restrictions on the interstate movement of horses by allowing the use of newly-developed tests that may be licensed by the Secretary of Agriculture for the laboratory diagnosis of EIA.

Executive Order 12291 and Regulatory Flexibility Act

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

This rule will allow the use of additional tests for the laboratory diagnosis of EIA. Estimates of the U.S. equine population vary from 5.25 million to 6.6 million. Equine owners have suffered losses due to domestic and foreign infectious diseases. The use of diagnostic tests has substantially cut losses that result from the commingling of infected animals with healthy ones. Such has been the case with the AGID and C ELISA tests for EIA. In fiscal year 1991, 993,712 tests for EIA were conducted resulting in the identification of 2,755 reactors. Compared to 9,089 reactors out of 354,412 tests for EIA conducted in 1974,[1] it is clear that the incidence of EIA has declined. Between the two periods, the prevalence of infection with EIA decreased from 2.56 percent to 0.277 percent. Losses attributed to EIA declined from approximately $271 million to $21 million (in 1990 dollars).

Allowing other tests to be designated as official tests may not result in such a dramatic decline in losses because the present base of infected animals is smaller when compared with previous years. However, the newly-developed tests could likely continue the decline in EIA incidence and could inject competition in the EIA test market. The opportunity to develop, obtain a license for, and market a new product for the laboratory diagnosis of EIA could provide a small company the means by which to enter this industry and realize a modest economic benefit. Of the dozen or so companies that manufacture veterinary diagnostic products, we are aware of only two that currently market the AGID and C ELISA tests for EIA. Neither of these companies is considered a small entity.

For these two large firms, marketing products for the laboratory diagnosis of EIA is a small fraction of their total business. Further, these sales represent a niche within a small part of a very large industry. According to USDA records, approximately 1 million tests for the laboratory diagnosis of EIA were produced in the United States in 1991. These records also indicate that during the same time period, approximately 54 million veterinary diagnostic tests were produced. Thus, the production of tests for the laboratory diagnosis of EIA equals approximately 2.0 percent of the total production of the U.S. veterinary diagnostic products.

Any increase in the production of products for the laboratory diagnosis of EIA will likely remain insignificant when compared with the total production of veterinary diagnostic products; however, increased competition could dramatically affect the test turn-around time by making available certain tests that may be less labor intensive. Additionally, designating other qualified tests as official tests will likely encourage entrepreneurs and scientists to engineer new and more powerful procedures and technology that could foster economic growth. Ultimately, costs for testing could be lowered for equine owners.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 75 is amended as follows:

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 75.4, paragraph (a), the definition of "Official test" is revised to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

(a) * * *

* * * * *

Official test. Any test for the laboratory diagnosis of equine infectious anemia that utilizes a diagnostic product that is: (1) Produced under license from the Secretary of Agriculture, and found to be efficacious for that diagnosis, under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 *et seq.*); and (2) conducted in a laboratory approved by the Administrator.

* * * * *

Done in Washington, DC, this 1st day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–29462 Filed 12–3–92; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 94

[Docket No. 92–031–2]

Meat and Meat Products From Northern Ireland and the Republic of Ireland; Restrictions on Importations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final.

SUMMARY: We are affirming as final and without change an interim rule that

[1] The first year of test reporting in the United States after the availability in the early seventies of the first test for diagnosing EIA.

amended the regulations concerning the importation into the United States of meat of ruminants and swine, and certain other animal products, from Northern Ireland and the Republic of Ireland. The imposition of additional import restrictions was a necessary response to new conditions that made possible the commingling of disease-contaminated meat or meat products with disease-free meat or meat products in these countries. In Northern Ireland, conditions have changed with respect to swine vesicular disease-contamination of meat or meat products only. This action was necessary to protect against the introduction into the United States of swine vesicular disease, rinderpest, and foot-and-mouth disease.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7885.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on August 18, 1992 (57 FR 37081–37083, Docket No. 92–031–1), we amended the animal and animal product importation regulations in 9 CFR part 94 by restricting the importation into the United States of meat of ruminants and swine, and certain other animal products, from Northern Ireland and the Republic of Ireland. This action was necessary to prevent the introduction of rinderpest, foot-and-mouth disease (FMD), and swine vesicular disease (SVD) into the United States.

Comments on the interim rule were required to be received on or before October 19, 1992. We received one comment, from a representative of the Government of Northern Ireland.

The commenter requested that we remove the special restrictions on animal products from Northern Ireland because animal products in Northern Ireland pose no disease risk to the United States. He cited the effectiveness of European Community epizootic disease control measures, and noted that most animals imported into Northern Ireland originate in the Republic of Ireland. The commenter stated that if we would not change the regulations for those reasons alone, the Government of Northern Ireland was prepared to guarantee, based on a centralized animal health computer system, that animal products exported from Northern Ireland to the United States meet all U.S. "non-commingling" requirements.

We are making no changes as a result of this comment. Meat and meat products of ruminants and swine from all countries listed in §§ 94.11 or 94.13 are subject to special import restrictions because of disease risk. The regulations are necessary to prevent meat and meat products from those countries from introducing rinderpest, FMD, or SVD into the United States. We can make no exception for Northern Ireland.

The facts presented in the interim rule still provide the basis for this rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12291, 12372, and 12778, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, the regulations in 9 CFR part 94 are amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FLOW PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 94.11 and 94.13 that was published at 57 FR 37081–37083 on August 18, 1992.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 1st day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–29463 Filed 12–3–92; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Parts 145 and 147

[Docket No. 91–026–2]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the National Poultry Improvement Plan (referred to below as the Plan) and its auxiliary provisions to improve its programs by isolating and testing birds from sources that do not participate in the Plan before their introduction into a Plan-participating flock, and by providing new procedures for examining and testing participating flocks. This action is necessary to increase the effectiveness of the Plan in preventing and controlling certain poultry diseases. The intended effect of these amendments is to help improve poultry breeding stock and hatchery products.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436–7768.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as the Plan) is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all the Plan programs is voluntary. However, flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program. Also, regulations at 9 CFR 82.33 require that no hatching eggs or newly-hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified "U.S. Sanitation Monitored" under the Plan, or meet the requirements of a State classification plan determined by the Administrator to be equivalent to the Plan.

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified within the Plan's various programs. As a result, customers can buy stock that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as "the

regulations") contain the requirements for this program. The Animal and Plant Health Inspection Service (APHIS) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

We published in the Federal Register on June 30, 1992 (57 29044–29050, Docket No. 91–026–1), a proposal to amend the regulations by making the following changes:

1. Add a definition of poultry dealer;

2. Provide for the segregation and testing of birds from sources that do not participate in the Plan before introduction into a Plan-participating flock;

3. Improve the "U.S. Sanitation Monitored" program for egg-type chicken breeding flocks by requiring 30-day culturing of the environment rather than dead-germ eggs;

4. Improve the "U.S. Sanitation Monitored" program for meat-type chicken breeding flocks by providing for environmental culturing and control efforts for flocks with certain *Salmonella* serotypes to reduce vertical transmission;

5. Provide for egg yolk monitoring test for *Mycoplasma gallisepticum* (MG) and reduced sample size for game birds to keep MG classification;

6. Improve sampling procedures for environmental sample collection for *Salmonella* testing of the breeding flock environment;

7. Provide procedures for bacteriologic examination of environmental samples for *Salmonella;* and

8. Provide procedures for drag-swab sampling for *Salmonella* testing of the breeding flock environment.

Our proposed amendments were consistent with the recommendations approved by the voting delegates to the June 1990 meeting of the Biennial Plan Conference. Participants at these meetings represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating States.

Comments

Our proposed rule invited the submission of comments, which were required to be received on or before July 30, 1992. We received one comment prior to the closing date. The comment, from a State Department of Agriculture, requested that we reconsider deleting requirements for dead-germ egg culturing.

U.S. Sanitation Monitored—Egg Type Chicken Breeding Flocks

We proposed to amend § 145.23 to change the "U.S. Sanitation Monitored" program for egg-type chicken breeders by requiring collection of environmental samples every 30 days after the first environmental sample has been taken and by deleting the requirements for dead-germ egg culturing. Also, we proposed to require bacteriological examination of a random sample of 60 live birds if *Salmonella enteritidis* ser *enteritidis* (SE) is isolated from environmental or other specified samples. To relieve any unnecessary burden upon a producer, we proposed to provide the participant the option of requesting a new examination of an additional 60-bird sample if the bacteriological examination reveals only one positive specimen. If the new examination does not recover any SE, then the flock can be eligible for the "U.S. Sanitation Monitored" classification.

The commenter suggested that—(1) Dead-germ egg culturing be required on at least a monthly basis as long as environmental samples are SE culture positive, regardless of negative bird culture results; (2) "U.S. Sanitation Monitored" status be withheld if either the breeder flock or its progeny (dead-germ eggs or newborn chicks) are SE culture positive; and (3) dead-germ eggs in hatcheries be cultured to monitor all source flocks regardless of their respective environmental status. The commenter believes these actions are necessary because "Investigators have speculated that use of vaccine and, or antibiotics in these flocks may have precluded isolation of SE."

We agree with the commenter that positive environmental samples may call for additional samples from dead-germ eggs, meconium and other hatching debris, and newly-hatched chicks to ensure that a breeding flock is not contaminated with SE. However, we have determined that environmental testing of samples is a quicker and more reliable means of detecting SE-contaminated egg-type chicken breeding flocks than the less-sensitive dead-germ egg culturing. Although our experiences indicate that the present program as amended by this rule is a sufficient means of detecting SE, we will recommend that the General Conference Committee take action at their next scheduled meeting before the 1994 Biennial Conference if future experience shows a further change to be warranted. At this time, we are not making any changes to this rule as a result of this comment.

Other Changes From the Proposed Rule

We have made several changes to the proposed rule for clarification. These changes are discussed below.

Definition of Dealer

We proposed to amend § 145.1 by adding the following definition: "Dealer. An individual or business that deals in commerce in hatching eggs and newly-hatched poultry obtained from breeding flocks and hatcheries. This does not include an individual or business that deals in commerce in buying and selling poultry for slaughter only."

We proposed this change to eliminate confusion and misunderstandings among Plan participants. However, our proposed definition does not take into account the stage of development of poultry after newly-hatched poultry. It was our intent to include started poultry; therefore, we are adding the term "started poultry" to the definition of "dealer."

Use of Selenite-cystine

We proposed to amend § 147.11 by adding specific steps for conducting bacteriologic examination of environmental and other contaminated specimens. These provisions include the use of Tetrathionate Hajna selective broth, TT Mueller-Kauffmann, or selenite-cystine for culturing a representative sample at a temperature of 41–42 °C for 24 hours. The National Veterinary Services Laboratories (NVSL) have continued to work with these substances. The NVSL's recent experience indicates that the use of selenite-cystine for culturing samples preserved in double strength skim milk results in false negatives due to a precipitation reaction. Because of these recent findings, we have determined that the use of selenite-cystine may be contraindicated when double strength skim milk is used to moisten drag swabs, and we are adding a sentence to paragraph (b)(1) of § 147.11 to caution against their combined use.

Pooling of Composite Samples

We proposed to amend § 147.12 by allowing the pooling of composite environmental samples to not less than five samples at the laboratory. Our proposal does not address the need to maintain the proper ratio between the volume of material collected and the volume of the enrichment broth. It was our intent to allow this pooling as long as the ratio of the composite environmental samples to the enrichment broth remains approximately 1 to 10. The 1 to 10 material to broth ratio is standard

industry practice and is stipulated in similar provisions elsewhere in the regulations. Therefore, we are adding a phrase to paragraph (a)(2) of § 147.12 to provide clear and consistent guidance.

Miscellaneous

We have also made minor nonsubstantive editorial changes and corrections to the proposed rule.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the proposal, as changed within this document, as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

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

These changes are based on the recommendations of representatives of member State, hatcheries, dealers, flock owners and breeders who were participants at the Biennial Plan Conference. Since participation in the program is voluntary, individuals are likely to continue in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program.

Several of the procedures for improvement will help prevent disease. The procedure for segregating and testing of nonparticipating birds will prevent disease from spreading into the participating flock. The egg yolk monitoring test for *Mycoplasma gallisepticum* (MG), besides permitting effective identification of the disease, allows for a reduced sample (30 birds rather than 100 birds) that will result in a decreased number of tests. Together with other methods of environmental culturing, the procedure for drag-swab sampling of breeding flocks will likely strengthen the effectiveness of the disease identification procedure. Specifically, if breeders suspect the presence of disease, they will find the drag-swab sampling of the breeding flock environment more cost effective than the previous methods. Any increased cost of these detection and prevention programs will be minor compared to the losses that each producer could bear in case of undetected disease spread. Furthermore, the number of birds required to be tested under this rule is very small compared to the size of flocks within the industry.

According to APHIS and other Federal and State Government data, there are 327 participating hatcheries with a total hatching egg capacity of approximately 490 million egg- and meat-type chickens. Hatcheries with less than a 50,000 hatching egg capacity produce only 1/10th of a percent of this total, while hatcheries with over a 500,000 hatching egg capacity account for 97 percent. Hatcheries with a 50,000 to 499,999 bird capacity account for the remaining 2.7 percent. One amendment to the "U.S. Sanitation Monitored" programs requires necropsy or culturing of 60 birds in the case of one positive sample. The additional cost of implementing this change is very minor when considered in terms of risk to the industry. In addition, the costs of conducting these tests as well as the cost of specific antigens used are modest. For example, a typical cost for performing the Pullorum-Typhoid plate test is $15 for the first 100 birds or fraction thereof at one location, $0.08 for each bird between 100 and 500 at the same location, and $0.04 for each bird in excess of 500 at the same location on consecutive working days. The cost of MG plate test antigen is $0.09 per plate test, while the cost of Pullorum-Typhoid plate test antigen is $0.03 per plate test. Compared to the total size of the hatcheries and to the total losses that individual producers could incur due to disease incidence, the cost of testing a small fraction of birds is minor.

Although information is not available regarding the benefits of the program, implementation of these procedures will likely advance the goals of disease prevention, through early detection and control of the disease, which will result in reduced egg and chick mortality. According to the industry representativess[1] contacted, the long-run losses avoided will far outweigh the cost of implementing the testing procedures. Since the additional costs and benefits are minor, the agency concludes that this rule will be unlikely to have any significant economic impact on producers, consumers, or any other small entities.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this document have been submitted for approval of the Office of Management and Budget.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 145.1 is amended by adding a new definition, in alphabetical order, to read as follows:

§ 145.1 Definitions.

* * * * *

Dealer. An individual or business that deals in commerce in hatching eggs, newly-hatched poultry, and started poultry obtained from breeding flocks and hatcheries. This does not include an individual or business that deals in commerce in buying and selling poultry for slaughter only.

* * * * *

[1] A list of industry representatives from whom information was collected may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** within this document.

§ 145.3 [Amended]

3. In § 145.3(c), the introductory text is amended by removing "NPIP Form 3B" and adding "VS Form 9–2 (formerly NPIP Form 3B)" in its place.

4. Section 145.4(d) is revised to read as follows:

§ 145.4 General provisions for all participants.

* * * * *

(d) Except as provided by this paragraph, participants in the Plan may not buy or receive products for any purpose from nonparticipants unless they are part of an equivalent program, as determined by the Official State Agency. Participants in the Plan may buy or receive products from flocks that are neither participants nor part of an equivalent program, for use in breeding flocks or for experimental purposes, under the following conditions only:

(1) With the permission of the Official State Agency and the concurrence of the Service; and

(2) By segregation of all birds before introduction into the breeding flock. Upon reaching sexual maturity, the segregated birds must be tested and found negative for pullorum-typhoid. The Official State Agency may require a second test at its discretion.

* * * * *

§ 145.10 [Amended]

5. Section 145.10(i) is amended by removing "*Mycoplasma*" in the paragraph heading and adding "*U.S.M.*" in its place, and by adding "Figure 10" below the illustrative design.

§ 145.14 [Amended]

6. Section 145.14(a)(1) is amended by adding "or in literature provided by the producer" after the last word in the second sentence.

7. In § 145.14, footnote number "1" and the reference in paragraph (b)(1) are renumbered "3".

§ 145.22 [Amended]

8. Section 145.22(d) is amended by removing "as described in § 147.25" and adding "(see § 147.25 of this chapter)" in its place.

9. Section 145.23 is amended as follows:

a. Paragraph (d)(1)(ii)(A) is amended by removing all text following "(APPI)" and adding in its place "*Salmonella* Education/Reduction Program. The protein products must have a minimum moisture content of 14.5 percent and must have been heated throughout to a minimum temperature of 190 °F, or above, or to a minimum temperature of 165 °F. for at least 20 minutes, or to a minimum temperature of 184 °F. under 70 lbs. pressure during the manufacturing process."

b. Paragraph (d)(1)(v) is amended by adding "The authorized agent shall also collect samples every 30 days after the first sample has been collected." immediately after the first sentence.

c. Paragraph (d)(1)(vi) is amended by removing "-typhoid" in the first sentence.

d. Paragraph (d)(1)(vii) is amended by removing "as described in § 147.25(a) of this chapter" and adding "(see § 147.25 of this chapter)" in its place.

e. Paragraph (d)(1)(viii) is amended by removing "as prescribed in § 147.25 of this chapter" and adding "fumigated (see § 147.25 of this chapter)" in its place.

f. Paragraph (d)(1)(ix) is removed.

g. Paragraph (d)(2) is revised.

h. Paragraph (d)(3) is amended by revising "paragraphs (d)(1)(vi) and (d)(1)(ix)" to read "paragraph (d)(1)(vi)".

As revised § 145.23(d)(2) reads as follows:

§ 145.23 Terminology and classification: flocks and products.

* * * * *

(d) * * *

(2) A flock shall not be eligible for this classification if *Salmonella enteritidis* ser *enteritidis* (SE) is isolated from a specimen taken from a bird in the flock. Isolation of SE from an environmental or other specimen as described in section (d)(1)(v) of this paragraph will require bacteriological examination, as described in § 147.11 of this chapter, of a random sample of 60 live birds for SE in an authorized laboratory. If only one specimen is found positive for SE, the participant may request bacteriological examination of another 60-bird sample from the flock. If no SE is recovered from any of the specimens in the second sample, the flock will be eligible for the classification.

* * * * *

§ 145.32 [Amended]

10. Section 145.32(c) is amended by removing "as described in § 147.25" and adding "(see § 147.25 of this chapter)" in its place.

11. Section 145.33 is amended by revising paragraphs (d)(1)(iii), (d)(1)(iv), (d)(1)(v), and (d)(1)(vi), and by adding new paragraphs (d)(1)(vii) and (d)(1)(viii) and footnote [4a] to read as follows:

§ 145.33 Terminology and classification: flocks and products.

* * * * *

(d) *U.S. Sanitation Monitored.* * * *

(1) * * *

(iii) If pelletized feed contains animal protein, the protein products should be purchased from participants in the Animal Protein Products Industry (APPI) *Salmonella* Education/Reduction Program. The protein products must have a minimum moisture content of 14.5 percent and must have been heated throughout to a minimum temperature of 190 °F. or above, or to a minimum temperature of 165 °F. for at least 20 minutes, or to a minimum temperature of 184 °F. under 70 lbs. pressure during the manufacturing process;

(iv) If mash feed contains animal protein, the protein products should be purchased from participants in the Animal Protein Products Industry (APPI) *Salmonella* Education/Reduction Program;

(v) Feed shall be stored and transported in such a manner as to prevent possible contamination;

(vi) Chicks shall be hatched in a hatchery meeting the requirements of §§ 147.23 and 147.24(b) and sanitized or fumigated (see § 147.25 of this chapter);

(vii) An Authorized Agent shall take environmental samples, as described in § 147.12 of this chapter, from each flock at 4 months of age and every 90 days thereafter. An authorized laboratory for *Salmonella* shall examine the environmental samples bacteriologically;

(viii) Owners of flocks found infected with a paratyphoid *Salmonella* may vaccinate these flocks with an autogenous bacterin with a potentiating agent.[4a]

* * * * *

§ 145.42 [Amended]

12. Section 147.42(c) is amended by removing "as described in § 147.25" and adding "(see § 147.25 of this chapter)" in its place.

§ 145.43 [Amended]

13. Section 145.43, paragraph (f)(3)(i) is amended by removing all text following "must have been" and adding in its place "heated throughout to a minimum temperature of 190 °F. or above, or to a minimum temperature of 165 °F. for at least 20 minutes, or to a minimum temperature of 184 °F. under 70 lbs. pressure during the manufacturing process."

§ 145.52 [Amended]

14. Section 145.52(b) is amended by removing "as described in § 147.25" and adding "(see § 147.25 of this chapter)" in its place.

15. Section 145.53 is amended by revising paragraph (c)(1)(i), the text beginning "*Provided,*" to read as follows:

[4a] Preparation and use of this type of vaccine may be regulated by State statutes.

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(c) *U.S.M. Gallisepticum Clean.* (1)

* * *

(i) * * * *Provided,* That to retain this classification, a random sample of serum or egg yolk from at least 5 percent of the birds in the flock, but at least 30 birds, shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of less than 5 percent may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a total of at least 5 percent of the birds in the flock, but at least 30 birds, is tested within each 90-day period; or

* * * * *

16. Section 145.53(c)(1)(ii)(B) is amended by removing the "; or" at the end of the sentence and adding a "period" in its place.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

17. The authority citation for part 147 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

§ 147.5 [Amended]

18. In § 147.5(b), footnote number "1" is amended by removing "Building 265, Beltsville Agricultural Research Center-East, Beltsville, Maryland 20705" and adding "VS, APHIS, USDA, Federal Building, Hyattsville, Maryland 20782" in its place.

19. Section 147.5(e)(4) is amended by removing "two-fold" in the first sentence and adding "twofold" in its place.

20. Section 147.5(f)(3) is amended by removing "[±]" immediately after "or vice versa" and adding "[∓]" in its place.

§ 147.7 [Amended]

21. Section 147.7 is amended as follows:

a. The seventh sentence of the introductory paragraph is amended by removing "any" immediately before "/ or tube antigens." and adding "and" in its place.

b. In paragraph (d)(1)(ii), the table is amended by removing "12.0" for the listing of Sodium citrate under the Grams column and adding "8.0" in its place, and by revising the entry for "Dextrose".

c. In paragraph (d)(2), the introductory paragraph is amended by removing "PBC" and adding "PBS" in its place.

d. In paragraph (e), the introductory paragraph is amended by removing "(c)" immediately after "§ 147.7" and adding "(d)" in its place.

e. Paragraph (e)(1)(iv) is amended by removing "paragraph (d)(1)(iv)" and adding "paragraphs (d)(1) (ii) through (v)" in its place.

f. Paragraph (e)(3)(x)(G) is amended by removing "0.05" the second time it appears and adding "0.5" in its place.

As revised, the entry for "Dextrose" in the table in paragraph (d)(1)(ii) reads as follows:

	Grams
* * * * *	
Dextros	20.5
Distilled water to make 1,000 ml	

22. Section 147.11 is amended as follows:

a. The section heading is amended by removing the word "reactors".

b. Paragraph (a) is amended by adding a new paragraph heading, and by removing "gall-bladder" in the first sentence and adding "gallbladder" in its place, and by removing "paragraph (f)" in the last sentence and adding "paragraph (g)" in its place.

c. Paragraphs (b) through (i) are redesignated as paragraphs (c) through (j) and a new paragraph (b) is added.

d. Newly-redesignated paragraph (c)(2) is amended by removing "gall bladder" and adding "gallbladder" in its place.

e. Newly-redesignated paragraph (d) is amended by removing "paragraph (b)" in the first sentence and adding "paragraph (c)" in its place.

f. Newly-redesignated paragraph (g) is amended by removing "paragraph (e)" and adding "paragraph (f)" in its place.

g. In newly-redesignated paragraph (i), footnotes 2 and 3 are redesignated as footnotes 3 and 4. Newly-redesignated footnote 3 is amended by removing "Texas A&M University, College Station, TX 77843" and adding "University of Pennsylvania, New Bolton Center, Kennett Square, Pennsylvania 19348–1692" in its place.

The additions to § 147.11 read as follows:

§ 147.11 Laboratory procedure recommended for the bacteriological examination of Salmonella.

(a) *Bacteriological examination of Salmonella reactors and necropsy specimens.* * * *

(b) *Bacteriologic examination of environmental and other contaminated specimens.* (1) Culture a representative sample of the specimen in tetrathionate Hajna (TTH) selective broth (TT Mueller-Kauffmann or selenite-cystine is also acceptable) as a temperature of 41–42 °C for 24 hours. Note: Do not use selenite-cystine if double strength skim milk is used as a preservative for the sample.

(2) Inoculate an agar late of brilliant green novobiocin (BGN) and an agar plate of xylose-lysine-tergitol 4 (XLT4), incubate at 37 °C for 24 hours, and retain culture tubes at room temperature for 5–7 days for possible reculturing of the negative tubes using 0.25 ml in TTH.

(3) Inoculate *Salmonella* suspect colonies to slants of triple sugar-iron (TSI) and lysine-iron (LI) agar and incubate at 37 °C for 24 hours. Five colony picks per plate should be taken unless 50 percent or more of the plates have *Salmonella*-like colonies. In that case, the number of picks may be reduced to three per plate.

(4) Conduct serologic screening of cultures revealing typical reactions of *Salmonella* on TSI and LI agar slants using somatic O-group antisera agglutination or transfer for further identification to appropriate biochemical tests such as: Dextrose, lactose, sucrose, mannitol, maltose, dulcitol, malonate, gelatin, urea broth, citrate, lysine decarboxylase, ornithine decarboxylase, methyl red and Voges-Proskauer, KCN, salicin broths, indole, and hydrogen sulfide. Motility or non-motility is demonstrated by inoculating a suitable semisolid medium. The Analytical Profile Index API 20E)[2] for Enterobacteriacea (APE) system may also be used for further identification if desired.

(5) Serotype all *Salmonella* group D cultures at the National Veterinary Services Laboratory.

* * * * *

23. Section 147.12 is amended as follows:

a. In paragraph (a)(2), the words "or house" are added after the words "the pen" in the second sentence and the words "or houses" are added after the words "from pens" in the three instances where they appear in the seventh sentence and concluding text is added at the end of paragraph (a)(2).

b. A new paragraph (c) is added.

The additions to § 147.12 read as follows:

§ 147.12 Procedures for collecting environmental samples and cloacal swabs for bacteriological examination.

* * * * *

(a) * * *

(2) * * *

The composite samples above may be pooled to not less than five samples at

[2] We use trade names solely for the purpose of providing specific information. Mention of a trade name does not constitute a guarantee or warranty of the product by the U.S. Department of Agriculture or an endorsement over other products not mentioned.

the laboratory as long as the volume of material collected equals approximately 10 percent of the volume of the broth.

* * * * *

(c) *Drag-swabs.* Drag-swabs for bacteriological examination should involve the exposure of at least six unpooled pads per house to promote representative sampling and some element of quantification.

(1) *Drag-swab assembly.* Assemble drag-swab sampling sets from folded-once 3-by-3-inch sterile gauze pads secured with paper clips. Bend end wires of each paper clip slightly to catch into the swab fabric, thus securing the clips to the folded pads. Use two pads, assembled as described to make each drag-swab sampling set. Securely connect one pad through the free rounded end of the paper clip to a 2-ft (0.6 m) length of size 20 fibrous wrapping twine. Similarly connect the other pad to a 1-ft (0.3 m) length of twine. Then securely connect the free ends of both lengths of twine to a small loop tied at the end of a similar 5-ft length of twine. The resulting assembly resembles the letter Y with a 5-ft long vertical stem and two diagonal branches (one 1 ft long and the other 2 ft long), with a folded swab securely attached at the end of each branch. After assembly, place each two-pad drag-swab sampling set into a sterile bag.

(2) *Procedure for taking drag-swab.* (i) *Floor litter:* The Plan participants should collect two samples as follows: Drag four 3-by-3-inch sterile gauze pads premoistened with double strength skim milk[1] over the floor litter surface for 15 min minimally. Place the gauze pads used to collect the samples in 18-oz whirl-pack bags, two pads per bag with each bag containing 5 ml of double strength skim milk. This will maintain the moistness of the sample during transport. Mark the bags with the type of sample and the house identification.

(ii) *Nest-boxes.* The Plan participant should collect one nest-box sample by using two 3-by-3-inch sterile gauze pads premoistened with double strength skim milk. Wipe the two gauze pads used to collect the sample over assorted locations of about 10 percent of the total nesting area. Place the gauze pads used to collect the sample in an 18-oz whirl-pack bag containing 5 ml of double strength skim milk. Mark the bag with the type of sample and the house identification.

[1] Obtain procedure for preparing double strength skim milk from USDA–APHIS "Recommended Sample Collection Methods for Environmental Samples" available from the National Poultry Improvement Plan Staff, VS, APHIS, USDA, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782.

§ 147.14 [Amended]

24. In § 147.14, footnote number "1" is amended by removing "Texas A&M University, College Station, TX 77843, 1975" and adding "University of Pennsylvania, New Bolton Center, Kennett Square, Pennsylvania 19348–1692, 1980" in its place.

§ 147.15 [Amended]

25. Section 147.15(a) is amended by removing "(e)" in the fifth sentence and adding "(f)" in its place.

26. Section 147.15(b) is amended by removing "(f)" in the fifth sentence and adding "(g)" in its place.

27. Section 147.15(g) is amended by removing "18.0" after "Purified agar (g)--" and adding "12.0" in its place.

§ 147.16 [Amended]

28. Section 147.16(c) is amended by removing "(e)" in the second sentence and adding "(f)" in its place.

29. Section 147.22(c) is amended by revising the first sentence to read as follows:

§ 147.22 Hatching egg sanitation.

* * * * *

(c) The visibly clean eggs should be fumigated (see § 147.25 of this chapter) or sanitized as soon as possible after collection. * * *

* * * * *

§ 147.23 [Amended]

30. Section 147.23(d) is amended by removing "(d)" at the end of the paragraph.

§ 147.24 [Amended]

31. Section 147.24(b)(3) is amended by removing "as described in § 147.25(e)" and adding "(see § 147.25 of this chapter)" in its place.

32. Section 147.24(c) is amended by removing "according to the procedures described in § 147.25(b) (3), (4), and (5)" and adding "(see § 147.25 of this chapter)" in its place.

§ 147.25 [Amended]

33. Section 147.25 is amended by removing paragraphs (a) through (f).

Done in Washington, DC, this 1st day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–29461 Filed 12–3–92; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1240

[Docket No. 91N–0272]

Control of Communicable Diseases; Definition of Milk and Milk Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations established for the control of communicable disease by defining "milk" and "milk products" and by revising the regulations to clarify that the requirement for pasteurization applies to the dairy ingredients of certain dairy products, such as nonfat dry milk, cottage cheese, or butter. It was never FDA's intention to require that these finished products be subjected to the pasteurization process after their manufacture. The purpose of this technical amendment is to make explicit that which was implicit in the original rule.

EFFECTIVE DATE: December 4, 1992.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF–346), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 1992 (57 FR 1407), FDA proposed to amend the regulations that it promulgated under the Public Health Service Act (42 U.S.C. 264) for the control of communicable diseases by including definitions for "milk" and "milk products" among the general definitions in § 1240.3 (21 CFR 1240.3) and by clarifying when dairy ingredients must be pasteurized in accordance with § 1240.61 (21 CFR 1240.61).

Interested persons were given until March 16, 1992, to comment. FDA received three letters, each containing one or more comments, from Federal and State officials. The comments generally supported the proposal. Two comments address issues (lack of repasteurization requirements for in-process and blended dairy products and lack of standards of identity for goat milk products) that are outside the scope of the proposal and, therefore, will not be discussed here.

A summary of the remaining comments and the agency's responses follow:

1. One comment requested that FDA revise the definition in § 1240.3(j) for milk products to clarify that it includes milk from any milk producing animal.

The definition for milk products in § 1240.3(j) clearly provides for the commercial lacteal secretions from all healthy milk producing animals and cites the examples of cows, goats, sheep, and water buffalo. Accordingly, the suggested clarification is not necessary.

2. One comment noted that the economic impact section lacked a certification in accordance with 605(b) of the Regulatory Flexibility Act that no significant economic impact in a substantial number of small entities will derive from this action.

The agency acknowledges the oversight. In fact, the agency has determined that this action, because it simply makes explicit that which was implicit, will have no significant impact on a significant number of small entities. Therefore, FDA has included in the economic section a statement that: "In accordance with Section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action."

Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule of January 14, 1992 (56 FR 1408). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

Economic Impact and Regulatory Flexibility Act Compliance

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. In addition, the agency determined that this will not be a major rule under Executive Order 12291. FDA has not received any new information or comments that would alter either determination.

List of Subjects in 21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

Therefore, under the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1240 is amended as follows:

PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for 21 CFR part 1240 continues to read as follows:

Authority: Secs. 215, 311, 361, 368 of the Public Health Service Act (42 U.S.C. 216, 243, 264, 271).

2. Section 1240.3 is amended by redesignating paragraphs (i), (j), (k), (l), (m), (n), (o), and (p) as paragraphs (k), (l), (m), (n), (o), (p), (q), and (r) respectively, and by adding new paragraphs (i) and (j) to read as follows:

§ 1240.3 General definitions.

* * * * *

(i) *Milk.* Milk is the product defined in § 131.110 of this chapter.

(j) *Milk products.* Food products made exclusively or principally from the lacteal secretion obtained from one or more healthy milk-producing animals, e.g., cows, goats, sheep, and water buffalo, including, but not limited to, the following: lowfat milk, skim milk, cream, half and half, dry milk, nonfat dry milk, dry cream, condensed or concentrated milk products, cultured or acidified milk or milk products, kefir, eggnog, yogurt, butter, cheese (where not specifically exempted by regulation), whey, condensed or dry whey or whey products, ice cream, ice milk, other frozen dairy desserts and products obtained by modifying the chemical or physical characteristics of milk, cream, or whey by using enzymes, solvents, heat, pressure, cooling, vacuum, genetic engineering, fractionation, or other similar processes, and any such product made by the addition or subtraction of milkfat or the addition of safe and suitable optional ingredients for the protein, vitamin, or mineral fortification of the product.

* * * * *

3. Section 1240.61 is amended by revising paragraph (a) to read as follows:

§ 1240.61 Mandatory pasteurization for all milk and milk products in final package form intended for direct human consumption.

(a) No person shall cause to be delivered into interstate commerce or shall sell, otherwise distribute, or hold for sale or other distribution after shipment in interstate commerce any milk or milk product in final package form for direct human consumption unless the product has been pasteurized or is made from dairy ingredients (milk or milk products) that have all been pasteurized, except where alternative procedures to pasteurization are provided for by regulation, such as in part 133 of this chapter for curing of certain cheese varieties.

* * * * *

Dated: November 1, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-29423 Filed 12-3-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 257

RIN 1510-AA26

Payment on Account of Deposits in the Postal Savings System

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This document removes the regulation governing payment on account of deposits in the Postal Savings System. This regulation is obsolete. Applications for payment are precluded by the Postal Savings System Statute of Limitations Act of 1984 (Pub. L. 98-359). The effect of this notice is to remove an unnecessary regulation.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mia Abeya, 202-874-8740.

SUPPLEMENTARY INFORMATION: In 1966, the Postmaster General was directed to transfer unpaid Postal Savings System deposits to the Treasury Department. Public Law 89-377, 80 Stat. 92 (March 28, 1966). The Treasury Department promulgated this regulation in 1968 to instruct claimants on how to file a claim for Postal Savings System deposits. In 1984, the Postal Savings System Statute of Limitations Act, Public Law 98-359, 98 Stat. 402, established July 18, 1985, as the final date upon which a claim for a Postal Savings System deposit could be filed. Therefore, this regulation is no longer necessary.

On August 18, 1992, a notice of proposed rulemaking to remove this regulation was published (57 FR 37139). The notice invited comments for a 30 day period after publication. No comments were received.

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. The removal of this unused regulation will have little or no effect on the economy

or consumers. It is hereby certified that removal of this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The removal of this unused regulation will have little or no effect on small entities.

List of Subjects in 31 CFR Part 250

Claims, Investments.

For the reasons set out in the preamble, 31 CFR part 257 is removed as follows:

PART 257—[REMOVED]

Part 257 is removed.

Russell D. Morris,

Commissioner.

[FR Doc. 92–29408 Filed 12–3–92; 8:45 am]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT2–1–5447; FRL–4542–1]

Approval and Promulgation of State Implementation Plans; Montana; Wood-Waste Burner Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is disapproving revisions to Montana's State Implementation Plan (SIP), which were submitted by the Governor of Montana on June 14, 1989. The revisions were made to the Administrative Rules of Montana (ARM) 16.8.1407, to relax the particulate emission standard and include additional requirements for the operation of wood-waste burners. EPA is disapproving these revisions because they did not meet the Federal criteria for enforceability. In addition, the State did not adequately address the impact of the relaxation of the particulate emission standard on the State's PM–10 nonattainment and unclassifiable areas.

EPA proposed disapproval of these revisions on August 5, 1991 (56 FR 37195). In that proposal, EPA also inadvertently proposed to disapprove the visible emissions standard for aluminum plants in ARM 16.8.1503. However, further review of the Governor's submittal letter indicated that ARM 16.8.1503 was not formally submitted. Therefore, this notice withdraws the proposed disapproval of the visible emissions standard for aluminum plants in ARM 16.8.1503.

EFFECTIVE DATE: This rule will be effective on January 4, 1993.

ADDRESSES: Copies of the document relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2405

Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background of Revisions

On December 1, 1988, the State of Montana submitted its proposed regulation revisions to EPA for review. Revisions were proposed to the provisions for wood-waste burners in ARM 16.8.1407 to relax the particulate emission standard for wood-waste burners and to require combustion at a certain temperature to insure cleaner burning. The proposed amendments were based on rulemaking petitions from the Montana Wood Products Association (WPA), which asserted that the existing grain loading standard was unreasonable because it did not reflect continual operation of wood-waste burners. In addition, the WPA contended that the proposed rule revisions would encourage methods of wood-waste disposal other than teepee burners.

Revisions were also proposed for ARM 16.8.1501 and 16.8.1503 to clarify the application of the standard for visible emissions from potrooms within aluminum plants. This proposed amendment was based on a petition for a clarification from CFAC.

On December 23, 1988, EPA submitted its comments to the State on the proposed revisions. EPA was concerned that the relaxation of the emission standard for wood-waste burners might adversely affect the State's PM–10 Group I and II areas.[1] EPA also expressed concerns with the enforceability of the visible emissions standard in ARM 16.8.1503 at CFAC.

On January 30, 1989, the State adopted the proposed revisions to ARM 16.8.1407, 16.8.1501, and 16.8.1503, with some minor modifications to address comments received.

II. Evaluation of Submittal

The Governor subsequently submitted the revisions to the wood-waste burner regulations to EPA for SIP approval on June 14, 1989. Although the submittal contained all of the relevant documentation showing that the revisions to the aluminum plant regulations in ARM 16.8.1501 and 16.8.1503 had been adopted by the State, the Governor's letter indicated that the revisions to the aluminum plant regulations would be submitted separately, following resolution of the enforceability issue. The revisions to ARM 16.8.1407 consisted of the following: (1) A statement encouraging the complete utilization of wood-waste residue; (2) a relaxation of the particulate emission standard for wood-waste burners from 0.1 grains per dry standard cubic foot (grs/dscf) at 12% carbon dioxide (CO_2) to 0.25 grs/dscf at 12% CO_2; (3) a new requirement to maintain a minimum operating temperature for the wood-waste burners (700 °F); and (4) a requirement that existing wood-waste burners comply with the new regulation by June 30, 1990.

On September 18, 1989, EPA notified the State that the SIP submittal was incomplete both on administrative and technical grounds, and additional information was requested. Specifically, the administrative issues involved the absence of a copy of the Montana Administrative Register in which the revisions appeared, and assurance that all public comments regarding the revisions had been received and addressed (see 40 CFR part 51, appendix V). The technical issues included EPA's concern about the enforceability of the new particulate matter emission standard for existing wood-waste burners and the impact of the relaxation of the standard on the State's PM–10 Group I and Group II areas.

[1] On July 1, 1987, EPA revised the NAAQS for particulate matter, replacing total suspended particulates (TSP) as the indicator for particulate matter with a new indicator that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (called "PM–10"). See generally 52 FR 24634. At the same time EPA adopted a PM–10 SIP development policy that involved dividing all areas of the country into categories based on their probability of violating the PM–10 NAAQS. See 52 FR 24679–82. EPA placed those areas having at least a 95 percent probability of not attaining the PM–10 NAAQS in "Group I," those areas having between a 20 and 95 percent probability of not attaining the PM–10 NAAQS in "Group II," and those areas having less than a 20 percent probability of violating the PM–10 NAAQS in "Group III." At the time EPA notified the State of Montana that the SIP revision addressed in today's action was incomplete, seven areas in Montana were Group I for PM–10 and six areas were Group II. See 52 FR 29383, 29385 (August 7, 1987).

The State responded to the September 18, 1989 completeness determination in correspondence dated November 17, 1989. In that response, information was supplied which satisfied the administrative issues.

In response to EPA's technical concern about the effect of the relaxation of the particulate emission standard for wood-waste burners on the State's PM–10 Group I and II areas, the State indicated that its new source review (NSR) permitting process would ensure that no Group I or II areas would be adversely affected, by requiring either best available control technology (BACT), or lowest achievable emission rate (LAER) and emission offsets, for any new wood-waste burner. In addition, the State contended that, in order to meet the new particulate emission standard, existing conical burners would have to be replaced with silo burners, which would result in overall emissions reductions because of the increased combustion efficiency of the silo burners. However, the revised State regulation did not specifically require the conversion of existing wood-waste burners to silo-type burners. Also, since the State estimated the particulate emission rate from a typical conical burner to be 0.2288 grs/dscf, which is less than the new standard, the relaxed emission standard did not provide much incentive for existing sources to convert to silo burners.

The State responded to EPA's concerns about the enforceability of the particulate emission standard by explaining the two measures which will be used at wood-waste burners to determine compliance: Opacity and combustion temperature. However, there is no direct relationship between opacity and mass particulate emissions and, although the State's "experience" shows that "a burner operating in compliance with the 20% opacity standard is well within the 0.25 grs/dscf," the State did not provide any data to support this observation. Further, the State's position was inconsistent with EPA policy issued in a June 24, 1991 memorandum from William Rosenberg, Assistant Administrator of the Office of Air and Radiation, to the Regional Administrators, which states that "compliance with a mass emission standard does not exempt a source from the visible emissions standard established in the SIP for that source."

After reviewing the State's response to EPA's concerns, EPA determined that sufficient information was available to make a decision on the status of the SIP revision. In correspondence dated June 7, 1990, the State was notified that EPA would propose to disapprove the SIP revisions. In that letter, EPA also notified the State that the revisions to the aluminum plant regulations would be disapproved.

On August 5, 1991, EPA subsequently proposed disapproval of the revisions to the wood-waste burner regulations (56 FR 37195). In that notice, EPA also inadvertently disapproved the revisions to the aluminum plant regulations in ARM 16.8.1503.

On November 15, 1990, amendments to the Clean Air Act (Act) were signed into law. The 1990 Amendments made significant changes to the air quality planning requirements for PM–10. Specifically, on the date of enactment of the 1990 Amendments, PM–10 areas meeting the qualifications of sections 107(d)(B) (i)–(ii) of the amended Act were designated nonattainment by operation of law. These areas included all former Group I areas identified in 52 FR 29383 and clarified in 55 FR 45799 (October 31, 1991), and any other areas violating the PM–10 NAAQS prior to January 1, 1989. All other areas were designated unclassifiable for PM–10. EPA formally codified the nonattainment designations for PM–10 on November 6, 1991 (56 FR 56694). There are currently eight areas in the State of Montana designated nonattainment for PM–10.

As explained further below, sections 110(1) and 193 of the amended Act contain very specific restrictions on modifications or revisions to implementation plans that may interfere with requirements of the Act or result in relaxation of control requirements in nonattainment areas. The State's submittal does not adequately address these restrictions.

Section 110(1) of the amended Act provides that EPA shall not approve a SIP revision if the revision interferes with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

The State of Montana has not adequately demonstrated that the SIP revision will not have an adverse impact on maintenance of the PM–10 NAAQS in those areas of the State designated as unclassifiable for PM–10, nor has the State shown no adverse impact on reasonable further progress towards timely attainment of the PM–10 NAAQS in those areas designated nonattainment for PM–10.

Section 193 of the amended Act prohibits the modification in any manner of any control requirement in effect, or required to be adopted by a plan in effect, before the date of enactment of the 1990 Amendments in any area which is nonattainment for any pollutant, unless the modification insures equivalent or greater emissions reductions of such air pollutant. The State has not adequately demonstrated that the modification of the wood-waste burner emission standard will insure equivalent or greater PM–10 emissions reductions in the State's PM–10 nonattainment areas.

III. Discussion of Public Comments

On September 4, 1991, written comments were received pursuant to the proposed disapproval of ARM 16.8.1503 from the law firm of Browning, Kaleczyc, Berry & Hoven, P.C. on behalf of CFAC. Because EPA has determined that it was not the Governor's intent to submit ARM 16.8.1503 for SIP approval, EPA is not addressing these comments. The State is currently reviewing alternatives for determining compliance with the visible emissions standard in ARM 16.8.1503, and will be submitting the revised regulation at a later date. EPA will propose action on any such State submittal, as appropriate. At that time, EPA will consider the comments received from CFAC and any additional comments submitted by CFAC or other persons.

EPA is proceeding with the final disapproval of the revisions to ARM 16.8.1407. EPA has determined that the State's submittal did not meet the criteria in sections 110(a)(2)(A) and 110(a)(2)(C) of the amended Act, which require enforceable emission limitations and a program to ensure compliance with the emission limitations. In addition, the impact of the relaxation of the particulate emission standard for wood-waste burners on the State's PM–10 nonattainment and unclassifiable areas was not adequately addressed, as required under sections 110(1) and 193 of the amended Act.

Final Action

In this action, EPA is disapproving revisions to the Montana SIP which were submitted by the Governor on June 14, 1989. EPA's disapproval pertains to the revisions to the particulate emission limitation and provisions for the operation of wood-waste burners in ARM 16.8.1407.

EPA is also clarifying that ARM 16.8.1503 was inadvertently noticed for disapproval. Although the State's submittal contained all of the relevant documentation that the revisions to the aluminum plant regulations in ARM 16.8.1503 were adopted by the State, the Governor's letter indicated that the revisions to the aluminum plant regulations would be submitted separately. EPA misinterpreted the submittal and incorrectly noticed ARM

16.8.1503 for disapproval. Therefore, this notice repeals the proposed disapproval of ARM 16.8.1503.

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.

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

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 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 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 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, Carbon monoxide, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: August 5, 1992

Kerrigan Clough,

Acting Regional Administrator.

40 CFR part 52, Subpart BB is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1384 is revised to read as follows:

§ 52.1384 Emission control regulations.

The provisions and emission standards for wood-waste burners in Administrative Rules of Montana (ARM) 16.8.1407, which were submitted by the Governor on June 14, 1989, are disapproved because: They do not satisfy the enforcement imperatives of section 110 of the Clean Air Act (Act); they relax the control of emissions without any accompanying analysis demonstrating that these relaxations will not interfere with the attainment and maintenance of the PM–10 National Ambient Air Quality Standards, as required by section 110(1) of the Act; and they modify emission control requirements without any demonstration that equivalent or greater emissions reductions will be obtained in PM–10 nonattainment areas, as required by section 193 of the Act.

[FR Doc. 92–29450 Filed 12–3–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 70

[FRL–4532–6]

Operating Permit Program; OMB Approval of Information Requirements; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: In the preamble to the Operating Permit Program, 40 CFR part 70, July 21, 1992, 57 FR 32250, the EPA noted that the information collection requirements were under review at the Office of Management and Budget (OMB). In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), those provisions are not effective until OMB approval has been obtained. The Agency is announcing the approval of these information requirements by the OMB. In conformance with this approval, the Agency will include the OMB control number in the body of the rule.

EFFECTIVE DATE: July 28, 1992.

FOR FURTHER INFORMATION CONTACT: Kirt Cox (telephone 919/541–5399).

List of Subjects in 40 CFR Part 70

Administrative practices and procedure, Air pollution control, Intergovernmental relations.

Dated: November 3, 1992

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, part 70 of title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et. seq.

2. Section 70.1 is amended by adding paragraph (f) to read as follows:

§ 70.1 Program overview.

* * * * *

(f) The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 2060–0243.

[FR Doc. 92–27290 Filed 12–3–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–163; RM–8037]

Radio Broadcasting Services; Clinton, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237C3 for Channel 237A at Clinton, Missouri, and modifies the license for Station KDKD(FM), in response to a proposal filed by Clinton Radio Co. See 57 FR 36971, August 17, 1992. The coordinates for Channel 237C3 are 38–24–32 and 93–46–50. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–163, adopted October 19, 1992, and released