In order to afford additional time for consideration of the issues raised in these two petitions, it is necessary to grant rehearing of Order No. 380–A for the limited purpose of further consideration.

The Commission orders:

Rehearing of Order No. 380–A is hereby granted for the limited purpose of further consideration. As provided in Rule 713(d) [3] of the Commission's rules of practice and procedure, no answers to the request for rehearing will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–26306 Filed 10–2–84; 8:45 am]

BILLING CODE 6717–01–M

[3] 18 CFR 385.713.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 84–211]

Refund of Duties on Imported Watches and Watch Movements

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document finalizes an interim Customs Regulations amendment to reflect a new incentive designed by the Congress to stimulate watch assembly activity in the U.S. insular possessions. The new incentive is in the form of a production incentive certificate entitling the holder (or another party to which it has transferred some or all of its entitlement) to secure the refund of duties paid to Customs on specified watches, watch movements, (including solid state watches and watch movements) and watch parts entered into the U.S. during a 3-year period beginning 2 years before the issue date of the certificate of entitlement. This incentive is being administered jointly by the Departments of Commerce and Interior and by Customs.

EFFECTIVE DATE: November 2, 1984.

FOR FURTHER INFORMATION CONTACT:
Betty L. Colburn, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5307) or
Richard Seppa or Frank Creel, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202–377–1660).

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 97–446, an Act, "to reduce certain Customs duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes", was approved on January 12, 1983.

The Act provides a new incentive designed to stimulate watch assembly activity in the U.S. insular possessions (i.e., U.S. Virgin Islands, Guam, American Samoa). The new incentive is in the form of a production incentive certificate which can be used to secure the refund of duties paid on specified watches, watch movements, and watch parts entered during a 3-year period beginning 2 years before the issue date of the certificate. This certificate is to be issued to eligible producers by March 1 of each calendar year.

Because the legislation became effective on January 27, 1983, the interim Customs Regulations amendment was published as T.D. 84–16 in the **Federal Register** on January 12, 1984 (49 FR 1480), and became effective on that date. No comments were received in response to the interim amendment.

The incentive is administered jointly by the Departments of Commerce and Interior and by Customs. Copies of International Trade Administration, Form ITA–360, Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements, are issued by Commerce/Interior and kept by the insular producers on their premises or at another location approved in advance by the Departments.

To obtain a refund, Form ITA–361, A Request for Refund of Duties on Watches and Watch Movements, must be presented by the certificate holder (or, because the certificate entitlements are transferable, by another party legally entitled to a portion or all of the entitlement) to a Customs official at the port of entry where the articles were entered. The documentation accompanying the request form must include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

The Form ITA–360 certificate expires 1 year from its date of issuance. A refund request made by either the insular producer itself or by a transferee named by the insular producer on Form ITA–361 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA–360 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires.

A request for refund on Form ITA–361 must be filed at the port where the watch import entry was originally filed, then forwarded to the appropriate Customs regional office of that port for payment and disbursement of copies. Every effort will be made to expedite the processing of these refunds. A fee of 1 percent will be deducted by Customs from each refund request as reimbursement to salaries and expenses of those Customs personnel processing the request. This figure has been reduced from 5 percent because Customs administrative costs were not as high as originally anticipated.

This document finalizes the interim amendment to Part 10, Customs Regulations (19 CFR Part 10), which added a new § 10.181 to provide a procedure to secure the refund of duties on watches and watch movements for watch producers in the U.S. insular possessions. The Department of Commerce drafted rules for the issuance and handling of certificates and the transfer of entitlements as contained in 15 CFR Part 303.

Other than reducing the fee deducted by Customs, the interim amendment is being adopted without change.

Executive Order 12291

Because the amendment does not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory impact analysis prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act, relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this amendment because it has not had a significant economic impact on a substantial number of small entities nor imposed, or otherwise caused, a significant increase in the reporting, recordkeeping, or other compliance burdens since January 27, 1983. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This amendment is not subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511. Forms ITA–360 and 361 do not require OMB approval numbers because there are fewer than 10 respondents using the forms.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from Commerce, Interior, and other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports.

Amendment to the Regulations

PART 10—[AMENDED]

§ 10.181 [Amended]

The interim amendment to Part 10, Customs Regulations (19 CFR Part 10), published as T.D. 84–16 in the **Federal Register** on January 12, 1984 (49 FR 1480), which added a new center heading and new § 10.181, is adopted as a final rule with the following change. In paragraph (f) of § 10.181, the figure "5" is removed and, in its place, the figure "1" inserted.

William von Raab,
Commissioner of Customs.

Approved: September 12, 1984.

Edward T. Stevenson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84–26215 Filed 10–2–84; 8:45 am]
BILLING CODE 4820–02–M

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19 CFR Parts 18, 123, and 144

[T.D. 84–212]

Customs Regulations Amendments Relating to the Transportation of Bonded Merchandise

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide more control over imported merchandise transported in-bond from the port of entry to the port of destination or port of exportation. It is also designed to prevent abuses of the lay order period and general order procedures.

In-bond transportation refers to merchandise moved under contract (bond) guaranteeing delivery to Customs and payment of duties and taxes. With few exceptions, existing regulations do not set a time for receipt and delivery of in-bond merchandise by a forwarding carrier, or notification to Customs of the arrival of the merchandise at the port of destination or exportation. As a result, the security of the merchandise is jeopardized and there are abuses of the lay order period and the general order procedure.

These amendments establish time periods for the receipt, delivery, and notification to Customs of arrival of imported merchandise transported in-bond within the United States. They also provide that presentation to Customs of the in-bond document accompanying the merchandise will be acceptable as proof of delivery, and that the new in-bond control system will be applicable to truck shipments of in-bond merchandise transiting the United States to Canada or Mexico.

EFFECTIVE DATE: November 2, 1984.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: J. Bradley Lund, Office of Inspection and Control (202–566–5354);

Entry Aspects: Jerry Laderberg, Entry Procedures and Penalties Division (202–566–5765);

Bond Aspects: William Lawlor, Carriers, Drawback and Bonds Division (202–566–5865); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Under sections 552 and 553, Tariff Act of 1930, as amended (19 U.S.C. 1552, 1553), any merchandise arriving at a port of entry in the United States, other than merchandise the importation of which is prohibited, may be entered without appraisement or payment of Customs duty for: (1) Transportation in-bond to any other port of entry; or (2) transportation in-bond through the United States for exportation. Either transportation must be made under the rules and regulations prescribed by the Secretary of the Treasury, most of which are set forth in Part 18, Customs Regulations (19 CFR Part 18).

The Customs Regulations do not specifically provide for the time of receipt, delivery, or notification to Customs of arrival of merchandise transported in-bond, except for transit air cargo and merchandise being transported for exportation (§§ 6.21 and 18.20, Customs Regulations (19 CFR 6.21, 18.20)). As a result, the security of the merchandise and compliance with Customs laws and regulations are jeopardized. Abuses of the lay order period and the general order procedures (whereby merchandise which is landed but not covered by a permit for its release is allowed to remain on the dock or unloading area for a period of 5 days before it is deposited in a public store or general order warehouse) have also resulted from Customs failure to provide specific time limits for the movement of imported in-bond merchandise through the United States.

After extensive study of this problem over several years, by notice published in the **Federal Register** on October 14, 1983 (48 FR 46812), amendments to Parts 18, 123, and 144, Customs Regulations, were proposed. That notice proposed the following:

(1) An amendment to § 18.2(a), Customs Regulations, to provide that within 5 working days after presentation of an entry for merchandise to be transported in-bond, the forwarding carrier would be required to take receipt of the merchandise provided the lay order period or any extension of that period had expired and no other entry had been filed. If the forwarding carrier failed to take receipt of the merchandise in the required period, the transportation entry would be canceled and the merchandise treated as unclaimed as of the date of original arrival.

(2) An amendment to § 18.2(c), Customs Regulations, to provide that, except for transit air cargo provided for in § 6.21, Customs Regulations, bonded merchandise destined to a final port in the United States, or for exportation from the United States, would be required to be delivered to Customs at the port of destination or exportation within 30 days, if transported by land, or within 60 days if transported on board a vessel in the U.S. coastwise trade, after the date of receipt by the forwarding carrier at the port of origin. Failure to comply with this time limit would constitute an irregular delivery and subject the initial bonded carrier to penalties under § 18.8, Customs Regulations.

(3) An amendment to §§ 18.2(d) and 18.7(a), Customs Regulations, to require a carrier delivering bonded merchandise to surrender the in-bond manifest to the district director within 2 working days, after arrival of any portion of the in-bond shipment at the port of destination or delivery of the merchandise to the exporting carrier at the port of exportation. As noted above, failure to comply with this time limit would constitute an irregular delivery and subject the initial bonded carrier to applicable penalties under § 18.8, Customs Regulations.

(4) An amendment to § 18.8, Customs Regulations, to provide that an acceptable proof of proper delivery of bonded merchandise to Customs at the port of destination or exportation would be a properly receipted copy of the in-

bond document (the appropriate Customs Form 7512 or 7520, or the carnet).

(5) An amendment to § 18.2(b), Customs Regulations, to provide that the in-bond document and Customs control card (Customs Form 7512–C, Transportation Entry and Manifest of Goods) be prepared by the carrier, shipper, or any of the parties named in § 18.11(b), Customs Regulations, whenever merchandise is being transported in-bond. The Customs in-bond document thus prepared may then be signed by the carrier or any of the parties named in § 18.11(b), Customs Regulations.

(6) An amendment to the Customs Regulations to delete the words "in duplicate" after the words "Customs Form 7512–C" wherever they appear in the Customs Regulations and to substitute the word "destination" for "duplicate" wherever that word appears in the Customs Regulations in reference to the second part of Customs Form 7512–C. Several other editorial changes and conforming amendments to Part 18, Customs Regulations, were also proposed. These amendments to the general provisions contained in §§ 18.1–18.8 apply to merchandise in transit through the United States to foreign countries (§§ 18.20–18.24, Customs Regulations), and merchandise withdrawn from warehouse for transportation or transportation and exportation (§§ 144.36 and 144.37, Customs Regulations).

The proposed in-bond control system also was to apply to baggage in transit from port-to-port in Canada or Mexico through the United States (§ 123.64, Customs Regulations), and truck shipments transiting the United States, except when otherwise provided. An additional paragraph to § 123.42, Customs Regulations, was proposed to accomplish this purpose.

Interested parties had until December 13, 1983, to submit written comments. Nine comments were received in response to the notice. A discussion of these comments and our responses follow.

Discussion of Comments

Most of the comments oppose at least some of the time limits placed upon the in-bond transportation of merchandise through the United States. The reason most often given for this opposition was the inability to adhere to the time limits because of circumstances beyond the carrier's control. These circumstances ranged from non-cooperation of the broker or other bonded carrier to acts of God, such as inclement weather.

Specific comments and our responses are as follows:

Comment: Movement of merchandise wholly or partially by barge may be impeded by ice or low water, thereby precluding delivery to the port of exportation or destination within the 30 or 60-day time limit. Also, the 30-day time limit is too short for certain rail traffic which may be restricted to movement during daylight hours.

Response: These conditions may be considered a circumstance beyond the carrier's control, upon which the district director, in his discretion, may mitigate any penalties or cancel the claim for liquidated damages incurred for late deliveries.

Comment: Allowing the fowarding carrier 5 days in which to take receipt of the merchandise being transported in-bond (after presentation of an entry for the merchandise and expiration of the lay order period and any extensions thereof) is unnecessary and could result in cargo sitting on the dock for long periods of time. This would continue the importing carrier's obligation under his bond.

Response: Although on occasion merchandise may remain on the dock for a long period, in most instances the importing carrier would not allow bonded merchandise it delivers to sit on the dock for an extended period. Customs believes that the exigencies of commerce require that the importing carrier be *allowed* an additional 5 days beyond the lay order period to arrange for the further transportation of the merchandise.

As to the continuation of the importing carrier's bond obligation while the merchandise is sitting on the dock, we note that the importing carrier has control over this situation. It could require the fowarding carrier to sign off on the in-bond transportation document (Customs Form 7512) which would extinguish its (the importing carrier's) bond obligation.

Comment: An operator of a limited use short route pipeline extending from a seaport to a contiguous country border location complains that the special nature of its operation often results in the imported material remaining in its pipeline in the United States for over 30 days. Since this company cannot always complete a transit movement within 30 days of the in-bond entry, it suggests that an exclusionary provision be added to § 18.2(c)(2), Customs Regulations, for merchandise transported by pipeline.

Response: While we recognize that the above problem exists, especially with regard to imported oil which may sit in a shore tank for a long period of time before it is sent through the pipeline or remain in the pipeline for some time after initial entry, we do not believe this occurs enough to warrant an exclusion from the regulation. A district director may use his discretionary authority to grant extensions of time to the pipeline operator for the in-transit movement of the merchandise through the pipeline.

Comment: Because of some misunderstanding between the broker who files the in-bond entry and the carrier who picks up the merchandise, the carrier may fail to receipt for the merchandise.

Response: This is a private matter between the broker and the carrier. It does not involve Customs.

Comment: The requirement that the carrier surrender the manifest to Customs within 2 days of arrival of the shipment at the port of destination is unreasonable because Customs may not be able to respond to the carrier's request for examination for up to 5 days.

Response: The commenter is confusing the issue here. The carrier need only deliver the manifest to Customs within the 2-day period to relieve itself of liability for failure to deliver the manifest. It does not have to wait for physical examination by Customs of the cargo to present the manifest.

One commenter suggested that the carrier's receipt of a copy of the in-bond document (Customs Form 7512) presented to Customs would help in resolving liquidated damages claims. While we agree with this comment, we note that this would only provide proof that the carrier has satisfied his obligation to report the arrival of the merchandise. It would not relieve it of liability for shortages, misdelivery, etc., under § 18.8, Customs Regulations.

Another commenter noted that the proposal did not provide a separate paragraph for merchandise delivered from a warehouse, as in present § 18.2(a)(2). We have remedied this by redesignating existing § 18.2(a)(2) as § 18.2(a)(3).

After careful analysis of the comments received and further review of the matter, it has been determined to adopt the proposal with the modification to § 18.2(a), as stated above.

Executive Order 12291

It has been determined that these amendments are not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 18

Common carriers, Customs duties and inspection, Exports, Freight forwarders, Imports, Surety bonds.

19 CFR Part 23

Canada, Mexico, Motor carriers.

19 CFR Part 144

Warehouses.

Amendments to the Regulations

Parts 18, 123, and 144, Customs Regulations (19 CFR Parts 18, 123, 144), are amended as set forth below:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. Paragraph (a), the first sentence of paragraph (b), and paragraphs (c) and (d) of § 18.2 are revised to read as follows:

§ 18.2 Receipt by carrier, manifest.

(a)(1) *Merchandise other than from warehouse delivered to bonded carrier.* Except as set forth in paragraph (a)(2) of this section, within 5 working days after presentation of an entry for merchandise to be transported in-bond, the forwarding carrier shall take receipt of the merchandise if any lay order period and extension thereof have expired and no other entry is filed. If the forwarding carrier fails to take receipt of the merchandise within the prescribed period, the transportation entry shall be canceled and the merchandise shall be treated as unclaimed as of the date of original arrival.

(2) When merchandise is delivered to a bonded carrier for transportation in-bond, the merchandise shall be laden on the conveyance under supervision of a Customs officer unless—

(i) The transporting conveyance is not to be sealed with Customs seals, or

(ii) the lading inspector accepts the check of the carrier as to the merchandise laden. The carrier's receipt shall be given immediately to the lading inspector on the Customs in-bond document (the appropriate Customs Form 7512 or 7520, or the carnet) covering the merchandise. In the case of a carnet, the receipt shall be given on the appropriate vouchers in the following form:

Received the cargo listed herein for delivery to Customs at the indicated port of destination or exportation, or for direct exportation.

Name of Carrier (or Exporter) ______

Attorney-in-fact or Agent of Carrier (or Exporter) ______

______

Date ______

(3) *Merchandise delivered from warehouse.* When merchandise is delivered from a warehouse to a bonded carrier for transportation in bond, supervision of lading shall be accomplished in accordance with the procedure set forth in § 19.6(b) of this chapter.

(b) A Customs in-bond document, containing a description of the merchandise, and Customs control card (Customs Form 7512-C), shall be prepared by the carrier or any of the parties named in § 18.11(b), whenever merchandise is being transported in bond. The Customs in-bond document thus prepared shall then be signed by the carrier or any of the parties named in § 18.11(b). * * *

(c)(1) After the merchandise has been laden and the in-bond carrier or his agent has receipted the in-bond document, either Customs Form 7512 or 7520 (in duplicate), together with either the related Customs Form 7512-C (destination) or the carnet (which cannot be used in conjunction with Customs Form 7512-C) shall be delivered as a manifest to the conductor, master, or person in charge to accompany the merchandise to its port of destination or exportation. If more than one conveyance is used to transport the merchandise, the Customs Form 7512-C (destination) shall accompany the first conveyance, and two copies of Customs Form 7512 shall accompany each conveyance as a manifest of the merchandise transported by that conveyance. A TIR carnet (see § 18.3(b)) shall not be used if more than one conveyance is required.

(2) Except transit air cargo provided for in § 6.21 of this chapter, bonded merchandise destined to a final port of destination in the United States, or for export from the United States, shall be delivered to Customs at the port of destination or exportation within 30 days after the date of receipt by the forwarding carrier at the port of origin, if transported on land. If the merchandise is transported on board a vessel engaged in the United States coastwise trade, delivery to Customs at the port of destination or exportation shall be within 60 days after the date of receipt by the forwarding carrier at the port of origin. Failure to deliver the merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8).

(d) Promptly, but no more than 2 working days after the arrival of any portion of the in-bond shipment at the port of destination, the delivering carrier shall surrender the in-bond manifest (the in-bond document and related Customs Form 7512-C (destination) or the carnet) to the district director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8).

2. Section 18.3(b) is revised to read as follows:

§ 18.3 Transshipment;[3] transfer by bonded cartmen.

* * * * *

(b) When bonded merchandise, other than merchandise covered by a TIR carnet, is to be transshipped to more than one conveyance, the carrier or any of the parties named in § 18.11(b) shall prepare for each such conveyance two additional copies of the Customs Form 7512 which accompanied the merchandise to the place of transshipment. The Customs Form 7512 and Customs Form 7512-C (destination) which accompanied the shipment to the place of transshipment shall be presented to the district director there. The Customs officer supervising the transshipment shall execute a certificate of transfer on all copies of the Customs Form 7512. The original copies of the Customs Form 7512 and the related Customs Form 7512-C (destination) shall be delivered to the conductor, master, or person in charge of the first conveyance. Two additional copies of the Customs Form 7512 shall be delivered to the person in charge of each additional conveyance in which the merchandise is forwarded for delivery to the district director at the port of destination or exportation.

* * * * *

3. Section 18.7(a) is revised to read as follows:

§ 18.7 Lading for exportation; verification of.

(a) Promptly, but no more than 2 working days, after arrival of any portion of the in-bond shipment at the port of exportation, the delivering carrier shall surrender the in-bond manifest (the in-bond document and related Customs Form 7512–C (destination) or the carnet) to the district director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8).

* * * * *

4. Section 18.8(a) is revised to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

(a) The initial bonded carrier shall be responsible for shortage, irregular delivery, or nondelivery at the port of destination or exportation of bonded merchandise received by it for carriage. An acceptable proof of proper delivery of bonded merchandise to Customs at the port of destination or exportation is a properly receipted copy of the in-bond document (the appropriate Customs Form 7512 or 7520, or the carnet). When sealing is waived, any loss found to exist at the port of destination or exportation shall be presumed to have occurred while the merchandise was in the possession of the carrier, unless conclusive evidence to the contrary is produced.

* * * * *

5. The last sentence of paragraph (b) of § 18.13 is revised to read as follows:

§ 18.13 Procedure; manifest.

* * * * *

(b) * * * Two copies of Customs Form 7520 and the related Customs Form 7512–C (destination) shall be delivered to the carrier to accompany the baggage and shall be delivered by the carrier to the district director at the port of destination as a notice of arrival.

* * * * *

§ 18.20 [Amended]

6. Section 18.20(c) is amended by removing the last sentence.

(R.S. 251, as amended (19 U.S.C. 66), sections 552, 553, 557, 623, 624, 46 Stat. 742, as amended, 744, as amended, 759, as amended (19 U.S.C. 1552, 1553, 1557, 1623, 1624))

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. Sections 123.42 (c)(1) and (d) are amended by removing the word "(duplicate)" and inserting, in its place, the word "(destination)".

2. Section 123.42 is further amended by adding a new paragraph (g) to read as follows:

§ 123.42 Truck shipments transiting the United States.

* * * * *

(g) *Forwarding procedure.* Except as otherwise provided in this section, merchandise transported in trucks shall be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1–18.8 of this chapter).

§ 123.64 [Amended]

3. Section 123.64(b) is amended by removing the word "(duplicate)" and inserting, in its place, the word "(destination)".

(R.S. 251, as amended (19 U.S.C. 66), sections 552, 553, 557, 623, 624, 46 Stat. 742, as amended, 744, as amended, 759, as amended (19 U.S.C. 1552, 1553, 1557, 1623, 1624))

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

§§ 144.36 and 144.37 [Amended]

Section 144.36(c) and § 144.37(a) are amended by removing the words, "in duplicate".

(R.S. 251, as amended (19 U.S.C. 66), sections 552, 553, 557, 623, 624, 46 Stat. 742, as amended, 744, as amended, 759, as amended (19 U.S.C. 1552, 1553, 1557, 1623, 1624))

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: September 12, 1984.

Edward T. Stevenson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84–26216 Filed 10–2–84; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 171

[T.D. 84–210]

Customs Regulations Amendment Regarding Petitions for Remission of Certain Conveyance Forfeitures

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document implements, on a permanent basis, an interim amendment to the Customs Regulations which provides for a 30-day time limit for submission of petitions for relief from interested parties in matters involving the seizure/forfeiture of conveyances in certain instances. Before the interim regulations were issued on March 12, 1984, parties were permitted a 60-day period to submit petitions, irrespective of the character of the alleged violation.

It was necessary to implement the change because of the dramatic increase in seizures of conveyances used to facilitate the illegal importation of drugs and firearms. This amendment is necessary in order to expand the effectiveness of Customs drug smuggling enforcement efforts and to provide for the expeditious disposition of seized conveyances.

EFFECTIVE DATE: October 3, 1984.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Office of Regulations and Rulings, Miscellaneous Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5746).

SUPPLEMENTARY INFORMATION:

Background

The National Narcotics Intelligence Consumers Committee has documented that the supply of illegal drugs to the U.S. market and the subsequent extent of drug abuse has reached monumental proportions. Illegal drugs generated an estimated $80 billion in retail sales in 1980, a 23 percent increase from 1979. The severity of the drug abuse problem, the preponderance of drug users and the major increases in the volume of illegal drug importations in the U.S. are indicated by the significant increase in drug-related deaths, medical care, arrests, and seizures. The Customs Service is playing an increasingly significant role in the Administration's war on drugs. In fact, Customs seizes more conveyances than any other Federal agency. The increased effectiveness of the enforcement efforts places a significant burden on Customs in that the seized conveyances must be stored and maintained, often for extended periods of time.

In order to address this growing problem, it was necessary to take immediate action. Therefore, the Customs Regulations were amended on an interim basis by the publication of T.D. 84–60 on March 12, 1984 (49 FR 9166), to provide an expedited petition process for cases involving certain conveyance seizures. Specifically, § 171.12, Customs Regulations (19 CFR 171.12), was amended to provide that petitions for relief from the seizures of conveyances involved in the illegal transportation of any amount of heroin, 5 pounds or more of cocaine, 10 pounds or more of hashish, 250 pounds or more of other controlled substances, or firearms in a quantity clearly in excess of personal use needs, must be filed within 30 days from the date of mailing of the notice of fine, penalty, or forfeiture.

Analysis of Comments

Only 6 comments were received in response to the publication of the interim regulations. Five of these were from banks or companies in the business of financing conveyances.

All commenters urged restoration of the 60-day petition period, but provided no documentation to substantiate their contention that a 30-day period would prove to be a burden on them. Section 171.13, Customs Regulations (19 CFR 171.13), as amended by T.D. 84-92, published in the **Federal Register** on April 25, 1984 (49 FR 17754), specifies which evidence a lienholder must submit with a petition for relief, and provides examples. The type of evidence specified is the kind of information a lienholder most certainly must require at the time a loan is granted. Customs believes the required information can easily be forwarded to Customs within the 30-day period.

After consideration of the comments received and further review of this matter, it has been determined advisable and necessary to implement the interim regulations set forth in T.D. 84-60 as a final rule.

Inapplicability of Notice and Delayed Effective Date Provision

Because of the ongoing problems associated with the delayed disposition of conveyances seized in connection with the illegal importation of certain drugs and firearms, it was determined that, pursuant to 5 U.S.C. 553(b)(3)(b), notice and public procedure were inapplicable and unnecessary. Accordingly, this amendment was adopted on an interim basis effective March 12, 1984. Because it has been effective since that date, good cause exists for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

E.O. 12291 and Regulatory Flexibility Act

Inasmuch as Customs does not believe that the amendment meets the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

Pursuant to the provisions of section 5 of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is hereby certified that the regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 171

Administrative practice and procedure, Law enforcement, Penalties, Seizures, and forfeitures.

Amendments to the Regulations

Part 171, Customs Regulations (19 CFR Part 171), is amended as set forth below.

PART 171—FINES, PENALTIES, AND FORFEITURES

Section 171.12 is amended by: (1) Redesignating paragraph (c) as paragraph (d);, (2) redesignating paragraph (d) as paragraph (e); (3) adding a new paragraph (c); and (4) revising paragraph (b) to read as follows:

§ 171.12 Filing of Petition.

* * * * *

(b) *When filed.* Except as provided in paragraph (c) of this section, or unless additional time has been authorized as provided in § 162.32(a) of this chapter, petitions for relief shall be filed within 60 days from the date of mailing of the notice of fine, penalty, or forfeiture incurred.

(c) *Petitions for remission of forfeitures of certain conveyances.* Petitions for remission of forfeiture of a conveyance seized in connection with the illegal importation of any amount of heroin, 5 pounds or more of cocaine, 10 pounds or more of hashish, 250 pounds or more of other controlled substances, or firearms in a quantity clearly in excess of personal use needs, shall be filed within 30 days from the date of mailing of the notice of fine, penalty, or forfeiture incurred.

* * * * *

(R.S. 251, as amended sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

William von Raab,

Commissioner of Customs.

Approved: September 12, 1984.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-26214 Filed 10-2-84; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 172

[T.D. 84-209]

Customs Regulations Amendment Relating to Relief From Certain Liquidated Damages Claims

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that claims for liquidated damages for the failure to file timely entry summaries after the release of merchandise under an entry or an immediate delivery permit are to be demanded and cancelled pursuant to guidelines published by the Commissioner of Customs. This change is necessary in order to have the regulations reference the guidelines, thereby ensuring uniform and consistent disposition of these liquidated damages claims.

EFFECTIVE DATE: November 2, 1984.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Miscellaneous Penalties Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20220 (202-566-5746).

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 484, Tariff Act of 1930, as amended (19 U.S.C. 1481), and Part 142, Customs Regulations (19 CFR Part 142), merchandise may be released from Customs custody before the deposit of duty and the submission of complete entry documentation. When an importer elects to use this procedure, the entry summary, together with the deposit of estimated duties and taxes due, must be submitted to Customs within 10 working days of release of the merchandise. An importer filing the entry summary late is subject to a demand under his Customs bond for liquidated damages in the amount of the value of the merchandise plus the duties and taxes owing. In such cases, under section 623, Tariff Act of 1930, as amended (19 U.S.C. 1623), and Part 172, Customs Regulations (19 CFR Part 172), the importer is afforded the opportunity to petition for relief from the payment of liquidated damages.

Customs initially set forth guidelines for the disposition of violations of the timely entry summary filing requirement by T.D. 80–298, published in the Customs Bulletin on December 24, 1980. These guidelines, however, resulted in certain inequities, prompting Customs to revise them. New guidelines were initially set forth in Manual Supplement 4400–11, issued to all Customs offices on April 20, 1983. They were subsequently published as Treasury Decision 83–117 in the Customs Bulletin dated June 1, 1983. They will be included in the 1985 revision of the Customs Fines, Penalties, and Forfeitures Handbook.

The new guidelines retained the basic concept of the previous guidelines under which the petitioner has two options available to him in resolving the demand for liquidated damages.

Under option 1, the violator may pay a specified sum within 60 days of the date of receipt of notice of the demand for liquidated damages and the case will be closed. By electing this option, the violator waives his right to file a petition. He may, however, file a petition after payment of the claim if he does so in accordance with the Customs Regulations and if he has some new fact or information which merits consideration. Under this option, for a dutiable entry where the entry summary is filed late, the specified sum will be $50 plus interest on the withheld duties at the rate of 0.1 percent (.001) per calendar day that the entry summary and/or duty were late. The specified sum for an entry for which there are not withheld duties (including a duty-free entry and a dutiable entry rejected, refiled late with no withheld duties) will be $50.

Under option 2, the violator may file a petition; but he generally would not be granted more relief than he would receive by paying the specified sum of option 1. If the entry summary is late by less than 30 days, the district director will grant further relief only when the petitioner has demonstrated either that the violation did not occur, or that the violation was the result of Customs error. If the entry summary is late by 30 days or more, the district director may consider the following factors in response to a petition for relief:

1. The circumstances causing the delay;
2. The extent of the lateness;
3. The amount of duty withheld;
4. The past record of the violator in filing entry summaries timely; and
5. The violator's lack of intent to file his entry summary late (an uncorroborated statement to this effect will generally be insufficient).

Ordinarily, mitigation granted under option 2 will not be in an amount less than the specified sum of option 1 unless the petitioner has presented extraordinary mitigating factors which justify such action.

Section 172.22(d), Customs Regulations (19 CFR 172.22(d)), provides for the manner in which a district director may act upon applications for relief from liquidated damages claims assessed for the failure to file timely an entry summary after release of merchandise under an entry or an immediate delivery permit. Section 172.22(d)(1) presently provides, in part, that if a district director is satisfied that the delay in filing the entry summary was not deliberate, he may cancel the claim for liquidated damages upon the payment of an appropriate sum which shall not exceed 10 percent of the duty assessed, but which shall not be less than $25. If the situation warrants, authority to exceed 10 percent of the duty is vested in the Commissioner of Customs by § 172.22(d)(3).

Customs is amending § 172.22(d) to state that claims for liquidated damages for the failure to file timely entry summaries after the release of merchandise under an entry or an immediate delivery permit shall be demanded and cancelled pursuant to guidelines published by authority of the Commissioner.

Section 172.22(d) is also amended to provide that, in the case of an entry summary which has not been filed, the district director may not grant relief from a claim for liquidated damages until the entry summary has been filed.

A notice of proposed rulemaking on this subject was published in the **Federal Register** on July 27, 1983 (48 FR 34061), inviting public comments. A discussion of the five comments received and our responses follow.

Discussion of Comments

Comment: The guidelines should be incorporated in the Customs Regulations, so as to make them subject to review by the general public. Also, regulations which are based upon guidelines not made part of the regulations violate the Administrative Procedure Act.

Response: We disagree. Guidelines are a matter of administrative discretion as granted by section 623(c), Tariff Act of 1930, as amended (19 U.S.C. 1623(c)). To publish guidelines as inviolate standards would remove the element of discretion granted to the Secretary of the Treasury, and would therefore be contrary to the statute.

Also, the omission of the guidelines from the regulations does not violate the Administrative Procedure Act. No mitigation guidelines are published in the regulations themselves. The 19 U.S.C. 1497 and 19 U.S.C. 1592 guidelines are published as appendices to the regulations. Moreover, all such guidelines are readily available to the general public and will be incorporated in the Fines, Penalties, and Forfeitures Handbook, a public document.

Comment: The new guidelines bar any use of discretion by the district director in deciding the mitigated amount to be paid by the violator. Also, § 172.22(d)(3), Customs Regulations, is inequitable in that it permits the district director, upon approval of the Commissioner, to take a mitigated amount in excess of the amount provided for by the guidelines. Section 172.22(d)(2) is inequitable in that it restricts cancellation of liquidated damages without payment of any mitigated amount to those cases in which the violation occurs *solely* because of Customs delay in returning the documents necessary to file an entry summary to the importer or broker. It does not take into account Customs contributory error.

Response: We disagree. First, the guidelines provide for discretion on the part of the district director in setting the mitigated amount in cases where the entry summary is filed 30 days late or more. In cases where the lateness is less than 30 days, there are very few reasons for the late filing other than the negligence of the importer or broker. In these cases, the district director intentionally was not given discretion in setting the mitigated amount, to discourage frivolous petitions.

Secondly, § 172.22(d)(3) does not permit the district director to take a mitigated amount greater than that set by the guidelines. Section 172.22(d)(3) provides that the case shall be referred to the Commissioner for disposition if the district director believes an amount in excess than that established in accordance with the guidelines is warranted. The decision as to an appropriate mitigated amount in such cases will be made by the Commissioner, not the district director.

Finally, we do not believe that § 172.22(d)(2) is inequitable because of its failure to consider Customs contributory error in a late filing violation. Customs cannot contribute to a late filing violation. If Customs error led to the petitioner's failure to file the entry timely, then Customs *caused* the late filing and cancellation of the claim for liquidated damages would be warranted under this regulation.

Comment: The basic $50 mitigated amount is too high and bears no relation to the loss of interest on duty that is deposited late along with the entry summary.

Response: The loss of the use of duty is not the sole reason for the penalty payment in these cases. While timely duty payment is important, the guidelines are also intended to deter the late filing of entry documentation and to partially compensate the Government for the administrative expenses incurred. The entry documentation is necessary for statistical and merchandise control purposes. Taking this into consideration, the $50 basic mitigated amount is fair. This amount, moreover, was established by Customs after consultation with the importing public, including brokers.

Comment: The mitigation guidelines should specify what type of data might "satisfy" the district director that the violation occurred solely because of delays by Customs in returning the necessary documents to the importer or broker.

Response: The commenter apparently is concerned about cases in which (1) entry summaries are presented to Customs but never returned to the importer or (2) entry summaries are delivered to Customs but claimed not to have been received.

This problem was resolved by issuing instructions to all Customs field offices, in Manual Supplement 4400-11, dated April 20, 1983, requiring institution of a date-stamping or receipt system, whereby entry summaries are stamped as received in front of the person filing the entry summary, or a receipt (validated broker copy) provided to the entry summary filer, as requested. Thus, the importer or broker would be able to prove timely filing of the entry summary, and any claim for liquidated damages for late filing would be cancelled by Customs.

Comment: Section 172.22(d)(3) permits certain cases to be forwarded to the Commissioner for disposition. This ordinarily means a delegate of the Commissioner. However, no delegation order to a subordinate exists.

Response: Customs Delegation Order No. 1 (Revision 1), Amended (T.D. 80-63), expressly provides for delegation to the Director, Office of Regulations and Rulings, at Customs Headquarters, of the authority granted the Commissioner of Customs by Treasury Department Order No. 165, Revised (T.D. 53654), to make decisions in liquidated damages cases. The Customs Delegation Order further provides for the redelegation of this authority from the Director, Office of Regulations and Rulings, to appropriate division directors and branch chiefs within the Office of Regulations and Rulings.

Comment: The proposed amendment, if promulgated, would have a significant economic impact on a substantial number of small entities, i.e., brokers. The provisions of the Regulatory Flexibility Act are therefore applicable.

Response: The amendment does not change any current economic impact upon brokers. Also, late filing liabilities generally are not assessed against brokers. Rather, they are assessed against importers of record who are ultimately liable, as principals on the entry bond, for any claims for liquidated damages.

Comment: The late filing mitigation guidelines, like the 19 U.S.C. 1497 and 1592 mitigation guidelines, should be published as an appendix to the Customs Regulations.

Response: Because of the legal complexity of the 19 U.S.C. 1497 and 1592 mitigation guidelines, they have been published as appendices to the Customs Regulations. The late filing guidelines do not involve such complexity. As with other non-complex guidelines, they are not included in the Customs Regulations, but are published in the Fines, Penalties, and Forfeitures Handbook, which is available to the public.

Upon consideration of the comments received, and further review of the matter, it has been determined advisable not to incorporate the late filing guidelines in the Customs Regulations, but to adopt the amendment as proposed.

Executive Order 12291

This amendment does not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

The provisions of the Regulatory Flexibility Act, relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this amendment because it will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 172

Customs duties and inspection, Imports, Administrative practice and procedure, Penalties.

Amendment to the Regulations

Part 172, Customs Regulations (19 CFR Part 172), is amended as set forth below.

Approved: September 12, 1984.

Edward T. Stevenson,
Acting Assistant Secretary of the Treasury.

Alfred R. De Angelus,
Acting Commissioner of Customs.

PART 172—LIQUIDATED DAMAGES

Section 172.22(d) is revised to read as follows:

§ 172.22 Special cases acted on by district director of Customs.

* * * * *

(d) *Failure to file timely entry summary after release under entry or immediate delivery permit.* (1) If an entry summary for merchandise not subject to quota has not been timely filed after release under an entry or under a special permit for immediate delivery, the district director shall issue a demand for liquidated damages in accordance with § 142.15 or 142.27 of this chapter, and in accordance with guidelines published by the authority of the Commissioner of Customs. The demand shall be cancelled in accordance with guidelines published by the authority of the Commissioner of Customs.

(2) If the district director is satisfied that the violation occurred solely because of a delay in the return by Customs to the importer or broker of documents necessary to file the entry summary, he may cancel such liquidated damages without payment.

(3) If collection of an amount greater than that established in accordance with this section appears warranted, the case shall be forwarded to the Commissioner of Customs for disposition.

(4) In the case of an entry summary which has not been filed, the district director may not grant relief from a demand for liquidated damages until the entry summary has been filed.

(R.S. 251, as amended, sec. 484, 46 Stat. 722, as amended, sec. 618, 46 Stat. 757, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1484, 1618, 1624))

[FR Doc. 84-26213 Filed 10-2-84; 8:45 am]
BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[T.D. 7980]

Income Tax; Tertiary Injectant Expenses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the allowance of a deduction for tertiary injectant expenses. In general, tertiary injectants are used to enhance the recovery of oil from a reservoir by use of certain enumerated methods. Changes to the applicable tax law were made by the Crude Oil Windfall Profit Tax Act of 1980. The regulation provides guidance to taxpayers using tertiary recovery methods for the enhanced recovery of oil.

DATES: The regulations are effective for taxable years beginning after December 31, 1979.

FOR FURTHER INFORMATION CONTACT: David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1983, the **Federal** Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 193 of the Internal Revenue Code of 1954 (48 FR 1761). The amendments were proposed to conform the regulations to section 251(a)(1) of the Crude Oil Windfall Profit Tax Act of 1980 (94 Stat. 286). Three comments on the proposed amendments were received, and a public hearing was held on May 17, 1983. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Tertiary Injectant Expenses

In general, tertiary injectants are used to enhance the recovery of oil from a reservoir by use of certain enumerated methods. Before the enactment of section 193, tertiary injectant expenses were required to be capitalized if the expenditures increased or enhanced the value of the reservoir beyond the year of injection by augmenting the recoverable amount of hydrocarbons. Section 193 allows as a deduction from gross income an amount equal to the qualified tertiary injectant expenses of the taxpayer. The final regulations allow the deduction for the later of—

(1) The taxable year in which the injectant is injected, or

(2) The taxable year in which the expenses are paid or incurred.

Under section 193, the term "qualified tertiary injectant expense" means, in general, any cost paid or incurred for any tertiary injectant which is used as part of a tertiary recovery method. Section 193 does not allow a deduction, however, for expenses allocable to recoverable hydrocarbons in an injectant containing "more than an insignificant amount" of hydrocarbons. The proposed regulations provided that the special rule for recoverable hydrocarbons applied only if recoverable hydrocarbons constituted at least 25 percent of the value of the injectant. One comment suggested that volume rather than value be used as the measurement standard. Another comment suggested that weight be used as the measurement standard. The final regulations retain value as the measurement standard because the other standards give an advantage to taxpayers combining heavy or high-volume components of little value with hydrocarbons.

One comment suggested that hydrocarbons be considered non-recoverable if their value as recovered is significantly reduced from their value as injected. The final regulations take this point into account by looking to the fair market value that the injected hydrocarbons will have upon recovery.

The final regulations provide that an injectant contains more than an insignificant amount of recoverable hydrocarbons if the fair market value of the hydrocarbon component of the injectant, in the form in which it is recovered, eqals or exceeds 25 percent of the cost of the injectant. If an injectant contains more than an insignificant amount of recoverable hydrocarbons, the amount deductible under section 193 shall be limited to the cost of the injectant reduced by the lesser of—

(i) The value of the hydrocarbon component in the form in which it is recovered, or

(ii) The cost to the taxpayer of the hydrocarbon component.

The final regulations provide that all hydrocarbons are presumed to be recoverable at their full value unless the taxpayer can show otherwise. An estimate based on generally accepted engineering practices may provide evidence of limitations on the amount and value of recoverable hydrocarbons. One of the comments stated that it is difficult to distinguish between injected hydrocarbons and those naturally occurring in the reservoir and cited studies that have indicated that between 0 and 60 percent of the hydrocarbons are recoverable. The comment suggested that the regulations should contain a provision which would presume that 30 percent of the hydrocarbons are recoverable unless the taxpayer shows otherwise. In view of the wide disparity in actual recoverability of hydrocarbons in different circumstances, such a presumption would be inappropriate.

The final regulations also clarify the definition of "hydrocarbon" in the proposed regulations. The regulations make clear that the term "hydrocarbon" includes *all forms of* natural gas or crude oil. This change conforms the definition in the regulations to the discussion of the term in the legislative history (S. Rep. No. 96-394, 96th Cong., 1st Sess. 98 (1979)). The final regulations also make clear that condensate from any source is a hydrocarbon for purposes of section 193. The proposed regulation provided expressly that the term hydrocarbon *includes* condensate "from gas wells"; this specific provision was not intended to exclude condensate from other sources from the definition.

A tertiary recovery method is any method enumerated in subparagraphs (1) through (9) of § 212.78(c) of the June 1979 energy regulations. Under the regulations a taxpayer may also use any method for which the taxpayer has obtained the approval of the Associate Chief Counsel (Technical) under section 4993(d)(1)(B) for purposes of chapter 45 of the Internal Revenue Code, any method which is approved in the regulations under section 4993(d)(1)(B), or any other method to provide tertiary enhanced recovery for which the taxpayer obtains the approval of the Associate Chief Counsel (Technical) for purposes of section 193.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of Order dated April 29, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations was David R. Haglund of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Adoption of Amendments to the Regulations

PART 1—[AMENDED]

Accordingly, 26 CFR Part 1 is amended as follows:

A new § 1.193-1 is added to read as follows:

§ 1.193-1 Deduction for tertiary injectant expenses.

(a) *In general.* Subject to the limitations and restrictions of paragraphs (c) and (d) of this section, there shall be allowed as a deduction from gross income an amount equal to the qualified tertiary injectant expenses of the taxpayer. This deduction is allowed for the later of—

(1) The taxable year in which the injectant is injected, or

(2) The taxable year in which the expenses are paid or incurred.

(b) *Definitions*—(1) *Qualified tertiary injectant expenses.* Except as otherwise provided in this section, the term "qualified tertiary injectant expense" means any cost paid or incurred for any tertiary injectant which is used as part of a tertiary recovery method.

(2) *Tertiary recovery method.* "Tertiary recovery method" means—

(i) Any method which is described in subparagraphs (1) through (9) of section 212.78(c) of the June 1979 energy regulations (as defined by section 4996(b)(8)(C)),

(ii) Any method for which the taxpayer has obtained the approval of the Associate Chief Counsel (Technical), under section 4993(d)(1)(B) for purposes of Chapter 45 of the Internal Revenue Code,

(iii) Any method which is approved in the regulations under section 4993(d)(1)(B), or

(iv) Any other method to provide tertiary enhanced recovery for which the taxpayer obtains the approval of the Associate Chief Counsel (Technical) for purposes of section 193.

(c) *Special rules for hydrocarbons*—(1) *In general.* If an injectant contains more than an insignificant amount of recoverable hydrocarbons, the amount deductible under section 193 and paragraph (a) of this section shall be limited to the cost of the injectant reduced by the lesser of—

(i) The fair market value of the hydrocarbon component in the form in which it is recovered, or

(ii) The cost to the taxpayer of the hydrocarbon component of the injectant. Price levels at the time of injection are to be used in determining the fair market value of the recoverable hydrocarbons.

(2) *Presumption of recoverability.* Except to the extent that the taxpayer can demonstrate otherwise, all hydrocarbons shall be presumed recoverable and shall be presumed to have the same value on recovery that they would have if separated from the other components of the injectant before injection. Estimates based on generally accepted engineering practices may provide evidence of limitations on the amount or value of recoverable hydrocarbons.

(3) *Significant amount.* For purposes of section 193 and this section, an injectant contains more than an insignificant amount of recoverable hydrocarbons if the fair market value of the recoverable hydrocarbon component of the injectant, in the form in which it is recovered, equals or exceeds 25 percent of the cost of the injectant.

(4) *Hydrocarbon defined.* For purposes of section 193 and this section, the term hydrocarbon means all forms of natural gas and crude oil (which includes oil recovered from sources such as oil shale and condensate).

(5) *Injectant defined.* For purposes of applying this paragraph (c), an injectant is the substance or mixture of substances injected at a particular time. Substances injected at different times are not treated as components of a single injectant even if the injections are part of a single tertiary recovery process.

(d) *Application with other deductions.* No deduction shall be allowed under section 193 and this section for any expenditure—

(1) With respect to which the taxpayer has made an election under section 263(c) or

(2) With respect to which a deduction is allowed or allowable under any other provision of chapter 1 of the Code.

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). B, a calendar year taxpayer why uses the cash receipts and disbursements method of accounting, uses an approved tertiary recovery method for the enhanced recovery of crude oil from one of B's oil properties. During 1980, B pays $100x for a tertiary injectant which contains 1,000y units of hydrocarbon; if separated from the other components of the injectant before injection, the hydrocarbons would have a fair market value of $80x. B uses this injectant during the recovery effort during 1981. B has not made any election under section 263(c) with respect to the expenditures for the injectant, and no section of chapter 1 of the Code other than section 193 allows a deduction for the expenditure. B is unable to demonstrate that the value of the injected hydrocarbons recovered during production will be less than $80x. B's deduction under section 193 is limited to the excess of the cost for the injectant over the fair market value of the hydrocarbon component expected to be recovered ($100x—$80x=$20x). B may claim the deduction only for 1981, the year of the injection.

Example (2). Assume the same facts as in example (1) except that through engineering studies B has shown that 700y units or 70 percent of the hydrocarbon injected is nonrecoverable. The recoverable hydrocarbons have a fair market value of $24x (30 percent of $80x). The recoverable hydrocarbon portion of the injectant is 24 percent of the cost of the injectant ($24x divided by $100x). The injectant does not contain a significant amount of recoverable hydrocarbons. B may claim a deduction for $100x, the entire cost of the injectant.

Example (3). Assume the same facts as in example (1) except that through laboratory studies B has shown that because of chemical changes in the course of production the injected hydrocarbons that are recovered will have a fair market value of only $40x. B may claim a deduction for $60x, the excess of the cost of the injectant ($100x) over the fair market value of the recoverable hydrocarbons ($40x).

Example (4). B prepares an injectant from crude oil and certain non-hydrocarbon materials purchased by B. The total cost of the injectant to B is $100x, of which $24x is attributable to the crude oil. The fair market value of the crude oil used in the injectant is $27x. B is unable to demonstrate that the value of the crude oil from the injectant that will be recovered is less than $27x. The injectant contains more than an insignificant amount of recoverable hydrocarbons because the value of the recoverable crude oil ($27x) exceeds $25x (25 percent of $100x, the cost of the injectant). Because the cost to B of the hydrocarbon component of the injectant ($24x) is less than the fair market value of the hydrocarbon component in the form in which it is recovered ($27x), the cost rather than the value is taken into account in the adjustment required under paragraph (c)(1) of this section. B's deduction under section 193 is limited to the excess of the cost of the injectant over the cost of the hydrocarbon component ($100x—$24x=$76x).

This Treasury decision is issued under the authority contained in Secs. 193 and 7805 of the Internal Revenue Code of 1954 (94 Stat.

286, 26 U.S.C. 193; 68A Stat. 917, 26 U.S.C. 7805, respectively).

Approved: September 21, 1984.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-26225 Filed 10-2-84; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR 1601

706 Agencies; Handling of Employment Discrimination Charges

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of the Topeka, Kansas Human Relations Commission as a 706 Agency.

EFFECTIVE DATE: October 3, 1984.

FOR FURTHER INFORMATION CONTACT: Hollis Larkins, Equal Employment Opportunity Commission, Office of Program Operations, Special Services Staff, 2401 E Street, NW., Washington, D.C. 20507, telephone 202/634-6806.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—PROCEDURAL REGULATIONS

Accordingly, Title 29, Chapter XIV of the Code of Federal Regulations, 29 CFR 1601.74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * * Topeka, Kansas Human Relations Commission * * *.

* * * * *

(Sec. 713(a) 78 Stat. 265 (42 U.S.C. 2000e 12(a))

Signed at Washington, D.C. this 19th day of September 1984.

For the Commission.

John D. Schmelzer,

Legal Advisor to Program Director.

[FR Doc. 84-25861 Filed 10-2-84; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Consideration of Amendments to the Kentucky Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR 917 by approving an amendment to the Kentucky permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment pertains to auger mining on pre-mined lands. Additionally, the Director is deferring action on an amendment relating to operations involving the crushing, screening or loading of coal. Action is being deferred until OSM can evaluate fully any impact the District court decision in *Permanent Surface Mining Regulation Litigation II* will have on its rule pertaining to support facilities and preparation plants.

EFFECTIVE DATE: The approval of these program amendments is effective on October 3, 1984.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Kentucky Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On May 28, 1982, OSM received, pursuant to the 30 CFR 732.17 State program amendment procedures, certain revisions to the State rules and laws. On July 23, 1982, OSM published a notice in the **Federal Register** announcing receipt of the amendments to the Kentucky program and inviting public comment thereon (47 FR 31890-31896). The public comment period ended August 23, 1982. A public hearing was held August 12, 1982. OSM publshed a second notice in the **Federal Register** on September 8, 1982, announcing receipt of provisions to satisfy conditions (k) and (l), and inviting public comment on whether the proposed amendments corrected these deficiencies (47 FR 39536-39537). The public comment period ended October 8, 1982. A public hearing scheduled September 22, 1982, was not held because no one expressed a desire to present testimony.

On January 4, 1983 (48 FR 245-252), OSM published a notice in the **Federal Register** which (1) Removed and amended certain conditions; (2) approved certain other program amendments; (3) deferred Secretarial action on the following proposed Kentucky rule revisions: 405 KAR 7:020 Section 1(86), 8:050 Section 2, 16:020 Section 4 and 16:190 Section 2(2); (4) deferred Secretarial action on the following proposed Kentucky statutory revisions: KRS 350.060 Sections 5(21) and 5(22), 350.093(2), and 350.062(9), contained in Senate Bill 218; (5) approved certain clarifications to the Kentucky program contained in a letter from the State, dated June 18 1982; (6) deferred Secretarial action on the clarification in the June 18, 1982, letter relating to incidental boundary revisions; and (7) deferred Secretarial action on whether the material submitted by Kentucky satisfied condition (1).

On May 13, 1983 (48 FR 21574-21579), OSM published a notice in the **Federal Register** which (1) removed condition (1); (2) approved amendments to KRS 350.062(9) and 350.093(2), and 405 KAR 16:020 Section 4; and (3) created two new conditions of approval, relating to the deferral of contemporaneous reclamation (KRS 350.093(2) and 405 KAR 16:020 Section 4) and the definition of "principal shareholder" (KRS 350.060 Section 5(g) and 405 KAR 7:020 Section 1(86)).

On April 28, 1983 (48 FR 19314-19322), OSM published a notice in the **Federal Register**, effective May 27, 1983, revising its rules for conducting auger mining. On May 5, 1983 (48 FR 20392-20402), OSM published a notice in the **Federal Register**, effective June 6, 1983, amending its rules applicable to support facilities and coal preparations plants. These OMS rule revisions relate to certain of the items listed above on which the Secretary deferred action in the January 4, 1983 **Federal Register** notice as follows: (1) 405 KAR 8:050 Section 2 and 16:190 Section 2(2), and KRS 350.060 Section 5(21) (augering), and (2) KRS 350.060 Section 5(22) (support facilities and coal preparation plants). On June 13, 1983, OSM reopened the public comment period on the above Kentucky amendments relating to augering, support facilities and coal preparation plants to allow the public time to review and comment on the Kentucky amendments as they related to the OSM rule changes (48 FR 27101–27102). On July 11, 1983, OSM reopened the public comment period on these Kentucky amendments for an additional 15 days (48 FR 31668–31669).

On September 16, 1983 (48 FR 41720–41735), OSM published a notice in the **Federal Register** amending its rules on remining. On October 31, 1983, OSM received additional material from Kentucky, responding to four issues raised by OSM regarding the Kentucky amendments relating to augering, support facilities and coal preparation plants. This material consisted of an explanatory letter and a legal opinion, dated October 26, 1983, addressing crusher and loader jurisdiction and augering on previously mined areas. OSM also received a number of emergency regulations including revisions to 405 KAR 16:190 and 18:190, regarding requirements for adequate drainage on backfilled areas and criteria for determining reasonably available spoil to backfill highwalls to the extent practical and feasible. On November 30, 1983, OSM reopened the public comment period on the above amendments as they relate to the revised OSM remining rules and the October 31, 1983, material submitted by Kentucky. The comment period closed on December 30, 1983 (48 FR 54080).

II. Secretary's Findings

Finding 1

The Secretary finds that the program amendments to KRS 350.060 Section 5(21), and 405 KAR 8:050 Section 2, 16:190 Section 2(2), Section 7(2) (a) and (e), Section 7(3), and 18:190 Section 5(2) (a) and (e), and Section 5(3), as clarified by the October 26, 1983 legal opinion on augering on pre-mined lands, are no less effective than 30 CFR 785.20, 817.106(a)(1), 819.19(b), and the OSM definitions of "reasonably available spoil" and "adverse physical impact" at 30 CFR 701.5.

The Federal regulations at 30 CFR 785.20 and Part 819 contain OSM's general augering requirements, and 30 CFR 819.19(b) contains OSM's requirements for auger mining on remined lands. KRS 350.060 Section 5(21), and 405 KAR 8:050 Section 2, 16:190 Section 7(3) and 18:190 Section 5(3), when read in conjunction with the above legal opinion and 405 KAR 16:190 Section 7(2) (a) and (e), and 18:190 Section 5(2) (a) and (e), contain the same requirements for augering on previously mined lands as those in 30 CFR 785.20 and 819.19(b).

On September 16, 1983, OSM promulgated, *inter alia*, definitions of "adverse physical impact" and "reasonably available spoil" at 30 CFR 701.5 (48 FR 41734). The State has promulgated a definition of "adverse physical impact" at 405 KAR 16:190 Section 7(2)(a) and 18:190 Section 5(2)(a) which is exactly the same as the OSM definition. Kentucky has also promulgated a definition of "reasonably available spoil" at 405 KAR 16:190 Section 7(2)(e) and 18:190 Section 5(2)(e) which is the same as the OSM definition except for the following sentence: "For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation." This sentence can be found in OSM's performance standards for backfilling and grading on previously mined areas at 30 CFR 817.106(a)(1). The Secretary finds that these two State definitions are no less effective than the OSM definitions at 30 CFR 701.5 and 817.106(a)(1).

Finding 2

The Director has decided to defer action on Kentucky's amendment to revise KRS 350.060 Section 5(22) pertaining to support facilities and coal preparation plants.

In Permanent Surface Mining Regulation Litigation II, Civil Action No. 79–1144 in The United States District Court for the District of Columbia, OSM's regulations at 30 CFR 700.5 pertaining to the definition of a surface coal mining operation and 30 CFR 701.5 pertaining to the definition of coal preparation and coal processing and coal preparation plant were remanded to the Secretary for revision. The Court found that the Secretary has jurisdiction under SMCRA to regulate these offsite facilities including processing plants and remanded the pertinent definitions to be corrected. Until OSM has evaluated fully the impacts of the Court's order, the Director believes it appropriate to defer action on Kentucky's amendment.

III. Public Comments

Comments received pertaining to coal preparation plants, coal processing and support facilities and support facilities will be answered when OSM takes final action on Kentucky's amendment. As explained in the Director's Finding number 2, OSM is deferring action on this matter.

The Comments listed below pertain to the amendments being approved in this notice.

1. The Appalachian Research and Defense Fund of Kentucky, Inc. (ARDFK) stated that KRS 350.060 Section 5(21) on augering on previously mined lands fails to limit its applicability to pre-existing areas as of August 3, 1977, the date of enactment of SMCRA. According to the commenter, an operator could conceivably place spoil from an operation in a fill, and later decide to auger claiming that sufficient spoil is not "reasonably available." The commenter asserted that SMCRA plainly does not extend to post-Act disturbances.

OSM can find no language in SMCRA or the Federal regulations, however, which restricts auger mining on pre-mined lands to those areas disturbed prior to August 3, 1977, and the commenter cited no such language. Further, if an operator were to wait long enough to begin auger mining in such an area, spoil may not be "reasonably available" because the area may be stabilized and revegetated. In such a case, the operator must properly seal all holes and backfill the highwall to a minimum of four feet above the coal seam being mined under KRS 350.060 Section 5(21). This State requirement is no less effective than that at 30 CFR 819.19(b)(3)

Further, in the September 16, 1983, **Federal Register** notice, revising OSM's remining rules, OSM states (48 FR 41723):

> OSM disagrees that the definition of "previously mined area" is vague and has rejected the suggestion the the definition "previously mined area" be limited only to lands mined prior to August 3, 1977, and which were inactive for some period of time prior to remining. However, neither the proposal nor the final definition allows ongoing operations variances from the requirements for backfilling and grading or approximate original contour (AOC) restoration in areas not adversely impacted by past mining. In the case of any coal mine developed on or after May 3, 1978, the effective date of the interim regulatory program, reclamation in accordance with the Act's standards is required. This rule does not relieve the continuing obligations of former operators with regard to any site. Thus, there is no unjustifiable exemption from the approximate original contour operation.
>
> Nevertheless, the final rule recognizes that there may have been some mining which occurred after August 3, 1977, that was not reclaimed in accordance with the requirements for return to AOC. Such operations could include unpermitted mines; mines exempt under section 528 of the Act; and mines in existence between August 3, 1977, and May 3, 1978, or which qualified for the special exemption of § 710.12. Thus, while the AML program established by Title IV of the Act establishes the overall objective of reclamation of abandoned mined lands, the basis for this final rule is not limited to lands eligible for funding under that program. Furthermore, inclusion of lands disturbed and

improperly reclaimed since the Act was enacted in the definition of "previously mined area" will not result in damage to the environment because in every instance where sufficient spoil is reasonably available, highwalls must be eliminated.

2. The Kentucky Coal Association (KCA) stated that the term "reasonably available spoil" in 405 KAR 16:190 Section 2(2)(c) should not be used to require the operator to use spoil from the downslope of previously mined lands. KCA contents that in the majority of cases this material has stabilized and should not be disturbed.

On October 31, 1983, Kentucky submitted amendments to 405 KAR 16:190 and 18:190 which include a definition of "reasonably available spoil" at 405 KAR 16:190 Section 7(2)(e) and 18:190 Section 5(2)(e). The State definition is the same as the OSM definition at 30 CFR 701.5, promulgated in the **Federal Register** on September 16, 1983 (48 FR 41734), except that the Kentucky definition includes the following additional sentence: "For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation." This sentence can be found in OSM's performance standards for back-filling and grading on previously mine areas at 30 CFR 817.106(a)(1). In Finding 1, above, OSM found the Kentucky definition to be no less effective than the OSM rules. The revisions to the Federal and State programs remedy the commenter's concern. Since spoil from the downslope of previously mined lands which has stabilized is not "accessible and available for use", it need not be used in operations involving augering on previously mined lands.

3. ARDFK commented that the State's proposals would allow auger mining on previously mined areas under less stringent controls than augering on new sites, particularly with regard to the requirement to completely backfill and regrade the area to its original contour before mining. According to the commenter, the proposal violates the Federal Act, existing OSM rules, and goes beyond OSM rules at 30 CFR 816.106.

OSM disagrees with this comment because the Kentucky rules place the same controls on operations involving augering on new and remined areas. Kentucky regulations at 405 KAR 8:050 Section 2(2)(c) requires compliance with all applicable requirements of KRS Chapter 350 and regulations under Title 405, Chapter 7 through 24. Additionally, 405 KAR 16:190 Section 2(1)(a) and 18:190 Section 2(1)(a) require that *all* disturbed areas, including new and remined sites, shall be returned to the AOC. This requirement is no less effective than to the OSM backfilling and grading requirements at 30 CFR 816.102(a)(1) (which replaced 30 CFR 816.106).

4. ARDFK claimed that the Kentucky statute and regulations on augering on pre-mined lands fail to: do all that is possible short of total highwall elimination, address long term stability problems occassioned by the further disturbance of highwalls, and address the leaving of potentially sizeable highwall remnants.

OSM disagrees with this comment. First, KRS 350.060 Section 5(21) provides for the issuance of permits upon a demonstration by the applicant that the proposed surface coal mining operation on a previously mined area will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities. Second, 405 KAR 16:190 Section 7(3) and 18:190 Section 5(3) require highwall elimination to the maximum extent technically practical. Finally, 405 KAR 16:190 Section 2(1)(a) and 18:190 Section 2(1)(a) further require that backfilling and grading be done to achieve a minimum static safety factor of 1.3 to ensure long term stability.

5. ARDFK charged that the proposed Kentucky provisions for augering on pre-mined lands are deficient because they fail to require the operator to demonstrate that sufficient spoil is not available prior to obtaining a variance.

OSM disagrees with this comment. Kentucky's regulations at 405 KAR 16:190 Section 7(3) requires such demonstration in writing and therefore, 405 KAR 16:190 Section 7(3) is no less effective than 30 CFR 819.19(b).

6. ARDFK commented, in regard to Kentucky's proposed reaugering provisions, that a permittee who proposes to leave highwall remnants must demonstrate that such highwall will be stable in the long term, and that this stability must be proven through geotechnical analysis.

Kentucky's regulations at 405 KAR 8:050 Section 2(2)(c) requires compliance with the requirements of Chapters 7 through 24 for the issuance of a permit for augering on previously mined lands. Kentucky's standard at 405 KAR 20:060 Section 2(3) requires, in part, that the permittee must demonstrate to the State, using standard geotechnical analysis, that the minimum static factor of safety for stability of all portions of the reclaimed land is at least 1.3. This State requirement, therefore, is no less effective than OSM's at 30 CFR 819.19(b)(1).

7. ARDFK claimed that mandatory diversion of all drainage above the highwall, through ditches capable of carrying a 14 hour, 100 year design storm event, must be required.

OSM disagrees with this comment. There is no such requirement in the Federal regulations and, therefore, OSM is without authority to require the State program to have such a provision.

8. ARDFK commented that use of the term "physically impacted" in 405 KAR 16:190 Section 2(2)(c) is unclear. According to ARDFK, the State must require that the permittee stabilize any highwall adversely impacted, whether through direct physical impact or as a proximate result of reaugering.

On September 16, 1983, OSM promulgated a definition of "adverse physical impact" at 30 CFR 701.5 (48 FR 41734). In the material submitted on October 31, 1983, the State deleted 405 KAR 16:190 Section 2(2)(c) and included a definition of "adverse physical impact" at 405 KAR 16:190 Section 7(2)(a) and 18:190 Section 5(2)(a) which is exactly the same as the OSM definition.

9. ARDFK charged that the proposed Kentucky statute and rules regarding augering on pre-mined lands and OSM's revised rules at 30 CFR 819.19(b) expressly violated SMCRA, Section 515(b)(3), which requires that all affected areas be regraded to achieve the approximate original premining contour.

OSM disagrees with this comment. As stated above in response to comment number 3, the Kentucky rules require that all affected areas be regraded to achieve the approximate original premining contour.

10. ARDFK alleged that the Kentucky proposals on augering on pre-mined lands fall short of requiring the operator to do all that is technically practical. The statute and regulations speak in terms of utilizing all "reasonably" available spoil to backfill the highwall "to the extent practical and feasible." According to the commenter, this language is susceptible to a reading that would allow the operator to limit material recovery to that which is economically convenient.

As stated above in response to comment number 2, Kentucky has promulgated an acceptable definition of "reasonably available spoil" at 405 KAR 16:190 Section 7(2)(e) and 18:190 Section 5(2)(e). OSM believes that the Kentucky definition makes it clear that the operator may not limit material recovery to that which is economically convenient.

11. ARDFK claimed that the Kentucky proposals on augering on pre-mined lands fail to include a requirement that

backfill be designed by a qualified registered professional engineer to have a minimum static safety factor of at least 1.3 as required by 30 CFR 819.19(b)(1).

OSM disagrees with this comment. First, as stated above in response to comment number 6, 405 KAR 16:190 Section 2(1)(a), 18:190 Section 2(1)(a) and 8:050 Section 2(2)(c) require that backfill have a minimum static safety factor of at least 1.3 on operations involving augering on pre-mined lands. Second, the October 26, 1983 legal opinion from the State of Kentucky makes it clear that a qualified registered professional engineer must submit the backfilling plans for auger mining operations.

12. ARDFK commented that both KRS 350.060 Section 5(21) and 405 KAR 8:050 allow the permittee to reauger if he/she demonstrates that the operation will reduce the highwall *or* past adverse effects, or stabilize or enhance the area. Maximum highwall elimination must be the absolute minimum in *all* cases. If sufficient spoil does not exist, further disturbances should not be permitted. According to the commenter, the State proposal fails to require that the permittee, in all cases, backfill and regrade to the maximum extent possible.

While 405 KAR 8:050 Section 2(2)(c) does not require the maximum elimination of highwalls, it does provide for the issuance of a permit to auger mine on previously mined lands if the permittee demonstrates that the mining operation will provide for reduction or elimination of the highwall. Kentucky regulations at 405 KAR 16:190 Section 7(3) and 18:190 Section 5(3) require elimination of highwalls to the maximum extent technically practical. Further, as stated above in response to comment number 2, Kentucky has proposed a definition of "reasonably available spoil" which acceptably limits the meaning of the phrase "practical and feasible." For these reasons, OSM believes the commenter's concern is not well founded.

13. ARDFK alleged that the State proposals on reaugering fall short of 30 CFR 819.19(b)(3) in failing to require that backfill material be non-acid and non-toxic forming in nature.

OSM disagrees. First, KRS 350.050 Section 5(21) and 405 KAR 16:190 Section 7(3)(a) require backfilling of the highwall to a minimum of four (4) feet above the coal seam being mined. Second, 405 KAR 16:190 Section 7(3)(a) and 18:190 Section 5(3)(a) require noncombustible, non-acid, non-toxic forming material be used for cover. Additionally, 405 KAR 16:190 and 18:190 Section 3(1)(b) of the State rules further provide that where necessary the regulatory authority may require a thicker than four foot cover using non-toxic material. The Kentucky rules are, therefore, no less effective than 30 CFR 819.19(b)(3).

14. ARDFK commented that the State proposals on reaugering are less effective than 30 CFR 819.19(b)(3) because they fail to require the grade of the backfill to be compatible with the post-mining land use, and to provide adequate drainage and long-term stability.

OSM disagrees. First, 405 KAR 16:190 Section 2(1)(b) and 18:190 Section 2(1)(b) require that backfill be placed to support the approved post-mining land use. Second, 405 KAR 16:190 Section 2(1)(a) and 18:190 Section 2(1)(a) require a long-term static safety factor of 1.3. This requirement is no less effective than 30 CFR 819.19(b)(1). Finally, in the proposed Kentucky rules submitted to OSM on October 31, 1983, the State, at 405 KAR 16:190 Section 7(3)(c) and 18:190 Section 5(3)(c), requires that backfill shall provide adequate drainage and long-term stability in addition to being graded to a slope which is compatible with the post-mining land use.

15. ARDFK stated that Kentucky's reaugering proposals require less effort on the part of the operator to secure "available spoil." According to the commenter, OSM recognized that an operator who is remining by augering could design a permit area so as to minimize his/her responsibility for pre-existing spoil retrieval, and included a requirement in its auger mining rules that such permit areas include "spoil in the immediate vicinity."

As explained above in the response to comment number 2, Kentucky has proposed a definition of "reasonably available spoil" at 405 KAR 16:190 Section 7(2)(e) and 18:190 Section 5(2)(e). That definition includes "spoil or suitable coal mine waste material located in the permit area," and is no less effective than the OSM definition at 30 CFR 701.5 and the performance standards at 30 CFR 817.106(a)(1).

16. Kentucky Coal Association (KCA) disagreed with Kentucky's requirement to use all reasonably available spoil material to backfill the highwall in reaugering operations. KCA also disagreed with the four-foot minimum backfill requirement and stated that it should be replaced with a requirement to adequately backfill with reasonably available spoil such that the coal seam is covered.

OSM disagrees. Kentucky's regulations pertaining to these issues provides standards that are no less effective than the Federal standards. See discussion contained in comment numbers 2, 12, and 13.

17. ARDFK challenged the legality of the Kentucky amendments on augering on previously mined lands in light of Federal law, and attached its reply challenging the Secretary's rule permitting a variance from the approximate original contour standard for remining (*In Re: Permanent Surface Mining Regulation Litigation*, C.A., No. 79–1144). Additionally, ARDFK requested that OSM condition approval of the Kentucky amendments to 405 KAR 16:190 and 18:190 on augering on previously mined lands upon the outcome of *In Re: Permanent Surface Mining Regulation Litigation II*, C.A., No. 79–1144.

Since ARDFK submitted its comment, the court has upheld the Federal rules pertaining to variances from the AOC standard in certain remining situations. In the decision filed July 6, 1984, the court held that the Federal regulations are consistent with SMCRA and that the challenge to these regulations was not well founded, therefore, OSM will not condition its approval on the challenge to its regulations.

Approval of Program Amendments

Accordingly, the revisions to 405 KAR 8:050 Section 2; 16:190 Section 2(2), Section 7(2) (a) and (e), Section 7(3); 18:190 Section 5(2) (a) and (e) and Section 5(3) are hereby approved pursuant to 30 CFR 732.17.

The Federal regulations at 30 CFR 917.15 are amended to indicate approval of these program amendments. The approval of the amendments to the Kentucky program are effective October 3, 1984.

Additional Findings

1. *Compliance with the National Environmental Policy Act:* Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental document need be prepared on this rulemaking as State program decisions are exempt from compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

2. *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.C.S. 601 *et seq.*). This rule does not impose any new requirements; rather, it ensures 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 917

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

Accordingly, 30 CFR Part 917 is amended as set forth herein.

Dated: September 27, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

PART 917—KENTUCKY

Accordingly, Part 917 of Title 30 is amended as follows:

* * * * *

1. 30 CFR 917.15 is amended to add paragraph (j) to read as follows:

§ 917.15 Approval of Amendments to State Regulatory Program.

* * * * *

(j) The following amendments are approved effective October 3, 1984: 405 KAR 8:050 Section 2; 16:190 Section 2(2), Section 7(2) (a) and (e), Section 7(3); 18:190 Section 5(2) (a) and (e) and Section 5(3).

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

[FR Doc. 84-26162 Filed 10-2-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2685-4]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environment Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Today's notice approves a number of volatile organic compound (VOC) regulations for the State of California, and removes a number of conditions of approval for the State of California. These regulations were submitted to EPA in order to satisfy specific Part D requirements of the Clean Air Act. EPA has evaluated these regulations and determined that they are in conformance with the requirements of the Clean Air Act, 40 CFR Part 51 and EPA policy.

DATE: This action is effective November 2, 1984.

ADDRESSES: A copy of today's revision to the California State Implementation Plan is located at: The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408, Public Information Reference Unit, EPA, 401 M Street, S.W., Washington, DC. 20406.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Director, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94015, Attn: Thomas Rarick, (415) 974–7641.

SUPPLEMENTARY INFORMATION:

Background

Part D of the Clean Air Act requires States to revise their State Implementation Plan for all areas that have not attained the National Ambient Air Quality Standards. In order to assist States in meeting the stationary source VOC control requirements of the Act, EPA has published a number of Control Techniques Guidelines (CTGs) which provide recommendation for control limitations which are believed to represent Reasonably Available Control Technology (RACT).

On February 8, 1984, (49 FR 4795) and May 31, 1984 (49 FR 22669), EPA published Notices of Proposed Rulemaking (NPR) concerning CTG and non-CTG VOC regulations. These Notices should be used as a reference for this final rulemaking notice. The NPRs proposed to approve thirty-four VOC regulations for the Bay Area Air Quality Management District (AQMD), Fresno County Air Pollution Control District (APCD), El Dorado County APCD, Kings County APCD, Madera County APCD, Merced County APCD, Sacramento County APCD, San Diego County APCD, Shasta County APCD, South Coast, AQMD, Yolo-Solano APCD, and Yuba County APCD.

Public Comments

No comments were received on the February 8, 1984 and May 31, 1984 Notices of Proposed Rulemaking.

EPA Actions

In this notice, EPA takes final action to approve the following rules under Section 110 of the Clean Air Act, since they satisfy the requirements of Section 110 and Part D of the Act and EPA policy.

July 19, 1983, Submittals

Fresno County APCD

Rule 409.4 Surface Coating of Manufactured Metal Parts and Products

Merced County APCD

Rule 409.4 Surface Coating of Manufactured Metal Parts and Products
Rule 409.5 Cutback Asphalt Paving Materials
Rule 411 Gasoline Transfer Phase I
Rule 411.1 Gasoline Transfer Phase II

Sacramento County APCD

Rule 17 Surface Coating of Manufactured Metal Parts and Products

San Diego County APCD

Rule 67.3 Coating of Metal Parts and Products
Rule 67.4 Can and Coil Coating Operations
Rule 67.6 Solvent Cleaning Operations

Shasta County APCD

Rule 3.3(b) Gasoline Loading and Transfer
Rule 3.4(d) Industrial Use of Organic Solvents
Rule 3.15(c) Cutback Asphalt Paving Materials

August 2, 1983, Submittals

Kings County APCD

Rule 414.4 Pumps and Compressor Seals at Petroleum Refineries

Yuba County APCD

Rule 3.9 Storage of Petroleum Products

August 30 1983, Submittals

Bay Area AQMD

Regulation 8—Organic Compounds
Rule 30 Semiconductor Manufacturing

Stanislaus County APCD

Rule 409.1 Architectural Coatings

Yolo-Solano APCD

Rule 2.13(1) Graphic Arts

October 27, 1983, Submittals

Bay Area AQMD

Regulation 8—Organic Compounds
Rule 3 Architectural Coatings
Rule 9 Vacuum Processing Systems
Rule 10 Process Vessel Depressurization
Rule 20 Graphic Arts

Rule 22 Valves and Flanges at Chemical Plants
Rule 25 Pump and Compressor Seals at Petroleum Refineries and Chemical Plants
Rule 28 Pressure Relief Valves at Petroleum Refineries and Chemical Plants

El Dorado County APCD

Rule 224 Cutback Asphalt Paving Material
Rule 225 Solvent Cleaning Operations

Madera County APCD

Rule 416 Storage of Petroleum Distillates or Light Crude Oil

San Diego County APCD

Rule 67.9 Aerospace Coating

South Coast AQMD

Rule 1113 Architectural Coatings
Rule 1122 Solvent Cleaners (Degreasers)
Rule 1136 Wood Furniture and Cabinet Coatings
Rule 1141 Control of Reactive Organic Gases from Resin Manufacturing
Rule 1145 Plastics, Rubber and Glass Coatings and Adhesives

EPA conditionally approved *San Diego County APCD, Rule 67.3, Coating of Metal Parts and Products* in a June 4, 1982 (47 FR 24307) NFR. Final action to remove the condition of plan approval is being taken in this notice. However, EPA remains concerned about provision of San Diego's Rule 67.3 which exempts the coating of marine vessels from the requirements of the rule. EPA is currently working with the San Diego County APCD and affected industries to determine if emission reductions can be reasonably achieved from marine vessel coating operations.

EPA conditionally approved *Bay Area AQMD, Rule 25, Pump and Compressor Seals at Petroleum Refineries* in a July 8, 1982 (47 FR 29669) NFR. In addition, EPA conditionally approved *Madera County APCD, Rule 411, Storage of Petroleum Distillates and Light Crude Oil* in a May 7, 1982 (47 FR 19694) NFR. Revisions to these two VOC rules were submitted by the State on October 27, 1983. The deficiencies in the two VOC rules have now been corrected. Final action to remove the conditions of plan approval is being taken in this notice.

Regulatory Process

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: Secs. 110, 129, 171–178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)).

Dated: September 27, 1984.

William D. Ruckelshaus,
Administrator.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding new paragraphs (c)(137)(ii)(C), (iii)(B), (iv)(B), (vi)(B) and (xi); (c)(140)(i)(B), (iii)(B) and (iv); (c)(148)(i)(B), (ii)(B), (iv)(B), (vi)(B) and (viii); and (c)(150) (i) and (ii) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(137) * * *
(ii) * * *
(C) New or amended Rules 409.4, 409.5, 411 and 411.1.
(iii) * * *
(B) Amended Rule 17.
(iv) * * *
(B) Amended Rules 67.3, 67.4 and 67.6.

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(vi) * * *
(B) Amended Rules 3.3(b), 3.4(d) and 3.15(c).

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(xi) Fresno County APCD.
(A) Amended Rule 409.4.

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(140) * * *
(i) * * *
(B) New Regulation 8, Rule 30.

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(iii) * * *
(B) Amended Rule 409.1.
(iv) Yolo-Solano APCD.
(A) Amended Rule 2.13(1).

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(148) * * *
(i) * * *
(B) Amended Regulation 8, Rules 3, 9, 10, 20, 22, 25 and 28.
(ii) * * *
(B) New Rules 224 and 225.

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(iv) * * *
(B) New Rule 67.9.

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(vi) * * *
(B) New or amended Rules 1113, 1122, 1136, 1141 and 1145.

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(viii) Madera County APCD.
(A) Amended Rule 416.

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(150) Revised regulations for the following APCD's submitted August 2, 1983, by the Governor's designee.
(i) Kings County APCD.
(A) New Rule 414.4.
(ii) Yuba County APCD.
(A) Amended Rule 3.9.

* * * * *

2. Section 52.232 is amended by removing and reserving paragraphs (a)(4)(v) and (7)(ii), and revising paragraph (a)(10)(ii) as follows:

§ 52.232 Part D conditional approval.

(a) * * *
(4) * * *
(v) [Reserved]

* * * * *

(7) * * *
(ii) [Reserved]

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(10) * * *
(ii) * * *

(A) For the APCDs indicated below, by September 7, 1982, the State must either: (1) Provide an adequate demonstration that the following regulations represent RACT, (2) Amend the regulations so that they are consistent with the CTG, or (3) Demonstrate that the regulations will result in VOC emission reductions which are within five percent of the reductions which would be achieved through the implementation of the CTG recommendations.

Merced County APCD

Rule 409.3, "Organic Solvent Degreasing Operations"

Tulare County APCD

Rule 410.3, "Organic Solvent Degreasing Operations"

* * * * *

[FR Doc. 84-26175 Filed 10-2-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[EPA Docket No.: AM601DC; A-3-FRL-2685-5]

Approval and Promulgation of Implementation Plans; 1982 Ozone and Carbon Monoxide State Implementation Plan for the District of Columbia

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving the 1982 District of Columbia State Implementation Plan (SIP) revision for Ozone (O_3) and Carbon Monoxide (CO) except for the Inspection and Maintenance (I/M) portion. This revision, except as noted, meets all the requirements of the Clean Air Act and EPA policy. The O_3/CO revision provides for attainment and maintenance of the primary National Ambient Air Quality Standards (NAAQS) for O_3 and CO as required under Part D of the Clean Air Act Amendments of 1977.

EFFECTIVE DATE: November 2, 1984.

ADDRESSES: Copies of the revision and the accompanying support documents are available during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Management, Division, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Gaughan (3 AM11)

Department of Consumer and Regulatory Affairs, Enviromental Control Division, 5010 Overlook Avenue, SW., Washington, D.C. 20032

Public Information Reference Unit, U.S. Environmental Protection Agency, EPA Library, Room 2922, 401 M Street, SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC 20408

FOR FURTHER INFORMATION CONTACT: Jacqueline Pine at the EPA address stated above or call 215/597-4554.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added a new Part D to Title I of the Act. Under this Part, the States had to revise their SIPs for all nonattainment areas and submit the revision to EPA by January 1, 1979 (Section 171–178 of the Clean Air Act, Section 129(c) (uncodified) of Pub. L. 95–95). The revised plan had to provide for attainment by December 31, 1982, except in the case of O_3 or CO, where an extension of the deadline up to December 31, 1987 was possible if States demonstrated they could not attain the standard by the December 31, 1982 deadline. States which requested and later received extensions were required to submit a second SIP revision providing for attainment by the new deadline.

District of Columbia Submittals

The District of Columbia submitted in December, 1978, an initial SIP revision for the entire District area, which was designated as nonattainment for O_3 and CO. The District requested that EPA extend its attainment date for these standards until December 31, 1987. EPA approved this request and the initial plan on December 16, 1981 (46 FR 61254).

The District submitted a draft revision to its O_3/CO SIP on July 8, 1982. EPA published a Notice of Availability on October 20, 1982 (47 FR 46711). The District submitted the final draft SIP revision on November 8, 1982. EPA proposed disapproval of this plan on February 3, 1983 (48 FR 5066) because of several major deficiencies.

On December 28, 1982, and April 15, 1983, the District submitted a final SIP revision for ozone and carbon monoxide. EPA proposed approval of this final plan on December 7, 1983 (48 FR 54833), but requested additional information for two sections of the Ozone SIP. Also under this notice, EPA withdrew the proposed disapproval of February 3, 1983. Today's notice approves the O_3/CO SIP except for the I/M portion.

Description of the Ozone SIP

Ozone (O_3) is formed from various precursors, primarily oxides of nitrogen and a class of reactive hydrocarbons called volatile organic compounds (VOC's). VOC emissions are controlled to reduce ozone concentrations. The entire District of Columbia is designated as a nonattainment area for O_3, and the attainment date is December 31, 1987.

The 1982 District of Columbia SIP for O_3 combines a mix of both stationary and mobile source strategies to achieve emission reductions and can be divided into six sections:

1. Emissions Inventory
2. Demonstration of Attainment/ Modeling
3. Reasonable Further Progress
4. Stationary Source Controls
5. Transportation Control Measures
6. Inspection and Maintenance (I/M)

On December 7, 1983, [48 FR 54833], EPA proposed approval of the O_3 plan but requested additional information for the Stationary Source Controls and I/M sections. The District submitted information on both these sections which EPA has reviewed. Results of the review indicate approval of the Stationary Source Controls section, however, no action is being taken on the I/M section at this time. The approvability of the I/M portion rests on a change in the District's regulation governing its sticker issuance procedures and will be addressed in a future rulemaking notice. Therefor, only the first five sections listed above of the District's O_3 SIP satisfy the requirements for an acceptable plan and are approved today.

Description of the Carbon Monoxide SIP

Transportation sources, especially automobiles, are responsible for 93 percent of CO emissions in this area. CO is monitored at 10 sites throughout the region. Violations of the 8-hour standard have been recorded in areas of high traffic density. The entire District of Columbia is currently designated as nonattainment for CO. The attainment date for the District is December 31, 1987.

CO concentrations are expected to decrease significantly by 1987 due to a continuation of the Federal Motor Vehicle Control program and implementation of vehicle I/M. In order to determine expected concentrations of CO in 1987, the District performed several analyses of CO emissions. These included use of several techniques for modeling highway CO concentrations, and a modeling analysis of the primary point source of CO emissions (the Solid Waste Reduction Center). These analyses, which were submitted as part of the SIP, demonstrate that standards for CO will be attained by 1987. The plan also contains an adequate demonstration of Reasonable Further Progress (RFP). EPA approves the District's CO plan excluding the I/M portion.

Additional Requirements

1. *Conformity of Federal Actions.* Compliance with section 176(c) of the Clean Air Act requires a close cooperative effort between all agencies granted Federal funding.

Routine procedures which are part of the basic planning process performed by the Metropolitan Washington Council of Governments (COG) and the State and local governments will ensure that no projects will be constructed or implemented which will produce emissions that are inconsistent with the adopted SIP. Compliance with Sections 176(c) and 316 also requires the use of consistent population projections in all Federal funding activities. COG has developed a "Cooperative Forecasting

Process" which fills this need and is approved.

2. *Consultation with State and Local Officials.* During the preparation of the 1982 SIP, the District, via the COG planning process, insured the continued involvement of the public and all appropriate government agency officials. Opportunity was given for all interested parties to participate in the development of the transportation plan and other elements of the SIP. This section is approved.

3. *Conformance with other Requirements of Section 172 of the Clean Air Act.* Section 172(b) of the Clean Air Act requires that certain items be included in all SIP revisions. Most of these requirements have been addressed above. The following is a discussion of the remaining requirements which EPA has determined to have been adequately addressed and are hereby approved:

(a) *Commitment of Financial and Manpower Resources*—The District has committed adequate financial manpower resources to carry out the programs established in the 1982 SIP.

(b) *Analysis of Effects*—The District submitted an analysis of the effects the SIP will have on air quality, health, welfare, the economy, energy and society. In general, there are few negative effects, and these will be minimal. The majority of the effects of the plan on each of the above-mentioned criteria will be neutral or positive.

(c) *Contingency Plan*—EPA's January 1981 policy also requires States to develop a process for identifying and implementing additional transportation control measures that can be used in the event that there is an unanticipated shortfall in emission reductions. The COG plan includes a list of measures which will be considered in each circumstance and describes the process which will be used to make up any future shortfalls.

Response to Comments

Comments were submitted by the District of Columbia regarding EPA's proposed action on their 1982 O_3/CO SIP. Three issues were addressed in letters submitted by the District on February 6, June 28, and July 13, 1984.

First in the February 6 letter, the District did not agree with the VOC emission reduction targets as proposed in the December 7, 1983 **Federal Register**. They felt that a set of revised emission targets developed and approved by COG in the Spring of 1983 were final and could be used in their plan for reasonable further progress. However, these revised targets were approved for planning purposes on an interim basis and were intended to be used later in future SIP revisions. Also, since the new emission targets had not been officially submitted as a SIP revision, nor was a public hearing held, EPA cannot consider these revised emission targets as a part of this action. The District, in their letter dated June 28, 1984, confirmed that the original reduction target of approximately 10 tons per day, as initially proposed for approval, is currently acceptable and will be incorporated into the District's 1982 SIP. Also in the letter, the District has indicated that they plan to submit at a later date, following a public hearing, a revised SIP to incorporate the newly calculated emission target of 35 tons per day. Therefore, the current emission reduction target for the District will remain at approximately 10 tons per day until a subsequent SIP revision is submitted and is approved by EPA.

The second issue dealt with Stationary Source Control. It was unclear as to whether or not the District would be using an existing VOC regulation for the control of two graphic arts plants. EPA requested additional information from the District on this subject. The Mayor's February 6 letter confirmed that the present regulation, in effect since 1974, is applicable for the control of volatile organic compound emissions from printing plants and that the District will be controlling these facilities under the present regulation. This regulation has been determined by EPA to meet RACT requirements.

The third issue addressed by the District was in response to their Inspection and Maintenance program. In the proposed rulemaking, it stated that the District must submit additional information on their audit and surveillance procedures and on their procedures used in the issuance of approval and rejection stickers. The District stated in their February 6 letter that the required additional information on their I/M program had been submitted to EPA and they felt that it satisfied the requirements for the 1982 SIP revision. EPA has reviewd this material and approves the District's audit and surveillance procedures but found the procedures used in the issuance of approval and rejection stickers unacceptable for an effective I/M program. Under Chapter 6, Title 18 of the District's Municipal Regulations (recodified), there is a possibility that a vehicle might currently qualify for both an approval sticker (Section 603.1) because it meets all safety requirements, and a rejection sticker (Section 604.1) because it does not meet the emission standards. EPA has requested that the District amend its regulations to clarify its legal authority in this area. A letter dated July 13, 1984 submitted by the District included a draft of the proposed revised regulation. EPA believes that this revision, if adopted, would resolve this problem. It is EPA's understanding that the D.C. Department of Public Works will propose and finalize this revised regulation within approximately two months, and that this will subsequently be submitted as a SIP revision by the D.C. Department of Consumer and Regulatory Affairs. Based on this understanding, EPA is taking no action on the I/M portion of the SIP at this time. The approvability of the I/M portion of the SIP will be addressed in a separate notice at a later date subsequent to the District's adoption and submittal of the amendment to Title 18 of their Municipal Regulations.

Plan Review

EPA has determined that all portions of the District's Part D SIP submittal except for the I/M portion, meet the requirements of Section 110 and Part D of the Clean Air Act and 40 CFR Part 51. EPA has made this determination using the criteria published in the **Federal Register** on January 22, 1981 (46 FR 7182). These criteria supplement the "General Preamble" for SIP revisions for nonattainment areas, which was published on April 4, 1979 (44 FR 20372).[1] EPA's review is documented in a Technical Support Document which is available at the offices listed under "**ADDRESSES**" above.

Rulemaking Action

EPA approves the 1982 O_3/CO SIP, excluding the I/M section, for District of Columbia. In conjuction with the Administrator's approval, 40 CFR Part 52.470 (Identification of Plan) of Subpart J (District of Columbia) is revised to incorporate the approved portions of this SIP revision into the District's SIP.

General

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified the SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 45 FR 8709 (January 27, 1982).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be

[1] EPA published four additional notices supplementing the General Preamble in 1979; July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979, (44 FR 53761), and November 23, 1979 (44 FR 67182)

challenged later in proceedings to enforce its requirements [See 307 (B)(2)].

Under Executive Order 12291, today's action is not "major." It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7626.

Note.—Incorporation by Reference of the State Implementation Plan for the District of Columbia was approved by the Director of the Office of the Federal Register of July 1, 1982.

Dated: September 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Title 40, Part 52, Subpart J of the Code of Federal Regulations is amended as follows:

Subpart J—District of Columbia

Section 52.470 is amended by adding paragraph (c)(25) to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

(25) Plan revision, excluding the required vehicle emission inspection program, providing for attainment of the Ozone and Carbon Monoxide Standards, submitted by the District of Columbia on December 28, 1982 and April 15, 1983.

[FR Doc. 84-26176 Filed 10-2-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[EPA Docket Numbers AM016DE, AM017DE, and AM018DE [1]; A-3-FRL-2685-6]

Approval and Promulgation of Implementation Plans; Approval of Revisions to the Delaware State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of a revision to the Delaware State Implementation Plan (SIP). This revision, submitted on September 26, 1983, consists of the addition of three sections to the Delaware Regulations Governing the Control of Air Pollution. These additions will: (1) Establish an alternate opacity limit for existing catalytic cracking units, (2) require a minimum combustion temperature of 1400 °F and a temperature indicating device in the secondary chamber of incinerators used for the destruction of pathological waste and (3) specify emission limits of volatile organic compounds (VOC) in "pounds of VOC per gallon of deposited solids."

EFFECTIVE DATE: November 2, 1984.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Patricia Gaughan (3AM11).

Environmental Control and Air Resources, Department of Natural Resources, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901, Attn: Mr. Robert R. French.

Copies of the SIP revision are available for public inspection during normal business hours at the following offices:

Public Information Reference Unit U.S. Environmental Protection Agency; EPA Library, Room 2922, 401 M Street, SW., Washington, DC 20460.

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20480.

FOR FURTHER INFORMATION CONTACT: Jacqueline Pine (3AM13) at the EPA address cited above or telephone 215/597-4554.

SUPPLEMENTARY INFORMATION: On September 26, 1983, the State of Delaware submitted Secretarial Orders proposing the adoption of three new sectons to the Delaware Regulations Governing the Control of Air Pollution. Delaware requested this submittal be processed as a revision to their State Implementation Plan. The sections to be added are as follows:

(1) Section 2.3 is added to Regulation Number XIV, VISIBLE EMISSIONS, and exempts any existing catalytic cracking unit from the 20% opacity limit as set forth in Section 2.1 of the same regulation and permits opacities up to 50% provided that the source demonstrates that it meets the applicable emission standard. In accordance with Section 3 (Regulation No. XIV) the Secretary may grant an alternate opacity to a source upon demonstration that it meets the applicable mass emission standard.

The addition of subsection 2.3 to Regulation XIV specifically applies to the existing catalytic cracking unit at the refinery of the Getty Refining and Marketing Company in Delaware City. Test results from this unit demonstrate that it complies with the applicable mass emission standard with opacities of up to 50 percent. Any future units though, will be treated individually and will be subject to the appropriate standards.

(2) Section 2.3 is added under Section 2 to Regulation Number VII, PARTICULATE EMISSIONS FROM INCINERATION, which requires a minimum combustion temperature off 1400 °F and a temperature indicating device in the secondary chamber of incinerators used for the destruction of pathological waste. The temperature will ensure adequate destruction of pathogens and a pyrometer or other temperature indicating device will aid the operators in ensuring proper combustion temperatures.

(3) Section 9 of Regulation Number XXIV, CONTROL OF VOLATILE ORGANIC COMPOUND EMISSIONS, adds Table I(a) which states allowable VOC emission rates for various coating lines, and subsection 9.7 which calculates emission limits in "pounds of volatile organic compounds per gallon of deposited solids." The procedure and equation used in determining the emission limits as found in Table I(a) are consistent with the guidelines of the U.S. Environmental Protection Agency and will not relax any regulatory standards.

The State of Delaware provided proof that, after adequate public notice, a public hearing was held regarding the proposed revisions on June 16, 1983 in Delaware City. On April 30, 1984, EPA proposed approval of these revisions in the **Federal Register** (49 FR 18316). No comments were received during the 30-day public comment period.

EPA Evaluation

The regulations listed above have been reviewed by EPA and are acceptable as written.

Conclusion

The Administrator's decision to approve the proposed revisions was based on a determination that the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

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[1] Due to a recent reorganization at the EPA Region III Office, the prefix to the docket numbers has changed from the previous "AW" designation to "AM."

As a result of EPA's decision to approve these revisions to the Delaware SIP, 40 CFR 52.420 (Identification of Plan) is being revised as shown below.

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

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2), the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Delaware was approved by the Director of the Office of Federal Register on July 1, 1982.

(42 U.S.C. 7401–7642)

Dated: September 27, 1984.

William D. Ruckelshaus,
Administrator.

PART 52—[AMENDED]

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart I—Delaware

1. In § 52.420 Identification of Plans, paragraph (c)(33) is added as follows:

§ 52.420 [Amended]

* * * * *

(c) * * *

(33) A revision submitted by the State of Delaware on September 26, 1983 consisting of amendments to Section 2.3 of Regulation Number XIV, Section 2.3 of Regulation Number VII, and Section 9.7 and Table I(a) to Regulation Number XXIV of the Delaware Regulations Governing the Control of Air Pollution.

[FR Doc. 84-26177 Filed 10-2-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[Region II, Docket No. 40; A-II-FRL-2685-7]

New Jersey; Approval and Promulgation of Revision to the State Implementation Plan for Ozone and Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency is approving a request by New Jersey to revise its State Implementation Plan (SIP) for the attainment and maintenance of the ozone and carbon monoxide national ambient air quality standards. The revision will result in the inclusion in the SIP of three state regulations relating to the operation of the New Jersey motor vehicle emission inspection and maintenance program. These regulations, which previously had been adopted by the State on an emergency basis, have now been made permanent. Such action was committed to by New Jersey in its 1982 SIP revision as required by the Clean Air Act.

EFFECTIVE DATE: This action is effective on October 3, 1984.

ADDRESSES: A copy of the submittals from New Jersey are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: On September 26, 1983, January 27, 1984 and February 1, 1984 New Jersey submitted information supplementing an earlier revision to the New Jersey State Implementation Plan (SIP) for attainment and maintenance of the ozone and carbon monoxide national ambient air quality standards. This earlier SIP revision was approved by the Environmental Protection Agency (EPA) on November 9, 1983 (48 FR 51472). New Jersey's recent submittals concerned regulations related to the State's motor vehicle emissions inspection and maintenance (I/M) program, specifically:

- Operating procedures for private inspection stations,
- Mechanic certification requirements, and
- Specifications for exhaust gas analyzers.

The September 26, 1983 submittal consisted of regulations adopted in emergency form. The January 27, 1984 and February 1, 1984, submittals consisted of three permanently adopted regulations for inclusion into the SIP. New Jersey also submitted a State law (Pub. L. 1983, Chapter 417, c236) which has a minor effect on two of the regulations. Further information on these regulations can be found in both the November 9, 1983 **Federal Register** action mentioned earlier and in a May 15, 1984 (49 FR 20502) **Federal Register** notice proposing their approval. EPA received no comments on its May 15, 1984 proposed rulemaking action.

Today's notice approves New Jersey's January 27 and February 1, 1984 SIP revision requests and incorporates the three regulations into the SIP. EPA finds good cause to make this action immediately effective since these regulations have been adopted by the State and are currently in effect.

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

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

(Sec. 110, 172, and 301, Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601))

Note.—Incorporation by reference of the Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 27, 1984.

William D. Ruckelshaus,
Administrator, Environmental Protection Agency.

PART 52—[AMENDED]

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Amend § 52.1570 by adding new paragraph (c)(37) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *