DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Parts 802, 803, and 806

Annual Reporting of Revenues for Carrying Imports to, Expenditures in, the United States of Shipping and Air Transport Operators of Foreign Nationality; Reports on International Transactions in Royalties and Fees With Unaffiliated Foreign Residents and Direct Investment Surveys

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Technical amendments.

SUMMARY: The Bureau of Economic Analysis is issuing this final rule to amend regulations that do not display currently valid Office of Management and Budget (OMB) control numbers. The Paperwork Reduction Act (PRA) requires each agency to publish in the **Federal Register** the OMB control number for each information collection form referenced in the CFR to avoid confusion about whether a collection of information contained in a regulation has been approved by OMB.

EFFECTIVE DATE: December 27, 1983.

FOR FURTHER INFORMATION CONTACT: Marci Levin, 377-1328.

Dated: December 19, 1983.

Allan H. Young,

Deputy Director, Bureau of Economic Analysis.

SUPPLEMENTARY INFORMATION:

List of Subjects

15 CFR Part 802

Air carriers, Economic statistics, Foreign trade, Imports, Maritime carriers, Reporting and recordkeeping requirements.

15 CFR Part 803

Economic statistics, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 806

Economic statistics, Foreign investment in the United States, Reporting and recordkeeping requirements, United States investments abroad.

The authority citation for 15 CFR Part 802 is:

R.S. 161; 5 U.S.C. 301; Interpret or apply sec. 8, 59 Stat. 515; 22 U.S.C. 286f, E.O. 10033, 14 FR 561, 3 CFR 1949 Supp.

The authority citation for 15 CFR Part 803 is:

(Sec. 8(b), Bretton Woods Agreement Act, 59 Stat. 515 [22 U.S.C. 286(f); sec. 4(b) of the Federal Act (44 U.S.C. 3509)].

The authority citation for 15 CFR Part 806 is:

5 U.S.C. 301, 22 U.S.C. 3101, and E.O. 11961.

PART 802—[AMENDED]

For the reasons stated in the preamble, 15 CFR Part 802 is amended by adding a new § 802.5 to read as follows:

§ 802.5 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section will comply with the requirements of section 3507(f) of the Paperwork Reduction Act (PRA) which require agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control No.
802.1 through 802.4	0608-0012 0013

PART 803—[AMENDED]

For the reasons stated in the preamble-, 15 CFR Part 803 is amended by adding a new § 803.7 to read as follows:

§ 803.7 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section will comply with the requirements of section 3507(f) of the Paperwork Reduction Act (PRA) which require agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control No.
803.1 through 803.6	0608-0017

PART 806—[AMENDED]

For the reasons stated in the preamble, 15 CFR Part 806 is amended by adding a new § 806.18 to read as follows:

§ 806.18 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section will comply with the requirements of section 3507 (f) of the Paperwork Reduction Act (PRA) which require agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control No.
806.1 through 806.17	0608-0020 0024 0032 0004 0035 0030 0009 0023 0034

[FR Doc. 83-34115 Filed 12-23-83; 8:45am]

BILLING CODE 3510-06-M

FEDERAL TRADE COMMISSION

16 CFR Part 3

Procedures and Practice Rules

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended § 3.46 of its Rules of Practice and Procedure to require parties to include in their statements of proposed findings of fact and conclusions of law an index their exhibits and witnesses. The Commission has determined that the Administrative Law Judges in preparing initial decisions, and the Commission in ruling on appeals from initial decisions, will be better able to review the evidentiary records if each party to an adjudication is required to file indices of its exhibits and witnesses. These indices will assist the Administrative Law Judges and the Commission to find relevant testimony, documents and other exhibits in the record and are expected to result in more prompt decisions based on a better understanding of the record.

EFFECTIVE DATE: February 6, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce G. Freedman, Deputy Assistant General Counsel, Federal Trade Commission, 6th & Pennsylvania Ave., NW., Washington, D.C. 20580, (202) 523-3487.

SUPPLEMENTARY INFORMATION:

List of Subjects in 16 CFR Part 3

Administrative practice and procedure.

PART 3—[AMENDED]

Accordingly, the Commission revises 16 CFR 3.46 to read as follows:

§ 3.46 Proposed findings, conclusions, and order.

(a) *General.* At the close of the reception of evidence, or within a reasonable time thereafter fixed by the Administrative Law Judge, any party

may file with the Secretary of the Commission for consideration of the Administrative Law Judge proposed findings of fact, conclusions of law, and rule or order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

(b) *Exhibit Index.* The first statement of proposed findings of fact and conclusions of law filed by a party shall include an index listing for each exhibit offered by the party and received in evidence: (1) the exhibit number, followed by (2) the exhibit's title or a brief description if the exhibit is untitled; (3) the transcript page at which the Administrative Law Judge ruled on the exhibit's admissibility or a citation to any written order in which such ruling was made; (4) the transcript pages at which the exhibit is discussed; (5) an identification of any other exhibit which summarizes the contents of the listed exhibit, or of any other exhibit of which the listed exhibit is a summary; (6) a cross-reference, by exhibit number, to any other portions of that document admitted as a separate exhibit on motion by any other party; and (7) a statement whether the exhibit has been accorded *in camera* treatment.

(c) *Witness Index.* The first statement of proposed findings of fact and conclusions of law filed by a party shall also include an index to the witnesses called by that party, to include for each witness: (1) the name of the witness; (2) a brief identification of the witness; (3) the transcript pages at which any testimony of the witness appears; and (4) a statement identifying any portion of the witness' testimony that was received *in camera.*

(d) *Stipulated Indices.* As an alternative to the filing of separate indices, the parties are encouraged to stipulate to joint exhibit and witness indices at the time the first statement of proposed findings of fact and conclusions of law is due to be filed.

(e) *Rulings.* The record shall show the Administrative Law Judge's ruling on each proposed finding and conclusion, except when the order disposing of the proceeding otherwise informs the parties of the action taken.

(15 U.S.C. 46(g))

By direction of the Commission dated December 13, 1983.

Emily H. Rock,

Secretary.

[FR Doc. 83-34229 Filed 12-23-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; National Center for Devices and Radiological Health Officials, et al.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to functions performed by officials in the National Center for Devices and Radiological Health (NCDRH). The titles used in this amendment conform to the new organizational substructure of NCDRH in the reorganization approved by the Secretary of Health and Human Services and published in the Federal Register of November 30, 1983 (48 FR 54128).

EFFECTIVE DATE: November 30, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: The reorganization of FDA on October 8, 1982 (47 FR 44614) merged the Bureau of Medical Devices with the Bureau of Radiological Health to create the National Center for Devices and Radiological Health (NCDRH). A continuing delegation of authority was included in the reorganization order to permit NCDRH officials to continue normal operations while an indepth study was conducted to develop an organization structure that would fully integrate the functions of the merged bureaus. The result of that study is the reorganization that was approved by the Secretary and became effective on November 30, 1983. Although some of the authorities delegated to bureau officials before the merger were amended to reflect new titles and organizational placement under the temporary organization, many were not because of the impending comprehensive reorganization, which has now been approved.

This document revises the delegations of authority contained in Part 5 relating to the functions assigned to NCDRH. The affected sections are § 5.23 *Disclosure of official records* (21 CFR 5.23); § 5.25 *Research, investigation, and testing programs and health information and health promotion programs* (21 CFR 5.25); § 5.26 *Service fellowships* (21 CFR 5.26); § 5.30 *Hearings* (21 CFR 5.30); § 5.31 *Petitions under Part 10* (21 CFR 5.31); § 5.37 *Issuance of reports of minor violations* (21 CFR 5.37); § 5.45 *Imports and exports* (21 CFR 5.45); § 5.46 *Manufacturer's resident import agents* (21 CFR 5.46); § 5.47 *Detention of adulterated or misbranded medical devices* (21 CFR 5.47); § 5.49 *Authorization to use alternative evidence for determination of the effectiveness of medical devices* (21 CFR 5.49); § 5.50 *Notification to petitioners of determinations made on petitions for reclassification of medical devices* (21 CFR 5.50); § 5.52 *Notification to sponsors of deficiencies in petitions for reclassification of medical devices* (21 CFR 5.52); § 5.53 *Approval, disapproval, or withdrawal of approval of applications for premarket approval for medical devices* (21 CFR 5.53); § 5.54 *Determinations that medical devices present unreasonable risk of substantial harm* (21 CFR 5.54); § 5.55 *Orders to repair or replace, or make refunds for, medical devices* (21 CFR 5.55); § 5.59 *Approval, disapproval, or withdrawal of approval of applications for investigational device exemptions* (21 CFR 5.59); § 5.78 *Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs* (21 CFR 5.78); § 5.86 *Granting and withdrawing variances from performance standards for electronic products* (21 CFR 5.86); § 5.87 *Exemption of electronic products from performance standards and prohibited acts* (21 CFR 5.87); § 5.88 *Testing programs and methods of certification and identification for electronic products* (21 CFR 5.88); § 5.89 *Notification of defects in, and repair or replacement of, electronic products* (21 CFR 5.89); § 5.90 *Manufacturers requirement to provide data to ultimate purchasers of electronic products* (21 CFR 5.90); § 5.91 *Dealer and distributor direction to provide data to manufacturers of electronic products* (21 CFR 5.91); and § 5.92 *Acceptance of assistance from State and local authorities for enforcement of radiation control legislation and regulation* (21 CFR 5.92).

Where appropriate in the sections above, references to Bureau of Drugs and Bureau of Biologics officials have also been changed to conform with their organizational placement and new titles within the National Center for Drugs and Biologics.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in

an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. By revising § 5.23(c) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(c) The following officials are authorized to sign affidavits regarding the presence or absence of medical device establishment registration records:

(1) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH).

(2) The Director and Deputy Director, Office of Compliance, NCDRH.

(3) The Director, Division of Product Surveillance, Office of Compliance, NCDRH.

* * * * *

2. By revising § 5.25 (a) and (b) to read as follows:

§ 5.25 Research, investigation, and testing programs and health information and health promotion programs.

(a) The following officials are authorized under sections 301, 307, 311, 1701, 1702, 1703, and 1704 of the Public Health Service Act (the act) to establish research, investigation, and testing programs and health information and health promotion programs, which relate to their assigned functions, and to approve grants for conducting such programs:

(1) The Director, National Center for Toxicological Research.

(2) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH).

(3) The Director, Scientific Director, and Associate Director for Program Development and Operations, National Center for Drugs and Biologics.

(4) Directors of Bureaus.

(5) Executive Director of Regional Operations.

(b) The Director and Deputy Director, NCDRH, are authorized to establish an electronic product radiation control program and to approve grants for conducting the program under section 356 of the act.

* * * * *

3. By revising § 5.26 to read as follows:

§ 5.26 Service Fellowships.

The following officials are authorized to designate persons to receive service fellowships in the Food and Drug Administration Staff Fellowship Program under section 207(g) of the Public Health Service Act:

(a) Associate and Deputy Associate Commissioners.

(b) The Director, National Center for Toxicological Research (NCTR), and the Director, Office of Management, NCTR.

(c) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH), and the Director and Deputy Director, Office of Management and Systems, NCDRH.

(d) The Director, Scientific Director, and Associate Director for Program Development and Operations, National Center for Drugs and Biologics (NCDB), and the Director, Office of Management, NCDB.

(e) The Director and Deputy Director, Bureau of Foods (BF), and the Associate Director for Planning and Operations, BF.

(f) The Director and Deputy Director, Bureau of Veterinary Medicine (BVM), and the Associate Director for Voluntary Compliance and Operations, BVM.

(g) The Executive Director and Deputy Executive Director of Regional Operations (EDRO) and the Associate Director for Administration, EDRO.

4. By revising § 5.30 (a)(3), (b), and (c)(4) to read as follows:

§ 5.30 Hearings.

(a) * * *

(3) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH).

* * * * *

(b) The Director and Deputy Director, NCDRH, are authorized to hold hearings, and to designate other officials to hold informal hearings, under section 360(a) of the Public Health Service Act.

(c) * * *

(4) The Director and Deputy Director, NCDRH.

* * * * *

5. By revising § 5.31(c)(3) to read as follows:

§ 5.31 Petitions under Part 10.

* * * * *

(c) * * *

(3) The Director and Deputy Director, National Center for Devices and Radiological Health.

* * * * *

6. By revising § 5.37(a)(2) (ii) and (iii) and (b) (2) and (3) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(2) * * *

(ii) The Director and Deputy Director, Office of Compliance, NCDRH.

(iii) The Director, Division of Compliance Operations, Office of Compliance, NCDRH.

* * * * *

(b) * * *

(2) The Director and Deputy Director, Office of Compliance, NCDRH.

(3) The Director, Division of Compliance Operations, Office of Compliance, NCDRH.

* * * * *

7. By revising § 5.45(b) introductory text, (b)(4), (c), and (e)(1) to read as follows:

§ 5.45 Imports and exports.

* * * * *

(b) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH); the Director and Deputy Director, Office of Compliance, NCDRH; Regional Food and Drug Directors; District Directors; and chiefs of Station Offices are authorized, under section 360 of the Public Health Service Act (PHSA):

* * * * *

(4) To refuse or to grant permission and time extensions to bring noncomplying products into compliance with the PHSA in accordance with a corrective action plan approved by the Director, Office of Compliance, NCDRH.

(c) The following officials are authorized, under section 360B(b) of the PHSA, to exempt persons from issuing a certification, as required by section 358(h) of the PHSA, for electronic products imported into the United States for testing, evaluation, demonstrations, or training, which will not be introduced into commerce and upon completion of their function will be destroyed or exported in accord with Bureau of Customs' regulations:

(1) The Director and Deputy Director, NCDRH.

(2) The Director and Deputy Director, Office of Compliance, NCDRH.

(3) Regional Food and Drug Directors.

(4) District Directors.

(5) Chiefs of Station Offices.

* * * * *

(e) * * *

(1) For medical devices assigned to their respective organization:

(i) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH).

(ii) The Director and Deputy Director, Office of Compliance, NCDRH.

(iii) The Director and Scientific Director, National Center for Drugs and Biologics (NCDB).

(iv) The Director, Deputy Director, and Director, Division of Compliance, Office of Biologics, NCDB.

* * * * *

8. By revising § 5.46 to read as follows:

§ 5.46 Manufacturer's resident import agents.

The Director and Deputy Director, National Center for Devices and Radiological Health, are authorized to reject manufacturer's designations of import agents under § 1005.25(b) of this chapter.

9. By revising § 5.47(a) to read as follows:

§ 5.47 Detention of adulterated or misbranded medical devices.

(a) For medical devices assigned to their respective organizations:

(1) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH).

(2) The Director and Deputy Director, Office of Compliance, NCDRH.

(3) The Director and Scientific Director, National Center for Drugs and Biologics (NCDB).

(4) The Director, Deputy Director, and Director, Division of Compliance, Office of Biologics, NCDB.

* * * * *

10. By revising § 5.49 to read as follows:

§ 5.49 Authorization to use alternative evidence for determination of the effectiveness of medical devices.

The following officials, for medical devices assigned to their respective organizations, may authorize under section 513(a)(3)(B) of the Federal Food, Drug, and Cosmetic Act (the act) the use of valid scientific evidence (other than that prescribed by section 513(a)(3)(A) of the act) for determining the effectiveness of medical devices for the purposes of sections 513, 514, and 515 of the act:

(a) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH), and the Director, Deputy Director, and Associate Director, Office of Device Evaluation, NCDRH.

(b) The Director and Scientific Director, National Center for Drugs and Biologics (NCDB), and the Director and Deputy Director, Office of Biologics, NCDB.

11. By revising § 5.50 to read as follows:

§ 5.50 Notification to petitioners of determinations made on petitions for reclassification of medical devices.

The following officials, for medical devices assigned to their respective organizations, are authorized to notify petitioners of determinations made on petitions for reclassification of medical devices that are classified in class III (premarket approval) by sections 513(f) and 520(l) of the Federal Food, Drug, and Cosmetic Act (the act) and denials of petitions for reclassification of medical devices that are submitted under section 513(e) of the act (except for petitions submitted in response to **Federal Register** notices initiating standard-setting under section 514(b) of the act or premarket approval under section 515(b) of the act):

(a) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH), and the Director, Deputy Director, and Associate Director, Office of Device Evaluation, NCDRH.

(b) The Director and Scientific Director, National Center for Drugs and Biologics (NCDB), and the Director and Deputy Director, Office of Biologics, NCDB.

12. By revising § 5.52 to read as follows:

§ 5.52 Notification to sponsors of deficiencies in petitions for reclassification of medical devices.

The following officials, for medical devices assigned to their respective organizations, are authorized to notify sponsors of deficiencies in petitions for reclassification of medical devices submitted under sections 513(f) and 520(l) of the Federal Food, Drug, and Cosmetic Act:

(a) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH), and the Director, Deputy Director, and Associate Director, Office of Device Evaluation, NCDRH.

(b) The Director and Scientific Director, National Center for Drugs and Biologics (NCDB), and the Director and Deputy Director, Office of Biologics, NCDB.

13. By revising § 5.53 to read as follows:

§ 5.53 Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices.

(a) The following officials, for medical devices assigned to their respective organizations, are authorized to approve, disapprove, declare as complete or incomplete, or revoke product development protocols for medical devices submitted under section 515(f) of the Federal Food, Drug, and Cosmetic Act (the act):

(1) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH), and the Director, Deputy Director, and Associate Director, Office of Device Evaluation, NCDRH.

(2) The Director and Scientific Director, National Center for Drugs and Biologics (NCDB), and the Director and Deputy Director, Office of Biologics, NCDB.

(b)(1) The following officials, for medical devices assigned to their respective organizations, are authorized to approve, disapprove, or withdraw approval of applications for premarket approval for medical devices submitted under sections 515 and 520(l) of the act:

(i) The Director and Deputy Director, NCDRH, and the Director, Deputy Director, and Associate Director, Office of Device Evaluation, NCDRH.

(ii) The Director and Scientific Director, NCDB, and the Director and Deputy Director, Office of Biologics, NCDB.

(2) For medical devices assigned to their respective division, the Division Directors, Office of Device Evaluation, NCDRH, are authorized to approve, disapprove, or withdraw approval of supplemental premarket applications.

(c) The Director and Scientific Director, NCDB, are authorized to approve, disapprove, or withdraw approval of applications for premarket approval submitted under section 505 of the act or which are subject to section 520(l) of the act.

14. By revising § 5.54 to read as follows:

§ 5.54 Determinations that medical devices present unreasonable risk of substantial harm.

The following officials, for medical devices assigned to their respective organizations, are authorized to determine that medical devices present an unreasonable risk of substantial harm to the public health, and to order adequate notification thereof, under section 518(a) of the Federal Food, Drug, and Cosmetic Act:

(a) The Director and Deputy Director, National Center for Devices and Radiological Health.

(b) The Director and Scientific Director, National Center for Drugs and Biologics (NCDB), and the Director and Deputy Director, Office of Biologics, NCDB.

15. By revising § 5.55 to read as follows:

§ 5.55 Orders to repair or replace, or make refunds for, medical devices.

The following officials, for medical devices assigned to their respective organizations, are authorized to order repair or replacement of, or refund for, medical devices under section 518 (b) and (c) of the Federal Food, Drug, and Cosmetic Act:

(a) The Director and Deputy Director, National Center for Devices and Radiological Health.

(b) The Director and Deputy Director, National Center for Drugs and Biologics (NCDB), and the Director and Deputy Director, Office of Biologics, NCDB.

16. By revising § 5.59 to read as follows:

§ 5.59 Approval, disapproval, or withdrawal of approval of applications for investigational device exemptions.

(a) For medical devices assigned to their respective organizations, the following officials are authorized to approve, disapprove, or withdraw approval of applications for investigational device exemptions submitted under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act):

(1) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH), and the Director, Deputy Director, and Associate Director, Office of Device Evaluation, NCDRH.

(2) The Director and Scientific Director, National Center for Drugs and Biologics (NCDB), and the Director and Deputy Director, Office of Biologics, NCDB.

(b) For medical devices assigned to their respective division, the Division Directors, Office of Device Evaluation, NCDRH, are authorized to approve, disapprove, or withdraw approval of applications for investigational device exemptions submitted under section 520(g) of the act.

17. By revising § 5.78 to read as follows:

§ 5.78 Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs.

(a) The Director, Scientific Director, and Assistant Director for Regulatory Affairs, National Center for Drugs and Biologics, are authorized to perform all the functions of the Commissioner of Food and Drugs under section 507 of the Federal Food, Drug, and Cosmetic Act (the act) regarding the issuance, amendment, or repeal of regulations pertaining to antibiotic drugs for human use.

(b) The Director and Deputy Director, National Center for Devices and Radiological Health, are authorized to perform all the functions of the Commissioner of Food and Drugs under section 507 of the act regarding the issuance, amendment, or repeal of regulations pertaining to antibiotic drugs for human use contained in medical devices.

18. By revising § 5.86 to read as follows:

§ 5.86 Granting and withdrawing variances from performance standards for electronic products.

The Director and Deputy Director, National Center for Devices and Radiological Health, are authorized to grant and withdraw variances from the provisions of performance standards for electronic products established in Subchapter J of this chapter.

19. By revising § 5.87 to read as follows:

§ 5.87 Exemption of electronic products from performance standards and prohibited acts.

The Director and Deputy Director, National Center for Devices and Radiological Health, are authorized to exempt from performance standards any electronic product intended for use by departments or agencies of the United States under section 358(a)(5) of the Public Health Service Act (the act) and to exempt an electronic product or class of products from all or part of the provisions of section 360B(a) of the act under section 360B(b) of that act.

20. By revising § 5.88 to read as follows:

§ 5.88 Testing programs and methods of certification and identification for electronic products.

The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH), and the Director and Deputy Director, Office of Compliance, NCDRH, are authorized to review and evaluate industry testing programs under section 358(g) of the Public Health Service Act (the act), and to approve or disapprove alternate methods of certification and identification and to disapprove testing programs upon which certification is based under section 358(h) of the act.

21. By revising § 5.89 to read as follows:

§ 5.89 Notification of defects in, and repair or replacement of, electronic products.

(a) The Director and Deputy Director, National Center for Devices and Radiological Health (NCDRH), are authorized to perform all functions of the Commissioner of Food and Drugs relating to notification of defects in, noncompliance of, and repair or replacement of or refund for, electronic products under section 359 of the Public Health Service Act (the act) and under §§ 1003.11, 1003.22, 1003.31, 1004.2, 1004.3, 1004.4, and 1004.6 of this chapter; and Regional Food and Drug Directors, District Directors, and Chiefs of Station Offices are authorized to perform all such functions relating to:

(1) Assemblers of diagnostic x-ray systems, as defined in § 1020.30(b) of this chapter.

(2) Manufacturers of sunlamp products and ultraviolet lamps intended for use in any sunlamp product, as defined in § 1040.20(b) of this chapter.

(b) The Director and Deputy Director, Office of Compliance, NCDRH, are authorized to notify manufacturers of defects in, and noncompliance of, electronic products under section 359(e) of the act and under § 1003.11(a) of this chapter; and the chiefs of District Compliance Branches are authorized to perform all such functions relating to:

(1) Assemblers of diagnostic x-reay systems, as defined in § 1020.30(b) of this chapter.

(2) Manufacturers of sunlamp products and ultraviolet lamps intended for use in any sunlamp products, as defined in § 1040.20(b) of this chapter.

22. By revising § 5.90 to read as follows:

§ 5.90 Manufacturers requirement to provide data to ultimate purchasers of electronic products.

The Director and Deputy Director, National Center for Devices and Radiological Health, are authorized to require manufacturers to provide performance and technical data to the ultimate purchaser of electronic products under section 360A(c) of the Public Health Service Act.

23. By revising § 5.91 to read as follows:

§ 5.91 Dealer and distributor direction to provide data to manufacturers of electronic products.

The Director and Deputy Director, National Center for Devices and

Radiological Health (NCDRH), the Director and Deputy Director, Office of Compliance, NCDRH, are authorized to direct dealers and distributors of electronic products to furnish information on first purchasers of such products to the manufacturer of the product under section 360A(f) of the Public Health Service Act.

24. By revising § 5.92 to read as follows:

§ 5.92 Acceptance of assistance from State and local authorities for enforcement of radiation control legislation and regulations.

The Director and Deputy Director, National Center for Devices and Radiological Health, are authorized to accept assistance from State and local authorities engaged in activities related to health or safety or consumer protection on a reimbursable basis or otherwise, under section 360E of the Public Health Service Act.

Effective date. This regulation became effective November 30, 1983.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: December 19, 1983.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 83-34196 Filed 12-23-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 886

[Docket No. R-83-1099; FR-1795]

Section 8 Housing Assistance Payments Program; Special Allocations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Department is adopting as final an interim rule that allows the use of Fair Market Rents (based on a percentage of the Fair Market Rents for Section 8 New Construction) for units which were previously assisted under the Rent Supplement and Rental Assistance Payments Programs and which are now being converted to the Section 8 program.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, Room 6176, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-5654. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 9, 1983, the Department published at 48 FR 36101 an interim rule which allows the use of Fair Market Rents (based on a percentage of the Fair Market Rents for Section 8 New Construction) for units which were previously assisted under the Rent Supplement and Rental Assistance Payments Programs and which are now being converted to the Section 8 program. Provision was made for public comment, and two comments were received. Both comments were supportive of the interim rule without change.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it pertains to a relatively small number of units of the total number of units connected with the programs involved.

This rule is listed at 48 FR 47447 as item H-44-83 in the Department's Semiannual Agenda of Regulations published on October 17, 1983, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 886

Grant programs—housing and community development, Low and moderate income housing, Rent subsidies.

PART 886—[AMENDED]

Accordingly, the interim rule amending 24 CFR 886.110, published on August 9, 1983 (48 FR 36101), is hereby adopted as final without change.

(Sec. 5(b), U.S. Housing Act of 1937, 42 U.S.C. 1437c(b); section 8, U.S. Housing Act of 1937, 42 U.S.C. 1437f; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: December 19, 1983.

W. Calvert Brand,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-34232 Filed 12-23-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Permanent Regulatory Program; Approval of State Program Amendment

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 946 to approve an amendment consisting of statutory and regulation revisions submitted by the State of Virginia on May 20, 1983, to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment relates to the State's Coal Surface Mining Reclamation Fund which is an alternative bonding system. After providing opportunity for public comment and conducting a thorough review of the program amendment in accordance with 30 CFR 732.17, the Director, OSM, has decided to approve the amendment.

EFFECTIVE DATE: December 27, 1983.

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Director, Virginia Field Office, Office of Surface Mining Reclamation and Enforcement, Highway 23, South, P.O. Box 626, Big Stone Gap,

Virginia 24219; Telephone: (703) 523-4303.

ADDRESSES: Copies of the Virginia program amendment, and all comments received on the proposed amendments are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315, Washington, D.C. 20240, Telephone: (202) 343-7896

Office of Surface Mining Reclamation and Enforcement, Highway 23, South, Big Stone Gap, Virginia 24219

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219.

SUPPLEMENTARY INFORMATION: The Virginia program was conditionally approved by the Secretary of the Interior on December 15, 1981 (46 FR 61088-61115). Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register**. Information pertinent to the previous amendments submitted by Virginia concerning reclamation bonding can be found in the September 21, 1982 **Federal Register** (47 FR 41556), in the January 18, 1983 **Federal Register** (48 FR 2123) and in the February 28, 1983 **Federal Register** (48 FR 8271).

Background on Amendment

On May 20, 1983, Virginia submitted a proposed State program amendment consisting of an act, which amends and reenacts Sections 45.1-270.2—45.1-270.4 of the Code of Virginia, passed by the 1983 Virginia General Assembly relating to the State's Coal Surface Mining Reclamation Fund (Fund) and a draft copy of proposed regulations developed to implement the statutory amendment (Administrative Record No. VA 480). The statutory amendment, referred to as Chapter 131, modifies the statutory amendment creating the Fund submitted by Virginia on July 8, 1982, and approved by the Director, OSM, on September 21, 1982 (47 FR 41556). Chapter 131 and its implementing regulations would become effective upon approval by OSM. The State also provided a side-by-side comparison of the original program amendment of July 8, 1982, and the proposed Chapter 131 amendment.

The major differences between the July 8, 1982, amendment creating the Fund and the modifications of May 20, 1983 include: deletion of a five year history of satisfactory operation requirement and the need to pay additional Fund taxes; a decrease in the entrance fee and a decrease in the bond rates; addition of self-bonding criteria for surface mining and associated facilities operations; and an increase of the minimum balance of the Fund to $750,000 from $500,000.

On June 16, 1983, OSM published a notice in the **Federal Register** to announce receipt of the amendment, public comment period and opportunity for public hearing (48 FR 27552). The public comment period closed on July 18, 1983. A public hearing scheduled for July 11, 1983, was not held because no one expressed an interest in participating. Following this opportunity for a public hearing and the public comment period, OSM on August 4, 1983, sent to the State a letter which set forth OSM's tentative findings on the proposed amendment (Administrative Record No. VA. 498). On October 6, 1983, Virginia responded to OSM's letter in order to resolve any potential deficiencies (Administrative Record No. VA. 506).

In light of Virginia's response of October 6, 1983, OSM again sent a letter to the State on October 31, 1983, regarding the adequacy of the proposed amendment (Administrative Record No. VA. 509). On November 16, 1983, OSM met with representatives of the State, Divison of Mined Land Reclamation and Bonding Commission, to discuss the amendment and the prior correspondence between OSM and the State (Administrative Record No. VA 510). In response to that meeting, the State, on November 23, 1983, submitted clarifying material to resolve OSM's questions about the amendment (Administrative Record No. VA. 511).

On December 2, 1983, OSM reopened the comment period to allow the public sufficient time to consider the correspondence and meeting notes that transpired since the amendment was submitted initially (48 FR 54376). The public comment period closed on December 19, 1983.

Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by Virginia on May 20, 1983, consisting of an act, amending and reenacting Sections 45.1-270.2—45.1-270.4 of the Code of Virginia and the promulgated regulations (Part V809), is consistent with sections 509 and 519 of SMCRA and no less effective than the alternative bonding system requirements of 30 CFR Part 800. Section 800.11(e) of the OSM bonding rules, 48 FR 32960 (July 19, 1983), establishes two standards for approval of an alternative bonding system: sufficient funds must be available to ensure that reclamation is completed should a default occur and the alternative must provide a substantial economic incentive for the permittee to comply with reclamation provisions.

In the November 16, 1983 meeting between OSM and Virginia officials and in the State's subsequent letter of November 23, 1983, Virginia provided clarification of issues previously raised by OSM. Although the clarifying material is contained in the Virginia administrative record, the Director believes that the clarifications submitted by Virginia warrant mentioning in this notice in order to provide the basis for the approval of the amendment in light of the standards for an alternative bonding system.

Section V809.11 Participation in the Fund

Virginia clarified that Part V809 of the Virginia Coal Surface Mining Reclamation Regulations is an alternative bonding program that pertains only to those participants in the Fund. Reclamation Fund participation is at the election of the permittee. A permittee may also elect to self-bond. Self-bond applicants not participating in the Fund are subject to the Virginia bonding regulations at Parts V800-V808.

Section V809.13 Self-bonding

Virginia clarified that the standards for self-bond applicants for underground operations at V809.13(a)(2) are also applicable to self-bond applicants for proposed surface mining operations or associated facilities as referenced at V809.13(b)(3). Most importantly, a surface mine self-bond applicant would have to have a net worth of $1 million.

Virginia provided information to substantiate the $1 million net worth standard for self-bonding eligibility at V809.13(a)(2). Virginia officials estimate that only 15-20 companies will self-bond under the Fund regulations and that each of these companies will have a history of continuous operation of no less than five years. As of November 23, 1983, Virginia had issued only one

permit that has potential reclamation liabilities exceeding $1 million.

Section V809.16 Forfeiture

Virginia clarified the intent of Section V809.19(b) with regard to use of the Fund in the event of forfeiture. Virginia stated that it has the authority to use the Fund in the event of forfeiture to the extent necessary to meet reclamation liabilities under a particular permit. The subsection makes the Fund immediately accessible in those cases without the normal delay of collecting certificates of deposit, surety bonds, cognovit notes, or indemnity agreements.

On August 4, 1983, OSM recommended that Section V809.19(b) be amended to include a reference to V809.13(b) immediately after the current reference to § 809.12(c) to clarify that self-bond applicants of a proposed surface mining operation or associated facility, as well as self-bond applicants for underground operations, are subject to the forfeiture provisions of the section. Virginia responded that the omission of the citation was clearly an oversight and the regulations would be corrected as an insignificant change. The Director accepts that the omission was an oversight and that it will be corrected expeditiously. When Virginia incorporates the omitted reference, the Director requests that Virginia provide him with notification of the correction. However, as a requirement of this approval, the Director requires that Virginia not approve any self-bond permits of a proposed surface mining operation or associated facility unless the applicant has agreed to be subject to the forfeiture section of this amendment.

Adequacy of Fund

In response to OSM's concerns about the adequacy of the Fund, Virginia submitted data concerning Fund status. As of November 15, 1983, there were 98 participants in the Fund out of 174 permanent program permittees. Also, as of November 15, 1983, the Fund total, including entrance fees, reclamation tax and interest, was $498,192.36.

Virginia stated that the $1 million Fund ceiling is its best estimate of an amount adequate to assure reclamation liabilities for participants. Also, the State indicated that the Fund would become larger than $1 million due to the requirement that taxes will be paid on each permit for a one year period commencing with and running from the date of coal production, processing or loading. Further, Virginia indicated that it continues to stand behind its estimate that forfeiture of bond will occur on 50 acres per year.

With regard to adequacy of the Fund, Virginia indicated that it will monitor the adequacy on a continuing basis and will adjust Fund criteria as necessary to ensure the viability of the program. The Director will also monitor the adequacy of the Fund. In conjunction with OSM's continuous oversight monitoring, the Director, as part of his original approval of the alternative bonding program on September 21, 1982, and his approval today of these modifications to the alternative program, requires the State to continue to provide a periodic report evaluating the adequacy of the Fund amount and other parameters. *See* 47 FR 41557, September 21, 1982.

Disposition of Comments

No relevant comments were received from the public on Virginia's proposed program amendment. Comments from Federal agencies were limited and did not indentify any specific deficiencies of the proposed program amendment.

Pursuant to section 503(b) of SMCRA and 30 CFR Part 732.17(h)(10)(i), of those Federal agencies invited to comment, comments were received from the following: Bureau of Land Management, Mine Safety and Health Administration, the Army Corps of Engineers, Environmental Protection Agency and the Agricultural Stabilization and Conservation Service.

Additional Determinations

Compliance with the National Environmental Policy Act: The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 129(d), no environmental impact statement need be prepared on this rulemaking.

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

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

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

List of Subjects in 30 CFR Part 946

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

Dated: December 21, 1983.

J. Roy Spradley,

Acting Director, Office of Surface Mining.

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

PART 946—VIRGINIA

30 CFR 946.15 is amended by adding paragraph (j) as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendment was approved effective December 27, 1983. Revised § 45.1-270.2—45.1-270.4 of the Code of Virginia and Virginia revised regulations of Part V809, submitted on May 20, 1983.

[FR Doc. 83-34321 Filed 12-23-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 960

Intelligence Oversight

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by removing Part 960—Intelligence Oversight, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 200-13 has been redesignated and revised. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: December 27, 1983.

FOR FURTHER INFORMATION CONTACT: Col. Burchard, HQ AFISC/IGQI, Norton AFB, CA 92409, Telephone (714) 382-5521.

PART 960—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 960.

List of Subjects in 32 CFR Part 960.

National defense, Military law.

Authority: 10 U.S.C. 8012.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 83-34281 Filed 12-23-83; 8:45 am]

BILLING CODE 3910-01-M

POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority; Mail Covers; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: On December 20, 1983 (48 FR 56215), the Postal Service adopted its final rule to permit postal inspectors to make the decision to record, and to use in criminal investigations and prosecutions, the information found on the covers of the mail matter reasonably believed to be the evidence of a postal crime such as mail theft, embezzlement, or depredation. The effective date of the rule was shown to be January 20, 1983, which is incorrect. It should have been January 20, 1984.

EFFECTIVE DATE: January 20, 1984.

FOR FURTHER INFORMATION CONTACT: Charles R. Braun at (202) 245-4620.

(39 U.S.C. 401, 403, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-34305 Filed 12-23-83; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-2-FRL 2496-7]

Hazardous Waste Management Program; Phase I Interim Authorization

AGENCY: Environmental Protection Agency (EPA), Region II.

ACTION: Granting of Phase I Interim Authorization to State Hazardous Waste Program.

SUMMARY: The State of New York has applied for Interim Authorization of its hazardous waste program under Subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, and EPA guidelines for the approval of State hazardous waste programs at 40 CFR Part 271, Subpart B (formerly 40 CFR Part 123, Subpart F). EPA has reviewed New York's hazardous waste program and has determined that the program is substantially equivalent to the Federal program. EPA is hereby granting Phase I Interim Authorization to New York to operate a hazardous waste program in lieu of Phase I of the Federal hazardous waste program in its jurisdiction.

EFFECTIVE DATE: December 27, 1983.

FOR FURTHER INFORMATION CONTACT: Evan Liblit, Solid Waste Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278 (212) 264-4536.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), requires EPA to establish a comprehensive Federal program to assure the safe management of hazardous waste. One a Federal program is established, EPA is authorized under Section 3006 of RCRA to approve State hazardous waste programs to operate in lieu of the Federal program in their jurisdictions. Two types of State program approvals are authorized under RCRA: "Final Authorization" is a permanent approval which may be granted to States whose programs are "equivalent" to and "consistent" with the Federal programs, and "Interim Authorization" is a temporary approval for States which might not meet the requirements of Final Authorization, by whose programs are at least "substantially equivalent" to the Federal program. It is intended that States receiving Interim Authorization will use the Interim Authorization period to make the changes in their regulations and statutes necessary to quality for Final Authorization.

On May 19, 1980 EPA published the first phase of the Federal hazardous waste program regulations (40 CFR Parts 260-263 and 265) including guidelines for authorizing State hazardous waste programs under Section 3006 (40 CFR Part 271; formerly 40 CFR Part 123). These guidelines set forth the requirements for Interim Authorization and the procedures which EPA will follow in acting on State applications for Interim Authorization. They also provide that EPA may grant Interim Authorization in two major phases (Phase I and Phase II), corresponding to the two major phases of the Federal program; namely compliance and enforcement and permit issuance.

On January 12, 1982, the State of New York submitted to EPA its complete application for Phase I Interim Authorization (IA application). In the February 11, 1982, **Federal Register** (47 FR 6298), EPA announced the availability for public review of the New York application. EPA also indicated that a public hearing would be held on March 18, 1982, with the public record open until March 25, 1982.

After detailed review of the final New York IA application, written comments submitted by the public during the public notice period and oral comments received at the public hearing, EPA transmitted comments to the New York State Department of Environmental Conservation (DEC) on June 10, 1982. These comments requested revisions to the State's hazardous waste regulations. On October 21, 1983 the State filed proposed amended regulations with the New York Secretary of State. These regulations and additional clarifying correspondence from the DEC Commissioner on November 22, 1983 satisfactorily address all issues raised by EPA.

The issues raised by EPA addressed two major areas of concern. First, EPA questioned DEC's authority to incorporate by reference the Federal listing of hazardous wastes into its Identification and Listing regulation. Article IV Section 8 of the New York State Constitution has been construed by some New York State courts to invalidate the State's incorporation by reference of certain Federal regulations. The courts held that the Federal regulations in question would have to be set forth fully in the official compilation of New York regulations, and would have to be filed with the New York Secretary of State in their entirety. In order to remove any doubt about the legality of the State's identification and listing of hazardous waste, DEC filed the EPA regulations with the Secretary of State in their entirety.

Second, New York's regulations appear to provide that a generator storing hazardous waste for less than 90 days is exempt from regulation as a treatment, storage or disposal facility provided the wastes are treated on-site within 90 days of generation. This provision appears to exempt not only the accumulation of wastes during the 90 day period, but the subsequent treatment as well. No such exemption for the treatment of hazardous wastes exists under RCRA.

The DEC regulation has been interpreted and administered in a manner substantially equivalent to the Federal program. The Commissioner's response to EPA's comment explains that no such exemption was ever intended, and no one has ever claimed or been allowed such an exemption