respect to illegal drug activities that the Service has been unable to collect. Therefore, the Service immediately seizes the $75,000 in cash in partial payment of the tax liability. The Service will consider that the information furnished by the police department substantially contributed to the recovery of $75,000 in taxes with respect to drug related activities.

Example (4). Through information furnished by a reliable informant, a local police department learns that a known racketeer and suspected drug dealer maintains a second set of books and records in a safe at home. The local police obtain a search warrant and find a set of books revealing that this person has been using a legitimate business operation to launder money derived from both prostitution and drug dealing. At the time these records are turned over to the local CID office, the taxpayer is already under examination for tax evasion. However, based on the information contained in this second set of books, the Service is able to collect additional taxes and civil penalties in the amount of $1 million in connection with these illegal activities. The Service will consider that this information substantially contributed to the recovery of $1 million in taxes with respect to money laundering in connection with illegal drug activities because, even though the taxpayer was already under examination, the information provided by the local police would normally not have been discovered by the Service in the course of an ordinary investigation.

(c) *Application for reimbursement.* An agency that intends to apply for reimbursement under the provisions of this section must indicate this intent to the Service at the time the information is first provided to the Service. A final application for reimbursement of expenses must be submitted on Form 211A, State or Local Law Enforcement Application for Reimbursement, to the Chief, Criminal Investigation Division of the Internal Revenue Service district in which the taxpayer is located. Copies of Forms 9061, DAG–71, or other claim for an equitable share of asset forfeitures in the case must also be furnished with Form 211A.

(d) *Time for filing application for reimbursement.* An application for reimbursement may be filed by an agency at the time the information is first provided or as soon as practicable after submitting information to the Service. However, it must be filed not later than 30 days after the Service notifies the agency pursuant to section 7624(b) of the amount of taxes collected as a result of the information provided. If an application for reimbursement is filed by more than one agency with respect to taxes recovered from a taxpayer, the Service will use discretion in determining an equitable amount of reimbursement allocated to each agency based on all relevant factors. In no event, however, shall the aggregate of the amounts paid by the Service to two or more agencies exceed the amount specified in paragraph (e)(3) of this section.

(e) *Amount and payment of reimbursement*—(1) *De minimis rule.* No reimbursement shall be paid under section 7624 or this section to a State or local law enforcement agency in any case where the taxes recovered total less than $50,000.

(2) *Taxes recovered.* For purposes of section 7624 and this section, the terms "taxes" recovered and "sum" recovered mean additional Federal taxes, civil penalties, and additions to tax collected (less any subsequent refund to the taxpayer) with respect to illegal drug or related money laundering activities, but not additional interest or criminal fines that may be collected.

(3) *Limitation on reimbursement.* The amount of reimbursement payable under section 7624 and this section shall not exceed 10 percent of any taxes recovered.

(4) *No duplicate reimbursement.* A State or local law emforcement agency shall not receive reimbursement under section 7624 or this section for any expenses incurred in the investigation of a taxpayer which have been or will be reimbursed under any other program or arrangement including, but not limited to, Federal or State forfeiture programs, State revenue laws, or Federal and State equitable sharing arrangements.

(5) *Time of payment.* No payment of any reimbursement under this section will be made to a State or local law enforcement agency before the later of final expiration of the applicable period of limitations for filing a claim for refund by the taxpayer of the taxes recovered as provided in subchapter B of chapter 66 of the Code or the determination of the taxpayer's tax liability, as defined in section 1313(a). However, reimbursement may be made earlier but only if the agency provides adequate indemnification against loss by the Service due to a refund to the taxpayer of Federal taxes recovered.

(6) *Applicability.* The provisions of section 7624 apply only to State and local law enforcement agencies within the United States and the District of Columbia.

(f) *Effective date.* This section 7624 applies with respect to information first provided to the Service by a State or local law enforcement agency after February 16, 1989.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: March 16, 1989.

Dennis Earl Ross,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89–11609 Filed 5–15–89; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 301 and 602

[T.D. 8254]

RIN 1545–AM47

Abatement of Penalty or Addition to Tax Attributable to Erroneous Advice

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the abatement of a portion of any penalty or addition to tax attributable to erroneous written advice furnished to a taxpayer by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity. Changes to the applicable law were made by the Omnibus Taxpayer Bill of Rights provisions of the Technical and Miscellaneous Revenue Act of 1988. The regulations affect all taxpayers, and provide guidance regarding the definition of "advice" and the procedures that must be followed to obtain an abatement. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: The temporary regulations are effective with respect to advice requested on or after January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen J. Toomey of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:R:T (IA–103–88), (202) 566–6320, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information requirement contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-0024. The time estimates for the reporting and recordkeeping requirements contained in this regulation are included in the burden of Form 843.

For further information concerning the collection of information, where to submit comments on the collection of information, and suggestions for reducing the burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

Background

This document contains temporary regulations amending the Procedure and Administration Regulations (26 CFR Part 301) under section 6404 of the Internal Revenue Code of 1986 (Code). The amendments would conform the regulations to section 6229 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3342).

In General

Section 6404(f) provides that the Internal Revenue Service shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to a taxpayer in writing by an officer or employee of the Service, acting in such officer's or employee's official capacity. The Service will abate a portion of any penalty or addition to tax under section 6404(f) only if (a) the written advice was reasonably relied upon by the taxpayer; (b) the written advice was in response to a specific written request of the taxpayer; and (c) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide the Service with adequate or accurate information. Section 6404(f) is effective for advice requested on or after January 1, 1989.

Reliance on Written Advice

The written advice from the Service must have been reasonably relied upon by the taxpayer in order for any penalty to be abated under section 6404(f). Thus, in the case of written advice from the Service that relates to an item included on a federal tax return of a taxpayer, if such advice is received subsequent to the date on which the taxpayer filed such return, the taxpayer did not reasonably rely on the written advice in filing such return. However, if a taxpayer files an amended return that conforms with written advice received from the Service, the taxpayer will be considered to have reasonably relied on the advice for purposes of the position set forth in the amended return. In the case of written advice that does not relate to an item included on a federal tax return (for example, advice relating to the payment of estimated taxes), if such written advice is received by the taxpayer subsequent to the act or omission that is the basis of the penalty or addition to tax, then the taxpayer shall not be considered to have reasonably relied on such written advice.

If the written advice relates to a continuing action or series of actions, the taxpayer may rely on that advice until put on notice that the advice no longer represents Service position and, thus, is no longer valid. Correspondence from the Service to the taxpayer stating that the advice no longer represents Service position is sufficient to put the taxpayer on notice. Further, any of the following events, occurring subsequent to the issuance of advice, that set forth a position contrary to the position of the written advice will serve to put the taxpayer on notice that the advice is no longer valid: (a) Legislation or a tax treaty; (b) a United States Supreme Court decision; (c) temporary or final regulations; and (d) a revenue ruling, a revenue procedure, or other statement published in the Internal Revenue Bulletin.

Definitions

For purposes of section 6404(f) and the temporary regulations thereunder, a written response issued to a taxpayer by an officer or employee of the Service shall constitute "advice" if, and only if, the response applies the tax laws to the specific written facts submitted by the taxpayer and provides a conclusion regarding the tax treatment to be accorded the taxpayer upon the application of the tax laws to those facts. The regulations define the terms "penalty" and "addition to tax" as any liability of a particular taxpayer imposed under Subtitle F, Chapter 68, Subchapter A and Subchapter B of the Internal Revenue Code, and the liabilities imposed by sections 6038(b), 6038(c), 6038A(d), 6038B(b), 6039E(c), and 6332(d)(2). In addition the terms "penalty" and "addition to tax" shall include any liability resulting from the application of other provisions of the Code where the Commissioner of Internal Revenue has designated by regulation, revenue ruling, or other guidance published in the Internal Revenue Bulletin that such provision shall be considered a penalty or addition to tax for purposes of section 6404(f). The terms "penalty" and "addition to tax" shall also include interest imposed with respect to any penalty or addition to tax. The Service welcomes any comments concerning which provisions, if any, not included in the definition of "penalty" and "addition to tax" should be considered a penalty or an addition to tax for purposes of section 6404(f) and the regulations thereunder.

Procedures for Abatement

Section 301.6404-3T(d) provides that taxpayers entitled to an abatement of a penalty or addition to tax pursuant to section 6404(f) should complete and file Form 843. If the erroneous advice received relates to an item on a federal tax return, taxpayers should submit Form 843 to the Internal Revenue Service Center where the return was filed. If the erroneous advice does not relate to an item on a federal tax return, Form 843 should be submitted to the Service Center where the taxpayer's return was filed for the taxable year in which the taxpayer relied on the erroneous advice. Form 843 must be accompanied by copies of: (a) The taxpayer's written request for advice; (b) the erroneous written advice furnished by the Service to the taxpayer and relied on by the taxpayer; and (c) the report (if any) of tax adjustments that identifies the penalty or addition to tax and the item relating to the erroneous written advice.

Period for Requesting Abatement

An abatement of any penalty or addition to tax pursuant to section 6404(f) and § 301.6404-3T shall be allowed only if the request for abatement is submitted within the period allowed for collection of such penalty or addition to tax, or, if the penalty or addition to tax has been paid, the period allowed for claiming a credit or refund of such penalty or addition to tax.

Regulatory Impact Analysis

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

Issuance of Proposed Regulation and Submission to Small Business Administration

The rules contained in this document are also being issued as proposed regulations by the notice of proposed rulemaking on this subject in the proposed rules section of this issue of the Federal Register. Pursuant to section

7805(f) of the Internal Revenue Code, a copy of the rules will be submitted to the Administrator of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these temporary regulations is Stephen J. Toomey of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, on matters of both substance and style.

List of subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Disclosure of information, Employment taxes, Estate tax, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 301 and 602 are amended as follows:

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * *. Section 301.6404–T is also issued under 26 U.S.C. 6404(f)(3).

Par. 2. The following new section is added immediately following § 301.6403–1 to read as follows:

§ 301.6404–OT Table of contents (temporary).

This section lists the paragraphs contained in §§ 301.6404–1 through 301.6404–3T.

Par. 3. The following new section is added immediately following § 301.6404–2T to read as follows:

§ 301.6404–3T Abatement of penalty or addition to tax attributable to erroneous written advice of the Internal Revenue Service (temporary).

(a) *General rule.* Any portion of any penalty or addition to tax that is attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service (Service), acting in his or her official capacity, shall be abated, provided the requirements of paragraph (b) of this section are met.

(b) *Requirements*—(1) *In general.* Paragraph (a) of this section shall apply only if—

(i) The written advice was reasonably relied upon by the taxpayer;

(ii) The advice was issued in response to a specific written request for advice by the taxpayer; and

(iii) The taxpayer requesting advice provided adequate and accurate information.

(2) *Advice was reasonably relied upon*—(i) *In general.* The written advice from the Service must have been reasonably relied upon by the taxpayer in order for any penalty to be abated under paragraph (a) of this section.

(ii) *Advice relating to a tax return.* In the case of written advice from the Service that relates to an item included on a federal tax return of a taxpayer, if such advice is received by the taxpayer subsequent to the date on which the taxpayer filed such return, the taxpayer shall not be considered to have reasonably relied upon such written advice for purposes of this section, except as provided in paragraph (b)(2)(iii) of this section.

(iii) *Amended returns.* If a taxpayer files an amended federal tax return that conforms with written advice received by the taxpayer from the Service, the taxpayer will be considered to have reasonably relied upon the advice for purposes of the position set forth in the amended return.

(iv) *Advice not related to a tax return.* In the case of written advice that does not relate to an item included on a federal tax return (for example, the payment of estimated taxes), if such written advice is received by the taxpayer subsequent to the act or omission of the taxpayer that is the basis for the penalty or addition of tax, then the taxpayer shall not be considered to have reasonably relied upon such written advice for purposes of this section.

(v) *Period of reliance.* If the written advice received by the taxpayer relates to a continuing action or series of actions, the taxpayer may rely on that advice until the taxpayer is put on notice that the advice is no longer consistent with Service position and, thus, no longer valid. For purposes of this section, the taxpayer will be put on notice that written advice is no longer valid if the taxpayer receives correspondence from the Service stating that the advice no longer represents Service position. Further, any of the following events, occurring subsequent to the issuance of the advice, that set forth a position that is inconsistent with the written advice received from the Service shall be deemed to put the taxpayer on notice that the advice is no longer valid—

(A) Enactment of legislation or ratification of a tax treaty;

(B) A decision of the United States Supreme Court;

(C) The issuance of temporary or final regulations; or

(D) The issuance of a revenue ruling, a revenue procedure, or other statement published in the Internal Revenue Bulletin.

(3) *Advice was in response to written request.* No abatement under paragraph (a) of this section shall be allowed unless the penalty or addition to tax is attributable to advice issued in response to a specific written request for advice by the taxpayer. For purposes of the preceding sentence, a written request from a representative of the taxpayer shall be considered a written request by the taxpayer only if—

(i) The taxpayer's representative is an attorney, a certified public accountant, an enrolled agent, an enrolled actuary, or any other person permitted to represent the taxpayer before the Service and who is not disbarred or suspended from practice before the Service; and

(ii) The written request for advice either is accompanied by a power of attorney that is signed by the taxpayer and that authorizes the representative to represent the taxpayer for purposes of the request, or such a power of attorney is currently on file with the Service.

(4) *Taxpayer's information must be adequate and accurate.* No abatement under paragraph (a) of this section shall be allowed with respect to any portion of any penalty or addition to tax that resulted because the taxpayer requesting the advice did not provide the Service with adequate and accurate information. The Service has no obligation to verify or correct the taxpayer's submitted information.

(c) *Definitions*—(1) *Advice.* For purposes of section 6404(f) and the regulations thereunder, a written response issued to a taxpayer by an officer or employee of the Service shall constitute "advice" if, and only if, the response applies the tax laws to the specific facts submitted in writing by the taxpayer and provides a conclusion regarding the tax treatment to be accorded the taxpayer upon the application of the tax law to those facts.

(2) *Penalty and addition to tax.* For purposes of section 6404(f) and the regulations thereunder, the terms "penalty" and "addition to tax" refer to any liability of a particular taxpayer imposed under Subtitle F, Chapter 68, Subchapter A and Subchapter B of the Internal Revenue Code, and the liabilities imposed by sections 6038(b), 6038(c), 6038A(d), 6038B(b), 6039E(c), and 6332(d)(2). In addition, the terms "penalty" and "addition to tax" shall include any liability resulting from the application of other provisions of the Code where the Commissioner of Internal Revenue has designated by regulation, revenue ruling, or other guidance published in the Internal Revenue Bulletin that such provision shall be considered a penalty or addition to tax for purposes of section 6404(f). The terms "penalty" and "addition to tax" shall also include interest imposed with respect to any penalty or addition to tax.

(d) *Procedures for abatement.* Taxpayers entitled to an abatement of a penalty or addition to tax pursuant to section 6404(f) and this section should complete and file Form 843. If the erroneous advice received relates to an item on a federal tax return, taxpayers should submit Form 843 to the Internal Revenue Service Center where the return was filed. If the advice does not relate to an item on a federal tax return, the taxpayer should submit Form 843 to the Service Center where the taxpayer's return was filed for the taxable year in which the taxpayer relied on the erroneous advice. At the top of Form 843 taxpayers should write, "Abatement of penalty or addition to tax pursuant to section 6404(f)." Further, taxpayers must state on Form 843 whether the penalty or addition to tax has been paid. Taxpayers must submit, with Form 843, copies of the following—

(1) The taxpayer's written request for advice;

(2) The erroneous written advice furnished by the Service to the taxpayer and relied on by the taxpayer; and

(3) The report (if any) of tax adjustments that identifies the penalty or addition to tax and the item relating to the erroneous written advice.

(e) *Period for requesting abatement.* An abatement of any penalty or addition to tax pursuant to section 6404(f) and this section shall be allowed only if the request for abatement described in paragraph (d) of this section is submitted within the period allowed for collection of such penalty or addition to tax, or, if the penalty or addition to tax has been paid, the period allowed for claiming a credit or refund of such penalty or addition to tax.

(f) *Examples.* The following examples illustrate the application of section 6404(f) of the Code and the regulations thereunder:

Example 1. In February 1989, an individual submitted a written request for advice to an Internal Revenue Service Center and included adequate and accurate information to consider the request. The question posed by the taxpayer concerned whether a certain amount was includible in income on the taxpayer's 1989 federal income tax return. An employee of the Service Center issued the taxpayer a written response that concluded that based on the specific facts submitted by the taxpayer, the amount was not includible in income on the taxpayer's 1989 return. Since the response provided a conclusion regarding the tax treatment accorded the taxpayer on the basis of the facts submitted, the response constitutes "advice" for purposes of section 6404(f). The taxpayer filed his 1989 return and, relying on the Service's advice, did not include the item in income. Upon examination, it was determined that the item should have been included in income on the taxpayer's 1989 return. Because the taxpayer reasonably relied upon erroneous written advice from the Service, any penalty or addition to tax attributable to the erroneous advice will be abated by the Service. However, the erroneous advice will not affect the amount of any taxes and interest owed by the taxpayer (except to the extent interest relates to a penalty or addition to tax attributable to the erroneous advice) due to the fact that the item was not included in income.

Example 2. In March 1989, an individual submitted a written request to the National Office of the Internal Revenue Service regarding whether a certain activity constitutes a passive activity within the meaning of section 469 of the Code. The request did not meet the procedural requirements set forth by the National Office for consideration of the submission as a private letter ruling request and, thus, was not treated as such by the Service. The Service furnished the taxpayer with a written response that transmitted various published provisions of section 469 and the regulations thereunder relevant to the determination of whether an activity is passive within the meaning of those provisions. The Service also included a Publication regarding the tax treatment of passive activities. However, the Service's response contained no opinion or determination regarding whether the taxpayer's described activity was or was not passive under section 469. The Service's response is not advice within the meaning of section 6404(f), and cannot be relied upon for purposes of an abatement of a portion of a penalty or addition to tax under that section.

Example 3. On April 1, 1989, an individual submitted a written request for advice to an Internal Revenue Service Center. The advice related to an item included on a federal tax return. The individual filed a federal income tax return with the appropriate Service Center on April 15, 1989. Subsequently, on May 1, 1989, the individual received advice from the Service Center concerning the written request made on April 1. Because the individual filed his tax return prior to the date on which written advice from the Service was received, the individual did not rely on the Service's written advice for purposes of section 6404(f). If, however, the individual amends his tax return to conform with the written advice received from the Service, the individual will be considered to have reasonably relied upon the Service's advice.

Example 4. Individual A, on May 1, 1989, received advice from the Service that concluded that interest paid by the taxpayer with respect to a specific loan was interest paid or accrued in connection with a trade or business, within the meaning of section 163(h)(2)(A) of the Code. The advice relates to a continuing action. Therefore, provided the facts submitted by the taxpayer to obtain the advice remain adequate and accurate (that is, the circumstances relating to the indebtedness do not change), Individual A may rely on the Service's advice for subsequent taxable years until the individual is put on notice that the advice no longer represents Service position and, thus, is no longer valid.

Example 5. An individual, on June 1, 1989, received advice from the Service that concluded that no gain or loss would be recognized with respect to a transfer of property to his spouse under section 1041. The advice does not relate to a continuing action. Therefore, the taxpayer may not rely on the advice of the Service for transfers other than the transfer discussed in the taxpayer's written request for advice.

(g) *Effective date.* Section 6404(f) shall apply with respect to advice requested on or after January 1, 1989.

Par. 4. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101 (c) is amended by inserting in the appropriate place in the table:

26 CFR part or section where identified and described	Current OMB control number
§ 301.6404-3T(d)	1545-0024

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

Michael J. Murphy,

Acting Commissioner of Internal Revenue

Approved: May 8, 1989.

John G. Wilkins,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-11611 Filed 5-15-89; 8:45 am]

BILLING CODE 4830-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 85-4B]

Registration of Claims to Copyright Registration and Deposit of Databases

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; correction.

SUMMARY: The Copyright Office is correcting an error in the designation of a subparagraph relating to the deposit requirements for registration of databases which appeared in the Federal Register on March 31, 1989 (54 FR 13177).

EFFECTIVE DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559; (202) 707-8380.

SUPPLEMENTARY INFORMATION: The Copyright Office issued final regulations with respect to registration and deposit of databases, including group registration for a database and its updates, on March 31, 1989 at 54 FR 13177. The references to § 202.20(c)(2)(vii)(B) should have read § 202.20(c)(2)(vii)(D).

Accordingly, the following corrections are made in Docket RM 85-4B, Registration of Claims to Copyright, Registration and Deposit of Databases published in the Federal Register on March 31, 1989 (54 FR 13177):

§ 202.3 [Corrected]

1. The cross-references to § 202.20(c)(2)(vii)(B) in § 202.3(b)(4)(i)(C) on page 13181, second column, line 49, and (4)(ii)(C) on page 13181, third column, line 2, are corrected to read § 202.20(c)(2)(vii)(D).

§ 202.20 [Corrected]

2. Section 202.20(c)(2)(vii)(B) on page 13181, third column, lines 4 and 12 is correctly redesignated § 202.20(c)(2)(vii)(D).

3. In redesignated § 202.20(c)(2)(vii)(D), the cross-references in Clause (3) to (c)(2)(vii)(B), page 13181, third column, line 32 and in Clause (4) to (c)(2)(vii)(B)(*5*), page 13181, third column, line 43 are corrected to read (c)(2)(vii)(D) and (c)(2)(vii)(D)(*5*), respectively.

Dated: April 28, 1989.

Ralph Oman,

Register of Copyrights.

[FR Doc. 89-11666 Filed 5-15-89; 8:45 am]

BILLING CODE 1410-07-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL-3550-8]

Approval and Promulgation of Implementation Plans; and Designation of Areas for Air Quality Planning Purposes; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rulemaking takes final action to approve the Nebraska particulate matter (PM_{10}) State Implementation Plan (SIP) revision and other contemporaneous revisions to the state's air pollution control regulations. This action is in response to a request submitted on June 15, 1988, by the Governor of Nebraska. The PM_{10} SIP submittal requested that EPA redesignate its group II areas as unclassifiable with respect to the total suspended particulates (TSP). As a result of this action, all areas of the state of Nebraska will be unclassifiable or attainment with respect to TSP. Today's action also honors the Governor's request to take no action to make certain air toxics regulations part of the applicable Nebraska SIP. EPA is using the direct-to-final procedure for this rulemaking.

EFFECTIVE DATE: This rulemaking will become effective July 17, 1989, unless someone notifies EPA that they wish to make adverse or critical comments by June 15, 1989. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Documents relevant to this action are available for public inspection at the Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, during normal business hours. Copies are also available during normal business hours at the Nebraska Department of Environmental Control, Air Quality Division, 301 Centennial Mall, P.O. Box 98922, Statehouse Station, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1987, (52 FR 24634), EPA promulgated a new national ambient air quality standard (NAAQS) for particulate matter. The new standard only applies to particles with a nominal aerodynamic diameter of 10 micrometers or less (PM_{10}). The new standard replaces total suspended particulates (TSP) as an ambient air quality standard.

In order for states to regulate PM_{10}, they must make certain changes in their rules and regulations and in the SIPs. The changes to the rules and the SIP must insure that the PM_{10} NAAQS are attained and maintained; that new and modified sources which emit PM_{10} are reviewed; that PM_{10} is one of the pollutants to trigger alert, warning, and emergency actions; and that the states' monitoring network be designed to include PM_{10} monitors. These changes must be made regardless of the existing levels of PM_{10} in any area of the state.

Where preliminary monitoring data indicate that it is likely PM_{10} standards are being exceeded in an area, a control strategy is required to show how PM_{10} emissions will be reduced to provide for attainment and maintenance of the PM_{10} NAAQS. This is called a group I area.

If data show that the PM_{10} standards could possibly be met in an area but there is some uncertainty, the states are required to commit to perform additional PM_{10} monitoring in such an area and to prepare a control strategy if the data show with certainty that the standards are being exceeded. This is called a group II area. The commitments must be submitted in the form of a SIP revision and are termed a "committal" SIP.

Where available particulate matter data indicate the PM_{10} air quality is better than the standards, EPA presumes that the existing SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standards. This is called a group III area. Preconstruction review and emergency episode provisions are the only PM_{10} rule revisions required for group III areas. The regulations require PM_{10} SIPs to be submitted nine months after the federal PM_{10} regulations became effective on July 31, 1987. However, because of the burdensome administrative requirements for adoption of rules in some states, they were given some flexibility in the scheduling of their PM_{10} SIP submissions.

PM_{10} Attainment Status in Nebraska

Based upon existing TSP and PM_{10} air quality data, there are no areas in Nebraska where the standards are likely to be exceeded (group I) and two areas where the attainment status is uncertain (group II). The group II areas are Omaha and Weeping Water; Louisville and the remainder of the state are group III.

Based upon available PM_{10} data and in accordance with Section 110 of the Clean Air Act and EPA regulations at 52 FR 24672, Nebraska must meet the following requirements for EPA to approve its SIP for PM_{10}: (1) Adopt acceptable revisions to its preconstruction review rules, (2) submit a committal SIP for Omaha and Weeping Water, and (3) revise the emergency episode plans to incorporate PM_{10}. The Nebraska air monitoring SIP is general in that it commits the state to meeting all the monitoring requirements in 40 CFR Part 58, but does not mention specific criteria pollutants. As a result, no change was needed in the Nebraska monitoring SIP to implement new PM_{10} monitoring requirements.

Review of the Nebraska SIP

The Governor of Nebraska submitted the PM_{10} SIP on June 15, 1988. The submittal consists of: (1) Revisions to the Nebraska Air Pollution Control Rules and Regulations, and (2) a committal SIP for Omaha and Weeping Water. In addition to the rule revisions necessary to incorporate PM_{10}, other changes were made in the rules to control toxic pollutants, eliminate and renumber some chapters, change the format and grammar of some rules, and update provisions of the state regulations which adopt EPA regulations by reference. In the submittal letter, the Governor requested that EPA take no action to approve the state's air toxics regulations as part of the Nebraska SIP. EPA is honoring that request.

The state provided evidence of a public hearing and notification that satisfies the requirements of 40 CFR 51.102.

The section of the Nebraska Air Pollution Control rules pertaining to release of emission data to the public was deleted. However, this requirement is covered in the Nebraska Rules of Practice and Procedure, Title 115, which were submitted with the PM_{10} SIP. This is acceptable.

Chapter 19 of the Nebraska Air Pollution Control Rules and Regulations provides authority to obtain information to determine whether sources of air pollution are in compliance with emission limitations. The state is also authorized to require source tests, installation of continuous monitoring systems, maintenance of records, and submission of reports or emission reports.

The state resources needed to implement the PM_{10} SIP are provided for in the annual State/EPA Agreement signed by the Director of the Nebraska Department of Environmental Control and the EPA Region VII Administrator.

The state's committal SIP for Omaha and Weeping Water is contained in a letter dated February 5, 1988, to the EPA Region VII Administrator. This document was presented at the public hearing for comment. The committal SIP contains all the requirements identified in the July 1, 1987, promulgation (52 FR 24681). EPA believes the committal SIP is acceptable and that the state's PM_{10} SIP submittal is complete. Approval of the Nebraska committal SIP sets the attainment date for PM_{10} on July 17, 1992.

Review of PM_{10} Regulatory Revisions

The Nebraska SIP is currently approved as meeting the requirements of 40 CFR Part 51 relating to review of new and modified sources. This includes 40 CFR 51.165, Permit requirements, and 40 CFR 51.166, Prevention of significant deterioration (PSD) of air quality.

The only change required in Nebraska's rules to meet the new PM_{10} requirements of 40 CFR 51.165 was to add a provision providing for offsets where major sources locate in attainment or unclassified areas, but would have a significant impact on an area where air quality standards are being exceeded. This provision is contained in 40 CFR 51.165(b). The state added requirements in Chapter 6 of its air pollution control rules and regulations at 005.02 and 005.03 to satisfy the EPA's requirements. The state rule at 005.02 is consistent with the requirement of 40 CFR 51.165(b)(2) and is approvable. The rule at 005.03 is consistent with the requirement of 40 CFR 51.165(b)(4) and is approvable.

Nebraska adopted by reference 40 CFR 52.21 to satisfy the PSD requirements of 40 CFR 51.166. EPA originally approved the Nebraska PSD SIP revision on July 23, 1984 (49 FR 29597). The state incorporated the July 1, 1987, update of the EPA regulations which includes all the revisions promulgated with the PM_{10} standards' revision.

The state adopted definitions for PM_{10}, PM_{10} emissions, particulate matter, particulate matter emissions, and total suspended particulates. The state's definitions are consistent with EPA's definition of these terms found in 40 CFR 51.100 and are approvable.

Chapter 3 of the Nebraska Air Pollution Control regulations contain the ambient air quality standards for the state of Nebraska. The state added the PM_{10} air quality standard to Chapter 3. The state also retained the particulate matter air quality standard in its rules. The state believes this would provide a stronger legal basis for continuing to enforce particulate matter emission regulations. The state's actions adopting and retaining standards related to PM_{10} and particulate matter are acceptable.

Chapter 23 of the Nebraska Air Pollution Control regulations pertains to emergency episode plans. The state revised Chapter 23 to include PM_{10} and delete references to TSP. These revisions are consistent with 40 CFR Part 51, Appendix L, and are approvable.

The state of Nebraska has adopted all the required regulatory revisions needed to satisfy the PM_{10} SIP requirements of 40 CFR Part 51. The state's PM_{10} SIP revision contains each of the elements required for a PM_{10} SIP revision. Today's action approves the Nebraska PM_{10} SIP revision.

Review of Other Nebraska Rule Revisions

The revised regulations submitted by the Governor contained major and minor revisions; grammatical changes to simplify understanding of the regulations; deletions; and regulations adopted to control emissions of air toxics. Because the Governor's transmittal letter specifically requests that EPA take no action on the rules pertaining to air toxics emissions, discussion of those rules will be limited to identification only. EPA is honoring the request to take no action on the state's air toxics rules.

Chapter 1 contains definitions generally applicable to provisions of the state's regulations. The state revised the definition of allowable emissions by identifying the titles of 40 CFR Part 60 and Part 61. This is approvable. Best Available Control Technology (BACT) was revised to apply to sources of toxic emissions. EPA is not acting on this revision. The state's PSD regulations are EPA's 40 CFR 52.21 adopted by reference. That group of rules contains EPA's BACT definition at 40 CFR 52.21(b)(12) which is applicable to all new source review activities, since there are no nonattainment areas in Nebraska.

Definitions for Chairman, Chief, and Complaint are deleted as unnecessary.

Major modification at 042 is revised to reference EPA's recodification of its SIP regulations in 40 CFR Part 51 on November 7, 1986, and some minor corrections. This is acceptable.

The state's definition of volatile organic compound is revised to remove any reference to vapor pressure. This is approvable.

Definitions pertaining to the state's stack height regulation are acted on in a separate rulemaking and will not be discussed here, except that these definitions are renumbered.

Chapter 2 of the state's rules identifies air quality control regions in the state consistently with EPA's designations.

The revisions in Chapter 3 pertaining to PM_{10} are discussed above. However, the NAAQS for hydrocarbons is deleted and the NAAQS for lead is added. This is acceptable.

Chapter 4 contains reporting and operating permit requirements. Among the revisions in this chapter is added applicability to sources of ten tons per year of PM_{10} emissions. No action is taken on 004.O1G pertaining to sources of air toxics emissions except as it pertains to lead emissions. Appendix III contains a list of substances the state defines as air toxics. EPA can only approve 004.O1G as it applies to lead.

Chapter 5 contains the state's stack height regulations. These regulations were approved in a separate rulemaking on February 16, 1989 (54 FR 7036).

Chapter 6 contains requirements for new, modified, or reconstructed sources. New source performance standards (NSPS) sources are identified in 001. This list has been modified to identify the appropriate subpart of 40 CFR Part 60. EPA does not act on state NSPS regulations as a SIP revision. This authority is delegated to the states. Thus, EPA is not approving section 001 of Chapter 6 as part of the Nebraska SIP.

Activities requiring permit applications under Chapter 6 are identified in Section 002. New subsection 002.04 is added requiring applications for air toxics sources. EPA is acting on this requirement only insofar as it pertains to lead.

The revisions of section 005 that pertain to PM_{10} are discussed above.

Section 007 in Chapter 6 pertains to air toxics. At the request of the state, EPA is taking no action on this section.

Chapter 7 contains requirements for sources subject to the PSD review. Nebraska's PSD rules were approved by EPA on July 24, 1984 (49 FR 29599). The PSD updates pertaining to PM_{10} are discussed above. Other revisions include corrections of the previously approved regulations, minor revisions which reference EPA's recodification of 40 CFR Part 51, and minor revisions having no effect on the approvability of the Nebraska PSD regulations. Included in the referenced regulations is EPA's BACT definition which is applicable in all areas of the state. This chapter remains approvable.

The requirements of Chapters 8, 9, 10, and 11 are presently part of the approved Nebraska SIP and are unchanged.

Chapter 12 adopts EPA's National Emission Standard for Hazardous Air Pollutants in 40 CFR Part 61 by reference. The citation in the revision updates the citation to July 1, 1987. EPA does not act on state NESHAP regulations as a SIP revision. This authority is delegated to the states. Thus, EPA is not approving Chapter 12 as part of the Nebraska SIP.

Chapter 13 contains sulfur compound emission limits for existing sources. This chapter is revised by deleting section 003. That section was applicable to existing sources other than fuel-burning equipment in existence during calendar year 1971. The state certifies that sources which would be subject to that provision are no longer in existence. New sources would be subject to NSPS and/or PSD. The types of sources would include lime kilns, cement kilns, and petroleum refineries. This is acceptable.

Minor wording changes were made in Chapter 14 pertaining to nitrogen oxides emissions without changing its approvability. This chapter is currently part of the approved SIP.

Chapter 15 pertaining to open burning is unchanged. Chapter 16 is deleted as unnecessary. Old Chapter 16 made the property owner responsible for any open fires found on that property.

New Chapter 16 is the former Chapter 17 renumbered and contains visible emission limitations for existing sources. This regulation is revised specifying Method 9 of 40 CFR Part 60, Appendix A, as the compliance determination method. This is approvable.

Chapter 17 requires controls to prevent fugitive dust escaping the premises. This rule is currently part of the approved Nebraska SIP.

Chapter 18 contains time schedules for compliance of sources not subject to other schedules under new source review or PSD regulations. This chapter conforms with Nebraska statutory requirements for variances. It identifies what must be included in a variance request. The chapter is revised by deleting references to 1975 and 1976 compliance dates mandated by the 1970 Clean Air Act. This is acceptable.

Chapter 19 contains emission-testing requirements. It is revised by updating references to EPA's testing methods. This is acceptable.

Chapter 20 contains the state's malfunction regulations. These regulations were approved as part of the Nebraska SIP on March 28, 1983 (48 FR 12718). Circumvention of emission limit requirements is prohibited by Chapter 21.

Chapter 22 disallows claims of exemption from any regulation relating to emission limits because of plan reviews by the state. This regulation is currently part of the approved Nebraska SIP.

Chapter 23 provides for emergency episode plans. As discussed above, this chapter is revised to be consistent with the revised PM_{10} standard. Appendix I is a companion to Chapter 23 and identifies steps to reduce public exposure in the event an emergency episode occurs.

Chapter 24 relates to visible emissions from diesel-powered motor vehicles. This chapter is currently part of the Nebraska SIP.

Chapter 25 provides for noncompliance penalties and enforcement actions. Chapter 26 pertains to severability. These chapters are part of the approved SIP.

Chapter 27 provides for appeals. Chapter 28 provides for amendment or repeal of the state air pollution control regulations. Chapter 29 establishes an effective date for new or revised regulations and repeal of inconsistent or conflicting rules. These last three regulations are currently part of the approved Nebraska SIP.

Appendix III contains a list of substances the state of Nebraska considers toxic for the purposes of its air toxics emission regulations. With the exception of lead, EPA is not approving this list as part of the Nebraska SIP. As stated above, the Governor of Nebraska requested EPA not to make the air toxics regulations part of the approved Nebraska SIP.

Action

A. EPA approves the revised Nebraska PM_{10} SIP regulations submitted by the Governor on June 15, 1988. These revisions are as follows:

1. Chapter 1, Definitions: *055* PM_{10}; *057* Particulate matter emissions; and *058* PM_{10} emissions.
2. Chapter 3: Ambient air quality standards.
3. Chapter 6: New source review requirements at *005.02* and *005.03*.
4. Chapter 7: PSD requirements.
5. Chapter 23: Revised emergency episode plan.

B. EPA approves the remaining revisions to Title 129 Nebraska Air Pollution Control Rules and Regulations, *except* for those revisions pertaining to the control of toxic air contaminants. No action is taken (as requested by the Governor) on the following revisions:

1. Chapter 1 definition at *013* "Best Available Control Technology";
2. Chapter 4, section *004.01G* except as it applies to lead emissions;
3. Chapter 6, section *002.04* and section *007;* and
4. Appendix III except for lead.

In addition to the air toxics provisions cited above, EPA is not acting on Chapter 6, section 001 pertaining to NSPS and Chapter 12 pertaining to NESHAP.

Area Redesignations

The final rulemaking promulgating EPA's PM_{10} SIP requirements published on July 1, 1987 (52 FR 24682) discussed an Area Designation Policy with respect to TSP. The EPA encouraged states to submit requests to redesignate TSP nonattainment areas to unclassifiable for TSP at the time the PM_{10} control strategy for the area is submitted. The rulemaking stated that when EPA approves the control strategy as sufficient to attain and maintain the PM_{10} NAAQS, it will also approve the redesignation. An area designation for TSP must be retained until EPA promulgates PM_{10} increments, because the Section 163 PSD increments depend upon the existence of Section 107 designations. Section 107 does not provide for PM_{10} area designations; thus, TSP area designations are retained until such time as there is a provision for PM_{10} designations.

The state of Nebraska requested TSP redesignations to unclassifiable for Omaha, Weeping Water, and Louisville in its February 5, 1988, committal SIP. The request calls for redesignating Omaha and Weeping Water from secondary nonattainment for TSP to unclassifiable, and Louisville from primary nonattainment to unclassifiable. EPA agrees with the Nebraska redesignation request.

Action

EPA approves Nebraska's request to redesignate Omaha and Weeping Water from secondary nonattainment with respect to TSP to unclassifiable for TSP. Louisville is redesignated unclassifiable for TSP from primary nonattainment.

The public should be advised that this action will be effective July 17, 1989. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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

Under section 307(b)(1) of the Act, as amended, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, and Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

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

Date: March 28, 1989.

Morris Kay,

Regional Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

Subpart CC—Nebraska

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

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

2. Section 52.1420 is amended by adding paragraph (c)(37) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(37) Revised Title 129 of Nebraska Air Pollution Control rules and regulations pertaining to PM_{10} and other rule revisions submitted by the Governor of Nebraska on June 15, 1988.

(i) Incorporation by reference. (A) Nebraska Department of Environmental Control Title 129—Nebraska Air Pollution Control rules and regulations adopted by the Nebraska Environmental Control Council February 5, 1988, effective June 5, 1988. The following Nebraska rules are not approved: Chapter 1, definition at *013*, "Best Available Control Technology"; Chapter 4, section *004.01G*, except as it applies to lead; Chapter 6, section *002.04* and section 007; Appendix III except for lead; Chapter 6, section *001* pertaining to NSPS; and Chapter 12 pertaining to NESHAP.

(B) Nebraska Department of Environmental Control Title 115—Rules of Practice and Procedure, amended effective July 24, 1987.

(ii) Additional information. (A) None.

3. The table in § 52.1431, is revised to read as follows:

§ 52.143 Attainment dates for national standards.

* * * * *

Air quality control region	Pollutant								
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)	Lead	PM_{10}
	Primary	Secondary	Primary	Secondary					
Metropolitan Omaha-Council Bluffs Interstate.	d	d	b	a	c	c	c	e	f
Lincoln-Beatrice-Fairbury Interstate	b	a	c	c	c	c	c	c	c
Metropolitan Sioux City Interstate	c	c	c	c	c	c	c	c	c
Nebraska Intrastate	d	d	c	c	c	c	c	c	f

NOTE: 1: dates or footnotes which are italicized are prescribed by the Administrator because the plan does not provide a specific date.
a. July 1975.
b. Air quality levels presently below primary standards.
c. Air quality levels presently below secondary standards.
d. December 31, 1987.
e. February 1, 1988.
f. (three years from effective date of rulemaking)

NOTE: 2: Sources subject to plan requirements and attainment dates establishes under Section 110(a)(2)(A) of the Act prior to the 1977 Clean Air Act amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1431.
Only portions of those AQCRs with attainment dates after July 1975 have new attainment dates under the 1977 Clean Air Act Amendments. The reader is referred to 40 CFR Part 81 for identification of the designated areas under section 107(d) of the Act.

4. A new § 52.1423 is added as follows:

§ 52.1423 PM_{10} State implementation plan development in group II areas.

The state of Nebraska committed to conform to the PM_{10} regulations as set forth in 40 CFR Part 51. In a letter to Morris Kay, EPA, dated February 5, 1988, Mr. Dennis Grams, Director, Nebraska Department of Environmental Control, stated:

(a) An area in the City of Omaha and the area in and around the Village of Weeping Water have been classified as Group II areas for the purpose of PM_{10} State Implementation Plan (SIP) development. The specific boundaries of these areas are identified in our letter of October 6, 1987, to Carl Walter. In accordance with the requirements for PM_{10} SIP development, the State of Nebraska commits to perform the following PM_{10} monitoring and SIP development activities for these Group II areas:

(1) Gather ambient PM_{10} data, at least to the extent consistent with minimum EPA requirements and guidance.

(2) Analyze and verify the ambient PM_{10} data and report 24-hour exceedances of the National Ambient Air Quality Standard for PM_{10} to the Regional Office within 45 days of each exceedance.

(3) When an appropriate number of verifiable exceedances of the 24-hour standard occur, calculated according to section 2.0 of the PM_{10} SIP Development Guideline, or when an exceedance of the annual PM_{10} standard occurs, acknowledge that a nonattainment problem exists and immediately notify the Regional Office.

(4) Within 30 days of the notification referred to in paragraph (a)(3) of this section, or within 37 months of promulgation of the PM_{10} standards, whichever comes first, determine whether measures in the existing SIP will assure timely attainment and maintenance of the PM_{10} standards and immediately notify the Regional Office.

(5) Within 6 months of the notification referred to in paragraph (a)(4) of this section, adopt and submit to EPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the committal SIP.

An emission inventory will be compiled for the identified Group II areas. If either area is found to be violating the PM_{10} standards, the inventory will be completed as part of the PM_{10} SIP for that area on a schedule consistent with that outlined in paragraphs 3, 4, and 5. If the PM_{10} standards are not violated, the inventory will be completed not later than July 1, 1989, and submitted to EPA not later than August 31, 1990, as part of the determination of adequacy of the current SIP to attain and maintain the PM_{10} air quality standards.

(b) We request that the total suspended particulate nonattainment areas in Omaha and Weeping Water (all secondary nonattainment) and Louisville (Primary nonattainment) be redesignated to unclassifiable.

PART 81—[AMENDED]

40 CFR Part 81, Subpart C, is amended as follows:

Subpart C—Nebraska

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.328 is amended by revising the attainment status designation table for TSP to read as follows:

§ 81.328 Nebraska.

NEBRASKA TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 085 (Douglas and Sarpy Counties):				
Douglas County:.				
Omaha			X	
Remainder of Douglas County.				X
Sarpy County:				
Bellevue			X	
Remainder of Sarpy County.				X
AQCR 086			[1] X	
AQCR 145				X
AQCR 146:				
Cass County			X	
Dawson County.			[1] X	
Remainder of AQCR 146.				X

[1] EPA designation replaces state designation.

* * * * *

[FR Doc. 89–11608 Filed 5–15–89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 796 and 798

[OPTS-46104B; FRL-3572-1]

Toxic Substances Control Act Test Guidelines; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document reinstates in the Code of Federal Regulations various changes that were inadvertently omitted from toxic substances test guidelines published in the Federal Register of September 27, 1985 (40 FR 39252), but which were carried in the Code of Federal Regulations (CFR) for 1986 and 1987 and were removed by an Office of the Federal Register (OFR) correction published in the Federal Register of December 20, 1988 (53 FR 51099). As this document merely reinstates amendments to guidelines that impose no regulatory burden, advance notice and public comment are unnecessary and this document becomes effective on publication.

EFFECTIVE DATE: May 16, 1989.

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

SUPPLEMENTARY INFORMATION: In the Federal Register of September 27, 1985 (50 FR 39252), EPA added toxic substances test guidelines in 40 CFR Parts 796, 797, and 798. The document EPA submitted to OFR for publication inadvertently omitted changes in 40 CFR Parts 796 and 798 that were made during the numerous in-house revision cycles. These changes were not made in the final rule published in the Federal Register, but were apparently nevertheless incorporated in the Code of Federal Regulations (CFR) issued in 1986. Therefore, there are discrepancies between the toxic substances test guidelines in 40 CFR Parts 796 and 798 published in the Federal Register of September 27, 1985, and those codified in the CFR's of 1986 and 1987.

As the original September 27, 1985 daily issue publication is the controlling version, OFR issued a correction document, published in the Federal Register of December 20, 1988 (53 FR 51099), that conforms the CFR to the September 27, 1985 Federal Register final rule. EPA is issuing these technical amendments to 40 CFR Parts 796 and 798 because most of the changes that were inadvertently omitted from the Federal Register final rule of September 27, 1985 were intended and should be reinstated in the CFR.

Codification of these technical amendments to guidelines does not impose any regulatory obligation on any person who may be subject to the Toxic Substances Control Act (TSCA) section 4 test rule. Specific guidelines do not become mandatory test standards until they are promulgated as such in individual section 4 rulemakings. When promulgated in such test rules, the pertinent TSCA guidelines become test standards for only that particular section 4 rule and do not serve as generic test standards. EPA may propose modifications to the various guidelines as they are utilized for chemical-specific test rules. In each chemical-specific rule, the proposed test standards and any modification will be subject to public comment.

List of Subjects in 40 CFR Parts 796 and 798

Testing, Environmental protection, Chemical fate, Environmental effects, Chemicals.

Dated: May 8, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 796—[AMENDED]

1. In Part 796:

a. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

§ 796.3140 [Amended]

b. In § 796.3140 *Anaerobic biodegradability of organic chemicals*, in paragraph (b)(2)(i)(C) in the first sentence add "are" after "components" and before "added."

PART 798—[AMENDED]

2. In Part 798:

a. The authority citation for Part 798 continues to read as follows:

Authority: 15 U.S.C. 2603.

§ 798.1150 [Amended]

b. In § 798.1150 *Acute inhalation toxicity*, in paragraph (f)(8) change "food" to "feed" in the two places it appears.

§ 798.1175 [Amended]

c. In § 798.1175 *Acute oral toxicity*, in paragraphs (f)(6) (ii) and (iii) change "food" to "feed."

§ 798.2250 [Amended]

d. In § 798.2250 *Dermal toxicity*, in paragraphs (e)(9)(v) and (f)(3)(ii)(D) change "food" to "feed."

§ 798.2450 [Amended]

e. In § 798.2450 *Inhalation toxicity*, in paragraph (d)(9) in the two places it appears, in paragraph (d)(10)(v), and in paragraph (e)(3)(iv)(D), change "food" to "feed"; and in paragraph (d)(11)(ii)(B) change the phrase "expected or observed toxicity" to "expected and/or observed toxicity."

§ 798.2650 [Amended]

f. In § 798.2650 *Oral toxicity*, in paragraphs (e)(8)(v) and (f)(3)(ii)(D) change "food" to "feed"; in paragraph (e)(10)(iii) delete the period at the end of the paragraph and add "; and (rodent-zymbal glands)."

§ 798.2675 [Amended]

g. In § 798.2675 *Oral toxicity with satellite reproduction and fertility study*, in paragraphs (e)(8)(v) and (f)(3)(ii)(D), change "food" to "feed" and in paragraph (e)(9)(ii)(B) change the phrase "expect or observed activity" to "expected and/or observed activity."

§ 798.3260 [Amended]

h. In § 798.3260 *Chronic toxicity*, in paragraph (b)(6)(iii)(C), in paragraph (b)(7)(vi) in the two places it appears, and in paragraph (c)(3)(i)(B)(*4*) change "food" to "feed."

§ 798.3300 [Amended]

i. In § 798.3300 *Oncogenicity*, in paragraph (b)(6)(iii)(C), in paragraph (b)(7)(v) in the two places it appears, and in paragraph (c)(3)(i)(B)(*4*) change "food" to "feed"; also, make the following correction: In paragraph (d)(8) add "*of*" after "Journal."

§ 798.3320 [Amended]

j. In § 798.3320 *Combined chronic toxicity/oncogenicity*, in paragraphs (b)(6)(iii)(C), in paragraph (b)(7)(v) in the two places it appears, and in paragraph (c)(3)(i)(B)(*4*), change "food" to "feed"; and in paragraph (b)(6)(iii)(A) in the first sentence insert "to" after "per hour," and before "ensure."

§ 798.4350 [Amended]

k. In § 798.4350 *Inhalation developmental toxicity study*, in paragraph (f)(3)(iii)(E) change "food" to "feed."

§ 798.7100 [Amended]

l. In § 798.7100 *Metabolism*:

i. In paragraph (c)(1)(i) in the next-to-last sentence, change "in several species" to "in more than one species";

ii. In paragraph (c)(2)(ii), change "no-effect-level" to "no-observable-effect level";

iii. In paragraph (c)(2)(iv), change "single or repeated doses" to "single and repeated doses";

iv. In paragraphs (c)(3) and (c)(5)(iii), change "95 percent" to "90 percent";

v. In paragraphs (c)(5)(iii) and (c)(5)(iv)(A), change "i.e.," to "e.g.,";

vi. In paragraph (c)(5)(iv)(A), in the first sentence remove "1.5" and delete the last sentence, "In the dog, quantities of label in urine and feces should be measured at appropriate intervals (i.e., every 6 hours for the first 48 hours after dosing and every 12 hours for the remaining 5 days) throughout the study for all animals."; and

vii. In paragraph (e), the words "the rat and dog" are deleted and the words "those employed may" are added in their place.

[FR Doc. 89-11694 Filed 5-15-89; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 433

[OBA-15-F]

RIN 0938-AE31

Medicare and Medicaid; Approved Information Collection Requirements and Federal Medical Assistance Percentage Computation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule and technical correction.

SUMMARY: This final rule amends a general HCFA regulation to display up-to-date control numbers assigned by the Office of Management and Budget (OMB) to approved "collection of information" requirements contained in regulations governing the Medicare and Medicaid programs. This rule is issued in accordance with OMB regulations for controlling paperwork burdens on the public and serves as notice that the cited collections of information are approved. This document also correctly displays our longstanding formula for computing the State share of the Federal Medical Assistance Percentage (FMAP). Section 433.10(b) of our regulations contains a typographical error.

EFFECTIVE DATE: These regulations are effective May 16, 1989.

FOR FURTHER INFORMATION CONTACT: Maxine Turnipseed, (301) 966-1981. (For information collection requirements.)

Matt Plonski, (301) 966-4662. (For FMAP correction.)

SUPPLEMENTARY INFORMATION:

I. Background

Information Collection Requirements

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), Federal agencies are required to obtain Office of Management and Budget (OMB) approval of "collection of information" requirements that are contained in any regulations published by the agencies. To implement provisions of this act, OMB has established regulations under Part 1320 of Title 5 of the Code of Federal Regulations (CFR). The OMB regulations require Federal agencies (1) to notify the public that a collection of information requirement has been approved by OMB by issuing a notice in the **Federal Register**, and (2) to display the control number assigned by OMB after approval of the requirement, as part of the agency's regulatory text.

To comply with the OMB requirement that HCFA include in its regulations the OMB control numbers assigned, we have established a general regulation under 42 CFR 400.310 to display valid OMB control numbers and applicable regulation sections as a means of notifying the public that the information collection requirements have been approved. We update this regulation routinely to add the most recent OMB control numbers or to delete entries no longer in effect.

Federal Medical Assistance Percentage

The Medicaid program, established under Title XIX of the Social Security Act (the Act), is a State administrated program that provides medical assistance to certain needy individuals. Funding is shared between the States and the Federal Government. Under the Medicaid program, the term "medical assistance" means payment of part or all of the cost of care and services provided to a beneficiary under a HCFA approved State plan. The portion of the medical assistance expenditures that the Federal Government provides to the States to cover their expenditures is called the Federal Medical Assistance Percentage (FMAP). The FMAP cannot be less than 50 percent nor more than 83 percent for any State. Each State's percentage is determined by the formula described in section 1905(b) of the Act and shown in our regulations at 42 CFR 433.10(b). Under that formula the State whose per capita income exceeds that of the national per capita income would receive a lower share from the Federal Government. Also, the State whose per capita income is lower than the national average would receive a higher share from the Federal Government. The Federal Government share would be within the statutory 50-83 percentage limits.

Although section 1905(b) of the Act clearly indicates the formula and ratio relationships to be used to calculate FMAP, the formula in our regulations at § 433.10(b) is incorrectly presented.

II. Provisions of These Regulations

Information Collection Requirements

Before May 2, 1983 there was no requirement to publish OMB control numbers in agency regulations. Under 5 CFR 1320.2, we submit for OMB approval information collection requirements that we identify in existing regulations either because they have not been previously approved or because a prior approval has expired. After the approval is obtained, we publish in the **Federal Register** the control numbers for the sections approved or reapproved. In this manner, we expect to eventually publish control numbers for all our regulation sections that have OMB approved information collection requirements, and also to update reapproved items. We have identified a number of items for inclusion in our table at § 400.310 based on an OMB approval action. (Ordinarily a reapproval item retains its original control number and will not be reprinted in § 400.310. This is not always the case and some of our information collections have been assigned more than one control number.)

In the preamble of final rules containing information collection requirements, we identify sections of the regulations for which we have requested assignment of an OMB control number. Control numbers have been assigned for the following documents published in the **Federal Register**:

Peer Review Organization Contracts Solicitation of Statements of Interest From In-State Organizations (53 FR 7976, March 11, 1988) (42 CFR 462.102 and 462.103).

Conditions for Intermediate Care Facilities for the Mentally Retarded (53 FR 20448, June 3, 1988) (42 CFR 483.410, 483.420, 483.440, 483.450, 483.460, 483.470).

Technical Correction

We are revising § 433.10(b), Rates of FFP for program services, to correct typographical errors by amending the State share formula so it conforms to the formula described in section 1905(b) of the Act. We inadvertently omitted the division sign "/" and failed to include the brackets that are used to indicate the computation within the formula.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

This regulation and technical correction merely update our display of OMB control numbers for approved collection of information requirements contained in HCFA regulations and correct an obvious typographical error