agreement, the parties must determine their net premiums on a net consideration basis as described in § 1.848–2(f)(5).

(D) *Examples.* The principles of this section are illustrated by the following examples.

Example 1. On July 1, 1991, an insurance company (L1) transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an arrangement whereby L2 becomes solely liable to the policy holder under the contracts reinsured. The tax reserves on the reinsured contracts are $100,000. Under the assumption reinsurance agreement, L1 pays L2 $83,000 for assuming the life insurance contracts. Under paragraph (c)(3) of this section, since the increase in L2's tax reserves ($100,000) exceeds the net consideration transferred by L1 ($83,000), the reinsurance agreement provides for a ceding commission. The ceding commission equals $17,000 ($100,000-$83,000). Under paragraph (c)(3) of this section, L1 reduces its gross amount of premiums and other consideration for the 1991 taxable year under section 848(d)(1)(B) by the $100,000 premium incurred for reinsurance, and L2 includes the $100,000 premium for reinsurance in its gross amount of premiums and other consideration under section 848(d)(1)(A). L1 treats the $17,000 ceding commission as non-premium related income and section 803 (a)(3).

Example 2. On July 1, 1991, a life insurance company (L1) transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an arrangement whereby L2 becomes solely liable to the policyholder under the contracts reinsured. The tax reserves on the reinsured contracts are $100,000. Under the assumption reinsurance agreement, L1 pays L2 $100,000 for assuming the contracts, and L2 pays L1 a $17,000 ceding commission. Under paragraph (c)(1) of this section, L1 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by $100,000. L2 includes $100,000 in its gross amount of premiums and other consideration under section 848(d)(1)(A). Under paragraph (c)(3) of this section, since the increase in L2's tax reserves ($100,000) exceeds the net consideration transferred by L1, the reinsurance agreement provides for a ceding commission. The ceding commission equals $17,000 ($100,000 increase in L2's tax reserves less $83,000 net consideration transferred by L1). L1 treats the $17,000 ceding commission as non-premium related income under section 803(a)(3).

Example 3. On July 1, 1991, a life insurance company (L1) transfers a block of individual life insurance contracts to an unrelated insurance company (L2) under an arrangement whereby L2 becomes solely liable to the policyholder under the contracts reinsured. Under the assumption reinsurance agreement, L1 transfers assets of $105,000 to L2. The tax reserves on the reinsured contracts are $100,000. Under paragraph (c)(1) of this section, L1 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by $105,000, and L2 increases its gross amount of premiums and other consideration under section 848(d)(1)(A) by $105,000. Since the net consideration transferred by L1 exceeds the increase in L2's tax reserves, there is no ceding commission under paragraph (c)(3) of this section.

Example 4. (i) On June 30, 1991, a life insurance company (L1) reinsures 40% of certain individual life insurance contracts to be issued after that date with an unrelated insurance company (L2) under an agreement whereby L1 remains directly liable to the policyholders with respect to the contracts reinsured. The agreement provides that L2 is credited with 40% of any premiums received with respect to the reinsured contracts, but must indemnify L1 for 40% of any claims, expenses, and policyholder dividends. During the period from July 1 through December 31, 1991, L1 has the following income and expense items with respect to the reinsured policies:

Item	Income	Expense
Premiums	$8,000	
Benefits paid		$1,000
Commissions		6,000
Policyholder dividends		500
Total		7,500

(ii) Under paragraphs (b) and (c)(2) of this section, L1 includes $8,200 in its gross amount of premiums and other consideration under section 848(d)(1)(A) ($8,000 gross premiums on the reinsured contracts plus $200 of policyholder dividends reimbursed by L2 ($500 × 40%). L1 reduces its gross amount of premiums and other consideration by $3,200 (40% × $8,000) as premiums and other consideration incurred for reinsurance under section 848(d)(1)(B). The benefits and commissions incurred by L1 with respect to the reinsured contracts do not reduce L1's gross amount of premiums and other consideration under section 848(d)(1)(B). L2 includes $3,200 in its gross amount of premiums and other consideration (40% × $8,000) and is treated as having paid return premiums of $200 (the amount of reimbursable dividends paid to L1). L2 is also treated as having incurred the following expenses with respect to the reinsured contracts: $400 as benefits paid (40% × $1,000) and $2,400 as commissions expense (40% × $6,000). Under paragraph (b) of this section, these expenses do not reduce L2's gross amount of premiums and other consideration under section 848(d)(1)(A).

Example 5. On December 31, 1991, an insurance company (L1) terminates a reinsurance agreement with an unrelated insurance company (L2). The termination applies to a reinsurance agreement under which L1 had ceded 40% of its liability on a block of individual life insurance contracts to L2. Upon termination of the reinsurance agreement, L2 makes a final payment of $116,000 to L1 for assuming full liability under the contracts. The tax reserves attributable to L2's portion of the reinsured contracts are $120,000. Under paragraph (c)(4) of this section, L2 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by $120,000. L1 includes $120,000 in its gross amount of premiums and other consideration under section 848(d)(1)(A).

Example 6. (i) On June 30, 1991, an insurance company (L1) reinsures 40% of its existing life insurance contracts with an unrelated life insurance company (L2) under a modified coinsurance agreement. For the period July 1, 1991 through December 31, 1991, L1 reports the following income and expense items with respect to L2's 40% share of the reinsured contracts:

Item	Income	Expense
Premiums	$10,000	
Benefits paid		$4,000
Policyholder dividends		500
Reserve adjustment		1,500
Total		6,000

(ii) Pursuant to paragraph (c)(5) of this section, L1 reduces its gross amount of premiums and other consideration under section 848(d)(1)(B) by the $4,000 net consideration for the modified coinsurance agreement ($10,000–$6,000). L2 includes the $4,000 net consideration in its gross amount of premiums and other consideration under section 848(d)(1)(A).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 38. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 39. Section 602.101 (c) is amended by adding the following entries in the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
1.848–2(g)(8)	1545–1287
1.848–2(h)(3)	1545–1287
1.848–2(i)(4)	1545–1287

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: November 16, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–30943 Filed 12–28–92; 8:45am]

BILLING CODE 4830–01–m

DEPARTMENT OF THE INTERIOR

Bureau of Mines

30 CFR Part 609

RIN 1032–AA02

Payments Required for Owners of Private Lands Upon Which the Bureau of Mines Performs Exploration or Development Work To Investigate Known Coal Deposits

AGENCY: Bureau of Mines, Interior.

ACTION: Final rule; rescission.

SUMMARY: This document rescinds the Federal Government's regulations that stipulate that a "reasonable percentage" of the value of coals produced by a private owner be paid to the Federal Government as compensation for the exploration and development efforts of the Bureau of Mines. This regulation is no longer applicable to Bureau programs.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: John D. Ford, U.S. Department of the Interior, U.S. Bureau of Mines, Branch of Management Analysis, 810 7th Street NW., Washington, DC 20241, Tel: 202–501–9253.

SUPPLEMENTARY INFORMATION: The current 30 CFR part 609, Payments Required from Owners of Private Lands Upon Which the Bureau of Mines Performs Exploration or Development Work to Investigate Known Coal Deposits is a result of a directive established in fiscal year 1947 by the Interior Department Appropriation Act. At that time, the Bureau investigated known coal deposits on Federal, State, and private lands. When on private lands, the Federal Government required a "reasonable percentage" of the value of coals produced by the private owner as compensation for the exploration and development efforts. This regulation, as described above, no longer has application to Bureau programs. Under the authority of the President's memorandum of January 28, 1992, regarding reducing the burden of Government regulations, this regulation is rescinded.

The Department of the Interior has determined this document is not a major rule under Executive Order 12291 and certifies this document does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Mines certifies that this final rule does not have a significant economic effect on a substantial number of small entities.

This final rule to rescind 30 CFR part 609 is determined not to have federalism effects under Executive Order 12612 as it has no direct causal effect on the relative roles of Federal and State Governments.

This final rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment under The National Environmental Policy Act of 1969.

Author: Michael L. Kaas, Chief, Division of Resource Evaluation, U.S. Bureau of Mines.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. A proposed rule was published in the Federal Register, Vol. 57, No. 183, Monday, September 21, 1992, on pages 43411–43412. Accordingly, interested persons were asked to submit written comments, suggestions, or objections regarding its content. No comments were received during the 30-day comment period.

The Department has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 30 CFR Part 609

Coal, Mines.

Accordingly, in exercise of authority delegated (5 U.S.C. 302) by the Secretary of the Interior to the Assistant Secretary, 30 CFR chapter VI is amended by removing part 609.

Dated: November 5, 1992.

John M. Sayre,

Assistant Secretary—Water and Science.

[FR Doc. 92–31370 Filed 12–28–92; 8:45 am]

BILLING CODE 4310–53–M

30 CFR Part 651

RIN 1032–AA03

Administration of Grants

AGENCY: Bureau of Mines, Interior.

ACTION: Final rule, rescission.

SUMMARY: 30 CFR part 651 requires innovation in the submission of research and development proposals to further Bureau programs as authorized by statute. These requirements are also contained in 48 CFR chapter 15, part 1515, subpart 1515.5. Since there is no need these requirements be contained in both locations, this part is rescinded.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: John D. Ford, U.S. Department of the Interior, U.S. Bureau of Mines, Branch of Management Analysis, 810 7th Street NW., Washington, DC 20241, Tel: 202–501–9253.

SUPPLEMENTARY INFORMATION: Under the authority of the President's memorandum of January 28, 1992, regarding reducing the burden of Government regulation, this regulation is rescinded.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq .*).

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Mines certifies that this final rule does not have a significant economic effect on a substantial number of small entities.

This final rule to rescind 30 CFR part 651 is determined not to have federalism effects under Executive Order 12612 as it has no direct causal effect on the relative roles of Federal and State Governments.

This final rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment under The National Environmental Policy Act of 1969.

Author: Doyne W. Teets, Chief, Division of Procurement, U.S. Bureau of Mines.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. A proposed rule was published in the Federal Register, Vol. 57, No. 183, Monday, September 21, 1992, on page 43412. Accordingly, interested persons were asked to submit written comments, suggestions, or objections regarding its content. No comments were received during the 30-day comment period.

The Department has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 30 CFR Part 651

Grant programs-environmental protection, Grant programs-health, Mine safety and health, Reporting and recordkeeping requirements, Waste treatment and disposal.

Accordingly, in exercise of authority delegated (5 U.S.C. 302) by the Secretary of the Interior to the Assistant Secretary, 30 CFR chapter VI is amended by removing part 651.

Dated: November 5, 1992.

John M. Sayre,

Assistant Secretary—Water and Science.

[FR Doc. 92-31371 Filed 12-28-92; 8:45 am]

BILLING CODE 4310-53-M

LIBRARY OF CONGRESS

37 CFR Part 201

[Docket No. RM 92-7]

Cable and Satellite Carrier Royalty Interest Regulations (Amendments)

AGENCY: Copyright Office; Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office amends §§ 201.11(h)(2) and 201.17(i)(2)(i) of its regulations to adopt the Department of the Treasury's published interest rates for late and underpaid royalties made pursuant to section 111 and section 119 of the Copyright Act. The Office also makes technical amendments to §§ 201.11(h)(3) and 201.17(i)(2)(ii).

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

On April 10, 1989, the Copyright Office announced that it would be assessing interest against late and underpaid royalties made pursuant to the cable compulsory license. See 54 FR 14217 (1989). The Office made a similar announcement on July 3, 1989 for late payments and underpayments made pursuant to the satellite carrier compulsory license. See 54 FR 27873 (1989). The regulations provide, *inter alia*, the means for determining the beginning and end of the accrual period, the minimum charge assessable, and the method for determining the applicable interest rate.

With regards to determination of an interest rate, the Office provided:

> The Copyright Office does not wish to penalize cable systems for late and amended filings, but rather wishes to compensate copyright owners for the present value loss of royalties which should have been deposited on a timely basis. Therefore, to achieve this equitable result, the Office chose a rate which would most closely approximate the interest earned on royalty payments made within the accounting period filing dates.
>
> As part of its standard practice, the Copyright Office makes a deposit of royalty funds recently received with the U.S. Treasury on the first business day after the close of an accounting filing period. The interest rate paid on that deposit is readily obtainable from the U.S. Treasury within a day or so of the deposit. The Office feels that making the Treasury rate applicable to all underpayments which resulted from cable carriage during that accounting period, most closely equals the amount of interest the underpaid royalties would have earned had they been paid in accordance with the accounting period filing deadlines. The one drawback of adopting such an interest rate is that it is not a fixed predetermined rate.

54 FR at 14220. See also 54 FR at 27874-75. The Office subsequently adopted a regulation which set the interest rate for an accounting period as the rate paid by the Treasury on the first investment of royalties made after the close of the filing period for that accounting period. See § 201.17(i)(2)(i). See also, § 201.11(h)(2).

The Copyright Office also adopted a regulation for the cable and satellite carrier license setting the minimum amount of interest that would be assessed. The regulation provides:

> Interest is not required to be paid on any royalty underpayment from a particular accounting period if the sum of that underpayment is less than or equal to five dollars ($5.00).

§ 201.17(i)(2)(ii). See also § 201.11(h)(3).

2. Policy Decision of the Copyright Office

The Copyright Office has found the procedure for setting the interest rate for late payments and underpayments from particular accounting periods to present several problems. First, the Office has noticed a significant disparity between the interest rate appearing on Treasury securities purchased after the close of an accounting filing period and the actual yield those securities produce. This has resulted in the setting of an interest rate pursuant to §§ 201.11(h)(2) and 201.17(i)(2)(i) which is often higher than the interest yield the royalties would have produced had they been deposited with the Office on time. Second, the Office has faced the administrative problem, particularly with section 119 royalties, of not having sufficient funds to make an investment immediately following the close of the accounting filing period. This has caused problems with the setting of the interest rate. Furthermore, the Copyright Office is often forced to purchase short-term Treasury bills, as opposed to Treasury notes, which contain a discount rate rather than an interest rate, further complicating the setting of an appropriate interest rate.

As the Copyright Office noted in the preamble to the interest regulation for the cable compulsory license, the Office "does not wish to penalize cable systems for late and amended filings, but rather wishes to compensate copyright owners for the present value loss of royalties which should have been deposited on a timely basis." 54 FR at 14220. In order to further this goal, the Office chose a system for establishing a rate of interest to be assessed against late payments and underpayments that it felt would most closely match the amount of interest copyright owners would have earned had all royalties been submitted on time for each individual accounting period. The Office therefore concluded that the "interest rate applicable under the interest regulation adopted herein shall be the interest rate paid by the Treasury on the cable royalty funds deposited by the Copyright Office on the first business day after the close of the filing deadline for the accounting period with respect to which the underpayment occurs." *Id.* at 14220. See also 54 FR at 27875.

The current system for establishing the applicable interest rate has proved administratively difficult for several reasons. First, as noted above, the interest rate obtained from the Treasury on securities purchased the first business day after the close of the filing period has often differed greatly from the effective yield of those securities. For example, when the Office purchases a Treasury note on the day following the close of the filing period, the note may state on its face that it will pay a 9.125% interest rate over the two year term of the note. However, as is often the case, the Copyright Office is forced to purchase notes which have been issued well prior to the purchase date by the Office, and have actually been held by others. The notes are typically held for up to six months or less, at which time the funds are available to the Copyright Royalty Tribunal for distribution. The notes are therefore held for a far shorter period of time than the term of the note. In the above example, a two year note paying 9.125% over that period which is only held for a six month period will yield an amount that is far less than 9.125%. A cable system which makes a late payment therefore must, under the

current regulations, pay a 9.125% interest assessment when, if it had submitted its royalties on time, copyright owners would have received a lesser yield. This result frustrates the Office's stated goal of not penalizing cable systems and satellite carriers for late payments, but rather providing copyright owners the funds they would have received had the royalties been paid on time.

Second, the Copyright Office has encountered the administrative difficulty, particular with satellite carrier royalties, in making deposits of royalties with the Treasury the day after the close of the filing period. It is often the case that the majority of royalties arrive well in advance of the final day of the filing period, necessitating earlier deposits. The Copyright Office does not wish to hold funds from deposit for any period of time, since copyright owners will lose the interest on those funds, nor will it deposit relatively insignificant amounts on a daily basis. The problem therefore arises of having a sufficiently large, recently received royalty pool to be deposited on the day after the close of the filing period so that the appropriate interest rate may be established.

Third, the Copyright Office is faced with the problem of not always being able to purchase Treasury securities which carry an interest rate. It is often the case that the Office is forced to purchase Treasury bills, rather than notes, which are sold at a discount rate, rather than an interest rate. This situation arises when the royalty funds are to be turned over to the Copyright Royalty Tribunal at a time period of less than six months from the date of investment. Since the bills do not carry an interest rate, the question becomes how to calculate the appropriate interest rate for regulation purposes.

Finally, due to such circumstances as the necessity of purchasing Treasury bills as opposed to notes, it is often difficult for the Copyright Office to quickly provide cable and satellite operators with the applicable interest rate for the most recent accounting period. This delay, while perhaps only for a period of several days, has serious implications for Form 3 systems submitting large royalty payments a day or two late.

To correct the above-stated problems, the Copyright Office has decided to amend its regulations to adopt the Department of the Treasury's method for determining the percentage rate charge for late payments. Section 8025.40 of the Treasury Financial Manual states:

> The minimum annual rate of interest to be charged will be calculated by Treasury as an average of current value of funds to Treasury and will be published in the **Federal Register** each year by October 31, to become effective January 1.

Described as the Current Value of Funds Rate, this Treasury Department rate is subject to quarterly revisions if the annual average changes by 2 percent, and such revisions are published in the **Federal Register**. The applicable interest rate for an accounting period shall be the Current Value of Funds Rate in effect on the first business day after the close of an accounting filing period.

The Copyright Office finds the Current Value of Funds Rate to be the superior means of calculating the appropriate cable and satellite interest rate for several reasons. First, the rate more accurately reflects what the market is currently paying on investment funds than the current system, thereby producing a rate which approximates yield on investment. This eliminates disparities currently experienced between interest rate assessed and yield on funds received by copyright owners. Second, the Current Value of Funds Rate solves the problem of lack of deposits on the day after the close of a filing period, and the problem faced by the purchase of Treasury bills carrying only a discount rate. Finally, the rate is easily determinable well in advance of the close of an accounting filing period and is available to all through the **Federal Register**. The Office therefore amends its regulations to adopt the Treasury's method of calculating interest to be effective beginning with the current 1992/2 accounting period and for all accounting periods thereafter.

The Copyright Office also amends §§ 201.11(h)(3) and 201.17(10)(2)(ii) by adding "or late payment" after the word "underpayment" and by removing the second "underpayment" and replacing it with the words "interest charge." Both sections should read:

> Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars ($5.00).

Since this regulation makes technical adjustments to the method used in calculating interest on late and underpaid royalties and since the amendments make it easier to establish the applicable interest rate, the regulation is issued in final form and takes effect for late payments and underpayments related to royalties due for the 1992/2 accounting period and for all accounting periods thereafter. The Copyright Office has already set the interest rates for accounting periods earlier than 1992/2 under the superseded regulation, and those established rates are unaffected by this amendment of the regulation. That is, the interest rates already set under the superseded regulation will apply to any late payments or underpayments related to royalties due for any accounting period before 1992/2.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Cable television; Cable compulsory license.

Final Regulation

In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR, chapter II, as set forth below.

PART 201—[AMENDED]

1. The authority section for part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.7 is also issued under 17 U.S.C. 408, 409, and 410; § 201.16 is also issued under 17 U.S.C. 116; § 201.24 is also issued under Public Law 101–650, 104 Stat. 5089, 5134; § 201.6 is also issued under 17 U.S.C. 708; § 201.17 is also issued under 17

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

U.S.C. 111; § 201.19 is also issued under 17 U.S.C. 115.

PART 201.11—[AMENDED]

2. Sections 201.11(h) (2) and (3) are revised to read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions for private home viewing.

* * * * *

(h)(1) * * *

(2)(i) The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the **Federal Register**, in effect on the first business day after the close of the filing deadline for that accounting period. Cable operators wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.

(ii) The interest rate applicable to a specific accounting period earlier than the 1992/2 period shall be the rate fixed by the Licensing Division of the Copyright Office pursuant to 37 CFR 201.11(h) in effect on June 30, 1992.

* * * * *

(3) Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars ($5.00).

§ 201.17 [Amended]

3. Sections 201.17(i)(2) (i) and (ii) are revised and (i)(2)(iii) is added to read as follows:

§ 201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(i)(1) * * *

(2) * * *

(i) The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the **Federal Register**, in effect on the first business day after the close of the filing deadline for that accounting period. Cable operators wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by contacting the Licensing Division of the Copyright Office.

(ii) The interest rate applicable to a specific accounting period earlier than the 1992/2 period shall be the rate fixed by the Licensing Division of the Copyright Office pursuant to 37 CFR 201.17(i) in effect on June 30, 1992.

(iii) Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars ($5.00).

* * * * *

Dated: December 3, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92-31286 Filed 12-28-92; 8:45 am]

BILLING CODE 1410-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 16-1-5140; FRL 4545-5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving three revisions to the Illinois State Implementation Plan (SIP) addressing the control of emissions of total suspended particulates (TSP) from fuel combustion sources. These revisions pertain to the incorporation of new TSP rules to replace those remanded by the courts, as well as procedures for granting adjusted opacity standards. USEPA's action is based upon a request incorporating all three revisions, which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

DATES: This action will be effective March 1, 1993 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Randolph O. Cano at (312) 886-6036, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J) U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Illinois SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604 (312) 886-6036.

SUPPLEMENTARY INFORMATION: USEPA revised the National Ambient Air Quality Standard (NAAQS) for particulate matter on July 1, 1987, (52 FR 24634), and replaced the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, USEPA continues to process TSP SIP revisions which were in process at the time the new (PM_{10}) standard was promulgated. In a policy document published on July 1, 1987, (52 FR at 24679, column 2), USEPA stated that it would regard its approval of existing TSP rules as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM_{10}. Section 110(1) of the 1990 Clean Air Act Amendments (CAAA), 42 U.S.C. 7410, prohibits USEPA from approving SIP revisions that result in the relaxation of control requirements in effect in nonattainment areas before November 15, 1990, if such revisions "would interfere with any applicable requirement concerning attainment or reasonable further progress (as defined in section 171), or any other applicable requirement of this Act." If the SIP revision is judged to include more stringent provisions than are in the existing plan, USEPA's general policy is to approve it. Regulations in the TSP SIP cannot be relaxed, however, without a demonstration that the revision will not interfere with attainment and maintenance of the PM_{10} NAAQS. It is USEPA's judgement that the revisions in this action would increase the stringency of the plan and are, therefore, not likely to interfere with the attainment and maintenance of the PM_{10} standard as well. Thus, USEPA is approving this SIP revision.

On May 31, 1972 (37 FR 10862), USEPA approved the incorporation of Illinois Pollution Control Board (IPCB) rule 203(g)(1) and rule 202(b) into the Illinois SIP. These rules were vacated and remanded by the Illinois Appellate Court on September 22, 1978 and, therefore, are no longer federally enforceable as part of the Illinois SIP. Rule 203(g)(1) addressed particulate-emission from fuel combustion emission sources. Rule 202(b) addresses visual emission standards for existing sources.

Because these regulations were vacated, USEPA issued a notice of deficiency regarding the Illinois SIP (on July 12, 1979, (44 FR 40723)). Today's rulemaking concerns regulations adopted to replace the TSP fuel combustion regulations remanded by the Court.

On March 13, 1986, the Illinois Environmental Protection Agency (IEPA) submitted certain proposed regulations to USEPA then being considered by the IPCB to replace the regulations vacated and remanded by the Illinois Appellate Court. In submitting these proposed regulations, the State requested USEPA to initiate proposed rulemaking on these regulations using parallel processing. USEPA did not take action on the March 13, 1986, submittals. On July 2, 1986, the IPCB adopted final regulations to replace rule 203(g)(1), those being rules 212.201 through 212.204, and 212.209. The final adopted regulations were submitted to USEPA on July 30, 1986, with a request to incorporate them into the SIP. On June 30, 1988, the IPCB finally adopted regulations to replace rule 202(b), those being rules 212.113, and 212.121 through 212.126. These regulations were submitted to USEPA on July 22, 1988, with a request to incorporate them into the SIP. Also submitted July 22, 1988, were procedural rules, those being rules 106.501 through 106.507, adopted by the IPCB, intended to establish procedures for considering source requests for an adjusted opacity standard pursuant to § 212.126.

It should be noted that subsequent to the invalidation of rule 203(g)(1) and 202(b) by the Illinois Appellate Court, the State of Illinois recodified all of its environmental regulations into title 35 of the Illinois Administrative Code (IAC). The regulations being considered to replace rule 203(g)(1) and rule 202(b) are, respectively, §§ 212.201 through 212.204 and 212.209 and 212.113, 212.121 through 212.126 of 35 IAC Subtitle B; Air Pollution, Chapter I: Pollution Control Board USEPA's description and evaluation of these regulations will utilize the revised numbering scheme.

Description and Evaluation of Rules

Boilers Rules

Section 212.201 Existing Sources Using Solid Fuel Exclusively Located in the Chicago Area

This section provides an emission limit of 0.10 lbs/million British Thermal Units (Btu). This is the same limit that was approved in 1972. USEPA considers this rule to represent Reasonably Available Control Technology (RACT) for TSP sources in Illinois.

Section 212.202 Existing Sources Using Solid Fuel Exclusively Located Outside the Chicago Area

This section provides the following emission limits:

Actual heat input of sources in million Btu/hr (H)	Emission limit in pounds per million Btu
Less than or equal to 10	1.0
Greater than 10 but less than 20	5.18H–0.175
Greater than or equal to 250	0.1

These are the same limits that were approved in 1972. USEPA believes that these rules represent RACT. They would apply both in attainment and nonattainment areas.

Section 212.203 Existing Controlled Sources Using Solid Fuel Exclusively

This section allows for degradation of control at sources subject to section 212.201 and 212.202. Emissions from these sources would in no case exceed 0.20 lbs per million Btu. The rule approved in 1972 would allow a source to degrade up to 0.05 lbs per million Btu from original design or acceptance performance test conditions. Section 212.203 would additionally allow a source to degrade up to 0.05 lbs per million Btu from the most recent stack test submitted prior to April 1, 1985. This rule would apply in attainment and nonattainment areas alike. USEPA considers these Illinois rules, even with this relaxation, to represent RACT. Granting a relaxed emission limit would redefine RACT for a particular facility.

This rule, in effect, sets up a generic procedure for the State agency to provide an alternate emission limit for sources subject to § 212.201 or 212.202. As a general practice USEPA is reluctant to approve SIP provisions which grant the state "director discretion" to allow sources to modify their emission limits without first obtaining Federal approval through the SIP rulemaking process. USEPA's concern is that if source emission limits can be relaxed without Federal SIP approval it is possible that the SIP could be modified so that the attainment and maintenance of the National Ambient Air Quality Standards the SIP was intended to protect is jeopardized. USEPA would not be given an opportunity to rulemake on all such modifications. Several factors lessen USEPA's concerns. First, in all instances the degregations cannot exceed .05 lbs/MMBtu. The relaxed emission limits cannot exceed .20/lbs per MMBtu. USEPA believes that even these relaxed emission limits are reflective of RACT for in the process of granting a relaxed emission limit the State redefines RACT as it pertains to the subject facility. Further, all such relaxations should be incorporated in an operating permit. On December 17, 1992, (57 FR 59928) USEPA approved the Illinois Operating Permit program for the purpose of issuing federally enforceable operating permits. Prior to issuing an operating permit, the State must give USEPA the opportunity to review the permit to ensure that the respective permit is federally enforceable. USEPA will therefore be able to use its review of State operating permits to further ensure that the NAAQS are protected.

Section 212.204 New Sources Using Solid Fuel Exclusively

This section would provide an emission limit of 0.10 lbs per million Btu in any one hour period for new solid fuel sources. This is the same limit that was approved as representing RACT in 1972 and is still approvable as RACT. Under the Clean Air Act's regulatory scheme new sources would also be subject to any applicable emission limits required by Part D, or section 112. These include lowest achievable emission rate (LAER), new source performance standards (NSPS) and, national emission standards for hazardous air pollutants (NESHAPS).

Section 212.209 Village of Winnetka Generating Station

This section would provide as a variance a temporary emission limit of 0.25 lbs per million Btu for the Village of Winnetka Generating Stations if the Village files a petition to establish site-specific particulate standards within 60 days of the effective date of this rule. This variance would be effective until January 1, 1988, or until a final determination is made by the Illinois Pollution Control Board on the site-specific rulemaking, whichever occurs sooner. (The provisions of § 212.209 are moot since the variance period ended on January 1, 1988.)

USEPA believes that §§ 212.201, 212.202, 212.203 and 212.204 are

approvable because they represent RACT. As § 212.209 is moot by its own terms, no determination is made as to its approvability.

Opacity Rules

Section 212.113 Incorporations by Reference

This section was revised to incorporate all of part 60 of title 40 of the Code of Federal Regulations (1987) (which was the most current version available at the time the State modified this Section). In addition, language was added to clarify that no future additions were being incorporated by reference at this time. This additional qualification is consistent with the legal requirements for incorporation by reference at both the State and Federal level. It is simply impossible to incorporate by reference something that is not yet in existence.

Section 212.121 Opacity Standards

This section provides that, for the purpose of subpart B: Visible Emissions of part 212: Visible and Particulate Matter Emissions, all visible emission opacity standards shall be considered equivalent to corresponding Ringleman Chart readings as described under the definition of opacity in § 211.122. An additional change to this Section is that the term "visible" replaces the term "visual". USEPA approves the incorporation of this section into the SIP because the change to the rule in non substantive.

Section 212.122 Limitation for Certain New Sources

This Section, which provides emission limits for new sources with actual heat input greater than 250 MMBtu/hr, was approved for incorporation into the Illinois SIP on May 31, 1972 (37 FR 10862) as PCB rule 202(a)(1). Today USEPA is incorporating the recordified rule number, 35 IAC 212.122 into the SIP.

Section 212.123 Limitation for All Other Sources

This Section has been revised to clarify that no person shall cause or allow emission of smoke, or other particulate matter, with an opacity greater than 30 percent, into the atmosphere from any emission source other than those sources subject to § 212.122. This Section also contains an exception for smoke or other particulate matter from any such emission source, which allows opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period. The more opaque emissions shall occur from only one such emission source, located within 305 meters or 1,000 feet radius from the center point from any other such emission source, owned or operated by the same person. It is further provided that the periods of more opaque emissions are limited to three times in a 24 hour period. USEPA is granting approval of the incorporation of this section into the SIP.

Section 212.124 Exceptions

This section provides for exceptions during startup, malfunction, and breakdown, as provided in an operating permit issued in accordance with 35 IAC 201. Part 201 contains the permit and general provisions. Section 212.124 also provides that sources which have obtained an adjusted opacity standard pursuant to § 212.126 are subject to that standard rather than the limitations of § 212.122 or 212.123. Finally § 212.124 clearly defines the criteria for a source's use of compliance with the particulate regulations as a defense to a violation of the applicable opacity standards. USEPA approves the incorporation of this section into the SIP.

Section 212.125 Determination of Violations

This Section provides three methods for determining violations: visual observation, use of an approved calibrated smoke evaluation device or, use of an approved smoke monitor, which were approved by IPCB for incorporation into the Illinois SIP on May 31, 1972 (37 FR 10862) as PCB rule 202(c). Today USEPA is incorporating the recodified rule number 35 IAC 212.125 into the SIP.

Section 212.126 Adjusted Opacity Standards Procedures

This Section provides detailed procedures a source can follow to obtain an adjusted opacity standard, including a detailed testing methodology. Four limits on alternate opacity limitations are also set forth; they must be contained in an operating permit; must substitute for the otherwise applicable limit; must not allow an opacity greater than 60 percent; and, must allow opacity for one, six minute averaging period in any sixty minute period, to exceed the adjusted opacity standard. USEPA approves the incorporation of this Section in the SIP.

The Illinois opacity rules as discussed above incorporate guidance provided by USEPA in its September 23, 1986, comments to IEPA. The regulations are clear and enforceable. The procedures in § 212.126 Adjusted Opacity Standards Procedures allows the IPCB to modify the pertinent SIP emission requirements without USEPA rulemaking. It should be noted here that opacity is used as an indirect measure of compliance with particulate emission limits by a point source. Even without an opacity limit, compliance with the particulate limit is required. Further, such compliance can be more accurately measured through the use of a stack test. USEPA normally objects to this practice because the State could modify the SIP in such a way as to interfere with attainment and maintenance of the NAAQS. However, because USEPA has approved the Illinois operating permit program for the purpose of issuing federally enforceable operating permits, and operating permits will be the vehicle for issuing Adjusted Opacity Standards, such concerns are minimized. USEPA intends to use its overview of the Illinois operating permit program to review operating permits prior to their issuance; and, through its authority under section 105 of the Act grant process, to ensure attainment and maintenance of the NAAQS. For the above cited reasons, USEPA approves the incorporation of these opacity rules into the SIP.

Air Adjusted Standards Procedures

As part of its June 30, 1988, submittal the State submitted Adjusted Standard Procedures which are part of IPCB's procedural results. These procedures are contained in 35 IAC Subtitle A: General Provisions; Chapter I: Pollution Control Board; part 106: Hearings Pursuant to Specific Rules; subpart E: Air Adjusted Standard Procedures; § 106.501 through 106.507.

Section 106.501 Scope and Applicability

This Section clarifies that subpart E only applies whenever an adjusted standard is requested pursuant to 35 IAC 212.126 Adjusted Opacity Standard Procedures.

Section 106.502 Joint Single Petitions

This Section provides that any person may initiate an adjusted standard proceeding by filing a petition jointly with the IEPA, or on its own.

Section 106.503 Request to Agency to Join as Co-Petitioner

This Section allows IEPA to act in any adjusted standard proceeding as a petitioner. Any person may request IEPA assistance in initiating a petition for an adjusted standard. IEPA may require the requestor to submit relevant information. IEPA must promptly notify the requestor of its decision whether or not to become a co-petitioner. The basis for not becoming a co-petitioner must be given to the requestor. IEPA's decision

is discretionary and not appealable to the IPCB.

Section 106.504 Contents of Petition

This Section specifies what information must be included in a petition.

Section 106.505 Response and Reply

This Section requires IEPA to file a response within 45 days of a petition being filed in which IEPA is not a co-petitioner. This response must include IEPA's recommendations concerning IPCB's proposed action on the petition. The petitioner is allowed 15 days to file a reply to the IEPA response.

Section 106.506 Notice and Conduct of Hearing

This Section requires the IPCB to hold at least one public hearing prior to granting an adjusted standard. The public notification process must conform to the pertinent Federal requirements.

Section 106.507 Opinions and Orders

This Section requires the IPCB to issue an Opinion and Order stating the relevant facts and rationale for the final IPCB determination. The IPCB may issue other orders as it deems appropriate. This Section also requires the Clerk of the IPCB to maintain a record of all Opinions and Orders for public inspection. This Section also provides that decisions of the IPCB are appealable pursuant to section 41 of the Illinois Environmental Protection Act, which provides for judicial review of IPCB decisions in the Appellate Court for the District in which the cause of action arose.

USEPA believes that these Air Adjusted Standards Procedures are well defined and provide for adequate review of petitions for an adjusted standard in that both the public and IEPA are afforded an opportunity to comment on all petitions. These comments must also be addressed in the IPCB Opinion and Order. For these reasons, USEPA approves the incorporation of these procedural rules into the SIP.

USEPA has reviewed IEPA's submittals of July 30, 1986, and July 22, 1988, for conformance with the provisions of the 1990 CAAA enacted on November 15, 1990. USEPA has determined that these actions conform with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Because USEPA considers today's actions noncontroversial and routine, we are approving them today without prior proposal. The action will become effective on March 1, 1993. However, if we receive notice by January 28, 1993 that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the 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.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The CAA forbids USEPA to base it actions concerning SIPs on such grounds. *Union Electric Co* v. *U.S., E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall be not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: December 2, 1992.

David Kee,

Acting Regional Administrator.

For the reasons set out in the preamble title 40, Chapter I of the Code of Federal Regulations is amended as follows.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart O—Illinois

Authority: 42 U.S.C. 7401, 7671(q)

2. Section 52.720 is amended by adding paragraph (c)(94) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(94) On July 30, 1986, the State submitted particulate boiler rules intended to replace rule 203(g)(1) which was vacated by the Courts. No action is taken on § 212.209 because the variance which it authorized has expired. On July 22, 1988, the State submitted opacity rules intended to replace rule 202(b) which had been vacated by the Courts. Also on July 22, 1988, the State submitted Illinois Pollution Control Board procedural rules for considering Air Adjusted Standard Procedures.

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Illinois Administrative Code, Subtitle B: Air Pollution; Chapter 1: Pollution Control Board; part 212 Visible and Particulate Matter Emissions; subpart E: Particulate Matter Emission from Fuel Combustion Emission Sources; §§ 212.201, 212.202, 212.203 and 212.204. Amended or added at 10 Ill Reg. 12637, effective July 9, 1986.

(B) Title 35: Environmental Protection, Illinois Administrative Code,

Subtitle B: Air Pollution; Chapter 1: Pollution Control Board; part 212 Visible and Particulate Matter Emissions; subpart B: Visible Emissions. Amended or added at 12 Ill. Reg 12492, effective July 13, 1988.

(C) Title 35: Environmental Protection, Illinois Administrative Code; Subtitle A: General Provisions; Chapter 1: Pollution Control Board; part 106: Hearings Pursuant to Specific Rules; subpart E: Air Adjusted Standards Procedures. Added at 12 Ill. Reg 12484, effective July 13, 1988.

[FR Doc. 92-31265 Filed 12-28-92; 8:45 am]
BILLING CODE 6560-50-M