test or inspect locomotives or rail cars should be limited to

avoid undue burdens on interstate commerce. One commenter estimated that an average passby test of a rail car would cost a railroad approximately \$1,000 in equipment time, crew time, fuel consumption, and interference with other activities. It recommended amending the proposed rule to include guidelines authorizing an inspector to require a locomotive or rail car to be submitted for inspection or testing only if there are reasonable grounds to suspect a noise defect, if the request is in writing, and if the time and place are reasonable.

In light of the comments, the rule has been redrafted to authorize an inspector to request the railroad to test, inspect or examine for noise defects only when there are reasonable grounds to believe that a noise defect is present. Such grounds could be established by a passby noise emission reading in excess of the standards for locomotives or railroad cars or by numerous public complaints about excessive noise from an identified piece of equipment or specific train operation. On the basis of such evidence, an inspector could make, or request a railroad to make, an inspection of the train at the next recognized inspection point or scheduled stopping point. If a railroad has the capability to perform the appropriate tests for noise emissions as prescribed by EPA, testing requested by an inspector must be performed as soon as practicable. If the railroad does not have the capability, the inspector may request that the railroad make the rolling stock and appropriate personnel available at a reasonable time and location for the inspector to obtain the required sound measurements. However, a railroad is not required to test or submit its rolling stock for testing if a readily identifiable noise producing condition is corrected and the correction is verified by an inspector.

Should the requests be in writing? The section also includes the added requirement that the inspector's request that the railroad make a noise inspection or test be in writing, stating his grounds for suspecting a noise defect. This requirement will provide a basis for the railroads to determine why the inspectors are requesting them to make noise inspections. The written record also will serve as evidence that a railroad has been given notice of the existence of noise defective equipment and will serve to establish the "willful" or "knowing" violation necessary to support a criminal action under the Noise Control Act.

Should the rule allow testing during movement pursuant to § 210.9? The same commenter also recommended that an inspector be precluded from testing or demanding a test when cars are moving pursuant to § 210.9 or when the cause of a noise defect has been noted and there is reasonable evidence to show that it has been eliminated. The suggested amendment to preclude testing during movement to § 210.9 has not been adopted because FRA believes it would constitute too broad an exception. While conducting a passby test to determine whether a train was operating in compliance with the EPA standards, an inspec-

tor might not be aware that the train included equipment being moved under § 210.9. Under the rule as written a railroad cited for violating the standards must be prepared to show that the noise emissions above the standards could have resulted from the movement of noise defective equipment in accordance with § 210.9. To preserve its defense in that situation, the railroad will have to retain records of the movement in accordance with § 210.9 for enough time to allow for delays between measuring violations and issuing citations.

§ 210.27 (b) (1)

One commenter objected to measuring the noise emissions from a consist of locomotives manufactured both before 1980 and after 1979 against the higher noise emission standard for pre-1980 locomotives. The commenter contended that the provision has the effect of changing the substance of the standard for post-1979 locomotives. This commenter recommended that a procedure be established either to differentiate the noise emitted from different locomotives in a mixed consist, or to require the railroad to test each unit in a mixed consist when the consist violates the lower standard for post-1979 locomotives.

The changes recommended by the commenter have been rejected as infeasible. First, the rule does not prescribe a procedure to distinguish the noise emitted by different locomotives in the same consist during a passby test, because such a procedure is technically impossible given the present state of the art in noise measurement unless such locomotives are separated within the consist by at least 10 rail car lengths or 500 feet. Second, a requirement to test individually each unit in a mixed consist that violates the post-1979 standard probably would force individual retesting of each of the units whenever there is a passby test of a mixed consist. To avoid that retesting burden, a railroad would have to operate only unmixed locomotive consists. Such a severe restriction on the use of motive power would impose an undue burden on interstate commerce by railroad.

§ 210.27 (b) (3)

One commenter stated that if the built dates of locomotives are not known to the inspector at the time of a passby test, the railroad should have the burden to supply them or have the lower post-1979 noise emission standards applied. FRA does not agree. In most cases, the inspector will not know the built dates of the locomotive units in a consist at the time of a passby test. He will, therefore, be required to identify the units in the locomotive consist by number when the test is made. The built dates for the specific units in a consist can then be determined by reference to carrier records. If the inspector fails to record the locomotive unit numbers, and the built dates cannot be established, the higher pre-1980 standard will apply since all locomotives, regardless of age, must operate below that noise level.

§ 210.27(c)

One commenter objected to applying the standard for movement at more than 45 miles per hour when the inspector's measuring equipment is not operating within an accuracy of 5 mph. The commenter stated that it is the inspector's duty to maintain properly calibrated measuring devices, and the enforcement regulation should not dilute the EPA standard in anticipation of his failure to do his job properly.

FRA agrees that it is the inspector's duty to maintain his equipment properly. However, if a failure does occur, prosecution for violation of the lower standard is not possible without proof that the train's speed was 45 mph or less.

§ 210.29(b)(1)(i)

One commenter stated that it is unclear whether the noise measurement device must be calibrated to actual frequencies. The section has been amended to make it clear that calibration to nominal frequencies satisfies the requirement. A sufficient degree of accuracy in noise measurements is assured as long as the calibrator frequency is accurate within a range, for example plus or minus three percent.

Another commenter stated that hourly calibrations are not necessary during a series of measurements, stating that calibration at the beginning of each series would assure accurate measurements.

FRA disagrees. The sound level meters are battery powered. Accordingly, frequent calibration during continuous use is important to assure that the inspector is aware as soon as the battery's voltage output drops close to the minimum operating voltage level of the sound level meter.

§ 210.29(c)

One commenter suggested increasing the measurement tolerance to at least 3dB(A), stating that the factors enumerated may realistically justify up to 5dB(A). The 2dB(A) measurement tolerance has been retained because it is the tolerance level generally accepted in the technical noise measurement community for field measurement purposes. (See, e.g., Society of Automotive Engineers Standard J952b, September 1971; SAE Technical Report J192, December 1970.)

In response to another commenter, paragraph (6) of the NPRM, which included an interpretation factor among those taken into account in determining the 2dB(A) tolerance, has been eliminated in this final rule. FRA agrees that the interpretation of the other factors is not properly listed as a separate item in the series and has included this consideration in the general explanation as to the purpose of the 2dB(A) tolerance.

§ 210.31(a)

One commenter opposed requiring that each locomotive manufactured after 1979 be tested for stationary noise emissions before it is placed in service initially. In response to the comment, type certification based on sample testing of each

locomotive model will be required on all new locomotives built after 1979. The certification may be based on either load cell or passby testing. For reasons of clarity and rational organization of the final rule, the provisions for new locomotive certification for locomotives built after December 31, 1979 have been placed in a separate section § 210.33.

§ 210.31(g)

Six commenters addressed the proposed requirement for stationary noise testing whenever a locomotive is load cell tested for any reason. All six were opposed. They stated that the requirement would be ineffective in enforcing the noise emission standards, and compliance would be totally impractical. According to the commenters, many railroads do not have load cell facilities at all. One survey that included all of the major railroads plus a number of switching railroads showed that they have only approximately 176 load cell facilities. Furthermore, the typical locations of load cells is in or adjacent to locomotive repair shops. These locations often are unsuitable for noise testing in accordance with the EPA standards because they do not present the large open area, and the isolation from other noise sources that is required by the EPA definition of an acceptable test site. Also, some existing load cells depend upon high voltage direct current. Relocating the load cells at a distance from the shops would require the use of expensive transmission cables, and line losses of electric current during transmission from the power source to the remote load cell would reduce the efficiency of the devices for their primary purpose, i.e., testing the power output of the locomotive engines. The survey cited above showed that only seven existing load cell facilities in the country are suitable for noise testing under the site requirements prescribed in the EPA standards. One commenter that has two locomotive repair shops with load cells estimated that it would need to spend approximately \$360,000 on modification of facilities and equipment before it could carry out stationary noise testing in accordance with the EPA standards at those shops. The commenters were also very concerned about the potential delays in returning recently repaired locomotives to service should a load cell noise test be required each time the locomotive is submitted to load cell testing for any purpose, because load cell noise emission tests cannot be performed during precipitation or when the measured wind velocity is over 12 mph. One commenter stated that the ability to take full advantage of its functioning motive power is critical for a small, financially weak railroad. Another concern was utilization of personnel. One commenter asserted that large numbers of new personnel would be needed, especially since the remote locations and random times for the required tests would reduce their efficiency. Finally, a commenter stated that additional problems might arise because of annoyance to the general public and em-

ployees who are not now subjected to load cell test noise. That commenter estimated that the proposed regulation would require approximately 47,000 stationary noise tests annually.

Two arguments were made about the effectiveness of the regulation in enforcing the standards. First, the commenters stated that load cell testing normally is done just after overhauls, repairs, or maintenance. That is the time a locomotive is most likely to be in compliance. To provide a more effective enforcement program, the commenters felt that required noise measurements should be taken on equipment with a higher probability of violations. Second, the commenters stated that the proposed rule would in effect exempt certain locomotives from any requirement for stationary noise testing. For example, there are many new locomotives that are equipped with a feature that permits load testing without connecting the unit to wayside load cell testing equipment. Also, locomotives owned by railroads that do not have load cell test facilities would not be subject to the requirement. A commenter that favored more frequent testing stated that the proposed rule needs to be strengthened because railroads do not conduct load cell tests regularly and there is no requirement for them to do so.

As a result of our review of the comments and further analysis, FRA believes it is not reasonable to require periodic load cell testing by the railroads. Many railroads apparently could not perform the tests without a substantial investment in facilities and equipment, and it is not sensible to require such an investment when the EPA has not identified locomotives as a major noise source. However, FRA is not at liberty to exempt locomotives entirely from load cell testing because EPA clearly did not intend the standards for stationary and moving locomotives to be alternatives. The preamble to the EPA standards states in part that—

The EPA strongly believes that a stationary as well as a moving standard is necessary in order to account for the varying nature of locomotive noise (41 FR 2189).

An inspector could still request a railroad that has the capability to conduct a load cell test to do so if a locomotive is suspected of having a noise defect (§ 210.25(b)(1)). In addition, locomotives manufactured after December 31, 1979, must be certified for noise emission compliance before being placed in service initially. This certification may be based upon a load cell test.

§ 210.31(h)

One commenter stated that no test of a noise defective locomotive should be required if the cause of the noise defect was readily identifiable and corrected.

The FRA recognizes that the retesting requirement for locomotives under proposed § 210.31(h) will constitute somewhat of a burden on railroads. This is true because the present location of locomotive repair facilities within or di-

rectly adjacent to congested yard areas will not ordinarily present an acceptable test site in terms of the criteria established by EPA in Subpart C of 40 CFR 201. In addition, as stated earlier, very few of the existing load cell facilities are located in areas that present acceptable test sites.

FRA believes that the source of excessive locomotive noise will often be readily identifiable as a result of recognized inspection and maintenance procedures. The retesting requirement, is not necessary in such cases in order to accomplish the intended purpose of the EPA standards. Therefore, in those situations in which the excessive noise emission is readily identifiable as related to a particular defective component, and that component can be replaced or there is an accepted repair procedure, FRA believes that retesting before returning the locomotive to service should not be required. Where no such defective component can be readily identified, retesting is necessary to assure elimination of the noise defect and will be required. Paragraph (c) of this section has been rerafted accordingly.

EMPLOYEE SAFETY AND HEALTH

One commenter criticized the EPA standards themselves, stating that they are too high to protect employees from noise related injury. The commenter also stated that there are many sources of railroad noise that might affect an employee's health that are not covered by the EPA standards. The commenters requested that FRA promulgate noise emission standards to protect employees.

The commenter's request is not within the scope of this proceeding. Further related rule making could be undertaken in the future, depending upon the nature of any evidence that particular noise emissions are a serious safety problem.

In accordance with the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new part 210 to read as set forth below. These rules shall become effective on October 1, 1977.

Issued in Washington, D.C. on August 17, 1977.

JOHN M. SULLIVAN,
Administrator.

Subpart A—General Provisions

- Sec.
- 210.1 Scope of part.
- 210.3 Applicability.
- 210.5 Definitions.
- 210.7 Responsibility for noise defective locomotives or rail cars.
- 210.9 Movement of a noise defective locomotive, rail car or consist of a locomotive and rail cars.
- 210.17 State or local enforcement of Federal Railroad Noise Emission Standards—qualified noise compliance inspector.
- 210.19 Waivers.
- 210.21 Penalty.

Subpart B—Inspection and Testing

- 210.23 Scope of subpart.
- 210.25 Noise testing and inspection.
- 210.27 Operation standards.
- 210.29 Measurement criteria and procedures.

- Sec.
- 210.31 Locomotive tests.
- 210.33 New locomotive certification.

AUTHORITY: Sec. 17, Pub. L. 92-574, 86 Stat. 1234 (42 U.S.C. 4916); § 1.49(p) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(p).

Subpart A—General Provisions

§ 210.1 Scope of part.

This part prescribes minimum compliance regulations for enforcement of the Railroad Noise Emission Standards established by the Environmental Protection Agency in 40 CFR Part 201.

§ 210.3 Applicability.

(a) The provisions of this part apply to the total sound emitted by rail cars and locomotives operated by a common carrier as defined in 45 U.S.C. 22 under the conditions prescribed herein and in 40 CFR Part 201, including the sound produced by refrigeration and air conditioning units which are an integral element of such equipment, except:

(b) The provisions of this part do not apply to:

- (1) Steam locomotives;
- (2) Street, suburban or interurban electric railways unless operated as a part of the general railroad system of transportation;
- (3) Sound emitted by a warning device, such as a horn, whistle or bell when operated for the purpose of safety;
- (4) Special purpose equipment which may be located on or operated from rail cars; and
- (5) As prescribed in 40 CFR 201.10, the provisions of 40 CFR 201.11 (a) and (b) do not apply to gas turbine-powered locomotives or any locomotive type which cannot be connected by any standard method to a load cell.

(c) "Consist of a locomotive and rail cars" means one or more locomotives coupled to a rail car or rail cars.

(d) "Noise defective" means the condition in which a locomotive, rail car or consist of a locomotive and rail cars is found to exceed the Railroad Noise Emission Standards, 40 CFR Part 201.

(e) "Standards" means the Railroad Noise Emission Standards, 40 CFR Part 201.

(f) "Inspector" means FRA regional Motive Power & Equipment Specialists,

§ 210.5 Definitions.

(a) *Statutory definitions.* All terms used in this part and defined in the Noise Control Act of 1972 (Pub. L. 92-574, 86 Stat. 1234) have the definitions set forth in that Act.

(b) *Definitions in standards.* All terms used in this part and defined in § 201.1 of the Railroad Noise Emission Standards, 40 CFR 201.1, have the definition set forth in that section.

(c) *Additional definitions:* As used in this part:

(1) "FRA" means the Federal Railroad Administration.

(2) "Administrator" means the Federal Railroad Administrator, the Deputy Administrator, or any official of the FRA to whom the Administrator has delegated authority to enforce the Act.

(3) "Consist of a locomotive and rail cars" means one or more locomotives coupled to a rail car or rail cars.

(4) "Noise defective" means the condition in which a locomotive, rail car or consist of a locomotive and rail cars is found to exceed the Railroad Noise Emission Standards, 40 CFR Part 201.

(5) "Standards" means the Railroad Noise Emission Standards, 40 CFR Part 201.

(6) "Inspector" means FRA regional Motive Power & Equipment Specialists,

FRA Motive Power & Equipment Inspectors and State or local noise compliance inspectors designated and certified under § 210.17.

§ 210.7 Responsibility for noise defective locomotives or rail cars.

Any railroad that knows or has notice that a locomotive, rail car or a consist of a locomotive and rail cars that is operating or testing is noise defective according to the criteria established in this part and in the Standards is responsible for compliance with this part. Subject to § 210.9, such railroad shall:

- (a) Correct the noise defect; or
- (b) Remove the noise defective locomotive or rail car from service.

§ 210.9 Movement of a noise defective locomotive, rail car or consist of a locomotive and rail cars.

A locomotive, rail cars or consist of a locomotive and rail cars that is noise defective may be moved no further than the nearest forward facility where the noise defective condition can be eliminated only after the locomotive, rail car or consist of a locomotive and rail cars has been inspected and been determined to be safe to move.

§ 210.17 State or local enforcement of the standards—qualified noise compliance inspectors.

(a) Any State or local jurisdiction that desires to enforce the Standards must so notify the FRA, and shall designate persons qualified to inspect and test locomotives or rail cars for defects prescribed by this part. Each person designated must be certified by the State or local jurisdiction and must carry official credentials stating his or her authority to conduct inspections and tests as prescribed in this part.

§ 210.19 Waivers.

(a) Any person may petition the Administrator for a waiver of compliance with any requirement in this part. A waiver of compliance with any requirement prescribed in the Standards, may not be granted under this provision.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by 49 CFR Part 211.

(c) If the Administrator finds that a waiver of compliance applied for under paragraph (a) of this section is in the public interest and is consistent with railroad noise abatement and safety, he may grant a waiver subject to any conditions he deems necessary. Notice of each waiver granted, including a statement of the reasons therefor, will be published in the FEDERAL REGISTER.

§ 210.21 Penalty.

Any person who willfully or knowingly operates a locomotive or rail car in violation of the requirements of this part or of the Standards is liable to a penalty as prescribed in section 11 of the Noise Control Act of 1972 (Pub. L. 92-574, 86 Stat 1242).

Subpart B—Inspection and Testing

§ 210.23 Scope of subpart.

This subpart prescribes the compliance criteria concerning the requirements for inspection and testing of a locomotive, a rail car or a consist of a locomotive and rail cars.

§ 210.25 Noise inspection and testing.

(a) An inspector is authorized to perform a passby noise emission test as prescribed in the Standards, and in the procedures of this part, at any time, at any appropriate location, and without prior notice to the railroad for the purpose of determining whether a locomotive, rail car, or consist of a locomotive and rail cars is in compliance with the Standards.

(b)(1) An inspector is authorized to request that a locomotive, rail car or consist of a locomotive and rail cars together with appropriate railroad personnel be made available for a passby or stationary noise emission test as prescribed in the Standards, and in the procedures of this part, and to conduct such test, at a reasonable time and location, for the purpose of determining whether the locomotive, rail car or consist of a locomotive and rail cars is in compliance with the Standards.

(2) If the railroad has the capability to perform an appropriate noise emission test as prescribed in the Standards, and in the procedures of this part, an inspector is authorized to request the railroad to test the locomotives or rail cars. The railroad must perform the appropriate test as soon as practicable.

(3) The requests referred to in this paragraph must be in writing, must state the grounds upon which the inspector has reason to believe that the locomotive, rail car or consist of a locomotive and rail cars does not conform to the Standards, and must be presented to an appropriate operating official of the railroad.

(4) Testing or submission for testing is not required if the cause of the noise defect is readily apparent and the inspector verifies that it is corrected by the replacement of defective components or by instituting a normal maintenance or repair procedure.

(c)(1) An inspector is authorized to inspect or examine a locomotive, rail car or consist of a locomotive and rail cars operated by a railroad, or to request the railroad to inspect or examine the locomotive, rail car or consist of a locomotive and rail cars, whenever he has reason to believe that it does not conform to the requirements of the Standards.

(2) The request referred to in this paragraph must be in writing, must state the grounds upon which the inspector has reason to believe that the locomotive, rail car or consist of a locomotive and rail cars does not conform to the Standards, and must be presented to an appropriate operating official of the railroad.

(3) The inspection or examination referred to in this paragraph may be con-

ducted only at recognized inspection points or scheduled stopping points.

(4) An inspector may request a railroad to conduct an inspection or examination of a rail car or consist of rail cars on the basis of an excessive noise emission level measured by a passby test. If, after such inspection or examination, no mechanical condition that would result in a noise defect can be found, and the inspector verifies that no such mechanical condition exists, the rail car or consist of rail cars may be continued in service.

(5) An inspector may request a railroad to conduct an inspection or examination of a locomotive on the basis of an excessive noise emission level measured by a passby test. If, after such inspection or examination, no mechanical condition that would result in a noise defect can be found, and the inspector verifies that no such mechanical condition exists, the locomotive may be continued in service.

§ 210.27 Operation standards.

The operation standards for the noise emission levels of a locomotive, rail car or consist of a locomotive and rail cars are prescribed in the Standards.

(a) Noise emission standards for locomotive operating under stationary conditions are contained in § 201.11 of the Standards.

(b) Noise emission standards for locomotives operating under moving conditions are contained in § 201.12 of the Standards. Measurements for compliance with the standards prescribed in § 201.12 of the Standards shall be made in compliance with the provisions of Subpart C of the Standards and the following:

(1) Consists of locomotives containing at least one locomotive unit manufactured prior to December 31, 1979, shall be evaluated for compliance in accordance with § 201.12(a) of the Standards, unless a locomotive within the consist is separated by at least 10 rail car lengths or 500 feet from other locomotives in the consist, in which case such separated locomotives may be evaluated for compliance according to their respective built dates.

(2) Consists of locomotives composed entirely of locomotive units manufactured after December 31, 1979, shall be evaluated for compliance in accordance with § 201.12(b) of the Standards.

(3) If the inspector cannot establish the built dates of all locomotives in a consist of locomotives measured under moving conditions, evaluation for compliance shall be made in accordance with § 201.12(a) of the Standards.

(c) Noise emission standards for rail cars operating under moving conditions are contained in section 201.13 of the Standards. If speed measurement equipment used by the inspector at the time of the measurement is not operating within an accuracy of 5 miles per hour, evaluation for compliance shall be made in accordance with § 201.13(2) of the Standards.

§ 210.29 Measurement criteria and procedures.

The parameters and procedures for the measurement of the noise emission levels are prescribed in the Standards.

(a) Quantities measured are defined in § 201.21 of the Standards.

(b) Requirements for measurement instrumentation are prescribed in § 201.22 of the Standards. In addition, the following calibration procedures must be utilized:

(1)(i) The sound level measurement system including the microphone must be calibrated and appropriately adjusted at one or more nominal frequencies in the range from 250 through 1000 Hz at the beginning of each series of measurements, at intervals not exceeding 1 (one) hour during continual use, and immediately following a measurement indicating a violation.

(ii) The sound level measurement system must be checked not less than once each year by its manufacturer, a representative of its manufacturer, or a person of equivalent special competence to verify that its accuracy meets the manufacturer's design criteria.

(2) An acoustical calibrator of the microphone coupler type designed for the sound level measurement system in use shall be used to calibrate the sound level measurement system in accordance with paragraph (1)(i) of this subsection. The calibration must meet or exceed the accuracy requirements specified in § 5.4.1 of the American National Standard Institute Standards, "Method for Measurement of Sound Pressure Levels," (ANSI S1.13-1971) for field method measurements.

(c) Acoustical environment, weather conditions and background noise requirements are prescribed in § 201.23 of the Standards; and in addition, measurement tolerances not to exceed 2dB(A) for a given measurement will be allowed to take into account the effects of the factors listed below and the interpretation of these effects by enforcement personnel:

(1) The common practice of reporting field sound level measurements to the nearest whole decibel; (2) Variations resulting from commercial instrument tolerances; (3) Variations resulting from the topography of the noise measurement site; (4) Variations resulting from atmospheric conditions such as wind, ambient temperature, and atmospheric pressure; and (5) Variations resulting from reflected sound from small objects allowed within the test site.

(d) Procedures for the measurement of locomotive and rail car noise are prescribed in § 201.24 of the Standards; and

(1) Accurate determination to within plus or minus 5 miles per hour of train speed (which may change during a passby) must be made as the train passes the microphone location, as defined in § 201.24 of the Standards, to determine the rail car compliance level specified in § 201.13(1) or (2) of the Standards.

(2) Locomotives and rail cars tested pursuant to the procedures prescribed

in this part and in the Standards shall be considered in noncompliance whenever the test measurement, minus the appropriate tolerance, exceeds the noise emission levels prescribed in §§ 201.11, 201.12, or 201.13 of the Standards, as appropriate.

§ 210.31 Locomotive tests.

(a) For load cell tests: (1) Each noise emission test shall begin after the engine of the locomotive has attained the normal cooling water operating temperature as prescribed by the locomotive manufacturer.

(2) Noise emission testing in idle or maximum throttle setting shall start after a 40 second stabilization period in the throttle setting selected for the test.

(3) After the stabilization period as prescribed in paragraph (2) of this subsection, the A-weighted sound level reading in decibels shall be observed for an additional 30 second period in the throttle setting selected for the test.

(4) The maximum A-weighted sound level reading in decibels that is observed during the 30 second period of time prescribed in paragraph (3) of this subsection shall be used for compliance purposes.

(b) The following data determined by any locomotive noise emission test conducted after December 31, 1976 shall be recorded in the "Remarks" section on the reverse side of Form FRA F 6180.49: (1) Location of the test; (2) Type of test; (3) Date and location of the test; and (4) The A-weighted sound level reading in decibels obtained during the passby test, or the readings obtained at idle throttle setting and maximum throttle setting during a load cell test.

(c) Any locomotive subject to this part that is found not to be in compliance with the Standards as a result of a passby test shall be subjected to a load cell test or another passby test prior to return to service, except that no such retest shall be required if the cause of the noise defect is readily apparent and is corrected by the replacement of defective components or by a normal maintenance or repair procedure.

(d) The last entry recorded on Form FRA F 6180.49 as required by paragraph (b) of this section shall be transcribed to a new Form FRA F 6180.49 when it is posted in the locomotive cab.

§ 210.33 New locomotive certification.

(a) A railroad shall not operate a locomotive built after December 31, 1979 unless the locomotive has been certified to be in compliance with the Standards.

(b) The certification prescribed in this section shall be determined for each locomotive model, by either: (1) Load cell testing in accordance with the criteria prescribed in the Standards; or (2) Passby testing in accordance with the criteria prescribed in the Standards.

(c) If passby testing is used under paragraph (b) (2) of this section, it shall be conducted with the locomotive operating at maximum rated horsepower output.

(d) Each new locomotive certified under this section shall be identified by

a permanent badge or tag attached in the cab of the locomotive near the location of the inspection Form F 6180.49. The badge or tag must state: (1) Whether a load cell or passby test was used; (2) The date and location of the test; and (3) The A-weighted sound level reading in decibels obtained during the passby test, or the readings obtained at idle throttle setting and maximum throttle setting during a load cell test.

[FR Doc. 77-24317 Filed 8-22-77; 8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, EXPORTATION AND IMPORTATION OF WILDLIFE

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination That the Tan Riffle Shell is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rulemaking.

SUMMARY: The Director, U.S. Fish and Wildlife Service issues a rule which determines the tan riffle shell (*Epioblasma walkeri*) to be an Endangered species because of the likelihood that this mussel could become extinct within the foreseeable future.

DATES: The amendments will become effective on September 26, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202-343-4646).

SUPPLEMENTARY INFORMATION: The Director, U.S. Fish and Wildlife Service (hereinafter the Director and the Service, respectively) hereby issues a rulemaking pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the Act) which determines the tan riffle shell (*Epioblasma walkeri*) to be an Endangered species.

BACKGROUND

On September 26, 1975, the Service published a proposed rulemaking in the FEDERAL REGISTER (40 FR 44329) advising that sufficient evidence was on file to support a determination that the tan riffle shell was an Endangered species as provided for by the Act. That proposal summarized the factors thought to be contributing to the likelihood that this mussel could become extinct within the foreseeable future; specified the prohibitions which would be applicable if such a determination were made; and solicited comments, suggestions, objections and factual information from any interested person.

Section 4(b)(1)(A) of the Act requires that the Governor of each State, within which a resident species of wild-

life is known to occur, be notified and be provided 90 days to comment before any such species is determined to be a Threatened species or an Endangered species. Letters were sent to the Governors of Virginia, Kentucky, and Tennessee on June 25, 1976, notifying them of the proposed rulemaking. Such letters were inadvertently not sent at the time of the proposed rulemaking in 1975.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a "summary of all comments and recommendations received" be published in the FEDERAL REGISTER prior to adding any species to the List of Endangered and Threatened Wildlife.

In the September 26, 1975, FEDERAL REGISTER proposed rulemaking (40 FR 44329) and the related press release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

Comments were received from three States and one individual. In a letter dated July 19 from Governor Julian M. Carroll, the State of Kentucky did "not wish to register any opposition to the action" and considered the tan riffle shell to be restricted to the Red River, in Logan and Simpson Counties, Kentucky, in rather limited numbers. The State of Virginia, according to Earl J. Shiflet of the Office of the Governor in a letter dated July 14, 1976, did not have sufficient information available regarding the status of this mussel in Virginia to make a judgment as to whether it should be designated Endangered pursuant to the Act. However, this State did not believe that overharvesting was an immediate danger. The State of Tennessee, in a letter dated September 16, 1976, from Harvey Bray, Executive Director, Tennessee Wildlife Resources Agency, supported the listing of *Epioblasma walkeri* "based on its limited occurrence in the Clinch, Powell and Duck Rivers and its rapid rate of disappearance." They further recommended that the Department of the Interior "do all possible to implement, in cooperation with States, a realistic program aimed at water quality improvement as the prime means of effecting a recovery program for Endangered mussels and habitats; encourage designation of acceptable comprehensive classification and nomenclature terms, and distribution and population data; and that immediate research be coordinated to determine management procedures (relating to impoundment effects, commercial and scientific mussel use, and to industrial, municipal, and agricultural practices) which will best assure perpetuation of these mussels."

The Service received a report on the status of *Epioblasma walkeri* from Dr. David H. Stansbery, Museum of Zoology, The Ohio State University, Columbus, Ohio, which resulted from contract 14-16-0008-755. This report (RF 37 12 Final No. 6, October 1976, The Ohio State University Research Foundation, 1314 Kinnear Road, Columbus, Ohio 43212) summarized the synonymy, taxonomic status,

diagnostic characteristics, former distribution (a rather general distribution in medium small to large streams in both the Cumberland and Tennessee systems), the present distribution (Middle Fork Holston River above South Holston impoundment, Red River of the Cumberland system, Clinch River and the Duck River from Wilhoite Mill downstream to Columbia) and threats. Threats include sewage effluent from Marion, Chilhowie and other communities in the middle fork Holston. The TVA Columbia Dam, if completed, would inundate the entire Duck River population of the mussel.

CONCLUSION

After a thorough review and consideration of all information available, the Director has determined that the tan riffle shell is in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act. This review amplifies and substantiates the description of those factors included in the proposed rulemaking (40 FR 44329). Those factors are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The tan riffle shell is a pearly mussel and it exemplifies a well known characteristic of its genus (*Epioblasma*): It characteristically inhabits riffle areas of medium to large streams. Species adapted to live in such riffle areas are particularly vulnerable to power dams because of the voluminous, rapid water flow, as well as to pollution because of their large oxygen requirement. About a third of the three dozen *Epioblasma* species are presumed extinct.

The tan riffle shell formerly had a rather general distribution in medium small to large streams in both the Cumberland and Tennessee River systems. It is presently found only in the lower Red River of the Cumberland system in Kentucky and Tennessee, the middle fork of the Holston River in Virginia, possibly the Stones River in Tennessee where it would be very rare, the Duck River in Tennessee from Wilhoite Mill downstream to Columbia, and the Clinch River in Virginia and Tennessee where it is very rare. It is endangered in all of these rivers by pollution, including mine acid and municipal wastes. Pollution problems include low dissolved oxygen below Adairville and untreated effluent from a meat packing plant in the Red River system; mercury and lead in the middle fork of the Holston; low dissolved oxygen at Murfreesboro in the west fork Stones River; and lead, mercury, and a history of accidental spills of fly ash and sulfuric acid in the Clinch River. It is further endangered by channelization of the upper Clinch and by the TVA dam being constructed on the Duck River at Columbia. This dam will inundate and thereby extirpate the Duck River population.

Information on the mechanism by which physical and chemical factors jeopardize *Epioblasma* and other genera of mussels appeared in the "Proceedings of a Symposium on Rare and Endangered

Molluscs of the U.S.", Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, August 10, 1971, and "Greater Adaptability of Freshwater Mussels to Natural Rather than to Artificial Displacement" by Marc J. Imlay, which appeared in the *Nautilus* (1972, 86:76-79). In general, the mussels were demonstrated to be better adapted to naturally occurring stresses than to artificial ones. For example, 25 transplanted mussels (the result of dredging) lay on their sides and were disoriented in a stream where other mussels had re-oriented after natural storms had washed them downstream.

Information on water quality appeared in material supplied by the Virginia State Water Control Board, Southwestern Regional Office; Division of Water Quality, Kentucky Department for Natural Resources and Environmental Protection; Proposed Criteria for Water Quality, Volume I, October 1973, U.S. Environmental Protection Agency, Washington, D.C. 20460; and Water Resources Data for Tennessee Water Year 1975, U.S. Geological Survey TN 75 1.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This species appears on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora because it is threatened with extinction and could enter into previously unregulated international commerce. The impact of this commerce (pearl button and Japanese cultured pearl industry) on the tan riffle shell, while significant, is relatively minor, however, compared to the impact on mussel species with thick shells.

3. *Disease or predation.* Not applicable for this species.

4. *The inadequacy of existing regulatory mechanisms.* No regulations currently exist pertaining to the protection and conservation of this species other than the prohibitions against international trade that apply to species such as *E. walkeri* which are on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. These regulations provide no protection against taking for domestic purposes.

5. *Other natural or manmade factors affecting its continued existence.* During the mid-1950s the Asian clam, *Corbicula manilensis*, was introduced into the Tennessee River system. *Corbicula* has spread throughout the Tennessee River system where it has replaced many beds of native mussels including the tan riffle shell. A square yard of bottom frequently contains hundreds of individual Asian clams. Information on *Corbicula* appeared in the "Proceedings of a Symposium on Rare and Endangered Molluscs of the U.S.", U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, August 10, 1971.

EFFECT OF THE RULEMAKING

The effects of these determinations and this rulemaking include, but are

not necessarily limited to, those discussed below. Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The prohibited regulations referred to above, which pertain to Endangered species, are found at § 17.21 of Title 50 and, for the convenience of the reader, are reprinted below:

§ 17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

(i) Aid a sick, injured or orphaned specimen; or

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen which may be useful for scientific study; or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take Endangered Species, for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably

anticipated to result in: (i) the death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days."

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

The determination set forth in this final rulemaking also makes the tan rifle shell eligible for the consideration provided by Section 7 of the Act. That Section reads as follows:

"The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical."

The Director has prepared, in consultation with an ad hoc interagency committee, guidelines for Federal agencies for the application of Section 7 of the Act. Proposed regulations were published regarding Section 7 (42 FR 4868; January 26, 1977). When this rulemaking becomes effective, all Federal agencies will be required to meet their responsibilities under Section 7 of the Act,

and where appropriate, utilize the consultation procedures contained in Section 7 guides and the proposed regulations.

Regulations which appear in Part 17, Title 50 of the Code of Federal Regulations were first published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44412), and provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. It addresses this action as it involves the tan rifle shell. The assessment and the public comments received on this rulemaking are the basis for a decision that these determinations are not major Federal actions which would signifi-

cantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

(Endangered Species Act of 1973 (U.S.C. 1531-1543; 87 Stat. 884).)

This final rulemaking was prepared by Dr. Marc J. Imlay, Office of Endangered Species.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 10, 1977.

LYNN A. GREENWALT,

Director, Fish and Wildlife Service.

According to § 17.11 of Part 17 of Chapter 1 of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the tan rifle shell to the list under "Clams" as indicated below:

Species			Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered			
Rifle shell, tan...	<i>Epioblamus walkeri</i>	NA	Virginia, Tennessee, Kentucky.	Entire.....	E	27	NA

[FR Doc.77-24431 Filed 6-22-77;8:45 am]

PART 21—MIGRATORY BIRD PERMITS

States Meeting Federal Falconry Standards
AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service publishes a list of States where falconry laws have been determined by the Director to meet or exceed the minimum Federal standards. Any State may obtain a review and determination of its existing laws or regulations relating to falconry. Falconry may now be practiced in the States listed in 50 CFR 21.29.

DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Danny M. Searcy, Special Agent, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202-343-9242.

SUPPLEMENTARY INFORMATION: In notices of proposed rulemaking dated July 30, 1973 (38 FR 20264), and April 4, 1974 (39 FR 12314), the Service issued proposed regulations which provided for the review and approval of State falconry laws. If a given State's laws were approved, the State would be listed in 50 CFR 21.29(k), and falconry permitted therein pursuant to a system of joint Federal-State permits. These regulations were finalized on January 15, 1976 (41 FR 2237). On December 28, 1976 (41 FR 56329), the time limit for a State to

submit its laws for review and approval was extended until December 31, 1977.

Utilizing the criteria established in 50 CFR 21.29, the Director has now reviewed and approved the falconry laws of 25 States. In accordance with 41 FR 2237 and 41 FR 56329, upon publication of this Appendix in the FEDERAL REGISTER, the practice of falconry in the 25 States listed below shall be governed by 50 CFR 21.28, as amended, and § 21.29.

The primary author of this document is Mr. Ronald Swan, Office of the Solicitor, Department of the Interior.

Accordingly, the following list is hereby added to 50 CFR 21.29(k):

§ 21.29 Federal falconry standards.

- (k) * * *
- * Alaska
 - * Arizona
 - * Arkansas
 - * Florida
 - * Georgia
 - * Idaho
 - * Indiana
 - * Iowa
 - * Kentucky
 - * Massachusetts
 - * Minnesota
 - * Mississippi
 - * Missouri
 - * Nebraska
 - * New Mexico
 - * New York
 - * North Dakota
 - * Oklahoma
 - * Pennsylvania
 - * South Carolina
 - * South Dakota
 - * Utah
 - * Virginia
 - * Washington
 - * Wyoming