contributions referred to in paragraph (b) of this section); plus

(5) One-half of all loan repayments posted to the individual account during the current valuation period; minus

(6) All amounts in the individual account transferred out of an Investment Fund to another Investment Fund as of the previous allocation date; minus

(7) One-half of all error correction adjustments made to the respective source of contributions in the individual account and in the respective Investment Fund during the current valuation period; minus

(8) Any loans or withdrawals paid from the individual account in the current valuation period.

(b) *Inclusion of retroactive contributions.* The individual account basis for employer basic contributions will also include all amounts attributable to retroactive contributions that are made to the individual account pursuant to 5 U.S.C. 8432(c)(3) and that are processed by the recordkeeper during the current valuation period.

(c) *Computation of Fund Basis.* For each valuation period, the Fund Basis of each source of contributions in each Investment Fund will be the total of all individual account bases for that source of contributions in each Investment Fund, calculated as described in paragraphs (a) and (b) of this section.

§ 1645.6 Earnings allocation for individual accounts.

(a) *Computation of earnings for each individual account.* Earnings for each source of contributions for each Investment Fund will be allocated to each individual account separately. The total net earnings for each source of contributions in each Investment Fund (as computed under § 1645.3) will be divided by the Fund Basis for that source of contributions in that Investment Fund (as computed under § 1645.5(c)). The resulting number (the "allocation factor" for that source) will be multiplied by the individual account basis for the respective source of contributions in that Investment Fund (as computed under § 1645.5(a)), to determine the individual account earnings for the valuation period attributable to that source of contributions in that Investment Fund. The earnings of the individual account for each source of contributions in each Investment Fund, when added together, will constitute the earnings for that individual account during the valuation period.

(b) *Residual net earnings.* Amounts allocated to individual accounts may not exceed the total amount of earnings available to be allocated. To avoid allocating excessive amounts, computation of earnings for individual accounts described in subsection (a) of this section will not include fractions of a cent. Residual net earnings attributable to unallocated fractions of a cent will be allocated with the earnings for the following valuation period.

§ 1645.7 Posting of earnings to individual accounts.

For each source of contributions for each Investment Fund, the amount of earnings computed for each individual account in a valuation period, as described in § 1645.6, will be posted to the individual account as of the first day of the next valuation period.

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Part III

Environmental Protection Agency

40 CFR Part 253

Guideline for Federal Procurement of Retread Tires; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 253

[SWH-FRL 3295-3]

Guideline For Federal Procurement of Retread Tires

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing a guideline for Federal procurement of retread tires. The guideline would implement section 6002(e) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), which requires EPA (1) to designate items which can be produced with recovered materials and (2) to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002. Once EPA has designated a procurement item, section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase such items containing the highest percentage of recovered materials practicable.

This guideline designates tires as a product for which the procurement requirements of section 6002 apply. The guideline also contains recommendations for implementing the section 6002 procurement requirements as well as the requirements for revising specifications.

DATE: EPA will accept public comments on this proposed guideline until June 1, 1988.

ADDRESS: Comments on this proposed guideline should be addressed to the EPA RCRA Docket Clerk, Office of Solid Waste, WH-562, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should identify the docket number, which is F-88-PRTP-FFFFF.

The public docket is available for viewing in Room LG-100, U.S. EPA, 401 M Street SW., Washington, DC, from 9:00 AM to 4:00 PM, Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. Materials may be copied from any regulatory docket at a cost of 15 cents per page. Copying totaling less than $15 is free.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382-4502.

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I. Authority

This guideline is proposed under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Introduction

A. Purpose and Scope

The Environmental Protection Agency (EPA) is proposing today one in a series of guidelines designed to encourage the use of products containing materials recovered from the solid waste stream. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses appropriated Federal funds to procure certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230; 40 CFR Part 249). EPA issued a second guideline, for paper and paper products containing recovered materials, on October 6, 1987 (52 FR 37293; 40 CFR Part 250). EPA concurrently proposed minimum recovered materials content standards for paper and paper products; these standards are being finalized. A third guideline, for asphalt materials containing ground tire rubber, was proposed on February 20, 1986 (51 FR 6202). A fourth guideline, for engine lubricating oils, hydraulic fluids, and gear oils containing re-refined oils, was proposed on October 19, 1987 (52 FR 38838); this guideline is being finalized. Today's proposed guideline applies to procurement of tires.

This preamble describes the requirements of section 6002, explains the basis for designating tires as a procurement item subject to section 6002, and discusses the provisions of the proposed guideline. It also provides information regarding the price, availability, and performance of retread tires.

B. Requirements of Section 6002

Section 6002 of RCRA, "Federal Procurement," directs all procuring agencies using appropriated Federal funds to procure items composed of the highest percentage of recovered materials practicable, considering competition, availability, technical performance, and cost. Two factors trigger this requirement. First, EPA must designate the items to which this requirement applies. Second, the requirement only applies when the purchase price of the item exceeds $10,000 or when the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

Section 6002(c) requires procuring agencies to obtain from suppliers an estimate of and certification regarding the percentage of recovered materials contained in their products.

Federal agencies responsible for drafting or reviewing specifications for procurement items were required under section 6002(d)(1) to review and revise the specifications by May 8, 1986, in order to eliminate both exclusions of recovered materials and requirements that items be manufactured from virgin materials. In addition, within one year after the date of publication of a

procurement guideline by EPA, the Federal agencies must revise their specifications to require the use of recovered materials in such items to the maximum extent possible without jeopardizing the intended end use of the item.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to establish an affirmative procurement program for purchasing items designated by EPA. The program must assure that items composed of recovered materials will be purchased to the maximum extent practicable, be consistent with applicable provisions of Federal procurement law, and contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification of recovered material content; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Under section 6002(e), EPA is required to issue guidelines for use by procuring agencies in complying with the requirements of section 6002. The EPA guidelines must designate those items which can be produced with recovered materials and whose procurement by procuring agencies will fulfill the objectives of section 6002. They also must provide recommendations for procurement practices and information on availability, relative price, and performance.

Section 6002 is designed to promote materials conservation and thereby to reduce the quantity of materials in the solid waste stream. By using products containing recovered materials, Federal procurement can demonstrate their technical and economic viability. Because state and local governments and private purchasers often follow the Federal lead, Federal procurement of products containing reclaimed materials is expected to result in increased procurement of them by these other groups as well.

C. Rationale for Selecting Tires for a Procurement Guideline

In the preamble to the fly ash guideline, EPA established criteria for the selection of procurement items for which guidelines will be prepared. however, section 6002(e) of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984, specifically directs the EPA Administrator to issue procurement guidelines for tires. The portion of the Conference Committee report describing the amendments to section 6002 explains that the term "tires" includes "the use of retreaded tires." [H.R. 2867 Conference Report, p. 1, Cong. Rec. H11138 (October 3, 1984)]. Since Congress already has selected tires as an appropriate subject for a procurement guideline, it is not necessary for EPA to determine that tires are an appropriate subject for a guideline or to demonstrate that tires satisfy the EPA criteria.

D. Background Information on Tire Retreading

The retreading industry was started in the 1910s. Today there are approximately 2,600 retreading plants in the United States. They retread tires for aircraft (commercial and military), agricultural equipment, automobiles, light- and heavy-duty trucks, buses (school and mass transportation), off-road vehicles (i.e., earthmovers, graders, loaders, and dozers) and racing cars.

Tire retreading is the application of a new tread to a worn tire. The tire retreading process involves the following steps:

- Inspection and selection of tires suitable for retreading
- Removal of the old tire tread through a buffing process
- Repair of the tire casing, if necessary
- Application of rubber cement
- Application of a new tread
- Curing
- Inspection of the retreaded tire.

There are two methods for applying a new tread: the mold-cured process, in which an uncured rubber tread is applied, and the pre-cured process, in which a pre-cured, pre-molded rubber tread is applied.

During the mold-cured process, uncured (i.e., nonvulcanized) rubber is applied to the tire. The tire then is placed in a mold to form the tread pattern, the tire is internally pressurized, and the mold is heated. The combination of heat and air pressure applied for an appropriate period of time vulcanizes the rubber and bonds it to the tire body.

During the pre-cure process, a thin layer of uncured rubber (the bonding layer) is applied to the tire body. The pre-cured, pre-molded rubber tread is applied over the bonding layer. The tire is then placed in an autoclave to bond the tread to the tire body, Again, the combination of heat and air pressure applied over time vulcanizes the bonding layer and bonds it and the tread to the tire body.

A properly retreaded tire can provide the same mileage as a new tire, thus substantially extending a tire's useful life. Tires also can be retreaded multiple times. Truck tires, for example, are often retreaded two or three times.

E. Current Retread Tire Procurement Procedures

Procuring agencies can procure either a service—tire retreading—or a product—retread tires. Agencies currently use different methods for procuring retreading services than for procuring retreads as a product. These approaches are described below.

1. Procurement of Services

The General Services Administration (GSA) awards contracts for tire retreading services. Retreading contracts are awarded by the GSA regional offices. The regional offices then issue a supply schedule, Federal Supply Schedule No. 753II, Tire Retreading and Repairing, identifying the vendors of tire retreading services within the GSA region. The individual Federal agencies [1] can bring their tires to these vendors for retreading. The vendor retreads the tire and returns it to the procuring agency. If the tire is not retreadable (e.g., the casing is damaged), the vendor returns it to the agency for disposal.

Vendors retread tires in accordance with GSA Specification ZZ–T–441, which details the retreading procedures to be followed, including inspection of the worn tire casing for suitability for retreading, and inspection of the finished product. It applies to both the mold-cured and pre-cured retreading processes and to tire repairs. It covers four groups of tires: (1) Passenger car and cycles, (2) light truck and high speed industrial, (3) truck, bus and trailer, and (4) special service (including military, agricultural, off-highway, and slow speed industrial).

The specification also requires that the retreader receive a mandatory pre-award facility certification of approval. According to the specification, there are two acceptable approaches that a retreader may use to have his facility certified. First, a GSA inspector can perform the retreading facility inspection. Second, the retreader can provide evidence that within the previous 12 months the facility has received an approved certification from a nationally recognized retread tire trade association, such as the National Tire Dealers and Retreaders Association or the American Retreaders Association.

[1] The Department of Defense uses Schedule No. 753II for retreading of tactical equipment and heavy-duty truck tires, as well as for administrative and light-duty vehicle tires.

With the exception of the Department of Defense, very few Federal government agencies have central motor pools to maintain and repair vehicles. Nor are tires stockpiled in Federal government warehouses or depots. Instead, replacement tires are obtained from the commerical marketplace. Individual vehicle operators, in conjunction with GSA's Fleet Management, thus decide whether to procure a new tire or a tire retreading service for the worn tires on the operator's vehicle. There are no criteria for the vehicle operators to use in making the decision to procure a new tire or a tire retreading service, nor does GSA monitor procuring agencies' use of the retreading contracts. Note that if the retreading service is used, the vehicle operator is provided with his original casing with a new tread, unless the casing cannot be retreaded, in which case it is returned.

The State of Vermont also procures retreading services (for truck and aircraft tires). The state's specification identifies the retreading process to be used (mold-cured), retread size, and tread design. It requires that the retreader use the state's casings. The state invites bids to supply retreading services in accordance with the specification and awards one-year contracts with two options to renew.

Vermont has a central motor pool which warehouses replacement parts, including a mix of new and retreaded tires. The motor pool staff are trained in tire inspection procedures. Each tire casing is inspected to determine whether it can be retreaded; if it is suitable for retreading, it is sent to the contract retreader. Vehicle operators receive replacement tires, although not necessarily their old tire casings.

2. Procurement of Products

GSA is the lead agency for purposes of Federal tire procurement. GSA's tire specification, ZZ–T–381, is specific to new tires containing virgin or recovered rubber. GSA prepares a schedule (the Federal Supply Schedule) identifying the types and sizes of tires required by Federal agencies and awards national contracts to vendors of these tires.These vendors are then identified on the supply schedule (Federal Supply Schedule No. 26II, Pneumatic Tires and Inner Tubes). The Individual Federal agencies procure tires directly from these vendors using purchase orders. All Federal agencies, including the Defense Department, use the GSA supply schedule for automobile and truck tires. (DOD awards its own contracts for procurement of tires for tactical equipment, heavy-duty trucks, and airplanes.)

When retread tires are purchased as products by procuring agencies other than Federal agencies, they generally are purchased through open competition. The procuring agency invites bids from both vendors of new tires and vendors of retread tires. The contract is awarded to the lowest-priced responsible bidder.

For example, the Virginia Highways and Transportation Department (VHTD) purchases truck tires in this manner. VHTD has developed a performance specification for truck tires which specifies tire size and performance standards. It is neutral in that it applies to both new and retread tires. It requires the contractor to guarantee an average mileage and to submit a performance bond. The price of each tire is divided by the guaranteed mileage to obtain a guaranteed cost per mile. If the tire does not perform for the guaranteed mileage, the cost per mile is used to adjust the price of the tire. The difference between the actual tire price and the adjusted price is the amount the contractor must reimburse the VHTD. Both vendors of new tires and vendors of retreads can and have submitted bids to VHTD, and retreaders have received contract awards.

III. Proposed Guideline

This portion of the preamble explains each section of the proposed guideline.

A. Purpose and Scope

The purpose of this guideline is (1) to designate tires as an item subject to the procurement requirements of section 6002 of RCRA and (2) to recommend procedures for complying with section 6002.

This guideline applies to purchases of the following types of tires: passenger care tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including Military, agricultural, off-the-road, and slow speed industrial). It does not apply to airplane tires. Because Federal agencies that procure airplane tires already use retreads extensively, EPA believes that designating airplane tires will not result in increased use of retreaded airplane tires. (Information on airplane tire retreading is available in the docket.) In addition, EPA believes that when Congress directed EPA to issue a procurement guideline for tires, it intended EPA to focus on automobile, truck, and other vehicle tires because they are a significant solid waste problem; the bulk of the tires in the solid waste stream are automobile tires and, to a lesser extent, truck and other vehicle tires. Because airplane tires are not a significant solid waste problem, EPA believes that Congress did not intend for EPA to address them in this guideline. EPA requests comments on its decision not to include airplane tires in this guideline.

B. Applicability

Many of the requirements of section 6002 apply to "procuring agencies," which is defined by RCRA section 1004(17) as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under section 6002(a), the procurement requirements apply to any purchase by a procuring agency of an item costing $10,000 or more or when the procuring agency purchased $10,000 worth of the item or of a functionally equivalent item during the preceding fiscal year. Both direct and indirect purchases are covered.

1. Direct Purchases

This guideline applies to tire purchases made directly by a procuring agency or by a government contractor for use in government vehicles and equipment. Direct purchases by a contractor would include purchases for maintaining a government fleet.[2]

The guideline does *not* apply, however, to direct purchases for use in new equipment to be supplied by a contractor (e.g., new automobiles). Under the Federal Acquisition Regulation (FAR), Federal procuring agencies are required to purchase commercial products and use commercial distribution systems whenever such products or systems adequately meet the government's needs. (See FAR § 11.002). New vehicles are purchased in accordance with this requirement. Since new vehicle manufacturers are required by National Highway Traffic and Safety Administration (NHTSA) regulations (49 CFR 571.110 and 571.120) to use new tires, the vehicles purchased by Federal procuring agencies will have new tires installed on them. Requiring retread tires would be contrary both to the NHTSA regulations and the FAR, and thus contrary to the requirement of RCRA section 6002(i)(1) that procuring

[2] The term "government fleet" does not refer to vehicles owned by the contractor but rather to vehicles owned by a government agency and operated or maintained on behalf of the agency by the contractor.

agencies must comply with applicable Federal laws.

2. Indirect Purchases

The definition of "procuring agency" in RCRA section 1004(17) makes it clear that the requirements of section 6002 apply to "indirect purchases," i.e., purchases by a State or local agency or its contractors using appropriated Federal funds. Thus, the guideline applies to tire purchases meeting the $10,000 threshold made by States and their localities or their contractors, subcontractors, grantees, or other persons which are funded by grants, loans, or other forms of disbursements of monies from Federal agencies. However, the guideline does not apply to such purchases if they are unrelated to or incidental to the Federal funding, i.e., not the direct result of the grant, loan, or funds disbursement. An example of a tire purchase unrelated or incidental to Federal funding is where a contractor purchases tires for equipment under a grant for construction of a public works project. The tire purchases would not be subject to the requirements in section 6002 or this guideline, even though some of the grant funds supporting the contract might be used to finance the purchases.

EPA solicits comments on whether this guideline should be revised to exempt block grants from the section 6002 procurement requirements because it generally may not be possible to account separately for block grant funds from non-Federal funds. EPA also solicits comments on whether this guideline should be revised to exempt block grants only when it is not possible to account separately for such funds.

3. The $10,000 Threshold

The procurement requirements of section 6002(a) apply when the purchase price of an item exceeds $10,000 or when the quantity of such items or of "functionally equivalent" items purchased during the preceding fiscal year was $10,000 or more. In calculating whether the $10,000 threshold has been reached, EPA intends that procuring agencies consider all types of tires to be functionally equivalent items. When determining if the $10,000 threshold has been reached, procuring agencies should tally the cost of all tires purchased, rather than each size or category of tire (e.g., truck tires, automobile tires) purchased. EPA believes that restricting the applicability of section 6002 to purchases based upon a narrow definition of functional equivalency would limit the effectiveness of the proposed guideline in meeting the objectives of RCRA, because an agency may purchase less than $10,000 of each size or category of tire. EPA recommended a similar approach in the proposed guideline for re-refined oil, 52 FR 38843 (October 19, 1987).

EPA notes that the FAR contains a $25,000 small procurement provision, 48 CFR Part 13. This provision should not be confused with the $10,000 threshold because their purposes are different. The $10,000 threshold determines when the affirmative procurement provisions of RCRA section 6002 apply, whereas the $25,000 threshold triggers small procurement procedures. Procuring agencies must use the $10,000 threshold when determining the applicability of RCRA section 6002 and today's proposed guideline.

C. Definitions

Most of the definitions used in this procurement guideline are the same as used in RCRA itself.

For purposes of this guideline, the term "retread tires" means a worn automobile, truck, or other vehicle tire whose tread has been replaced.

Section 6002(c) requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable*, and section 6002(i) requires procuring agencies to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). EPA has defined "practicable" in the final paper guideline, 52 FR 37297 (October 6, 1987), and is including the definition in today's guideline as well.

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: (1) Performance in accordance with applicable specifications, (2) availability at a reasonable price, (3) availability within a reasonable period of time, and (4) maintenance of a satisfactory level of competition. EPA's definition of practicable incorporates these criteria.

D. Requirements vs. Recommendations

RCRA section 6002 requires procuring agencies and contracting officers to perform certain activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. EPA has incorporated the section 6002 requirements into the guidelines for the benefit of procuring agencies. As a result, the guidelines contain two types of provisions: requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). As used in this guideline, the verbs "shall" and "must" indicate section 6002 requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations for complying with those requirements.

Procuring agencies are required to comply with the requirements of section 6002, whereas EPA's recommendations for meeting those statutory requirements are advisory in nature. Procuring agencies may choose to use other approaches which satisfy the section 6002 requirements. However, EPA believes that if a procuring agency chooses to follow EPA's recommendations, that agency will be in compliance with the section 6002 requirements.

E. Specifications

1. Federal Agencies

RCRA section 6002(d) contains two requirements for revising specifications for procurement items. As discussed above, Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications by May 8, 1986 to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials [section 6002(d)(1)]. Second, within one year after the date of publication of a guideline as a final rule, Federal agencies must assure that their specifications require the use of recovered materials (in this case, recovered rubber and retread tires) to the maximum extent possible without jeopardizing the intended end use of the item [section 6002(d)(2)]. EPA believes that this second requirement is more extensive than the first requirement. Simply eliminating discriminatory provisions, as required by section 6002(d)(1), is not sufficient to meet all of the obligations of section 6002(d). EPA believes, however, that compliance with the affirmative procurement requirements of section 6002(i) fulfills the section 6002(d)(2) requirements because an affirmative procurement program should result in procurement to the maximum extent practicable.

In meeting the first specification revision requirement in the context of tires, the specification must provide that reclaimed rubber may be used in the basic compounds used in tire

construction. In addition, if a procuring agency chooses to implement the case-by-case approach as described below, the specification should apply both to new tires and to retread tires. Thus, GSA would be required to revise its specification for new tires, ZZ–T–381, so that it applies both to new tires and to retreads.

2. Procuring Agencies

EPA believes that the second specification revision requirement also applies to non-Federal procuring agencies which procure tires with appropriated Federal funds. Unless their specifications are revised to require the use of retread tires, these agencies will be unable to implement the affirmative procurement requirements of RCRA section 6002(c)(1) and (i). For this reason, § 253.10(b) of the proposed guideline provides that all *procuring agencies* (rather than "Federal agencies" as provided in the Act) must assure that their specifications require the use of retread tires to the maximum extent possible without jeopardizing the intended use of the item.

Under section 6002(d)(2), specifications need not be revised if the agency determines that, for technical reasons, a product containing recovered materials will jeopardize the end use of the product.[3] Such determinations should be documented and made within one year of the promulgation of a final guideline. (See § 253.11 of the proposed guideline.) If the agency subsequently issues a restrictive specification, the basis for the restriction must be documented when the specification is issued.

F. Affirmative Procurement Program

RCRA section 6602(i) requires procuring agencies to adopt an affirmative procurement program to ensure that retread tires are purchased to the maximum extend practicable. The program must contain four elements: (1) A recovered materials preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification of recovered materials content; and (4) procedures for annual review and monitoring of the program's effectiveness. The program must be established within one year of the date of publication of this guideline as a final rule.

[3] For example, Draft Army Regulation (AR) 750–36, which contains the Army's policy and procedures for use of retread tires, excludes use of retreads on the front wheels of buses and on emergency vehicles and heavy-lift vehicles. The regulation conforms to RCRA section 6002(d)(2) because it maximizes the use of retreads without jeopardizing the intended end use of the item.

The following sections explain EPA's recommendations for each element of the affirmative procurement program.

1. Recovered Materials Preference Program

Under section 6002(i)(3), procuring agencies have three options for implementing the preference program. They can employ a case-by-case approach, adopt minimum content standards, or choose an approach that is substantially equivalent to the preceding approaches. In general, the minimum content standard approach is appropriate when the quantity of recovered material used can vary. For example, the quantity of recycled paper used in manufacturing paper and paper products can be varied. In the case of retread tires, where the recovered material is the used tire casing, the quantity of recovered material used does not vary. For this reason, minimum content standards are inapplicable to retread tire procurement, and EPA only considered the other two approaches.

As discussed in section II.E. of this preamble, procuring agencies currently procure either a product—retreads—or a service—tire retreading. Procurement of tire retreading services falls within the "substantially equivalent alternative" category of procurement options provided by RCRA section 6002(i). Procurement of retread tires as a product falls within the case-by-case procurement option and may be used only by a non-Federal procuring agency until such time as GSA issues a specification for retread tires or revises ZZ–T–381 to include retreads. EPA believes that both approaches can be used, with certain procedural modifications, to satisfy the requirements of section 6002. These modified approaches are discussed below.

As discussed in the final paper guideline, 52 FR 37298–37299 (October 6, 1987), section 6002(i) also requires that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congres has established preferential procurement programs in order to attain socioeconomic goals. Among those are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and set-aside are currently being used in some state programs for the procurement of paper and paper products containing recovered materials. Four states are currently using price preference programs in which products containing recovered materials may cost from 5 to 10 percent more than virgin materials. Two states have set-aside programs for paper and paper products. These states report that they successfully procure products containing recovered materials.

EPA has considered recommending these programs at the Federal level. However, in the case of existing Federal preferential procurement programs that allow a price preference or set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of section 6002 seems, however, to contemplate the adoption of either price preference or set-asides, and doing so would conflict with existing Federal procurement regulations. Therefore, rather than recommending price preferences or set-asides, EPA is recommending that procuring agencies use the procurement mechanisms provided in RCRA section 6002(i)(3).

EPA noted in the final paper guideline that it believed that a case-by-case program might not satisfy the section 6002(i) requirement for an affirmative procurement program because it would only award contracts to the product containing a higher percentage of recovered materials in the event of a tie. [See 52 FR 37299, 27302 (October 6, 1987).] EPA made similar statements in the preamble to the proposed re-refined lubricating oils guideline, 52 FR 38844 (October 19, 1987).

EPA believes that a case-by-case approach will satisfy the section 6002(i) requirements for retread tires because retread tires will likely be less expensive to procure than new tires for comparable performance levels. (Information on the relative price of retread and new tires will be available in the docket.)

a. *Procurement of Services.* While GSA prepares tire specifications and awards contracts to tire vendors, the individual Federal operator, in conjunction with GSA's Fleet Management, decides whether to purchase retreading services or to buy a new tire.[4]

[4] Draft Army Regulation 750–36 establishes a policy for maximizing the use of retread tires on

Continued

Except for Department of Defense activities, the agencies do not maintain records on procurement of new tires or tire retreading services. EPA believes that recordkeeping is necessary to obtain information on cost savings, performance of retreads, and use of tire retreading contracts. Therefore, EPA recommends that agencies procuring retreading services institute a practice of monitoring the procurement of retreading services by agency subgroups or individuals by requiring them to record their decisions to procure new tires and tire retreading services. The record should identify the type and quantity of tires procured, the purchase price per tire, whether retreading services were procured, the cost of the retreading services, and, if new tires are procured, the reasons for not retreading. Section 253.21(b)(1) contains this requirement.

b. *Procurement of Products.* As explained in Section II.E.2 of this preamble, procuring agencies purchasing retreads as products can solicit bids from both vendors of new tires and vendors of retreads. The decision to purchase retreads is made on a case-by-case basis, and the contract is awarded to the lowest-priced responsible bidder. EPA believes that this approach should include a preference for retread tires in the event that tie bids are received from a vendor of retreads and a vendor of new tires, all other factors (e.g., availability) being equal. Section 253.21(b)(2) of the guideline recommends that procuring agencies adopt such a preference.

As discussed in the proposed paper guideline, 50 FR 14080–14081 (April 9, 1985), and the final paper guideline, 52 FR 37301–37302 (October 6, 1987), the legislative history of Section 6002 indicates that bids for items containing recovered materials should be given preference only if they are equal to, or less than, bids for the comparable virgin materials product.

2. Promotion Program

The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. The proposed guideline recommends several methods for procuring agencies to use for disseminating information about their preference programs, such as placing statements in invitations to bid, discussing the program at bidders' conferences, and informing industry trade associations about the program.

3. Estimates, Certification, and Verification

The third requirement of the affirmative procurement program set forth in section 6002(i) concerns estimates, certification, and verification. Many questions have been raised about the certification and estimation of recovered material content, such as when they should be provided, who is to provide them, how the information is to be obtained, and how it is to be verified. To clarify this subject, it is necessary to review the requirements of the law.

RCRA sections 6002(c)(3)(B) and 6002(i)(2)(C) require that after the effective date of an EPA guideline, contracting officers must require vendors who supply Federal procuring agencies with items covered by the guideline to provide an *estimate* of the total percentage of recovered materials contained in the items. EPA believes that this requirement is for the purpose of gathering statistical information on price, recovered materials content, and availability, and applies regardless of whether the procurement solicitation specifies that recovered materials can or must be used.

In the case of tires, procuring agencies purchase a product containing recovered tire casings, or contract for a retreading service for government casings, rather than purchasing a product containing a certain percentage of recovered materials. The statistical information that procuring agencies need to obtain, therefore, is the number of retread tires to be supplied by the vendor. The vendor must supply this data. EPA is recommending that procuring agencies retain these data for three years.

RCRA section 6002(i)(2)(C) provides that contracting officers must require vendors to supply certifications of recovered materials content, where appropriate. EPA believes that *written* certifications are inappropriate for retread tire procurement because retreaders already use another certification procedure which is required by Department of Transportation regulations. Newly retreaded tires are inspected to determine that they are free of defects and that they comply with Federal Motor Vehicle Safety Standards. Tires passing the retreaders' inspection are certified by stamping the retreading plant's identification number and the symbol DOT on the sidewall. The identification number indicates that the plant is a retreading operation. This is in accordance with section 114 of the National Traffic and Motor Vehicle Safety Act of 1966, 49 CFR 571.117 and 574.5. Imposition of a separate, additional certification for each tire or batch of tires would be duplicative and would only prove to be an unnecessary burden on the retreaders and the procuring agency.

Section 6002(i) also requires procuring agencies to establish reasonable procedures to verify the estimates and certification. For retread tires, verification will be relatively easy because the certification number stamped on the sidewall of the tire identifies the tire as a retread. Procuring agencies need only to spot check these numbers to verify that a retread tire has been supplied.

4. Annual Review and Monitoring

The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. EPA recommends that the review include an estimate of the number of retread tires purchased during the year, assessment of the effectiveness of the agency preference program, and an assessment of remaining barriers to procurement of retread tires.

IV. Price, Competition, Availability, and Performance

Section 6002(c)(1) of RCRA provides that a procuring agency may decide not to purchase an item designated by EPA if it determines that (1) the item is available only at an unreasonable price, (2) a satisfactory level of competition cannot be maintained, (3) the item is not reasonably available within a reasonable period of time, or (4) the item fails to meet the applicable specifications. EPA has considered the effect of these limitations on retread tire procurement and made the following determinations.

A. Price

Section 6002 provides that a procuring agency may not purchase a designated item if the price is "unreasonable." Commenters on several of the procurement guidelines stated that a "reasonable price" includes price preferences. However, as EPA stated in the paper guideline, 52 FR 37298–37299 (October 6, 1987), RCRA section 6002 does not provide explicit authority to EPA to authorize or recommend payment of a price preference or to create a set-aside. Therefore, unless an agency has an independent authority to provide a price preference or to create a set-aside, EPA proposes that a price is "unreasonable" if it is greater than the price of a competing product made of virgin material.

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vehicles and aircraft. AR 750–36 sets goals for tire retreading and requires that automotive, commercial, tactical, and off-the road tires be retreaded to the extent that it is economical and practical.

B. Competition and Availability

EPA believes that there will be a satisfactory level of competition and availability of retread tires. Currently, there is an abundant supply of worn tires in the waste stream that are candidates for retreading, and there are approximately 2,600 retreading plants located across the country. Therefore, there should be a satisfactory level of competition and availability.

C. Performance

As discussed elsewhere in this preamble, GSA's retread tire specification requires that retreaders have their production facilities certified either by GSA or by a nationally recognized retreader association. Once the plant is certified, it is periodically recertified to ensure that it is maintaining satisfactory operating procedures. In addition, newly retreaded tires are inspected by the retreader to determine that they are free of defects and that they comply with Federal Motor Vehicle Safety Standards. Therefore, performance is assured, so it should not be a reason for procuring agencies to decline purchasing retread tires.

V. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1986 (i.e., 18 months after enactment of HSWA), (2) one year after the date of publication of an EPA guideline, and (3) the date specified in an EPA guideline. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these deadlines.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items must eliminate from such specifications any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was to be completed by May 8, 1986.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item [section 6002(d)(2)]. In addition, procuring agencies must develop an affirmative procurement program for purchasing items designated by EPA, in this instance, retread tires [section 6002(i)(1)]. Both of these activities must be completed within one year after the date of publication of this guideline as a final rule.

Third, procuring agencies which procure items designated by EPA must begin procurement of such items containing the highest percentage of recovered materials practicable [section 6002(c)(1)]. In addition, contracting officers must require vendors to submit estimates and certifications of recovered materials content [section 6002(c)(3)]. Both of these activities must begin after the date specified by EPA in the applicable guideline.

EPA believes that procuring agencies should begin to procure retread tires as soon as the specification revisions have been completed and the affirmative procurement programs have been developed. Since these latter activities must be completed within one year after publication of this guideline as a final rule, affirmative procurement should begin no later than one year from publication as well. Section 253.26 specifies this implementation date.

EPA expects cooperation from affected procuring agencies in implementing this guideline. Under section 6002(g) of RCRA, the Office of Federal Procurement Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of the requirements of section 6002 and for coordinating it with other Federal procurement policies. OFPP is required to report to Congress on actions taken by Federal agencies to implement section 6002.

VI. Regulatory Analyses

A. Executive Order No. 12291

Under Executive Order No. 12291, EPA must determine whether a regulation is major or nonmajor. The proposed guideline is not a major rule because it is unlikely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Increased usage of retread tires and tire retreading services addressed by this guideline is not expected to produce recurring annual effects of $100 million or more on the economy. The Federal Procurement Data Center reported Federal tire purchases of $39,400,000 for 1985, which represented less than 1/3 of 1 percent of the estimated tire production for the year. The majority of DOD tire procurements are for specialty, heavy-truck, and military equipment vehicles. DOD actively procures retreading services for this equipment already. The impact of this guideline would, therefore, involve the GSA schedule purchases of other agencies. The 1986 GSA tire procurements were approximately $4,000,000. If *all* of these new replacement tires were replaced by using retreading services, the economic effect would be less than 10 percent of the $100 million criteria of Executive Order No. 12291.

An expanded potential market for retread tires by increased government procurement is not expected to increase costs of retreading services or prices of retread tires. The retread tire industry is currently characterized by intense cost competitiveness and excess production capacity. Therefore, an increase in prices for retreading services will be expected to result in market share losses and decreased profits. Increased prices to government agencies may similarly mean loss of that market share.

The current goal of the declining retreading industry is to increase net profits through the reduction of operating expenses. Simply increasing sales will not increase net profits in this industry.

In conclusion, the proposed guideline by itself will have neither adverse effects nor be significantly advantageous in terms of competitiveness, employment levels, capitalization, productivity or innovation in this industry.

This proposed rule was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As described in the background document prepared for this guideline, the economic impact on both small businesses and small governmental

jurisdictions is expected to be in some cases, negligible and in other instances, beneficial, because there will be no net change in the number of small businesses supplying tires to procuring agencies and most small government jurisdictions use non-Federal funds to procure tires. An extremely limited number of business and governmental entities are affected at all by the guideline. Therefore, the proposed guideline is not expected to have significant eonomic impact on a substantial number of small entities. As a result, the guideline does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 253

Government procurement, Recycling, Resource recovery, Retreading, Tires.

Dated: April 25, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations by adding a new Part 253 reading as follows:

PART 253—GUIDELINE FOR FEDERAL PROCUREMENT OF RETREAD TIRES

Subpart A—General

Sec.

253.1 Purpose.
253.2 Designation.
253.3 Applicability.
253.4 Definitions.

Subpart B—Specifications

253.10 Revisions.
253.11 Exclusions.

Subpart C—Affirmative Procurement Program

253.20 General.
253.21 Preference program.
253.22 Promotion program.
253.23 Estimates and verification.
253.24 Annual review and monitoring.
253.25 Implementation.

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 253.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, as that section applies to procurement of tires.

(b) This guideline contains recommendations for use in implementing the requirements of section 6002, including revision of specifications and development of an affirmative procurement program.

(c) The Agency believes that adherence to the recommendations in the guideline constitutes compliance with section 6002. However, procuring agencies may adopt other types of procurement programs consistent with section 6002.

§ 253.2 Designation.

EPA designated tires as items which are or can be produced with recovered materials (i.e., used tire casings) and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA.

§ 253.3 Applicability.

(a) This guideline applies to all procuring agencies and to all procurement actions involving tires, when the purchase price exceeds $10,000, or where the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more.

(b) The term "procurement actions" includes purchases made directly by a procuring agency and purchases made by any person directly in support of work being performed for a procuring agency (e.g., by a contractor).

(c) This guideline does not apply to purchases which are not the direct result of a contract, grant, loan, funds disbursement, or agreement with a procuring agency.

(d) This guideline does not apply to:

(1) Purchases of tires for use in new equipment to be supplied to a procuring agency, such as new vehicles, or

(2) Purchases of tires which are not the direct result of a contract, grant, loan, funds disbursement, or agreement with a procuring agency.

(3) Purchases of tires for use on airplanes.

(e) For purposes of determining when the $10,000 threshold has been reached, EPA recommends that procuring agencies consider all sizes and types (e.g., truck, automobile) of tires to be functionally equivalent items.

§ 253.4 Definitions.

As used in this guideline:

"Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*

"Federal agency" means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body.

"Practicable" means capable of being used consistent with: performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition.

"Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item.

"Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

"Retread tire" means a worn automobile, truck, or other vehicle tire whose tread has been replaced.

"Specification" means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references.

"Tire" means the following types of tires: passenger car tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including Military, agricultural, off-the-road, and slow speed industrial).

Subpart B—Specifications

§ 253.10 Revisions.

(a) By May 8, 1986, Federal agencies were required to eliminate from their specifications any exclusion of retread tires and any requirement that tires be manufactured from virgin materials unless there is a technical basis for such exclusion or requirement.

(b) Within one year after the date of publication of this guideline, each procuring agency must assure that its specifications require the use of retread tires to the maximum extent possible without jeopardizing the intended end use of these items.

§ 253.11 Exclusions.

Notwithstanding the requirements of § 253.10, agencies need not revise

sepcifications to require the use of retread tires if it can be determined that for a particular end use, for technical reasons, retread tires will not meet reasonable performance standards. Any such determinations should be documented by the agency and be based on technical performance information.

Subpart C—Affirmative Procurement Program

§ 253.20 General.

Within one year after the date of publication of this guideline as a final rule, each procuring agency which procures tires using appropriate Federal funds must establish an affirmative procurement program for procuring retread tires. The program must meet the requirements of section 6002(i) of RCRA, including the establishment of a preference program; a promotion program; procedures for estimation and verification; and procedures for conducting an annual review of the affirmative procurement program. This subpart provides recommendations for implementing section 6002(i).

§ 253.21 Preference program.

(a) RCRA section 6002(i)(3) requires procuring agencies to establish a preference program for procurement of retread tires consisting of one of the following:

(1) A policy of awarding contracts, on a case-by-case basis, to vendors offering retread tires or tire retreading services, subject to the limitations based on competition, availability, performance, and price described in section 6002(c)(1)(A)–(C) of RCRA and paragraph (c) of this section, or

(2) A substantially equivalent alternative to paragraph (a)(1) of this section.

(b) EPA recommends that procuring agencies implement one of the following procurement approaches in order to satisfy the requirements of RCRA section 6002(i):

(1) *Procurement of Tire Retreadng Services (Substantially Equivalent Alternative).* Under this approach, procuring agencies procure tire retreading services, such as from persons identified on the U.S. General Services Administration's Federal Supply Schedules. Procuring agencies must record the following information for each procurement of new tires and tire retreading services:

(i) type and quantity of tires,

(ii) whether new tires or retreading services were procured,

(iii) cost per tire, and

(iv) if new tires are procured, the reason for not procuring retreadng services.

(2) *Procurement of Retreads as a Product (Case-by-Case Approach).* Under this approach, procuring agencies procure retread tires through open competition between vendors of new tires and vendors of retreads. Procuring agencies must provide a preference for retread tires in the event that identical low bids are submitted by a vendor of new tires and a vendor of retreads, all other factors (i.e., availability, technical performance) being equal.

(c) The requirements in paragraph (a) of this section and the recommendations in paragraph (b) of this section, are subject to the following limitations provided in section 6002(c)(1) of the RCRA:

(1) Maintenance of a satisfactorily level of competition.

(2) Availability within a reasonable period of time;

(3) Ability to meet the specifications in the invitation for bids;

(4) Availability at a reasonable price.

(d) Procuring agencies should make determinations regarding competition, availability, and price in accordance with applicable provisions of the Federal Aviation (FAR) and other applicable Federal law.

§ 253.22 Promotion program.

Procuring agencies must develop a promotion program to promote the preference program. EPA recommends that procuring agencies use the following methods, at a minimum, to promote their preference programs:

(a) Place a statement in procurement invitations in the *Commerce Business Daily* describing the preference program.

(b) Describe the preference programs in tire procurement solicitations or invitations to bid.

(c) Discuss the preference program at bidder's conferences.

(d) Inform industry trade associations about the preference program.

§ 253.23 Estimates and verification

(a) Contracting officers must require vendors who supply tires to procuring agencies to estimate the number of retread tires to be supplied. EPA recommends that procuring agencies retain these estimates for three years.

(b) Procuring agencies must establish reasonable procedures to verify the estimates. EPA recommends that procuring agencies randomly check the numbers stamped on tire sidewalls to verify that retread tires have been supplied.

§ 253.24 Annual review and monitoring.

Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program. EPA recommends that the annual review include the following items:

(a) An estimate of the number of retread tires purchased.

(b) An assessment of the effectiveness of the preference program.

(c) An assessment of remaining barriers to procurement of retread tires to determine whether they are internal (e.g., resistance to use) or external (e.g., unavailability) barriers.

§ 253.25 Implementation.

(a) Federal agencies were required to review and revise their specifications, as set forth in § 253.10(a), by May 8, 1986.

(b) Procuring agencies are required to revise their specifications as set forth in § 253.10(b), and to establish affirmative procurement programs, as set forth in Subpart C, within one year of the date of publication of this guideline as a final rule.

(c) Procuring agencies must begin procurement of retread tires, in compliance with this guideline, one year from the date of publication of this guideline as a final rule.

[FR Doc. 88–9629 Filed 4–29–88; 8:45 am]

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Federal Register

Monday
May 2, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-28]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Evansville Dress Regional Airport, IN; Laughlin Air Force Base (AFB), TX; Midland Regional Airport, TX; Portland International Jetport, ME; and Springfield Capital Airport, IL. Each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Currently, the FAA has designated 104 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On November 25, 1987, the FAA proposed to designate ARSA's at Evansville Dress Regional Airport, IN; Laughlin Air Force Base (AFB), TX; Midland Regional Airport, TX; Portland International Jetport, ME; and Springfield Capital Airport, IL (52 FR 45292). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports.

Discussion of Comments

The FAA received 17 comments on the proposed ARSA's. Two of the commenters were in favor of all locations and the remaining commenters offered objections or recommendations to one or all of the sites.

The Soaring Society of America (SSA) submitted a number of objections to the basic ARSA program. Comments objecting to the ARSA program were considered during the rulemaking for the ARSA rule which was published in the **Federal Register** on March 6, 1985 (50 FR 9252).

In addition, the SSA and a few other commenters objected on the basis that a related rulemaking, specifically Notice 88-2, Docket 25531, had invalidated the Regulatory Evaluation and Regulatory Flexibility Determination and therefore the FAA should suspend all rulemaking action on candidate ARSA sites not adopted by December 31, 1987. The FAA does not agree. Any impact Notice 88-2 may have on ARSA locations will not take place until after the effective date of that rule. The cost of implementing the proposed Notice 88-2, therefore, is a cost of that rule and not a cost of this action or any prior rulemaking effort. Hence, the FAA finds that the Regulatory Evaluation and Regulatory Flexibility Determination continue to be valid.

Evansville, IN

The FAA received one written comment offering recommendations for the Evansville ARSA. The commenter first suggested that there appeared to be an error in the cutout for Skylane Airport. The FAA agrees and has made a modification to the Skylane cutout to allow pilots to arrive/depart Skylane without entering the ARSA if they so desire. This rule reflects those changes.

The same commenter suggested that the floor in half of the 5-10-mile area should be raised to 2,000 feet mean sea level (MSL) or about 1,600 feet above ground level (AGL) to allow pilots enough room to fly over the tops of antennas. The FAA does not agree. The FAA has found that pilots do not routinely overfly antennas at low altitudes, but will instead choose to fly around the antennas. The pilots could choose to overfly by simply establishing two-way radio with Air Traffic and flying through the ARSA. The FAA finds a need to know of all aircraft operating at these critical altitudes in this near proximity to the airport.

This same commenter submitted two suggestions which are outside the purview of this rulemaking action.

Laughlin Air Force Base (AFB), TX

The only comment received was at the Informal Airspace Meeting where the U.S. Border Patrol stated that they supported establishment of the ARSA but were concerned about the 5-10-mile area overlying the Rio Grande River where they routinely fly. They felt the shelf over the river was going to cause aircraft to fly low avoiding the ARSA over the river. The FAA does not find that compression will be a problem. Pilots may overfly the ARSA at a relatively low altitude or circumnavigate the ARSA. Experience has shown that most pilots will choose to avoid flying under the ARSA unless they wish to operate at an airport in that area. The FAA is sensitive to the concerns of the U.S. Border Patrol and intends to closely monitor the traffic situation. If traffic compression develops to a degree significant enough to cause an adverse impact on the Border Patrol mission, the FAA will work with the appropriate parties to find a solution.

Midland, TX

The FAA received 12 comments addressing the Midland proposal. Three commenters supported the proposal, and the remainder wrote in objection while offering some recommended alterations. All but two of the objections concerned sailplane activity in the area and stated that their favorite airports would be

under the 5–10-mile area. These commenters offered recommended alterations to the ARSA cutting one or all of these airports out. The airports included are Odessa/Schlemeyer, Bates Field, Midland Airpark and Sky Ranch.

The FAA carefully considered these comments and decided that although we were unable to comply with their desires for a cutout at each of these airports, we would raise the altitude of the floor in these areas to make access easier. The FAA decided to subdivide the 5–10-mile area and establish floors at an altitude that will allow pilots to operate to at least 500 feet above normal traffic pattern altitude at each of these airports and still remain clear of the ARSA. Providing the requested cutouts would preclude the FAA form having knowledge of aircraft operating at critical altitudes in close proximity to Midland International Airport. The local facility manager is prepared to negotiate with the users to establish local agreements, which will provide further relief. This rule reflects the floor alterations stated above.

Some of the commenters expressed concerns about antennas underlying the 5–10-mile area, specifically addressing two towers that were over 1,000 feet AGL. Raising the floor in the 5–10-mile area may alleviate these concerns. The FAA maintains that pilots do not routinely overfly obstacles at low altitudes but instead choose to circumnavigate.

One commenter suggested that the altitudes of two approaches were not wholly contained in the ARSA. The same commenter suggested that the floor of the 5–10-mile area should be lowered or the instrument procedure changed to wholly contain them within the ARSA.

The FAA finds that the instrument approach procedures fall outside the purview of this rulemaking action. The ARSA program does not provide for containment of instrument approach procedures. The FAA finds no need to lower the floor of the 5–10-mile area for this purpose.

Another commenter referred to existing TRSA's and the ARSA's as "Areas of Fear." Young pilots soon learn to avoid these areas to avoid embarrassment, so stated the commenter. The FAA disagrees. The ARSA program only requires the establishment of two-way radio communication prior to entering the ARSA. This is no more than is currently required to enter an Airport Traffic Area (ATA). The major objective of the ARSA program is to eliminate the unknown from the ARSA airspace. The high percentage of TRSA participation cited by this commenter, 95 to 98 percent, is an excellent indication of user satisfaction with the services provided and should ensure a smooth transition from TRSA to ARSA.

A few commenters suggested that the Midland ARSA would have an adverse effect on the soaring activities at Eagle Nest Airport. The FAA finds that this airport is located about eight miles south of the ARSA boundary and that normal towing and soaring operations should not be impacted by the ARSA. The FAA, however, is prepared to negotiate a local agreement if it is determined to be necessary.

The operator of Sky West Airport wrote in objection stating that the ARSA would have a negative impact on their use of an aerobatic training area. The FAA learned that this "aerobatic box" expired on March 31, 1988, and that the users are now negotiating with FAA for renewal. A local agreement is being developed to allow this operation to continue.

Portland, ME

Three commenters wrote in objection to the proposed ARSA for Portland, ME. One of the commenters had several statements/questions. This commenter had two concerns that will be addressed here. The remainder of this commenter's concerns were questions of clarification about ARSA procedures, which are outside the scope of this rulemaking action and will not be addressed here. The first concern about this proposal was that the ARSA effective date should be the same as the sectional charting date for that area. The FAA concurs and in fact the sectional charting date is coincidental with the planned effective date of this ARSA.

In addition, this commenter was concerned about safety in the ARSA due to a perceived reduction in separation standards. The commenter stated he did not understand how reducing separation from 1½ miles in the TRSA to target resolution in the ARSA improved safety. The FAA finds that the ARSA has several improved safety features over existing TRSA's. First, the FAA has knowledge of all aircraft operating in the ARSA, because communication is mandatory, whereas in the TRSA, participation was voluntary. Second, target separation is only one of the methods of providing separation, the rest are unchanged. Target separation does not reduce separation as much as it may seem. The original 1½ miles nearly exist when you consider how wide a target is and how much room must be between targets to ensure separation. Therefore, the FAA finds that safety has been greatly enhanced and, in addition, standardization of types of airspace has enhanced the safety issue by providing predictability.

Another commenter wrote in objection stating that he did not see any reason to change anything that was already working well. Specifically, the commenter was concerned that pilots would be intimidated from entering the ARSA, that the ARSA would encourage low level flight beneath the shelf and that the ARSA includes too rigid procedures. The FAA finds that the only requirement on the part of the pilot is to establish two-way radio prior to entering the ARSA. This is no more than is now required of pilots to enter an ATA. Additionally, pilots will not routinely choose to operate beneath the shelf. They will instead overfly the top of the ARSA, which is only 4,000 feet AGL, or circumnavigate. The only additional requirement is that pilots now must establish two-way radio communication prior to entering the ARSA. The FAA will continue to use the same methods for separating and sequencing traffic. The FAA, therefore believes that knowledge of all aircraft in this close proximity to the airport and at these critical altitudes is imperative when traffic reaches certain levels. The ARSA will provide this knowledge and a degree of safety that we believe to be mandatory.

The last commenter objected to the ARSA because there wasn't enough traffic to warrant one, and, secondly, because of Portland's strategic location, a large number of pilots traverse the area enroute or are sightseeing. He stated that a large portion of these use the coast for navigation and would be adversely affected by the ARSA. The FAA disagrees. First, Portland qualifies for an ARSA not only based on the National Airspace Review criteria but also on the follow-on criteria. The follow-on criteria established a level of activity or passenger emplanements at which the FAA finds it imperative for the sake of safety to know of all aircraft operating within this area.

Second, the FAA has not found that pilots must alter their operating practice simply to avoid the ARSA. As stated above, pilots may overfly the ARSA or simply establish two-way radio with the appropriate air traffic facility and fly through the ARSA. The ARSA program is not designed to prohibit any type of operation but simply to provide the air traffic facility with knowledge of all aircraft operating in this area.

Springfield, IL

Two commenters wrote objecting to the proposed ARSA for Springfield. One

of the commenters submitted a petition with 69 signatures. This petition, among other things, stated that the ARSA would reduce safety by providing no lateral separation. The FAA does not agree. The separation standards used, for the most part, in a TRSA are retained and used in the ARSA. The only change, is that the 1½ mile standard currently used in a TRSA is deleted in favor of target separation. Target separation does not reduce separation as much as it may seem. The original 1½ miles nearly exist when you consider how wide a target is and how much room must be between targets to ensure separation. The FAA, therefore, finds that safety is enhanced by having knowledge of all aircraft operating in this area, not reduced.

This same commenter stated that the ARSA would increase controller workload by expanding the radius of service ten (10) additional miles in all directions. The FAA is frankly puzzled by this statement. First, the ARSA is only a slight lateral increase over the existing TRSA and a reduction in altitude. If the commenter is referring to the ATA, the ARSA would be an increase of five miles in all directions, and the ATA is not a radar service area. We assume that the commenter is including the ARSA outer area which is not regulatory airspace. The size of the ARSA regulatory airspace has been kept at a very modest size to provide for the greatest degree of safety while providing the pilots with the greatest possible amount of operating flexibility. The FAA finds that the ARSA size has been optimum in most situations, and the increased requirement of communication has not resulted in an unmanageable workload for the controllers but has increased safety.

Both commenters stated that the ARSA would increase the high cost of flight training by forcing students further from the airport before beginning any exercises. The FAA finds that the ARSA rule made provisions for these types of situations. The local facility manager is prepared to negotiate local agreements with operators where it is believed that the ARSA will have an adverse impact. The FAA has found that these agreements work very well, not only for the operator, but for the FAA in maintaining the degree of safety it desires.

One commenter also stated that the ARSA was going to force transiting pilots and pilots inbound/outbound to airports underlying the 5–10-mile shelf into flying below the tops of two antennas located to the east under the 5–10-mile shelf. The FAA finds that pilots routinely choose to circumnavigate around obstacles at low altitudes; however, they may choose to overfly at a higher altitude simply by establishing two-way radio with the air traffic facility. Transiting pilots do not routinely choose to operate beneath the shelf of the 5–10-mile area. The FAA has found that these pilots will either circumnavigate or fly over the top of the ARSA which is only 4,000 feet AGL.

The last commenter suggested that the TRSA works reasonably well because of cooperation between pilots and controllers and enjoys high participation. He expected this would be impacted negatively by the imposition of the ARSA. The FAA does not agree. The FAA has found that a high degree of participation is generally indicative of an easy transition to an ARSA.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation discussed in the NPRM, as clarified by the "Discussion of Comments" cotained in the preamble to the final rule, contitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvement resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and the efficiency gains will be realized from the start. Other sites anticipate that delay problems will occur in the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in radar services and radio communication with ATC is voluntary, operations at airports inside the core might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities

through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates an ARSA at Evansville Dress Regional Airport, IN; Laughlin Air Force Base (AFB), TX; Midland Regional Airport, TX; Portland International Jetport, ME; and Springfield Capital Airport, IL. Each location designated is an airport at which a nonregulatory TSA is currently in effect. Establishment of these ARSA's will require the pilots maintain two-way radio communication with ATC while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation Safety, Airport Radar Service Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

Evansville Dress Regional Airport, IN [New]

That airspace extending upward from the surface to and including 4,500 feet MSL within a 5-mile radius of the Evansville Dress Regional Airport (lat. 38°02'17"N., long. 87°31'50"W.) excluding that airspace beginning where the Pocket City 057° radial crosses the 5-mile ring, thence northeast via the 57° radial to intercept a 1¼-mile radius of the Skylane Airport (lat. 38°01'00"N., long. 87°35'50"W.), thence counterclockwise via the 1¼-mile radius to the 360° bearing from the Skylane Airport, thence due west to the 5-mile ring extending upward from the surface to 1,600 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,600 feet MSL to and including 4,500 feet MSL. This airport radar service area is effective during the specific days and hours of operation of the Evansville Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Laughlin AFB, TX [New]

That airspace extending upward from the surface to and including 5,100 feet MSL within a 5-mile radius of Laughlin AFB (lat. 29°21'35"N., long. 100°46'35"W.), and that airspace extending upward from 2,500 feet MSL to and including 5,100 feet MSL within a 10-mile radius of Laughlin AFB. This airport radar service area (ARSA) excludes that airspace in Mexico. This ARSA is effective during the specific days and hours of operation of the Laughlin Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Midland International Airport, TX [New]

That airspace extending upward from the surface to and including 6,900 feet MSL within a 5-mile radius of the Midland International Airport (lat. 31°56'33"N., long. 102°12'06"W.), and that airspace within a 10-mile radius of the airport from the 029° bearing from the airport, clockwise to the 209° bearing from the airport, extending upward from 4,400 feet MSL to and including 6,900 feet MSL; and that airspace within a 10-mile radius of the airport from the 209° bearing from the airport, clockwise to the 279° bearing from the airport, extending upward from 4,600 feet MSL to and including 6,900 feet MSL; and that airspace within a 10-mile radius of the airport from the 279° bearing from the airport, clockwise to the 029° bearing from the airport, extending upward from 4,200 feet MSL to and including 6,900 feet MSL. This airport radar service area is effective during the specific days and hours of operation of the Midland Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Portland International Jetport, ME [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Portland International Jetport (lat. 43°38'46"N., long. 70°18'33"W.), and that airspace extending upward from 1,500 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Portland Tower and Approach Control Facility as established in advanced by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Springfield Capital Airport, IL [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Capital Airport (lat. 39°50'37"N., long. 89°40'38"W.), and that airspace exending upward from 1,800 feet MSL to and including 4,600 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Springfield Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on April 27, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–9656 Filed 4–29–88; 8:45 am]

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federal register

Monday
May 2, 1988

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 11

Horse Protection; Interim Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88-079]

Horse Protection; Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Horse Protection Regulations to remove a 16-ounce limit on horseshoes used on horses other than yearlings, and the prohibition of certain weights used on horses other than yearlings. Additionally, we are reinstating certain restrictions on the placement of lead and other weights on horses. We are requesting comments concerning how to restrict the use of weights, including horseshoes. This action is necessary to enable us to develop adequate information on how the weight on horses' feet should be limited. We are also removing a 6-ounce weight limit on boots used to protect horses. This action is warranted to allow the use of certain boots weighing more than 6 ounces that are used to protect horses.

DATE: This interim rule is effective April 28, 1988. Consideration will be given only to comments postmarked or received on or before June 27, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090-6464. Please state that your comments refer to Docket No. 88-079. Comments received may be inspected at room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background Information

On April 26, 1988, we published an interim rule in the **Federal Register** (FR 53 14778-14782) that amended the Horse Protection regulations in 9 CFR Part 11 (referred to below as the regulations) to prohibit and restrict certain devices and practices to prevent the soring of horses. Among other things, we established a 16-ounce weight limit on horseshoes used on all horses, prohibited the use of weights on all horses, and establisehd a 6-ounce weight limit on boots used on horses. In this interim rule, we are removing those weight limits, and are requesting comments on the most appropriate limits on the use of weights, including horseshoes.

Horseshoes and Other Weights

The restrictions and prohibitions we established regarding horseshoes and other weights in our April 26 interim rule were based on findings, discussed in that interim rule, that indicated that weights added to a horse's foot may cause inflammation. In promulgating the interim rule, we prohibited the use of weights and established a 16-ounce weight limit for horseshoes, applicable to all horses. However, since the publication of that interim rule, considerable information has been generated regarding the appropriateness of the prohibition and of the 16-ounce weight limit. Although the comments and information received to date are not exhaustive, and although they contain certain conflicting opinions, it is clear to us that additional information needs to be compiled concerning appropriate limits on the use of weights on horses' feet and on the weight of horseshoes.

We have received a comment in the form of a recommendation that was approved by representatives of a significant number of horse industry organizations, and by representatives of the American Horse Protection Association (AHPA), that suggests that we remove the prohibition on the use of certain weights and the 16-ounce limit on the weight of horseshoes—except with regard to yearling horses, reinstate prior restrictions on the placement of weights, and request comments regarding these issues. In addition to the AHPA, the recommendation was approved by, among others, represenatives of the American Saddlebred Horse Association, the United Professional Horsemen's Association, the National Show Horse Registry, the American Horse Council, the American Farriers Association, the California State Horsemen's Association, the Walking Horse Trainers Association, the Kentucky Walking Horse Association, the Racking Horse Breeders Association, the Friends of the Show Horse Association, the American Morgan Horse Association, the International Arabian Horse Association, the Wild Horse Sanctuary—California, Equines Ltd., and the Wild Horse Alliance.

Additional information we have received suggests that a 16-ounce limit may not be appropriate, and indeed may be inappropriate, for some horses. It appears, for example, that the 16-ounce limit may be inappropriate for large horses, such as draft horses, and for other breeds of horses.

We are therfore removing the prohibition of certain weights and the 16-ounce weight limit on horseshoes used on horses other than yearling horses.

We are requesting comments concerning necessary limits on the use of weights, including horseshoes, both to prevent soring and to accommodate the needs of different breeds and sizes of horses.

For yearling horses, a prohibition on the use of any weights and a 16-ounce limit on horseshoes was in effect prior to the publication of the April 26 interim rule. These restrictions were removed only because we established a rule applicable to all horses. Because we are removing the across-the-board restrictions, it is necessary to again establish the 16-ounce limit and the prohibition of weights for yearlings to protect them from soring. Additionally, we are reinstating certain restrictions on the placement of weights on horses' feet.

Weight Limits on Boots

In our April 26 interim rule, we limited the weight of all boots used on horses to 6 ounces. Based on information we have received, however—including the recommendation discussed above—we believe that certain protective boots that weigh more than 6 ounces will not lead to soring. Therefore, we are removing the 6-ounce weight limit on soft rubber or soft leather bell boots and on quarter boots used as protective devices.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment.

On April 26, 1988, we published an interim rule in the **Federal Register**. Information we have received since that date has indicated to us that the restrictions established in that rule may not be appropriate to all breeds and sizes of horses. Because it is possible that limiting some horses to a 16-ounce shoe may be inappropriate, and may possibly affect large horses, such as draft horses, adversely, it is necessary that we remove this weight limit as soon as possible, until more information regarding this subject can be gathered. We also need further information concerning necessary limitations on the use of other weights on horses' feet. Additionally, the April 26 interim rule limited the weight of all boots, including

protective boots, to 6 ounces. However, information we have received since that date has indicated that some protective boots weigh more than 6 ounces. To allow use of these protective boots, it is necessary that we remove the weight restriction on these boots as soon as possible.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature. We will consider comments postmarked or received on or before June 27, 1988. Any amendments we make to this interim rule as a result of these comments will be published in the Federal Register as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The changes to the regulations made by this interim rule will affect all horses equally, and will allow continued equitable competition among show horses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

PART 11—HORSE PROTECTION REGULATIONS

Accordingly, 9 CFR Part 11 is amended as follows:

1. The authority citation for Part 11 continues to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. Section 11.2 is amended by revising paragraphs (b)(7) and (b)(9) and by adding new paragraph (b)(19) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

(7)(i) Boots, collars, or any other devices, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg; and

(ii) Boots, collars, or any other devices that weigh more than 6 ounces, except for soft rubber or soft leather bell boots and quarter boots that are used as protective devices.

* * * * *

(9) Any weight on yearling horses, except a keg or similar conventional horseshoe, and any horseshoe on yearling horses that weighs more than 16 ounces.

* * * * *

(19) Lead or other weights attached to the outside of the hoof wall, the pad, or on the outside surface of the horseshoe.

* * * * *

Done in Washington, DC this 28th day of April 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–9805 Filed 4–29–88; 9:47 am]

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