

these regulations on matters of both substance and style.

List of Subjects

26 CFR Part 1

Income taxes, Employee benefit plans, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

26 CFR Part 14a

Income taxes, Incentive stock options.

Adoption of Amendments to the Regulations

For the reasons set out in the preamble, Parts 1 and 14a of Title 26, Chapter 1, Subchapter A of the Code of Federal Regulations are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.423-2 is amended by revising paragraph (c)(1) to read as follows:

§ 1.423-2 Employee stock purchase plan defined.

(c) *Stockholder approval.* (1) An employee stock purchase plan must be approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted. The approval of stockholders must comply with all applicable provisions of the corporate charter, bylaws and applicable State law prescribing the method and degree of stockholder approval required for the issuance of corporate stock or options. If the applicable State law does not prescribe a method and degree of stockholder approval in such cases an employee stock purchase plan must be approved—

(i) By a majority of the votes cast at a duly held stockholder's meeting at which a quorum representing a majority of all outstanding voting stock is, either in person or by proxy, present and voting on the plan; or

(ii) By a method and in a degree that would be treated as adequate under applicable State law in the case of an action requiring stockholder approval (i.e., an action on which stockholders would be entitled to vote if the action were taken at a duly held stockholders' meeting).

PART 14a—[AMENDED]

Par. 3. The authority for Part 14a continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Part 14a is amended by adding § 14a.422A-2 to read as follows:

§ 14a.422A-2 Question and answer relating to the stockholder approval of incentive stock option plans.

The following question and answer relates to the stockholder approval of incentive stock option plans required by section 422A of the Internal Revenue Code as added by section 251 of the Economic Recovery Tax Act of 1981:

Q: In what manner must the stockholders' approval required by section 422A(b)(1) be obtained?

A: The approval of stockholders must comply with all applicable provisions of the corporate charter, bylaws and applicable State law prescribing the method and degree of stockholder approval required for the issuance of corporate stock or options. If the applicable State law does not prescribe a method and degree of stockholder approval in such cases an incentive stock option plan must be approved—

(1) By a majority of the votes cast at a duly held stockholders' meeting at which a quorum representing a majority of all outstanding voting stock is, either in person or by proxy, present and voting on the plan; or

(2) By a method and in a degree that would be treated as adequate under applicable State law in the case of an action requiring stockholder approval (i.e., an action on which stockholders would be entitled to vote if the action were taken at a duly held stockholders' meeting).

There is a need for immediate guidance with respect to the provisions contained in the Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: November 2, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.
[FR Doc. 88-27777 Filed 12-1-88; 8:45 am]

BILLING CODE 4830-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM88-1 and R87-1]

Amendment to Domestic Mail Classification Schedule: Postal Rate and Fee Changes, 1987; Order of Rulemaking; Correction

Issued: May 12, 1988.

AGENCY: Postal Rate Commission.

ACTION: Final rule; correction.

SUMMARY: On April 29, 1988 (53 FR 15385-15393), the Postal Rate Commission published a final rule amending the Domestic Mail Classification Schedule (DMCS) as published in the *Code of Federal Regulations*. The Commission is issuing corrections to that rule.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street, NW., suite 300, Washington, DC 20268 (telephone: 202/789-8820).

SUPPLEMENTARY INFORMATION: On April 29, 1988, the Commission published a Final Rule amending the DMCS as published in the *Code of Federal Regulations*. In FR Doc. 88-9055, make the following changes.

PART 3001—[AMENDED]

Appendix A to Subpart C—[Amended]

1. Page 15388, second line of 400.090, change "follow" to "follows".

2. Page 15388, first line of text in section titled 400.10 Authorizations and licenses, change "400.10 A presort mailing" to "400.100 A presort mailing".

3. Page 15388, second line of text in section titled 400.10 Authorizations and licenses, change "muist" to "must".

4. Page 15392, rate schedule SS-12, first line under title description, change "Onsite" to "On-site".

By the Commission.

Charles L. Clapp,
Secretary.

[FR Doc. 88-27740 Filed 12-1-88; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

(FRL-3485-3)

Approval and Promulgation of State Implementation Plans; Call for Lead SIP Revisions for East Helena, MT

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of State Implementation Plan (SIP) inadequacy and call for SIP revisions for East Helena, Montana; information notice.

SUMMARY: EPA hereby gives notice that it has notified the Governor of Montana on October 1, 1988, that the Montana State Implementation Plan (SIP) for East Helena (Lewis and Clark County) is substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for lead.

DATES: SIP revisions are due within one year of the date that EPA notified the State.

ADDRESSES: Written comments should be addressed to: Chief, Air Programs

Branch, Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1814, (FTS) 564-1814.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the Environmental Protection Agency (EPA) promulgated a National Ambient Air Quality Standard (NAAQS) for lead. The standard was set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu\text{g}/\text{m}^3$), averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (CAA) as amended August 1977, requires that each State submit a State Implementation Plan (SIP) which provides for the implementation, enforcement and maintenance of each NAAQS within the State.

II. Finding of Inadequacy

The Montana SIP for Lead was approved in 49 FR 27944 (July 9, 1984).

The SIP called for the lead NAAQS to be achieved in the East Helena area within three years from the date of EPA approval of the SIP or by August 8, 1987.

The SIP identified the principle sources of lead to be the following: ASARCO smelter complex including fugitive emissions from the ore concentrate piles, and from the ore and zinc handling operations; process and fugitive emissions from the ASARCO blast furnace operation; and fugitive soil and road dust emissions from the ASARCO smelter complex and the City of East Helena and adjacent areas. The strategies to control the emissions from the above mentioned sources were all implemented on schedule and by December 31, 1986.

Since the approval of the Lead SIP, lead levels in the East Helena area have shown a downward trend. However, the NAAQS for lead ($1.5 \mu\text{g}/\text{m}^3$ —quarterly average) continues to be violated. The table below shows the ambient lead levels in $\mu\text{g}/\text{m}^3$, for calendar years (CY) 1986 and 1987, and first quarter CY 1988.

Site	CY86				CY87				CY88 1st
	1st	2nd	3rd	4th	1st	2nd	3rd	4th	
Haslie	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Hadfield	2.10	1.14	1.87	3.70	3.45	1.92	1.94	2.76	2.14
Hadfield*	2.00	1.27	1.82	3.72	3.25	2.01			
Firehall	3.17	1.77	2.34	5.16	3.44	2.35	3.10	4.11	2.71
Dartman	1.60	1.18	1.50	2.94	2.48	1.28	2.06	2.85	1.95

¹ Shut down.

* Collocated site

III. Call for SIP Revision

This finding of inadequacy requires Montana, pursuant to the provision of section 110(a)(2)(H) of the CAA, 42 U.S.C. section 7410(a)(2)(H), to carry out its SIP obligations and to adopt and submit to EPA for approval whatever additional control measures are necessary to assure timely attainment and maintenance of the lead NAAQS.

EPA is extending the section 110(c)(1)(C) of the CAA, 42 U.S.C. 7410(c)(1)(C), revision period to one year from the date of the letter notifying the Governor of the Lead SIP inadequacies to adopt and submit the necessary revision. In the absence of a curative SIP revision submitted within the one year period, EPA will be obliged to propose the appropriate CAA sanctions for the area in question. The State is to submit to EPA, within 60 days of the letter to the Governor, a schedule for the development of the SIP revisions to ensure that the SIP will be submitted on time.

IV. Final Action

In EPA's view, this finding of inadequacy does not constitute final actions that are reviewable inasmuch as they are not ripe for review. The determinations will not be sufficiently concrete for judicial resolution until additional action is taken by EPA in reliance on them. Further, Montana will not suffer hardship from delaying review because the findings do not have an immediate, direct and substantial impact. Also, Montana will have a later opportunity to obtain judicial review of the findings.

The 60-day time period for filing a petition for review under section 307(b) of the CAA is tolled until EPA makes the findings ripe by taking additional action in reliance on them, such as imposing sanctions or promulgating revisions, because a time limitation on petitions for judicial review can only run against challenges ripe for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Lead.

Authority: Secs. 101, 107, 110, 116 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7401, 7407, 7410, 7416 and 7610(a)].

Dated: November 17, 1988.

James J. Scherer,
Regional Administrator.

[FR Doc. 88-27762 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

(FRL-3481-3; TN-077)

Approval and Promulgation of Implementation Plans; Tennessee; Approval of SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA approves as a State Implementation Plan (SIP) revision

for the State of Tennessee Rule 1200-3-19-.06, which requires logs for operating hours for sources that are limited by Chapter 1200-3-19 (Emission Standards and Monitoring Requirements for Particulate and Sulfur Dioxide Nonattainment Areas). This revision which was submitted by Tennessee on February 19, 1980, was inadvertently overlooked by Region IV at the time of the submittal.

DATES: This action will be effective on January 31, 1989, unless notice is received by January 3, 1989, that someone wishes to submit adverse or critical comments.

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

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, SW., Washington, DC 20460.
Environmental Protection Agency,
Region IV, Air Programs Branch, 345
Courtland Street, NE., Atlanta,
Georgia 30365.
Division of Air Pollution Control,
Tennessee Department of Health and
Environment, Customs House 4th
Floor, 701 Broadway, Nashville,
Tennessee 37219.

FOR FURTHER INFORMATION CONTACT:
Ms. Rosalyn D. Hughes, Air Programs
Branch, EPA Region IV, at the above
address and telephone number (404)
347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On
February 19, 1980 the State of Tennessee
submitted four rules as SIP revisions.
Two of the rules, 1200-3-12-.02
(Procedures for Ambient Sampling and
Analysis) and 1200-3-2-.01 (General
Definitions) were approved earlier, on
June 24, 1982 (47 FR 27267). No action
was taken on Rule 1200-3-19-.05
(Operating Permits and Emission
Limiting Conditions) since the rule dealt
with operating permits. Rule 1200-3-19-
.06 (Logs for Operating Hours) should
have been approved, but was not. This
notice corrects that oversight.

Rule 1200-3-19-.06 states that any air
contaminant source with operating
hours restricted by a rule of Chapter
1200-3-19 (Emission Standards and
Monitoring Requirements for Particulate
and Sulfur Dioxide Nonattainment
Areas) must keep a running log, showing
the hours of operation of each source
with the startup and shutdown time
indicated. The log must be available for
the Technical Secretary of the
Tennessee Air Pollution Control Board
at all times and copies must be
maintained for at least two full calendar
years.

Final Action

Since Rule 1200-3-19-.06 is consistent
with EPA policy and requirements, it is
hereby approved. The public should be
advised that this action will be effective
60 days from the date of this **Federal
Register** notice. However, if notice is
received within 30 days that someone
wishes to submit adverse or critical
comments, this action will be withdrawn
and two subsequent notices will be
published before the effective date. One
notice will withdraw the final action
and another will begin a new
rulemaking by announcing a proposal of
the action and establishing a comment
period.

Under section 307(b)(1) of the Act,
petitions for judicial review of this
action must be filed in the United States
Court of Appeals for the appropriate
circuit by January 31, 1989. This action
may not be challenged later in
proceedings to enforce requirements.
(See 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify
that this SIP revision will not have a
significant economic impact on a
substantial number of small entities.
(See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by
reference, Intergovernmental relations,
Particulate matter, Reporting and
recordkeeping requirements, Sulfur
oxides.

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

Date: November 17, 1988.

Lee M. Thomas,
Administrator.

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

PART 52—[AMENDED]

1. The authority citation for Part 52
continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by
adding paragraph (c)(88) to read as
follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *
(88) Rule 1200-3-19-.06, Logs for
Operating Hours, submitted on February

19, 1980, by the Tennessee Department
of Health and Environment.

(i) *Incorporation by reference.* (A)
Rule 1200-3-19-.06, Logs for Operating
Hours which became State-effective
February 14, 1980.

(B) Letter of February 19, 1980, from
the Tennessee Department of Public
Health.

(ii) Other material—none.

[FR Doc. 88-27198 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3484-3]

Approval and Promulgation of State Implementation Plan; Montana

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today approving the
State of Montana's revision to its
Prevention of Significant Deterioration
(PSD) modeling guidelines and revisions
to its Particulate Matter, Fuel Burning
Equipment Regulation. The modeling
guideline revision incorporates
regulations promulgated by the
Administrator (52 FR 32176) to specify
models used to comply with the Clean
Air Act's (CAA) requirements for PSD
(sections 165 through 169 of the CAA).

DATES: This action will be effective on
January 31, 1989, unless notice is
received by January 3, 1989, that
someone wishes to submit adverse or
critical comments.

ADDRESSES: Copies of the revisions are
available for public inspection between
8:00 a.m. and 4:00 p.m., Monday through
Friday, at the following offices:

Environmental Protection Agency,
Region VIII, Air Programs Branch, 999
18th Street, Suite 500, Denver,
Colorado 80202-2405.
Environmental Protection Agency,
Public Information Reference Unit,
Waterside Mall, 401 M Street, SW.,
Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
Laurie Ostrand, Air Programs Branch,
Environmental Protection Agency, 999
18th Street, Suite 500, Denver, Colorado
80202-2405, (303) 293-1814, (FTS) 564-
1814.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1988, the Governor of
Montana submitted a request for
modification of the Montana State
Implementation Plan (SIP). The

modification consisted of revisions to the following rules:

1. Standard of Performance of New Stationary Sources (16.8.1423);
2. Emission Standards for Hazardous Air Pollutants (16.8.1424);
3. Air Quality Models (16.8.937); and
4. Particulate Matter, Fuel Burning Equipment (16.8.1402).

At this time, EPA is only acting on the Air Quality Models Rule (16.8.937) and the Particulate Matter, Fuel Burning Equipment Rule (16.8.1402). The Standards of Performance of New Stationary Sources and Emission Standards for Hazardous Air Pollutants Rules were addressed in a letter of delegation sent to the Governor on June 17, 1988. Such letter shall be published in the *Federal Register* in the near future.

Air Quality Models (16.8.937)

Section 165(e)(3)(D) of the CAA requires the Administrator to promulgate regulations specifying with reasonable particularity models to be used to comply with the CAA's PSD requirements. To carry out these requirements, the 1978 "Guidelines on Air Quality Models" was incorporated by reference in 40 CFR 51.24 (now renumbered 40 CFR 51.166) and 52.21. On September 9, 1986 (51 FR 32176), EPA promulgated amendments to 40 CFR 51.24 (now 40 CFR 51.166) and 52.21 to substitute by reference the "Guidelines on Air Quality Models (Revised)," EPA 450/2-78-027R, in these regulations. This change became effective October 9, 1986. The CAA, however, allows nine months (until July 9, 1987) for affected states to make the necessary changes in their programs.

A review of Montana's rules (16.8.937) categorized the State as one whose rules specifically precluded the use of the federal modeling guideline as amended. Because of this situation the State revised its modeling guidelines and submitted such revisions to EPA with a letter dated March 9, 1988. This submittal constitutes a revision to the State's PSD rule. The PSD program was originally transferred to the State effective June 6, 1983. (see May 5, 1983, 48 FR 20231.)

Subsequent to the State revising its modeling rules (16.8.937), EPA promulgated Supplement A (1987) on January 6, 1988 (53 FR 392). Supplement A (1987) adds four models to the modeling guidelines. Although the State has nine months from the effective date (or by November 5, 1988 in this case) to submit revisions to the rule, in the matter of efficiency, EPA is addressing Supplement A (1987) in this action.

Because the State's recent rule revision precludes the use of Supplement A (1987), the EPA requested, by letter dated June 2, 1988, that the State submit a committal letter stating that it would: (a) Revise its rules in a timely manner to include Supplement A (1987) and (b) limit PSD modeling to analyses which comply with the revised modeling guidelines and Supplement A (1987) or models otherwise approved for use by EPA. Such letter was submitted to EPA by the State Director of Air Quality Bureau, Jeffrey T. Chaffee, on September 9, 1988.

Particulate Matter, Fuel Burning Equipment (16.8.1402)

In revising the Particulate Matter, Fuel Burning Equipment Rule (16.8.1402), the State added an exemption to the Rule for residential solid fuel combustion devices such as fireplaces and wood and coal stoves (16.8.1402(4)). The State revised this Rule in consideration of the potential literal reading of the Rule could extend its applicability to residential wood burning devices. The State believes that this 16.8.1402 was never intended to be applied to residential wood stoves.

EPA interprets this revision to mean that such solid fuel combustion devices are exempted only from 16.8.1402. Such residential fuel combustion devices, however, may be subject to other rules, if applicable.

Final Action

EPA hereby approves the revisions to the Air Quality Modeling rule (16.8.937) based upon the State's commitment to revise 16.8.937 to incorporate Supplement A (1987) and based further upon the State's commitment to follow the Guidelines on Air Quality Models, including Supplement A, for all PSD permits. EPA approves the revision to the Particulate Matter, Fuel Burning Equipment rule (16.8.1402) with the interpretation as stated.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another notice will begin rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments

are received, the public is advised that this action will be effective January 31, 1989.

EPA finds good cause for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 1989. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter.

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

Date: November 23, 1988.

Lee M. Thomas,
Administrator.

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

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7462.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(23) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(23) On March 9, 1988, the Governor submitted a plan revising the State's Air Quality Modeling Rule (16.8.937) and its Particulate Matter, Fuel Burning Equipment Rule (16.8.1402).

(i) *Incorporation by reference.* (A) Modification to the State of Montana Air Quality Rules, that is the Air Quality Modeling rule (16.8.937) and the Particulate Matter, Fuel Burning Equipment rule (16.8.1402) adopted on January 15, 1988.

3. Section 52.1382 is amended by adding paragraph (c) to read as follows:

§ 52.1382 Prevention of significant deterioration of air quality.

(c) The State of Montana has committed to revise its Air Quality Modeling Rule (16.8.937) to incorporate Supplement A (1987). Until such rule is revised, the State will limit Prevention of Significant Deterioration (PSD) modeling to analyses which comply with the revised modeling guideline and Supplement A (1987) or models otherwise approved by EPA. In a letter to Douglas M. Skie, EPA, dated September 9, 1988, Jeffrey T. Chaffee, Director, Air Quality Bureau stated:

EPA requested Montana to incorporate by reference into the Montana PSD rule "Supplement A to the Guideline on Air Quality Models" (Revised July, 1987). Montana agrees to submit to EPA a revised SIP containing such changes by April 30, 1989. * * * During the interim, the department will continue to follow the "Guidelines on Air Quality Models" including Supplement A for all PSD permits.

[FR Doc. 88-27560 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42088E; FRL-3484-5]

Office of Solid Waste Chemicals; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a test rule under 40 CFR 799.5055 on hazardous waste constituents, published in the Federal Register of June 15, 1988 (53 FR 22300). This action is necessary to remove references to phthalic anhydride testing requirements.

EFFECTIVE DATE: Effective on December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is correcting 40 CFR 799.5055 (53 FR 22300) by deleting the hazardous waste

constituent phthalic anhydride from the list of chemicals for which testing is required.

In accordance with section 4(a) of the Toxic Substances Control Act (TSCA), a rule was promulgated under 40 CFR 799.5055 (53 FR 22300; June 15, 1988) to require health effects and/or chemical fate testing for 24 chemicals that are hazardous waste constituents. One of these chemicals, phthalic anhydride (CAS No. 85-44-9) was designated for soil adsorption testing.

EPA, in response to a letter received from the Chemical Manufacturers Association (CMA) Phthalate Esters Program Panel finds that phthalic anhydride was erroneously included in the list of 24 chemicals subject to testing under the final test rule for the Office of Solid Waste Chemicals. Comments received from CMA during the comment period for the proposed test rule noted that phthalic anhydride and maleic anhydride, a structurally similar chemical, hydrolyze very rapidly and are both inappropriate candidates for soil sorption and biodegradation testing. These comments were accepted by EPA, and maleic anhydride was removed from the final list of chemicals for which testing was required (53 FR 22300). However, phthalic anhydride was inadvertently left on the final list.

Because EPA already received comment on this issue, EPA finds that further public comment is unnecessary. In addition, EPA finds that making this deletion effective immediately will relieve administrative and testing burdens, and that good cause exists to make the amendment immediately effective.

PART 799—[AMENDED]

§ 799.5055 [Amended]

Accordingly, the table in 40 CFR 799.5055(c) appearing at page 22324, third column, FR Doc. 88-13347, published June 15, 1988, is corrected by removing the entries for "Phthalic anhydride, CAS No. 85-44-9(d)(1)."

Dated: November 23, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-27662 Filed 12-1-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Health Care Financing Administration

42 CFR Parts 74, 405, and 441

[HSQ-150-F]

Medicare and Medicaid Programs; Medicare, Medicaid, and Clinical Laboratories Improvement Act (CLIA) Patient Confidentiality Rules

AGENCY: Public Health Service (PHS) and Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule eliminates the requirement that a laboratory maintain the name and other identification of individuals undergoing testing to determine the presence of the Human Immunodeficiency Virus (HIV) antibody or causative agent, if the laboratory is not seeking Medicare or Medicaid payment for these tests. However, it will not excuse a laboratory from maintaining such information if it is required to do so by State law. Those laboratories or entities seeking payment from the Medicare or Medicaid programs for HIV testing must continue to provide the name and other identification of persons tested to assure proper payment of claims. However, State Medicaid programs may choose to approve the use of alternative identifiers in place of the patient's name for HIV testing of Medicaid recipients. Also, laboratories licensed under CLIA will not be required to maintain the names and other identification of individuals being tested to determine the presence of the HIV antibody or causative agent. The intent of this change is to add further protection of confidentiality of HIV test results and to encourage voluntary testing.

EFFECTIVE DATE: These regulations are effective January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Pam Renner, (301) 966-6818.

SUPPLEMENTARY INFORMATION:

I. Background

Acquired Immune Deficiency Syndrome (AIDS) is a major public health issue. In order to promote the laboratory testing of persons who suspect they may have been exposed to HIV, the virus associated with AIDS, current public health practice is to