Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statements of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Removal of the texts of recommendations and statements of the Administrative Conference.

SUMMARY: It has been the policy of the Administrative Conference of the United States to publish in the Code of Federal Regulations complete lists of its formal recommendations and statements, together with the texts of those deemed to be of continuing interest. However, for budgetary reasons the Administrative Conference is removing the texts of all recommendations and statements from parts 305 and 310 of the Code of Federal Regulations for Fiscal Year 1994. This is purely a cost-cutting measure that does not reflect any change in the Conference's views set forth in the recommendations and statements. If funding is available in future years, the Conference may again include the texts of recommendations and statements in the Code of Federal Regulations for the convenience of the public.

DATES: The removal of the texts of recommendations and statements from the Code of Federal Regulations is to be effective October 21, 1993.

FOR FURTHER INFORMATION: Renee Barnow, Information Officer (202–254–7020).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States is a federal agency whose mission includes making recommendations and other statements to improve the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs (5 U.S.C. 594(1)). Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register** upon adoption. In addition, it has been the policy of the Conference to publish the complete lists of recommendations and statements, together with the texts of those deemed to be of continuing interest, in the Code of Federal Regulations (1 CFR parts 305 and 310).

Although the Administrative Conference is removing the texts of all recommendations and statements from the Code of Federal Regulations for FY 1994, it will continue to publish the table of contents for all past Administrative Conference recommendations and statements. Copies of all recommendations and statements, and the research reports on which they are based, will continue to be available from the Office of the Chairman of the Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone: (202) 254–7020. Subscribers to the Code of Federal Regulations are advised to retain the 1993 edition of title 1 if they wish to maintain published copies of past Conference recommendations and statements.

For the reasons set forth in the preamble, 1 CFR Ch. III is amended as follows:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 591—596.

2. Part 305 is amended by removing the titles and texts (but not the table of contents) of all sections, and any notes following those sections, and by revising the note to part 305 to read as follows:

Note: Copies of the recommendations listed in this part may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone (202) 254–7020.

PART 310—MISCELLANEOUS STATEMENTS

1. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 591–596.

2. Part 310 is amended by removing the titles and texts (but not the table of contents) of all sections, and any notes following those sections, and by adding the following note to part 310:

Note: Copies of the statements listed in this part may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone (202) 254–7020.

Dated: October 14, 1993.

William J. Olmstead,

Executive Director.

[FR Doc. 93–25820 Filed 10–20–93; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 24, 111, 122, 123, 145 and 178

[T.D. 93–85]

RIN 1515–AA50

User Fees for Customs Services

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth final amendments to the Customs Regulations regarding fees for certain Customs services provided for in section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. The fees, subject to certain limitations, involve arrival fees applicable to commercial vessels, commercial trucks, railroad cars, private vessels and private aircraft, passengers aboard commercial vessels and commercial aircraft, and barges and other bulk carriers from Canada or Mexico, a fee for each item of dutiable mail for which a Customs officer prepares documentation, and an annual fee for each Customs broker permit. This document replaces interim regulations to reflect current statutory requirements and provide additional clarification regarding circumstances under which the fees must be paid.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT:
Operational Aspects: David Kahne, Office of Inspection and Control (202–927–0159).

Accounting Aspects: John Accetturo, National Finance Center (317–298–1308).

Audit Aspects: Cynthia Covell, Office of Regulatory Audit (202–927–1100).

SUPPLEMENTARY INFORMATION:

Background

Prior to enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 as discussed below, the Customs Service had only limited statutory authority for the collection of fees or other charges for services rendered to the public. Such fees or charges applied only in specific contexts, including the following: (1) In connection with pre-clearance of passengers and private aircraft when such services were of special benefit to particular persons; (2) in connection with the operation of Customs bonded warehouses and foreign trade zones; (3) for the entry and clearance of vessels, and the entry and delivery of merchandise carried by vessel, outside the limits of a port of entry; (4) for specific services rendered to vessels under the Customs and navigation laws (navigation fees); (5) for overtime services rendered to carriers during non-business hours; and (6) in connection with services provided at certain small user fee airports. No general legal authority existed for the collection of fees or charges for the broad range of services rendered by Customs in connection with commercial operations. These were borne by the taxpayers rather than the parties receiving the services.

Consolidated Omnibus Budget Reconciliation Act of 1985

In section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (the COBRA, Public Law 99–272), Congress vested in the Secretary of the Treasury explicit authority to collect fees for providing Customs services in connection with the arrival of certain vessels, vehicles, railroad cars, aircraft, passengers and dutiable mail, and in connection with Customs broker permits. In addition, section 8101 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, amended section 13031 of the COBRA to provide for the assessment of a processing fee on entries of imported merchandise; this aspect of section 13031 of the COBRA is not the subject of this document.

The fees set forth in section 13031 of the COBRA were codified at 19 U.S.C. 58c and, as originally enacted, consisted of the following:

1. For the arrival of a commercial vessel of 100 net tons or more, $397 (the COBRA also defined "vessel" to "not include any ferry");
2. For the arrival of a commercial truck, $5 (the COBRA also provided in this regard that no such fee may be charged for the arrival of a commercial truck during any calendar year after a total of $100 in fees has been paid for the provision of Customs services for all arrivals of that truck during that calendar year);
3. For the arrival of each passenger or freight railroad car, $5 (the COBRA also provided in this regard that no such fee may be charged (a) for certain in-transit railroad cars which are part of a train that originates and terminates in the same country, and (b) as in the case of commercial trucks, once $100 in fees have been paid on the railroad car in the same calendar year);
4. For all arrivals made during a calendar year by a private vessel or private aircraft, $25;
5. For the arrival of each passenger aboard a commercial vessel or commercial aircraft, $5 (the COBRA also provided in this regard that no such fee may be charged in connection with the arrival of any passenger whose journey originated in Canada, in Mexico, in a territory or possession of the United States, or in any adjacent island within the meaning of 8 U.S.C. 1101(b)(5));
6. For each item of dutiable mail for which a document is prepared by a Customs officer, $5; and
7. For each Customs broker permit issued under 19 U.S.C. 1641(c) and held by an individual, partnership, association, or corporate Customs broker, $125 per year.

Interim Regulations

On June 11, 1986, Customs published as T.D. 86–109, 51 FR 21152, interim amendments to the Customs Regulations to implement the fee provisions in section 13031 of the COBRA. The fees described in items 1. through 6. above were covered by new 24.22 (19 CFR 24.22), and the substance of the Customs broker permit fee was covered by new section 111.96(c) (19 CFR 111.96(c)). In addition, appropriate cross-references to the new § 24.22 provisions were inserted (1) in part 4 (19 CFR part 4) which concerns vessels in foreign and domestic trades, (2) in part 6 (19 CFR part 6) which concerns air commerce regulations and which was subsequently revised and redesignated as part 122 (19 CFR part 122), (3) in part 123 (19 CFR part 123) which concerns Customs relations with Canada and Mexico, and (4) in part 145 (19 CFR part 145) which concerns mail importations. Although these regulatory changes were set forth as interim regulations and went into effect on July 7, 1986, in order to coincide with the effective date of the statutory provisions, the notice invited public comments on the interim regulations which would be considered before adoption of a final rule. The public comment period closed on August 11, 1986.

Tax Reform Act of 1986

Subsequent to the publication of the interim regulations, section 13031 of the COBRA was extensively amended by section 1893 of the Tax Reform Act of 1986 (the Tax Act, Public Law 99–514). The Tax Act amendments having a substantive effect on the interim regulatory provisions were as follows:

1. A new $100 fee was added for the arrival of a barge or other bulk carrier from Canada or Mexico. In addition, for purposes of this fee the Tax Act defined "barge or other bulk carrier" as "any vessel which (A) is not self-propelled, or (B) transports fungible goods that are not packaged in any form."
2. The fee provision for arriving railroad cars was amended to refer to each railroad car "carrying passengers or commercial freight" and the fee was increased to $7.50. Thus, the fee, as increased, would no longer apply to empty railroad cars.
3. With regard to the fee applicable to the arrival of each passenger aboard a commercial vessel or commercial aircraft, a new limitation was added which provided that no such arrival fee may be charged for any passenger "(A) who is in transit to a destination outside the customs territory of the United States, and (B) for whom customs inspectional services are not provided."
4. With regard to the $397 fee applicable to the arrival of a commercial vessel of 100 net tons or more, new limitations were added which provided that no such fee may be charged for the arrival of (a) a vessel during a calendar year after a total of $5,955 in fees (charged either as the $397 fee or as the $100 fee applicable to a barge or other bulk carrier from Canada or Mexico) has been paid for the provision of Customs services for all arrivals of that vessel during that calendar year, (b) any vessel which, at the time of arrival, is being used solely as a tugboat, or (c) any barge or other bulk carrier from Canada or Mexico.
5. With regard to barges and other bulk carriers, a limitation was added which provided that no fee for the arrival of a barge or other bulk carrier

from Canada or Mexico may be charged during a calendar year after a total of $1,500 in fees, charged either under the $397 fee provision applicable to a commercial vessel of 100 net tons or more (for example, when the barge or other bulk carrier did not arrive from Canada or Mexico) or under the $100 fee provision applicable to a barge or other bulk carrier from Canada or Mexico, has been paid for the provision of Customs services for all arrivals of that barge or other bulk carrier during that calendar year.

6. With regard to the fees applicable to commercial trucks, railroad cars, and private vessels, a limitation was added which provided that no such fees may be charged if the commercial truck, railroad car, or private vessel is being transported, at the time of arrival, by any vessel that is not a ferry.

7. The exemption from the arriving passenger fee was expanded to also cover passengers whose journey originated in the United States and was limited to Canada, Mexico, territories and possessions of the United States, and the identified adjacent islands.

8. An exemption from the arrival fees was added to cover "the arrival of any ferry", and the definition of "vessel" (which specifically excluded a ferry) was replaced by a definition of "ferry", *i.e.*, "any vessel which is being used (A) to provide transportation only between places that are no more than 300 miles apart, and (B) to transport only (i) passengers, or (ii) vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods."

9. As regards the annual Customs broker permit fee, provisions were added stating that notice of the date on which payment of the fee is due shall be published in the **Federal Register** at least 60 days before the due date, that a permit may be revoked or suspended for nonpayment of the fee only if such required notice was published, and that a Customs broker license may not be revoked or suspended merely for nonpayment of the permit fee. In addition, the Tax Act provided that the permit fee payable for calendar year 1986 would be $62.50 and that any amount paid in excess of that amount would be refunded by Customs or, at the option of the broker, credited toward the 1987 fee.

Customs and Trade Act of 1990

Section 111 of the Customs and Trade Act of 1990 (the 1990 Act, Pub. L. 101–382) amended the COBRA in two respects which bear on the interim regulatory provisions. The first amendment modified the in-transit railroad car exemption so that its application would be based on the movement (journey) of the car rather than the train (thus, the car, rather than the arriving train of which it is a part, must originate and terminate in the same country in order for the exemption to apply). The second amendment involved the addition of a new paragraph providing that any fee under the COBRA shall be treated as a Customs duty (1) for purposes of applying the administrative and enforcement provisions of the Customs laws and regulations (including for purposes of computing penalties) except in the case of drawback or where otherwise provided in regulations, and (2) for purposes of determining the jurisdiction of any U.S. court or agency.

Additional Administrative Action

Pending analysis of the public comments received on the interim regulations, resolution of certain procedural issues, and anticipated further statutory changes, all of which necessitated a delay in adoption of the interim regulations as a final rule, and except for the changes to the annual broker permit fee provision, Customs implemented the Tax Act changes discussed above by means of directives or other instructions issued to Customs field offices and, through those offices, to the general public. The Tax Act change to the annual broker permit fee provision regarding 60-day advance publication of the due date for the fee was implemented in the Customs Regulations as a final rule on October 31, 1986, in T.D. 86–195, 51 FR 39746, which involved in this regard a revision of the text of section 111.96(c) as originally adopted on an interim basis. In addition, the two above changes to the COBRA effected by the 1990 Act were implemented on an interim basis (by revising § 24.22(d)(5) and by adding a new § 24.22(j)) on April 15, 1991, as part of T.D. 91–33, 56 FR 15036, the main purpose of which was to set forth new interim regulations implementing various changes that the 1990 Act made to the COBRA merchandise processing fee provisions; the interim regulatory provisions set forth in T.D. 91–33 were adopted as a final rule without change on December 5, 1991, as T.D. 91–95, 56 FR 63648.

Analysis of Comments

Comments were received from Members of Congress, Federal and state agencies, municipalities, trade associations, various airline, rail, vessel and commercial trucking concerns, customs brokers, private fliers and boaters, and other members of the general traveling and importing public.

Commercial Vessels

Comment: Numerous commenters stated that the $397 fee set forth in interim § 24.22(b) for the arrival of a commercial vessel of 100 net tons or more is burdensome, that the fee should not be assessed at other than the first port of arrival in the United States, and that a cap should be placed on the fee as it was for other fees. Some of these commenters further suggested that Great Lakes vessels should be exempted from the fee.

Customs response: The concerns reflected in these comments involve legislative policy issues that Customs cannot address in the regulatory texts where the statutory provisions do not provide a sufficient legal basis to support such regulatory changes. However, to the extent that some of these concerns were subsequently addressed by Congress in the Tax Act amendments discussed above, conforming changes to the interim regulations are appropriate.

The Tax Act provision establishing a per vessel limit of $5,955 in fees for arrivals during a calendar year addresses the comment regarding the need for a fee cap, and § 24.22(b) has been modified as set forth below to reflect this statutory change. However, in order to ensure both collection of required fees and proper application of the calendar year limit, and in recognition of the fact that records of prior individual arrival fee payments are not maintained by Customs so as to be available for verification at each port of entry, the modified regulatory text makes application of the annual statutory limit contingent on submission to Customs of adequate proof of payment to that limit. Such proof of payment of individual arrival fees normally would consist of Customs-certified copies of receipts (Customs Form 368 or 368A) which may be obtained at the time of payment of the individual arrival fee.

In regard to the comment that the fee should be assessed only at the first port of arrival rather than "at each port of arrival" as provided in the interim regulations, the Conference Report relating to the Tax Act, after noting that the fee cap was computed on the basis of fifteen arrivals per year, specifically reflected the conferees' intent that the commercial vessel fee "be applicable to each arrival at a U.S. port regardless of whether these arrivals occur as a series of calls at U.S. ports on the same trip or on several trips." Thus, the interim regulations in this regard are consistent with the statutory language and the legislative history relating thereto. The sentence in interim § 24.22(b) which gave rise to this comment has been redrafted as set forth below to more clearly reflect the Congressional intent.

Although the COBRA, as amended, provides no specific exemption for Great Lakes vessels, the Tax Act addition of the $100 fee and $1,500 annual cap for arrivals of barges or other bulk carriers from Canada has the effect of substantially reducing the fees payable by such bulk carriers over 100 net tons which operate on the Great Lakes.

A new paragraph (2) has been added to § 24.22(b) to set forth the terms of the barge or other bulk carrier fee. In order to ensure that this bulk carrier fee will be applied only in the intended context as reflected in the Tax Act Conference Report (*i.e.*, where such bulk carriers compete with trucks and rail cars arriving by land from Canada or Mexico which are subject to much lower arrival fees), this new paragraph covers only bulk carriers arriving from Canada or Mexico either in ballast (*i.e.*, empty) or transporting only cargo laden in Canada or Mexico; thus, the $397 fee, rather than the lower bulk carrier fee, would apply to a bulk carrier of 100 net tons or more which arrives transporting any cargo laden in a country other than Canada or Mexico even if the voyage of the carrier includes a stop in Canada or Mexico immediately prior to its arrival in the United States. In addition, consistent with the treatment of the other commercial vessels as discussed above, this new paragraph both provides that the fee applies to each arrival even if a single voyage involves more than one arrival and makes application of the annual fee limit contingent on submission of proof of prior payments during the year.

It should also be noted that the two new fee limitation provisions in paragraph (b) have been drafted in such a way as to give effect to the intent reflected in the statute and the Tax Act Conference Report that, where a vessel is used in the same year both as a bulk carrier to which the $100 fee and $1,500 cap apply and as a vessel to which the $397 fee and $5,955 cap apply, (1) once a total of $5,955 in fees has been paid on the vessel under one or both of the fee categories, no further fee (or portion thereof) would have to be paid during that year when the vessel arrives under circumstances that would normally trigger the $397 fee and (2) once a total of $1,500 in fees has been paid on the vessel under one or both of the fee categories, no further fee (or portion thereof) would have to be paid during that year when the vessel arrives under circumstances that would normally trigger the $100 fee.

Comment: Several commenters stated that the term "ferry" should be defined broadly for purposes of the statutory exemption from the $397 commercial vessel fee.

Customs response: Section 24.22(a) as set forth below has been modified to incorporate the definition of a ferry as added by the Tax Act, and Customs has no authority to expand upon this specific statutory definition.

Even though the Tax Act amendments removed the statutory definition of "vessel" as not including any ferry (because the addition of the specific fee exemption for ferries accomplished the same purpose), the broader definition of "vessel" in § 24.22(a) has been retained because it serves to clarify the basic scope of the commercial vessel fees. However, this definition has been amended as set forth below by deleting the words "or any ferry" at the end (to avoid an inconsistency with the definition of a ferry which uses the word "vessel"), and a separate exemption provision covering ferries has been added to § 24.22(b) as set forth below.

Given the specific statutory (and corresponding regulatory) definition of "ferry", which involves the way in which the vessel is being used at the time of its arrival, Customs believes that standard statutory application requires that precedence be given to this definition in determining what arrival fee or fees should be collected. Thus, if a vessel at the time of arrival is being used in a manner consistent with the definition of a ferry, it will be treated as a ferry for purposes of the COBRA fees, with the result that (1) no arrival fee will be collected on the ferry itself and (2) arrival fees will be payable for each passenger, commercial truck and loaded or partially loaded railroad car being transported by the ferry.

Comment: Several commenters suggested that tugs and barges should be treated as one unit for purposes of assessing the commercial vessel fee.

Customs response: This comment is addressed by the Tax Act provision which added an exemption from the fee for any vessel which, at the time of arrival, is being used solely as a tugboat, and § 24.22(b) as set forth below has been amended to reflect this statutory change. It should be noted that, as stated in the Tax Act Conference Report, this exemption applies only when the tugboat is actually propelling a barge or accompanying a vessel (because the barge or vessel would be subject to an arrival fee) and thus does not apply to a tugboat which arrives alone.

Comment: One commenter suggested that the user fees assessed at ports other than the first port of arrival be secured by a bond.

Customs response: The suggested procedure would only serve to delay collection of the fee. Moreover, the total fees due for additional port arrivals during the same voyage would have to be collected prior to departure of the vessel for a foreign port, and such a collection procedure would impose an unacceptable recordkeeping burden on Customs. Accordingly, Customs does not believe that this suggestion should be adopted.

Comment: One commenter suggested that the fee should not be charged on vessels merely taking on bunkers.

Customs response: Vessels merely taking on bunkers are not required to enter under 19 U.S.C. 1441 and 19 CFR 4.3 and thus under the interim regulations are not subject to the fee. Accordingly, no change to the interim regulations is required in this regard.

Comment: A commenter suggested that user fees should not be collected on a vessel owned by or under the complete control of the United States.

Customs response: Customs agrees. Given the specific application of the fee to a "commercial vessel" (*i.e.*, a vessel carrying passengers or goods in trade), a vessel owned or operated by or on behalf of the United States Government or a foreign government normally would not be subject to the fee. In order to clarify this point and also ensure consistency with the regulations covering vessel reporting and entry requirements, § 24.22(b) as set forth below has been modified by adding an exemption which refers to any government vessel for which no report of arrival or entry is required under § 4.5 of the Customs Regulations (19 CFR 4.5).

Commercial Trucks

Comment: A number of commenters expressed general opposition to the commercial truck processing fee based on the argument that Customs services are required by law and must be used. These commenters also complained of the resulting administrative burden placed on industries and carriers.

Customs response: These comments are directed to legislative policy issues reflected in the statute itself. Accordingly, in the absence of a change to the statutory fee structure, Customs has no legal authority to modify the implementing regulations in response to these comments.

Comment: Some commenters suggested that the 1986 $100 yearly permit fee for commercial trucks be prorated due to its mid-year implementation, similar to the administrative decision set forth in the interim regulations notice prorating the $25 annual fee for private aircraft and vessels to $12.50 for 1986.

Customs response: Customs determined that it would not be appropriate to prorate the $100 commercial truck prepaid permit fee for 1986 for the following reason: whereas the fee applicable to private aircraft and vessels is an annual or "time period" fee, the basic commercial truck processing fee is set at $5 for each truck entry and thus is a "transaction" fee. Thus, proration due to mid-year implementation was considered inapposite in the context of the $100 commercial truck prepaid permit fee, the function of which is only to provide the option of making a one-time payment reflecting the statutory limit on the total amount of $5 fees payable for one truck during a single year.

Comment: Several commenters suggested allowing the accumulation of individual $5 payments toward the issuance of a $100 permit.

Customs response: In order to implement the $100 annual fee cap under the COBRA with the least possible administrative burden on Customs, the interim regulations (1) included a provision allowing prepayment of the $100 prior to the first clearance through Customs in any calendar year and (2) provided that no credit toward the $100 annual fee would be given for $5 individual crossing payments. Support for these regulatory provisions was found in the Conference Report pertaining to the COBRA which stated that the conferees expected Customs "to administer this fee as a one-time fee."

Customs remains of the view that the $100 annual fee cap can and should be administered only on a one-time payment basis rather than also by cumulation of individual arrival fee payments. However, on further consideration Customs believes that there is no compelling reason for limiting the time for making the $100 prepayment (or for affixing the decal to the truck windshield) to either prior to the beginning of the calendar year or prior to the first clearance through Customs in that calendar year.

Accordingly, § 24.22(c) as set forth below has been modified (1) to refer to the $100 annual payment as a fee limitation but only in the context of a prepayment thereof and only if the issued decal has been affixed to the vehicle windshield (the latter representing the only evidence that would be available to Customs at the time of an arrival to show that the $100 annual fee has in fact been paid) and (2) to provide for such prepayment and issuance of the windshield decal at any time during the calendar year so that the exemption from individual arrival fees would apply to either the whole calendar year or any remaining portion thereof.

Comment: Many commenters questioned the propriety of collecting processing fees on empty trucks, contending that no paperwork is involved and minimal effort is expended by Customs in processing empties. It was also suggested that in-transit trucks should be exempted from the fee.

Customs response: A commercial truck was defined in the interim regulations as a "self-propelled vehicle designed and used for the transportation of commercial merchandise, or the transportation of non-commercial merchandise on a for-hire basis", and the interim text further stated that the definition included empty trucks and truck cabs without trailers. This definition clarified the intent reflected in the Conference Report pertaining to the COBRA which was to cover "self-propelled vehicles designed and used for the transportation of property." The term "self-propelled vehicle" was used for two reasons. First, in the case of tractor/trailer and similar towing situations, it ensures that the charge will be assessed on the tractor or other towing vehicle and not on the trailer or other vehicle being towed. Second, truck tractors and other towing or pulling vehicles are not the only conveyances charged: Any vehicle which can be driven (including a truck tractor arriving without a trailer) is subject to the charge. As the definition implies, the key factor in determining which vehicles will be charged is the actual or intended commercial use of the vehicle. Although the COBRA, as amended by the Tax Act, specifically provides for the assessment of the railroad car fee only on cars that are not empty, the commercial truck fee in the COBRA is not so limited. Similarly, the COBRA, as amended by the 1990 Act, contains an exemption for in-transit railroad cars but provides no such exemption for in-transit trucks. Given the clear Congressional intent reflected in the different treatment given commercial trucks and railroad cars in the statute in these regards, Customs has no latitude to provide for an exemption in the regulations for empty or in-transit trucks.

Comment: Several companies requested an exemption from the commercial truck processing fee because of their participation in joint U.S./Canadian automotive entry release procedures, where monthly filing of entries of Automotive Products Trade Agreement (APTA) products is permitted.

Customs response: Monthly filing of APTA entries generally expedites release and facilitates formal entry processing, but it does not absolve the carrier from undergoing Customs inspection of the conveyance and its contents to the extent deemed necessary by the inspector at the time of entry. In the absence of a specific exemption in the COBRA, an exemption from the commercial truck processing fee for carriers of merchandise where monthly entry filing occurs cannot be provided for in the regulations.

Comment: Driveaway truck operators suggested allowing use of a "floater" commercial truck processing fee permit for drivers since the delivery of new trucks is accomplished by driving one new vehicle for delivery to a dealership while towing the others.

Customs response: As Customs understands it, the suggested use of a "floater" permit would allow drivers to use the permit with each such delivery or, in another instance, to interchange it within a bus line having only two of its routes as commercial routes. Customs notes, however, that the $100 commercial truck processing fee permit relates only to the commercial use of a vehicle, and the benefit of obtaining a permit arises when the same commercial vehicle has multiple arrivals during a given calendar year. Since the annual permit attaches to a specific vehicle in the same way that an individual $5 fee is applied to the arriving vehicle, Customs has no authority to allow a transfer of a permit from one vehicle to another in order to follow a driver or correspond to a particular commercial route.

Comment: One commenter requested that Customs allow payment of the commercial truck processing fee in Canadian funds.

Customs response: Since Customs duties, taxes, and other charges are required under 19 CFR 24.1(a)(1) to be paid in U.S. funds, and in light of the amendment to the COBRA discussed above regarding the treatment of fees under the Act as Customs duties for administrative and enforcement purposes, the commercial truck processing fees must also be paid in U.S. funds.

Comment: One commenter stated that there should be provision for a more convenient form of individual payment such as tokens, stamps or cards in order to minimize delays in producing exact change.

Customs response: Customs inspectors and cashiers routinely make change without undue delay, and we are not aware of any particular problems with delays in this specific context. Moreover, any such delays may be avoided through use of the $100 calendar year permit which eliminates the need for individual payments.

Railroad Cars

Comment: One commenter objected to the railroad car fee on general grounds, stating that the fees will create economic hardship on the already depressed agricultural industry, will require excessive administrative collection costs, and are likely to provoke retaliation by Canada and Mexico.

Customs response: These comments involve legislative policy issues which are beyond the scope of Customs regulatory authority.

Comment: Several commenters stated that the annual $100 fee cap should be $50 for 1986.

Customs response: The response to the comment regarding proration of the 1986 $100 annual fee for commercial trucks set forth above is equally applicable here.

Comment: Several commenters stated that the fee should not be charged for empty railroad cars.

Customs response: As already noted, the COBRA was amended by the Tax Act so that the fee would not apply to empty railroad cars. Accordingly, § 24.22(d) as set forth below has been amended (1) in the basic fee provision, by referring to a "loaded or partially loaded passenger or commercial freight" railroad car, and (2) by adding a fee exemption to cover railroad cars transporting only containers, bins, racks, dunnage and other equipment or materials which have been used (as distinguished from such items in unused condition which could represent a commercial importation that would trigger collection of the arrival fee) for enclosing, supporting or protecting commercial freight, which Customs believes should be treated as empty railroad cars for purposes of the arrival fee.

Comment: A number of commenters argued that the fees paid for individual railroad car crossings should be permitted to accumulate toward satisfying the $100 annual fee cap.

Customs response: In light of the fact that the basic language in the COBRA regarding the annual fee limit for railroad cars is identical to that used in the case of commercial trucks, and since the Conference Report language discussed above in connection with commercial trucks applies equally to railroad cars, Customs believes that cumulation toward the annual fee limit should not be permitted for railroad cars but that prepayment of the $100 annual limit at any time during a calendar year should also be permitted in the case of railroad cars. Accordingly, § 24.22(d) as set forth below has been amended in a manner similar to the changes made to § 24.22(c) regarding commercial trucks as discussed above, the only essential difference being that in this case the prepayment will serve as a limitation on subsequent payment of individual arrival fees for a railroad car only if adequate records are maintained to enable Customs to verify that the $100 annual fee has in fact been paid on that railroad car, in recognition of the fact that railroad car fee payments and verification of those payments (including the applicability of a $100 prepayment to a specific railroad car) take place not at the time of arrival but rather at a time subsequent to the actual arrival.

Comment: Some commenters stated that individual carriers should be permitted to submit individual fee statements to Customs, rather than relying on their industry trade group to do so on their behalf.

Customs response: Customs has no objection to such an arrangement, and § 24.22(d) as set forth below has been modified accordingly.

Comment: A number of commenters requested that the time limit to remit payment be extended, from 60 days following the end of a month, to 60 or 90 days following a quarter.

Customs response: The suggestion by these commenters, if adopted, would significantly delay the collection of railroad car arrival fees. Given the fundamental administrative responsibility of Customs to ensure that statutorily mandated fees are collected in a timely fashion, it would not be appropriate to adopt this suggestion.

Comment: Several parties commented on payment procedures in the event a dispute arises between the AAR which calculates the fees owed and an individual carrier responsible for remitting those fees, arguing that payment should be withheld pending resolution of the dispute.

Customs response: Customs cannot agree to such an open-ended payment arrangement which could significantly delay collection of the fees. However, if the AAR and the individual carrier are unable to resolve any dispute during the 60-day time period following the close of the calendar month, a subsequent settlement of the dispute may be accounted for by means of an explanation in, and adjustment of, the next payment to Customs. Section 24.22(d) as set forth below has been amended to clarify the Customs position on this point.

Comment: Some commenters expressed confusion over the language concerning the exemption for in-transit trains. It was pointed out in this regard that the word "train" is too imprecise because a train is nothing more than the linkage of individual cars, and it was suggested that reference be made to "the country being transited" rather than "the United States".

Customs response: These points were resolved by the change to the in-transit exemption effected by the 1990 Act which was implemented by Customs in T.D. 91–33, as discussed above.

Comment: One commenter suggested that "railroad car" should be specifically defined in the regulations as a carrying vehicle measured from coupler to coupler.

Customs response: Customs agrees that such a definition would be useful, particularly in order to ensure that articulated cars are treated as one car. Accordingly, a definition of "railroad car" has been included in § 24.22(d) as set forth below.

Comment: One commenter stated that the regulations should provide a drawback, refund or allowance procedure for railroad cars that are received in error by a carrier and returned to the United States.

Customs response: Customs believes that such occurrences would most often involve empty cars, in which case no fee would apply as a result of the amendment to the railroad car fee provision effected by the Tax Act as discussed above. However, the fee would still apply in the case of such cars which are loaded or partially loaded, and Customs has no legal authority to provide otherwise in the regulations in the absence of supporting statutory language. It should be noted that such cars must still be cleared by Customs.

Comment: Two commenters suggested that the railroad company bringing a car into the United States and clearing it through Customs should be the party responsible for the fee payment, not another company receiving the car in interchange at the port of entry.

Customs response: Customs believes that the provisions regarding responsibility for fee payments as set forth in the interim regulations should be retained because they have provided

Customs with a workable method for identifying the party to which Customs will look for payment of the fees. However, so long as the actual payment to Customs is made by that party, there is nothing to prevent the two railroad companies from making their own private arrangements regarding reimbursement or allocation of the costs between them.

Comment: One commenter urged that the in-transit exemption provision be expanded to include in-transit cars which are set out (taken off line) for repairs outside the United States and then brought back on line, provided no cargo is loaded on or unloaded from the car.

Customs response: Customs agrees that the in-transit exemption remains applicable to such cars and, accordingly, § 24.22(d) as set forth below has been amended to clarify this point.

Private Vessels and Aircraft

Comment: Numerous commenters objected to the annual $25 fee for private vessels and aircraft on general grounds, stating that the assessment is unfair and discriminatory because automobiles entering the United States are not charged, that general taxes rather than user fees should be used to fund Customs operations, and that the private vessel fee will adversely affect business or trade and tourism in Canada.

Customs response: These comments relate to legislative policy issues that are beyond the scope of the regulations.

Comment: An association representing private vessel owners suggested the following:

1. Authorize procurement of a re-entry permit by mail order, in advance of departure to a foreign country.
2. Issue an identification permit number for the calendar year.
3. Allow permit number clearance by telephone whenever pleasure craft have nothing to clear through Customs.
4. Allow renewal of the permit number and fee, as well as pre-payment by mail for the following year, during the last 30 days of the current year.

Customs response: Section 24.22(e) presently states that the $25 fee may be prepaid to Customs, and Customs has instituted procedures for the advance issuance of decals either through local Customs offices or by mail, with the decal to be placed on the private vessel (or aircraft) as evidence that the fee has been paid for the calendar year in question. Accordingly, the first, second and fourth suggestions above have already been implemented by Customs, and § 24.22(e) as set forth below has been modified to reflect the current applicable procedures.

As regards the third suggestion, Customs currently permits telephonic report of arrival and clearance of private vessels in many districts, and such telephonic clearance normally includes verification of payment of the $25 annual fee. However, because special reporting and clearance requirements may apply in certain circumstances (see, for example, 19 CFR 4.2a), it would not be appropriate to provide for telephonic decal number clearance in these regulations.

Comment: One commenter stated that the annual $25 fee was reasonable but objected to the $25 overtime amount for Sunday inspectional services. This commenter suggested that Customs should stagger shifts during the week in order to provide free Sunday service.

Customs response: Pursuant to the decision of the Supreme Court in *U.S. v. Myers*, 320 U.S. 561 (1944), Customs inspectors must be paid overtime compensation for Sunday work without regard to whether the services are in addition to a regular weekly tour of duty. Therefore, staggered shifts would not alleviate the situation. However, Customs notes that section 8101(c)(1) of the Omnibus Budget Reconciliation Act of 1986 amended section 13031 of the COBRA so as to reinstate free overtime service for private aircraft on Sundays and holidays between the hours of 8 a.m. and 5 p.m. local time, thus addressing the substance of this commenter's objection as regards private aircraft but not as regards private vessels. In the absence of an appropriate statutory amendment similar to that made for private aircraft, Customs has no authority to eliminate overtime payments for Customs services provided in connection with private vessels. Section 24.22(e) as set forth below has been modified to clarify the overtime exception as regards private aircraft.

Comment: In order to exempt private vessels which are entered in regattas, one commenter made the following suggestions:

1. Exempt all pleasure craft not carrying merchandise regardless of size;
2. Exempt all participants in competitive events where the returning craft are not carrying merchandise; or
3. Extend the vessel length exemption from 30 feet to 65.6 feet (20 meters).

Customs response: The specific exemption for private pleasure vessels of less than 30 feet in length not carrying goods required to be declared was included in § 24.22(e) based on a statement of intent and regulatory mandate contained in the Conference Report relating to the COBRA (which noted in this regard that Customs incurs no processing costs in clearing such vessels). Customs has no authority to extend an exemption to other classes of vessels in the absence of support therefor in the statutory language and the legislative history relating thereto.

Dutiable Mail Entries

Comment: Two commenters requested that the regulations be revised to make it clear that the $5 processing fee is to be collected only when Customs prepares the entry documentation. Thus, when a customs broker prepares formal or informal entry documents, no fee would be assessed.

Customs response: Customs notes that the statute refers to "each item of dutiable mail for which a document is prepared by a customs officer" (emphasis added). Moreover, even though almost all dutiable formal mail entries are prepared by brokers, Customs in such cases still may have to prepare notices of arrival or other documentation in connection with the arrival, entry and clearance of the mail shipment. Accordingly, it would be inappropriate to refer only to "entry" documentation in § 24.22(f) or to otherwise limit the application of this regulatory provision which is in accord with the language and intent of the statute.

Comment: One commenter suggested exempting packages valued at less than $250 or reducing the amount of the fee because of the economic hardship the fee presents to small businesses.

Customs response: Since these suggestions involve legislative policy issues and are not supported by the statutory language, Customs has no authority to include such provisions in the regulations.

Commercial Vessel and Aircraft Passengers

Comment: Two commenters objected to the fee as a matter of principle. One commenter argued that the costs for services provided by Customs to arriving passengers should be covered out of general revenues. The other commenter argued that the fee is unfair because no other countries assess such a fee.

Customs response: These comments involve legislative policy issues implicitly reflected in the statute itself. Accordingly, Customs has no authority to address the comments in the regulatory texts.

Comment: One commenter stated that the exemption for transiting passengers should apply to all in-transit passengers rather than to only those not processed by Customs. This commenter specifically suggested that the regulations be amended to refer simply to persons transiting the United States who stop over "for less than 24 hours prior to continuing on a journey to a foreign country".

Customs response: The regulatory provision in question was included in the interim regulations on the reasoning that the arrival fee is intended to apply only in cases where Customs actually processes the passenger, and the exemption for in-transit passengers added by the Tax Act, as discussed above, explicitly recognized this principle by referring to a passenger "for whom customs inspectional services are not provided." Accordingly, the suggestion of this commenter is inconsistent with the statutory language and thus cannot be adopted. Section 24.22(g) as set forth below has been modified in this regard to reflect more accurately the statutory language.

Comment: Two commenters stated that the exemption for in-transit passengers should not be limited to airline passengers but rather should also apply to cruise ship passengers who are transiting the United States on route to another country.

Customs response: Neither the statute nor the regulations limit applicability of the in-transit exemption to airline passengers. Thus, in principle, it is equally applicable to cruise ship and other commercial vessel passengers. However, the exemption will apply in either case only if the passenger is in-transit to a location outside the Customs territory of the United States and is not processed by Customs during the layover (in-transit) period. As a practical matter, the exemption is applied more frequently in the case of airline passengers who often disembark and are held in a sterile, supervised in-transit lounge, without undergoing any Customs inspection, until their continuing or connecting flight is ready to leave. Unless in-transit vessel passengers who disembark similarly remain in such a secure in-transit area so as to not require Customs processing, they will not be entitled to the exemption.

Comment: One commenter requested a list of airports which have sterile in-transit areas where passengers may remain and thus be covered by the in-transit exemption.

Customs response: A list of airports at which sterile in-transit lounges are maintained is set forth in a brochure entitled Travel Industry Tips (Publication No. 529) which Customs has published and made available to the public to explain the collection process for Federal inspection fees. Copies of this brochure may be obtained by writing to: U.S. Customs Service, P.O. Box 7407, Washington, DC 20044.

Comment: One commenter requested that the regulations include examples in order to address specific problems that arise when complex travel arrangements are involved (for example, when multiple layovers and arrivals in the United States occur on the same itinerary).

Customs response: Customs does not believe that the regulations are the proper place for such examples, given the legally binding nature of the regulations and the impossibility of anticipating the myriad of specific factual patterns that would have to be covered in order for the examples to be complete and sufficiently informative. However, examples of specific travel situations have been included in the Travel Industry Tips brochure mentioned above.

Comment: A commenter requested that an explicit statement be included in the regulations to the effect that arriving passengers who are exempt from application of the fee are also exempt from charges for inspectional services.

Customs response: The passenger arrival fee is specifically intended to cover Customs costs in providing inspectional services to passengers, and there are no other Customs charges for such services which apply specifically to commercial passengers. Accordingly, the suggested statement is neither necessary nor appropriate.

Comment: With reference to the exemption concerning persons whose journey originates in Canada, Mexico, a U.S. territory or possession, or any adjacent island, one commenter suggested that no fee should be charged if a passenger stops for layover in one of those locations even if the journey originated outside one of those locations.

Customs response: The statutory provision regarding the cited exempt locations is strictly limited to a journey which either originated in one of those locations or originated in the United States and was limited to those locations. Thus, there is no legal basis for the suggested broad fee exemption based merely on a layover in one of the exempt locations.

Section 24.22(g) as set forth below has been modified by revising paragraph (2)(i) to reflect the Tax Act addition of the exemption for a journey which originated in the United States and was limited to the exempt locations. In addition, in order to reflect the basic Customs position set forth in Headquarters Ruling Letters 112511 and 112554 regarding the applicability of the two fee exemptions in that paragraph, the following additional changes have been made to § 24.22(g) as set forth below: (1) A new paragraph (B) has been added to paragraph (2)(i) to clarify what constitutes a journey and its origination point; (2) in the first sentence of paragraph (3) concerning fee collection procedures, the words "for transportation into the customs territory of the United States" have been added to clarify the context in which ticket or travel document issuance triggers collection of the arrival fee; and (3) interim paragraph 3(ii), which does not reflect the current Customs position, has been replaced by a new text setting forth an example in which the arrival fee is collected because the journey did not meet all conditions for exemption under the provision added by the Tax Act.

Comment: One commenter stated that United Nations officials should be accorded the same exemption from the fee as persons who have full diplomatic status.

Customs response: The exemption for diplomats was included in the interim regulations because the Conference Report pertaining to the COBRA stated that the conferees agreed that the fee should not apply to "diplomats entering the United States." Customs believes that the conferees intended to exempt from the fee those officials and other personnel of foreign governments and international organizations (including the United Nations) who may be exempt from normal Customs clearance procedures and requirements under subchapter VI of chapter 98 of the Harmonized Tariff Schedule of the United States and as provided in part 148 of the Customs Regulations (19 CFR part 148). Customs further notes that diplomatic status for purposes of United States law is dependent on the issuance of the appropriate visa by the U.S. Department of State and is not controlled by the issuance of a passport or other identifying document by a foreign government. In order to ensure that the fee exemption for diplomats clearly reflects the intent and can be easily and consistently applied, § 24.22(g)(2)(iii) as set forth below has been modified so that the exemption will be applied with reference to specific classes of visas issued by the Department of State.

Comment: A commenter took issue with the requirement that commercial air carriers collect the fee since it is the passenger who is liable for paying the fee, and this commenter argued that the regulations should absolve carriers from responsibility for collecting the fee when the passenger refuses to pay it. This same commenter suggested that the word "collected" should be changed to read "assessed" in interim § 24.22(g)(3).

Customs response: With regard to the first point, the statute sets forth the general rule that the fee shall be collected from the passenger by the person who issues a transportation document or ticket and that such collection shall take place when the document or ticket is issued. Given this statutory specificity, Customs cannot amend the regulations as this commenter suggests, and Customs further notes that when a passenger refuses to pay the fee, the carrier can solve the collection responsibility problem by simply declining to issue the document or ticket to that passenger. As regards the second point, since both the regulatory provision in question and the statutory provision on which it is based specifically concern the collection procedure (it is the statute itself which "assesses" the fee), it would not be appropriate to use the word "assessed" in the regulatory provision.

Comment: One commenter suggested that responsibility for collecting the fee should rest with the carrier which actually transports the passenger rather than the carrier which issued the ticket.

Customs response: Customs would also prefer to have responsibility for collection rest with the transporting carrier as this would greatly facilitate verification of required fee payments. However, given the specificity of the statute in this regard, in the absence of an appropriate statutory amendment Customs has no authority to amend the regulations to reflect this commenter's suggestion.

Comment: Two commenters argued that charter airlines should be responsible for the remittance of fees collected by tour operators, and they further suggested in this regard that the regulations be amended to require that tour operators remit the collected fees to the charter operators for this purpose.

Customs response: The statute states that the person "who collects" the passenger fees shall remit those fees to the Government. Since under the statute collection of the fees normally takes place when the transportation document or ticket is issued (in this case, by the tour operator), Customs has no authority to amend the regulations as suggested by these commenters.

Comment: Two commenters suggested that, in the case of charter operations, verification of fee payments should be based on the passenger manifest rather than on the tickets issued; under this procedure, tour operators would advise the carriers in writing via the manifests of the number of passengers who paid the fee. The same commenters also stated that the flight manifest should be used as the travel document for purposes of determining when remittance of the fees is due, because most charter airlines use the flight manifest in order to determine when a charter will leave and how many passengers are booked.

Customs response: In view of the specific statutory requirements regarding when and by whom the fees are to be collected and remitted, and in consideration of the fact that the intent of Congress was that the passenger (who is the recipient of the Customs inspectional services) pay the fee, the flight manifest cannot be used in the manner suggested by these commenters.

Comment: One commenter stated that commercial air carriers prefer to have the option of collecting the fee in lieu of collection by U.S.-based tour wholesalers who contract for passenger space.

Customs response: To the extent that the tour wholesalers issue the tickets (and thus under the statute are required to collect the fee), Customs has no authority to provide in the regulations for collection of the fee by the carrier.

Comment: One commenter criticized the requirement that carriers collecting the fee at a departure airport must issue a receipt to the passenger, stating that carriers should be allowed to issue a stamp similar to "U.S. Transportation Tax" in lieu of a receipt. Another commenter stated that the regulations should specify the types of receipts that are permissible.

Customs response: The regulatory requirement of issuance of a receipt to a passenger applies only when the fee is collected from the passenger at the time of departure from the United States due to a failure to collect the fee at the time of issuance of the ticket at an overseas location; the regulation reflects a specific statutory requirement and thus cannot refer to the issuance of anything other than a "receipt" as provided in the statute. Customs does not believe that it would be appropriate to specify in the regulations what type of "receipt" would be permissible because the party collecting the fee should have sufficient flexibility to adopt a procedure that is compatible with its particular operational requirements and procedures.

On a related point, Customs notes that the COBRA requires that the fee be separately identified on the document or ticket as a "Federal inspection fee", whereas interim § 24.22(g)(4) merely required that the ticket or travel document be "marked to indicate that the required fee has been collected from the passenger." The regulatory text as set forth below (and renumbered as § 24.22(g)(3) as discussed below) has been modified to conform to the statutory requirement but with reference to Federal inspection "fees" in order that other Federal agency inspection fees may be included as necessary.

Comment: With regard to the basic requirement that the carrier issuing the ticket or travel document is responsible for collecting the fee, one commenter stated that carriers should also be able to collect the fee on prepaid tickets or travel documents (in order to avoid, for example, having to collect the fee from a minor with a prepaid ticket).

Customs response: This commenter correctly notes that there may be a distinction between the time at which a passenger actually takes physical possession of a ticket and the time at which payment for the ticket is effected. However, this should not present a problem even in the case of prepaid tickets, provided it is understood that ticket "issuance" includes the act of preparing the ticket by the carrier, because the carrier can (and should) ensure collection of the fee by including the fee among the charges reflected on the ticket and paid by the ticket purchaser.

Comment: In consideration of the fact that refunds of collected fees will sometimes be necessary, one commenter requested that a procedure be implemented to allow airlines to adjust the remitted amount from quarter to quarter.

Customs response: Customs agrees that, if an explanation is provided with the payment, adjustments of previously remitted fees may be reflected in the next quarterly payment to Customs. Section 24.22(g) as set forth below has been modified accordingly.

Comment: In cases involving split charters whereby several tour operators charter space on one aircraft, one commenter suggested that the tour operator who contracts with the passengers, rather than the carrier, is in the best position to collect and remit the fees to Customs.

Customs response: If the tour operator issues the ticket or other travel document, the statute requires that the tour operator collect and remit the fees to Customs.

Although the last sentence of interim § 24.22(g)(4) clarified the responsibilities of U.S.-based tour wholesalers who issue non-carrier tickets, Customs notes that the first sentence of that section (which set forth the basic fee collection requirement) only referred to "carriers". Accordingly, the first sentence of interim § 24.22(g)(4) has been modified to refer to "each air or sea carrier, travel agent, tour wholesaler, or other party" issuing a ticket or travel document in order to clarify the statutorially-mandated responsibility, and corresponding changes also have been made to the texts of interim § 24.22(g) (5) and (7) which are a direct consequence of the collection requirement. In addition, the first sentence of interim § 24.22(g)(4) has been further modified by removing the words "on or after July 7, 1986," which were included only because the interim regulations were published prior to the effective date of the statutory fees. Finally, the texts of interim § 24.22(g) (3) and (4) have been combined into one § 24.22(g)(3) covering all fee collection procedures, with a consequential renumbering of the succeeding paragraphs under § 24.22(g).

Comment: One commenter expressed concern that the required accounting and operating procedures to be followed by clerks and attendants in collecting and verifying the fees will be viewed by passengers as a reduction in the quality of service. This commenter also complained that the general records maintenance requirement will increase expenses by necessitating additional staff.

Customs response: Notwithstanding the perceived or actual effect which these requirements may have, they are central and thus necessary to the proper administration of the statutory fee provisions. Accordingly, there is no practical means for addressing these concerns in the regulations.

Comment: One commenter suggested that when fees are collected in a foreign country, they should be collected in the local currency using the exchange rate applicable on the date of collection and, for purposes of remittance to Customs, the fees so collected should be converted to U.S. dollars using the exchange rate in effect on the date of remittance.

Customs response: Customs currently allows for the procedure suggested by this commenter. The Customs position on this point is also reflected in the Travel Industry Tips brochure mentioned above.

Comment: One commenter requested that the second sentence of interim § 24.22(g)(7) be modified to require retention of records for 2 years after "fee collection" rather than "fee calculation".

Customs response: Customs cannot agree to this request. Given the fact that payments and statements are submitted to Customs only quarterly (and may be submitted as late as 31 days after the close of the quarter), the effect of this proposed change would be to significantly shorten the record retention period with regard to those fees collected in the early part of the subject quarter. In order to ensure that Customs is able to perform a timely and accurate verification of payments, the records retention period must cover both the calculation itself and all the collection records upon which the calculation was based.

Comment: One commenter requested that the regulations specify the types of records that are to be maintained.

Customs response: Customs agrees in principle that it would be useful to clarify in the regulations the types of records or information that should be maintained to enable Customs to verify that the fees have been properly collected and remitted. However, Customs believes that this document is not the proper vehicle for such action, which could have the effect of imposing new substantive requirements on the public and thus should be the subject of further public comment procedures.

Comment: One commenter suggested that the deadline for quarterly payment and statement filing (31 days after the close of the calendar quarter) be extended by 60 days to avoid the need for estimates and ensure remittance of the correct amount.

Customs response: The deadline set forth in the regulations reflects a requirement in the statute and thus must be retained. Moreover, Customs believes that the addition of a provision allowing reconciliation of quarterly payments in the following quarter, as discussed above, will address the main concerns of this commenter.

Comment: One commenter pointed out that charter airlines already file quarterly reports with the U.S. Department of Transportation (DOT) and suggested that Customs review those quarterly reports to see if they would be sufficient for Customs purposes.

Customs response: Although information filed with the DOT may be useful to Customs for fee verification purposes in some circumstances, it would not be sufficient in and of itself because it only reflects passengers transported by carriers and thus would not provide complete information regarding fee collection which is based on ticket issuance rather than passenger arrivals.

Comment: Three commenters raised issues regarding the provision of adequate services to passengers as required by the COBRA, which was not addressed in the interim regulations. One commenter stated that a system should be implemented allowing airlines to notify Customs of intended arrival and that there should be some assurance regarding adequacy of personnel to clear passengers so that no passenger is required to wait in line for more than 20 minutes. Another commenter requested that Customs specify how adequacy of service will be assured and suggested that a telephone number be provided for purposes of reporting bad service. The third commenter requested inclusion of language in the regulations stating that charter airline passengers are entitled to the same service, and at no additional cost, as in the case of scheduled airline passengers because charter airlines also operate on a schedule.

Customs response: As regards notification of arrival, Part 122 of the Customs Regulations contains detailed provisions regarding the applicable procedures. With respect to the issue of adequacy and cost of service provided by Customs, it is noted that the COBRA was extensively amended in this regard by section 8101(c) of the Omnibus Budget Reconciliation Act of 1986, by section 1893(d) of the Tax Act, and by section 9501(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). Those amendments expanded the scope of the services that must be adequately provided, included specific factors to be taken into account in determining whether service is adequately provided, and expanded the list of services for which only fees under the COBRA may be charged. Consistent with the statutory mandate, the policy of Customs is to provide the most efficient and responsive service possible to all carriers (whether regularly scheduled or charter) and passengers, and included in this policy is a goal of processing all passengers within 20 minutes or less. Because most delays or other inspectional or clearance problems result from conditions arising at the local level, Customs suggests that any complaints be directed to the regional commissioner or district director of Customs having jurisdiction over the location where the flight was processed. As regards inclusion of adequate service standards in the regulations, Customs believes that this final rule document is not the proper vehicle for such proposals.

Customs Brokers

One commenter made a number of points on behalf of brokers nationwide with regard to the permit fee.

Comment: The commenter stated that confusing instructions were issued to Customs personnel concerning the permit fee, in particular regarding its applicability to inactive brokers, and to individually-licensed brokers employed by a corporate broker.

Customs response: When these problems were brought to the attention of Customs Headquarters, additional clarifying instructions were issued to all Customs field offices.

Comment: The commenter stated that the automatic permit revocation procedure set forth in section 111.96 of the interim regulations for failure to timely pay the fee, by not allowing a reasonable opportunity to cure the default, amounts to a denial of due process.

Customs response: Even though the interim regulations were published on June 11, 1986, and went into effect on July 7, 1986, Customs gave brokers an additional grace period, until August 6, 1986, to pay the annual permit fee for 1986. Moreover, Customs exercised a policy of leniency as regarded payment of the 1986 fee in order to avoid precipitous revocation of permits for failure to timely pay the fee. Thus, brokers were given ample notice and opportunity to pay the 1986 fee and thus retain their permits.

On the broader issue of due process, Customs would point out that since the Tax Act amendments discussed above explicitly ratified the regulatory principle of permit revocation for failure to timely pay the fee, provided appropriate notice of the due date has been published in the **Federal Register**, the issue of due process is essentially moot from a regulatory standpoint.

Comment: This commenter argued that the permit fee for 1986 should be reduced to one-half the full-year amount due to its mid-year implementation.

Customs response: This issue was resolved in the Tax Act as discussed above.

Comment: The commenter stated that an actual permit document should be made available to each broker.

Customs response: Such documents were issued to all Customs districts for immediate use in December 1986.

Additional Changes to the Regulations

In addition to the changes to the interim regulatory texts discussed above, the final regulations as set forth below incorporate (1) a number of non-substantive, editorial (organizational or drafting) changes to improve the clarity and readability of the regulations and (2) some necessary substantive changes involving subsequent statutory amendments and other matters not specifically discussed above in connection with the public comments. The principal editorial changes and additional substantive changes are described below.

Section 24.22

Paragraph (a) has been limited to definitions that apply to more than one of the other paragraphs under the section. Those definitions which pertain to only one such paragraph appear as part of the substantive fee provision.

Where applicable, separate subparagraphs have been included to cover annual fee limitations for individual arrival fees, prepayment of fees, and fee exceptions where more than one category of exemption applies to the fee in question. Each prepayment subparagraph reflects current payment procedures, including procedures for lump sum mid-year payment of both annual fees and any remaining balance where a calendar year limit applies to an individual arrival fee. Fee exceptions have been added to cover the Tax Act addition of exemptions for commercial trucks, railroad cars and private vessels transported by any vessel other than a ferry.

With regard to the commercial passenger arrival fee, the fee exemption covering crew members and persons directly connected with the operation, navigation, ownership, or business of the vessel or aircraft has been modified to reflect the longstanding Customs position, as stated in the Travel Industry Tips brochure mentioned above, that the exemption applies only to official business travel and not to travel for pleasure. In addition, the following changes have been made to the paragraph covering payment and quarterly statement procedures (paragraph (g)(4) as set forth below): (1) In order to more clearly reflect the necessary correlation between the statutory obligation to collect the fees and the consequent statutory obligation to remit those fees to Customs, reference is made to payment to Customs of the fees "required to be" collected (thus, the amount remitted must be equal to the amount of fees required to be collected under the statute, even if some required fees were in fact not collected); and (2) the provision regarding fee payment responsibility where the (foreign) ticket or travel document issuer has not collected the fee has been changed to more closely align on the wording of the statute and paragraph (g)(3). Finally, the paragraph concerning the limitation on charges (paragraph (g)(7) as set forth below) has been redrafted to more accurately reflect the terms of the statutory provision on which it is based (19 U.S.C. 58c(e)(1)), in particular to cover the exception regarding reimbursement for costs incurred by Customs in connection with user fee airports, and the references in this paragraph to provisions within part 6 have been changed to reflect the replacement of part 6 by part 122 as further discussed below.

The payment procedures applicable under paragraph (i)(1) have been clarified by insertion of a cross-reference to § 24.1 (which concerns general collection requirements and procedures that are equally applicable to the fees under § 24.22) and by inclusion of the identifying payment class codes (subsequently implemented by Customs for accounting and reporting purposes) to be referenced on a check or money order payment.

Part 111

In order to ensure applicability of the proper procedures, the second sentence of section 111.96(c) has been amended by inserting a cross-reference to the remittance procedures set forth in § 24.22(i). In addition, the third sentence of § 111.96(c) has been redrafted (1) to clarify the intended effect of the sentence, *i.e.* that no proration of a mid-year fee payment will be allowed, and (2) to include a reference to a permit application under section 111.19(b) in order to ensure procedural consistency between that section and § 111.96(c).

Part 122

As noted above, Part 6 concerning air commerce regulations was revised and redesignated as part 122 following publication of the interim regulations implementing the COBRA (which included a new section 6.1a setting forth a cross-reference to the interim § 24.22 fees as regards private aircraft and passengers aboard commercial aircraft). The final texts of part 122 were adopted on April 21, 1988, as T.D. 88–12, 55 FR 9285.

It is further noted, however, that no direct counterpart to interim section 6.1a was included in the final texts of part 122. Moreover, present § 122.29, which concerns overtime services for private aircraft, is incorrect in referring in this context to overtime charges which no longer apply to private aircraft as discussed above. In addition, there is no need for a cross-reference to passenger fees which apply only in regard to commercial aircraft. In order to address these issues, § 122.29 has been revised (1) to set forth a cross-reference to § 24.22 as regards the private aircraft arrival fee and (2) to set forth a cross-reference to § 24.16 only with regard to the procedures for requesting overtime services.

Part 123

The interim texts implementing the COBRA included a new § 123.1a which referred to § 24.22 as regards fees applicable to commercial trucks, truck cabs, and railroad cars whether empty or otherwise. Customs now believes that it would be preferable to remove this section, which represents an exception to normal regulatory numbering rules, and to include an appropriate cross-reference to the § 24.22 fees in § 123.0 which describes the overall scope of part 123 and which already contains cross-references to part 122 as regards aircraft and to part 4 as concerns vessels. Accordingly, a new sentence, with a simplified text, has been added at the end of § 123.0 for this purpose.

Part 145

For the same reasons stated above in regard to part 123, interim § 145.1a has been removed and a new sentence containing a cross-reference to the § 24.22 dutiable mail fee has been added to § 145.0 which concerns the scope of part 145.

Part 178

The changes to part 178 involve removing from section 178.2 the listings for §§ 4.98(i), 123.1a and 145.1a, which either are simply cross-reference provisions containing no substantive requirements or have been replaced in this document by cross-reference provisions as discussed above.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and based on the statutory changes and additional considerations discussed above, Customs believes that the interim regulations published as T.D. 86–109 should be adopted as a final rule with certain changes thereto as discussed above and set forth below.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Based on the supplementary information set forth above and because these regulations concern the collection of fees that are mandated by statute, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information in these final regulations, contained in § 24.22, has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0154. The estimated average annual burden associated with this collection is .25 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Maritime carriers, Cargo vessels, Passenger vessels, Yachts.

19 CFR Part 24

Customs duties and inspection, Accounting, Claims, Taxes, Wages, User fees.

19 CFR Part 111

Customs duties and inspection, Imports, Administrative practice and procedure, Brokers.

19 CFR Part 122

Customs duties and inspection, Imports, Air carriers, Air transportation, Aircraft, Airports.

19 CFR Part 123

Customs duties and inspection, Canada, Mexico, Motor carriers, Railroads, Vessels.

19 CFR Part 145

Customs duties and inspection, Postal service.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

Parts 4, 24, 111, 122, 123, 145 and 178, Customs Regulations (19 CFR Parts 4, 24, 111, 122, 123, 145 and 178), are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

Section 4.98 also issued under 31 U.S.C. 9701;

* * * * *

2. Section 4.98(i) is revised to read as follows:

§ 4.98 Navigation fees.

* * * * *

(i) Private and commercial vessels, and passengers aboard commercial vessels, may be subject to the payment of fees for services provided in connection with their arrival as set forth in § 24.22 of this chapter.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701, unless otherwise noted.

* * * * *

2. The authority citation for section 24.23 is removed.

3. Section 24.22 is revised to read as follows:

§ 24.22 Fees for certain services.

(a) *Definitions.* For purposes of this section:

(1) The term *vessel* includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water but does not include any aircraft.

(2) The term *arrival* means arrival at a port of entry in the customs territory of the United States or at any place serviced by any such port of entry.

(3) The expression *calendar year* means the period from January 1 to December 31 of any particular year.

(4) The term *ferry* means any vessel which is being used to provide transportation only between places that are no more than 300 miles apart and which is being used to transport only:

(i) Passengers, and/or

(ii) Vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.

(b) *Fee for arrival of certain commercial vessels.*

(1) *Vessels of 100 net tons or more.*

(i) *Fee.* Except as provided in paragraphs (b)(2) and (b)(4) of this section, a processing fee in the amount of $397 shall be tendered by the master, licensed deck officer, or purser upon arrival of any commercial vessel of 100 net tons or more which is required to enter under § 4.3 of this chapter or upon arrival of any U.S.-flag vessel of 100 net tons or more proceeding coastwise under § 4.85 of this chapter. The fee shall be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage.

(ii) *Fee limitation.* No fee or portion thereof shall be collected under paragraph (b)(1)(i) of this section for the arrival of a vessel during any calendar year after a total of $5,955 in fees has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to Customs.

(2) *Barges and other bulk carriers from Canada or Mexico.*

(i) *Fee.* A processing fee of $100 shall be tendered upon arrival of any barge or other bulk carrier which arrives from Canada or Mexico either in ballast or transporting only cargo laden in Canada or Mexico. The fee shall be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage. For purposes of this paragraph, the term "barge or other bulk carrier" means any vessel, other than a ferry, which is not self-propelled or which transports fungible goods that are not packaged in any form.

(ii) *Fee limitation.* No fee or portion thereof shall be collected under paragraph (b)(2)(i) of this section for the arrival of a barge or other bulk carrier during any calendar year after a total of $1,500 in fees has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to Customs.

(3) *Prepayment.* The vessel operator, owner or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section or any remaining portion thereof if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment may be made at a Customs district or port office or may be mailed to: U.S. Customs Service, National Finance Center, P.O. Box 68907, Indianapolis, Indiana 46268. In a case involving prepayment of the remaining portion of a maximum calendar year amount, certified copies of receipts (Customs Form 368 or 368A) issued for individual arrival fee payments during the calendar year shall accompany the payment. Where prepayment is made by mail, the payment shall be accompanied by a letter which sets forth the name of the vessel covered by the payment, the calendar year to which the payment applies, a return address, and any other information required under paragraph (i)(1) of this section.

(4) *Exceptions.* The following vessels are exempt from payment of the fees specified in paragraphs (b)(1) and (b)(2) of this section:

(i) Foreign passenger vessels making at least three trips a week from a port in the United States to the high seas and returning to the same U.S. port without having touched any foreign port or place, even though formal entry is still required;

(ii) Any vessel which, at the time of arrival, is being used solely as a tugboat;

(iii) Any government vessel for which no report of arrival or entry is required as provided in § 4.5 of this chapter; and

(iv) A ferry.

(c) *Fee for arrival of a commercial truck.*

(1) *Fee.* The driver or other person in charge of a commercial truck shall, upon arrival, proceed to Customs and tender the sum of $5 for the services provided. The fee shall not apply to any commercial truck which, at the time of arrival, is being transported by any vessel other than a ferry. For purposes of this paragraph, the term "commercial truck" means any self-propelled vehicle, including an empty vehicle or a truck cab without a trailer, which is designed and used for the transportation of commercial merchandise or for the transportation of non-commercial merchandise on a for-hire basis.

(2) *Fee limitation.* No fee shall be collected under paragraph (c)(1) of this section for the arrival of a commercial truck during any calendar year once a prepayment of $100 has been made and a decal has been affixed to the vehicle windshield as provided in paragraph (c)(3) of this section.

(3) *Prepayment.* The owner, agent or person in charge of a commercial truck may at any time prepay a fee of $100 to cover all arrivals of such commercial truck during a calendar year or any remaining portion of a calendar year. Prepayment may be made at a Customs district or port office or by mail in accordance with paragraph (i)(1) of this section, and each prepayment shall be accompanied by a properly completed Customs Form 339, Annual User Fee Decal Request. Once the prepayment has been made under this paragraph, a decal will be issued for placement in the lower left hand corner of the vehicle windshield to show that the vehicle is exempt from payment of the fee for an individual arrival during the applicable calendar year or any remaining portion thereof.

(d) *Fee for arrival of a railroad car.*

(1) *Fee.* Except as provided in paragraph (d)(6) of this section, a fee of $7.50 shall be charged for the arrival of each loaded or partially loaded passenger or commercial freight railroad car. The railroad company receiving a railroad car in interchange at a port of entry or, barring interchange, the company moving a car in line haul service into the customs territory of the United States, shall be responsible for payment of the fee. Payment of the fee shall be made in accordance with the procedures set forth in paragraph (d)(3) or (d)(4) of this section. For purposes of this paragraph, the term "railroad car" means any carrying vehicle, measured from coupler to coupler and designed to operate on railroad tracks, other than a locomotive or a caboose.

(2) *Fee limitation.* No fee shall be collected under paragraph (d)(1) of this section for the arrival of a railroad car during any calendar year once a prepayment of $100 has been made as provided in paragraph (d)(3) of this section, provided that adequate records are maintained to enable Customs to verify any such prepayment.

(3) *Prepayment.* As an alternative to the payment procedures set forth in paragraph (d)(4) of this section, a railroad company may at any time prepay a fee of $100 to cover all arrivals of a railroad car during a calendar year or any remaining portion of a calendar year. Each prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i)(1) of this section, shall be mailed to: National Finance Center, Revenue Branch, P.O. Box 68907, Indianapolis, Indiana 46268.

(4) *Statement filing and payment procedures.*

(i) The Association of American Railroads (AAR), the National Railroad Passenger Corporation (AMTRAK), and any railroad company preferring to act individually, shall file monthly statements with Customs, and shall make payment of the arrival fees to Customs, in accordance with the procedures set forth in paragraphs (d)(4)(ii) and (i) of this section. Each monthly statement shall indicate:

(A) The number of railroad cars subject to the arrival fee during the relevant period;

(B) The number of such railroad cars pulled by each carrier; and

(C) The total processing fees due from each carrier for the relevant period.

(ii) AMTRAK and railroad companies acting individually shall file each monthly statement within 60 days after the end of the applicable calendar month, and the fees covered by each statement shall be remitted with the statement. Monthly statements prepared by the AAR on behalf of individual railroad companies shall be filed within 60 days after the end of the applicable calendar month, and each railroad company shall remit the fees as calculated for it by the AAR within 60 days after the end of that calendar month. In cases of conflict between the AAR and an individual railroad company regarding calculation of the fees, the railroad company shall timely remit the amount as calculated by the AAR even if the dispute is unresolved. Subsequent settlements may be accounted for by an explanation in, and adjustment of, the next payment to Customs.

(5) *Maintenance of records.* The AAR, AMTRAK, and each railroad company preparing and filing its own statements shall maintain all documentation necessary for Customs to verify the accuracy of the fee calculations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 3 years from the date of fee calculation. The AAR, AMTRAK, and each railroad company preparing and filing its own statements shall provide to Customs the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section, and shall promptly notify Customs of any changes in identifying information previously submitted, in accordance with the procedures set forth in paragraph (i)(2) of this section.

(6) *Exceptions.* The following railroad cars are exempt from payment of the fee specified in paragraph (d)(1) of this section:

(i) Any railroad car whose journey originates and terminates in the same country, provided that no passengers board or disembark from the train and no cargo is loaded or unloaded from the car while the car is within any country other than the country in which the car originates and terminates, including any such railroad car which is set out for repairs outside the United States and then returned to on-line service without having undergone loading or unloading of passengers or cargo during the repair period;

(ii) Any railroad car transporting only containers, bins, racks, dunnage and other fixed or loose equipment or materials which have been used for enclosing, supporting or protecting commercial freight; and

(iii) Any railroad car which, at the time of arrival, is being transported by any vessel other than a ferry.

(e) *Fee for arrival of a private vessel or private aircraft.*

(1) *Fee.* Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft shall, upon first arrival in any calendar year, proceed to Customs and tender the sum of $25 to cover services provided in connection with all arrivals of such vessel or aircraft during that calendar year. Upon payment of this annual fee, a decal will be issued and shall be affixed to the vessel or aircraft as evidence that the fee has been paid. Except in the case of private aircraft, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment.* A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the $25 annual fee specified in paragraph (e)(1) of this section. Prepayment may be made at a Customs district or port office, or by mail in accordance with paragraph (i)(1) of this section, and shall be accompanied by a properly completed Customs Form 339, Annual User Fee Decal Request.

(3) *Exceptions.* The following are exempt from payment of the fee specified in paragraph (e)(1) of this section:

(i) Private pleasure vessels of less than 30 feet in length, so long as they are not carrying any goods required to be declared to Customs;

(ii) Any private pleasure vessel granted a cruising license under § 4.94 of this chapter, during the term of the license; and

(iii) Any private vessel which, at the time of arrival, is being transported by any vessel other than a ferry.

(f) *Fee for dutiable mail.* The addressee of each item of dutiable mail for which a Customs officer prepares documentation shall be assessed a processing fee in the amount of $5. When the merchandise is delivered by the Postal Service, the fee shall be shown as a separate item on the entry and collected at the time of delivery of the merchandise along with any duty and taxes due. When Customs collects the fee directly from the importer or his agent, the fee will be included as a separate item on the informal entry or entry summary document.

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fee.* Except as provided in paragraph (g)(2) of this section, a fee of $5 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States.

(2) *Exceptions.* The fee specified in paragraph (g)(1) of this section shall not apply to the following categories of arriving passengers:

(i)(A) Persons whose journey:

(*1*) Originates in Canada, Mexico, a territory or possession of the United States, or any adjacent island; or

(*2*) Originates in the United States and is limited to Canada, Mexico, territories and possessions of the United States, and adjacent islands.

(B) For purposes of paragraph (g)(2)(i)(A) and paragraph (g)(3) of this section, a journey, which may encompass multiple destinations and more than one mode of transportation, shall be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States. In addition, for purposes of this paragraph, territories and possessions of the United States include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and adjacent islands include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miquelon, and the Turks and Caicos Islands.

(ii) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided such crew member or other person is traveling for an official business purpose and not for pleasure;

(iii) Diplomats and other persons in possession of a visa issued by the U.S. Department of State in class A–1, A–2, C–2, C–3, G–1 through G–4, or NATO 1–6;

(iv) Persons departing from and returning to the United States without having touched a foreign port or place;

(v) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision thereof, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/ Customs Military Inspection Program;

(vi) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport; and

(vii) Persons who are in transit to a destination outside the United States and for whom Customs inspectional services are not provided.

(3) *Fee collection procedures.* Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the fee specified in paragraph (g)(1) of this section. The fee shall be separately identified with a notation "Federal inspection fees" on the ticket or travel document to indicate that the required fee has been collected from the passenger. If the ticket or travel document is not so marked and was issued in a foreign country, the fee shall be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at time of departure from the United States, the carrier making the collection shall issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents shall collect the fee in the same manner as a carrier. Collection of the fee shall include the following circumstances:

(i) When a through ticket or travel document is issued covering a journey into the customs territory of the United States which originates in a location other than one specified in paragraph (g)(2)(i)(A) of this section;

(ii) When a return ticket or travel document is issued in connection with a journey which originates in the United States and includes a stop in a location other than one specified in paragraph (g)(2)(i)(B) of this section; or

(iii) When a passenger arrives in the customs territory of the United States in transit from a location other than one specified in paragraph (g)(2)(i)(A) of this section and is processed by Customs.

(4) *Payment and quarterly statement procedures.* Payment to Customs of the fees required to be collected under paragraphs (g) (1) and (3) of this section shall be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees shall be made by the air or sea carrier, travel agent, tour wholesaler, or other party which issued the ticket or travel document or, in the case of a ticket or travel document issued in a foreign country without the required notation to indicate that the fee was collected from the passenger, by the carrier which provided transportation to the passenger when departing from the United States. Each quarterly fee payment shall be remitted in accordance with the procedures set forth in paragraph (i) of this section and shall be accompanied by a statement which includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer Identification number of the party remitting payment; and

(iii) The calendar quarter covered by the payment.

Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to Customs.

(5) Each carrier contracting with a U.S.-based tour wholesaler is responsible for notifying Customs of each flight or voyage so contracted, the number of spaces contracted for on each flight or voyage, and the name, address and taxpayer identification number of the tour wholesaler, within 31 days after the close of the calendar quarter in which such a flight or voyage occurred.

(6) *Maintenance of records.* Each air or sea carrier, travel agent, tour wholesaler, or other party affected by this paragraph shall maintain all such documentation necessary for Customs to verify the accuracy of fee calculations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 2 years from the date of fee calculation. Each such affected party shall provide to Customs the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section, and shall promptly notify Customs of any changes in the identifying information previously submitted, in accordance with the procedures set forth in paragraph (i)(2) of this section.

(7) *Limitation on charges.* Except in the case of costs reimbursed under § 24.17(a)(14) of this part, Customs services provided to passengers arriving in the United States on scheduled airline flights (as defined in § 122.1(k) of this chapter and operating within the requirements of subpart D of part 122 of this chapter) shall be provided at no cost to airlines and airline passengers other than the fee specified in paragraph (g)(1) of this section.

(h) *Annual customs broker permit fee.* Customs brokers are subject to an annual fee for each permit held by an individual, partnership, association, or corporate broker as provided in § 111.96(c) of this chapter.

(i) *Fee remittance and information submission procedures.*

(1) *Fee remittance.* All fee payments required under this section shall be in the amounts prescribed and shall be made in U.S. currency, or by check or money order payable to the United States Customs Service, in accordance with the provisions of § 24.1 of this part. If payment is made by check or money order, the check or money order shall be annotated with the appropriate class code, as follows:

(i) Commercial vessels (other than barges and other bulk carriers from Canada or Mexico), 491;

(ii) Barges and other bulk carriers from Canada or Mexico, 498;

(iii) Commercial trucks, 492 for each individual arrival and 902 for any prepayment of the maximum calendar year fee;

(iv) Railroad cars, 493 for each individual arrival and 903 for any prepayment of the maximum calendar year fee;

(v) Private vessels, 904;

(vi) Private aircraft, 494;

(vii) Dutiable mail, 496;

(viii) Commercial vessel and commercial aircraft passengers, 495; and

(ix) Customs broker permits, 497.

Except as otherwise provided in this section, all fee payments not made at the time of arrival shall be mailed to: U.S. Customs Service, P.O. Box 198151, Atlanta, Georgia 30384. In addition to any information specified elsewhere in this section, each payment by mail shall be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies.

(2) *Information submission.* Unless otherwise specified in this section, all information, summaries, reports, or other data required to be submitted to Customs under this section shall be mailed to the Director, National Finance Center, Attn: Revenue Branch, P.O. Box 68907, Indianapolis, Indiana 46268.

(j) *Treatment of fees as Customs duty.*

(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the Customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee provided for under this section,

and with respect to any person liable for the payment of such fee, as if such fee is a Customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of Customs duty, whether or not any such duty is in fact due and payable, shall be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction*. For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section shall be treated as if such fee is a Customs duty.

PART 111—CUSTOMS BROKERS

1. The authority citation for part 111 is amended by revising the specific authority citation for § 111.96 to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 1641; unless otherwise noted.

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

2. Section 111.96(c) is revised to read as follows:

§ 111.96 Fees.

* * * * *

(c) *User Fee*. An annual user fee of $125 will be assessed for each permit held by an individual, partnership, association, or corporate broker. The fee is payable for each calendar year in each district in which a broker has a permit to do business, shall be paid by the due date as published annually in the **Federal Register**, and shall be remitted in accordance with the procedures set forth in § 24.22(i) of this chapter. When a broker submits an application for a permit under § 111.19(b) of this part, the full $125 fee shall be remitted with the application regardless of the point during the calendar year at which the application is submitted. If a broker fails to pay the fee by the due date, the district director shall notify the broker in writing of the failure to pay and shall revoke the permit to operate. The notice will constitute revocation of the permit.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644, 49 U.S.C. App. 1509.

2. Section 122.29 is amended by revising the section heading and the section text to read as follows:

§ 122.29 Arrival fee and overtime services.

Private aircraft may be subject to the payment of an arrival fee for services provided as set forth in § 24.22 of this chapter. For the procedures to be followed in requesting overtime services in connection with the arrival of private aircraft, see § 24.16 of this chapter.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

2. Section 123.0 is amended by adding a sentence at the end to read as follows:

§ 123.0 Scope.

* * * * *

Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in § 24.22 of this chapter.

§ 123.1a [Removed]

3. Section 123.1a is removed.

PART 145—MAIL IMPORTATIONS

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

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

2. Section 145.0 is amended by adding a sentence at the end to read as follows:

§ 145.0 Scope.

* * * * *

The fee applicable to each item of dutiable mail for which Customs prepares documentation is set forth in § 24.22 of this chapter.

§ 145.1a [Removed]

3. Section 145.1a is removed.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by removing the listings for sections 4.98(i), 123.1a, and 145.1a.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: October 4, 1993.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 93-25835 Filed 10-20-93; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplemental NADA provides for expanding the use of currently approved bambermycins containing Type A medicated articles to making Type C medicated feeds for use in cattle fed in confinement for slaughter.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Warner J. Caldwell, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1638.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Rt. 202-206 North, P. O. Box 2500, Somerville, NJ 08876-1258, has filed a supplement to NADA 44-759. The supplemental NADA provides for expanding the use of currently approved (broiler chickens, growing-finishing swine, and growing turkeys) 2-, 4-, and 10-gram-per-pound bambermycins Type A medicated articles to make Type C medicated feeds for use in cattle fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency. The supplemental NADA is approved as of September 21, 1993, and the regulations are amended in 21 CFR 558.95(a) and (b) to reflect the approval.

As provided in 21 CFR 558.4(a) and (d), bambermycins are Category I drugs, which as the sole drug ingredient, do not require an approved Form FDA 1900 for making Type C feeds as in approved

NADA 44–759 and in 21 CFR 558.95, as amended herein.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning September 21, 1993, because the supplemental application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the claims of increased rate of weight gain and improved feed efficiency in cattle fed in confinement for slaughter for which the application is being approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.95 is amended by revising paragraph (a)(1), by redesignating existing paragraph (b)(4) as paragraph (b)(5), and by adding new paragraph (b)(4) to read as follows:

§ 558.95 Bambermycins.

(a) * * *

(1) 2, 4, and 10 grams of activity per pound to 012799 in § 510.600(c) of this chapter for use as in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section.

* * * * *

(b) * * *

(4) *Cattle*—(i) *Amount per ton.* 1 to 4 grams.

(*a*) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* Feed only to cattle being fed in confinement for slaughter. Feed continuously in a Type C medicated feed at a rate of 10 to 20 milligrams of bambermycins per head per day. Not for use in animals intended for breeding.

(ii) [Reserved]

* * * * *

Dated: October 13, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–25866 Filed 10–20–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns changes to sections 880–X–8, 880–X–10, and 880–X–12 of the Alabama Surface Mining and Reclamation Rules (Rules) and is intended to make the requirements of the Alabama program no less effective than the Federal program.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982, **Federal Register** (47 FR 22030). Subsequent actions taken with regard to Alabama's program and program amendments can be found in 30 CFR 901.10, 901.15, and 901.30.

II. Submission of Amendment

Alabama submitted proposed changes to its program by letter dated June 23, 1993 (Administrative Record No. AL–499), in order to improve its regulations pertaining to blaster's certification and permit information and maps, and to correct cross-references. The program amendment modifies the following sections of the Rules: 880–X–8D, 880–X–8G, 880–X–8I, 880–X–8K, 880–X–10C, 880–X–10J, and 880–X–12A. The amendment adds the following sections to the Rules: 880–X–8D–.05(8), 880–X–8F–.08(2)(j), 880–X–8G–.05(8), and 880–X–8I–.07(2)(j).

OSM announced receipt of the proposed amendment in the July 27, 1993, **Federal Register** (58 FR 40104) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on August 26, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17 are the Director's findings concerning the proposed amendment to the Alabama program submitted on June 23, 1993. Revisions not addressed below either concern cross-references and paragraph notations that have been updated to reflect organizational or nomenclature changes or involve nonsubstantive wording changes.

Revisions to Alabama's Rules that are Substantively Identical to the Corresponding Federal Regulations.

State regulation	Subject	Federal Counterpart
880–X–8D–.09(2).	Permit Term.	30 CFR 778.13(b).
880–X–8G–.09(2).	Permit Term.	30 CFR 778.13(b).
880–X–8I–.16(1).	Coal Mine Waste.	30 CFR 784.24(a).
880–X–8K–.10(1)(a).	Permit Applications.	30 CFR 773.15(a)(1).
880–X–10C–.41(1).	Coal Mine Waste.	30 CFR 816.84(a).

Because the above proposed revisions are identical in meaning to the corresponding Federal rules, the Director finds that Alabama's proposed rules are no less effective than the Federal rules.

Revisions to Alabama's Rules that are not Substantively Identical to the Corresponding Federal Regulations.

1. 880–X–8D–.05—Permit Applications

At 880–X–8D–.05(8), Alabama is proposing to add a new regulation requiring that each permit application identify the county(s) and any municipalities and their police jurisdictions from which coal will be mined or severed.

The Federal regulations at 30 CFR 778.13 pertaining to identification of interests contain no comparable provision. However, the Director finds the proposed regulation at 880–X–8D–.05(8) to be consistent with the Federal regulations at 30 CFR 778.13.

2. 880–X–8F–.08—Permit Maps

At 880–X–8F–.08(2)(j), Alabama is proposing to add a new regulation requiring that the map included in a permit application for surface mining show the boundaries of the county(s) and any municipalities and their police jurisdictions from which coal will be mined or severed.

The Federal regulations at 30 CFR 780.14(a) pertaining to operation plans for surface mining contain no comparable provision. However, the Director finds the proposed regulation at 880–X–8F–.08(2)(j) to be consistent with the Federal regulations at 30 CFR 780.14(a).

3. 880–X–8G–.05—Identification of Interests

At 880–X–8G–.05(8), Alabama is proposing to add a new regulation requiring that each permit application identify the county(s) and any municipalities and their police jurisdictions under which coal will be mined or severed.

The Federal regulations at 30 CFR 778.13 pertaining to identification of interests contain no comparable provision. However, the Director finds the proposed regulation at 880–X–8G–.05(8) to be consistent with the Federal regulations at 30 CFR 778.13.

4. 880–X–.8I–.07—Permit Maps

At 880–X–8I–07(2)(j), Alabama is proposing to add a new regulation requiring that the map included in a permit application for underground mining show the boundaries of the county(s) and any municipalities and their police jurisdictions from under which coal will be mined or severed.

The Federal regulations at 30 CFR 784.23(b) pertaining to operation plans for underground mining contain no comparable provision. However, the Director find the proposed regulation at 880–X–8I–07(2)(j) to be consistent with the Federal regulations at 30 CFR 784.23(b).

5. 880–X–10J–.03—Coal Processing Plants

At 880–X–10J–.03(f), Alabama is proposing to revise its regulations pertaining to the use of water wells at coal processing plant operations by deleting this requirement due to an incorrect reference to its regulations at 880–X–10C–.24.

The Federal regulations at 30 CFR 827.12 pertaining to coal preparation plants do not contain provisions for the use of water wells. However, the Director finds that the proposed revision at 880–X–10J–.03(f) if not inconsistent with the Federal regulations at 30 CFR 827.12.

6. 880–X–12A–.07—Blasting Certification

At 880–X–12A–.07, Alabama is proposing to revise its regulations for blaster's certification. Subsections have been renumbered for organizational consistency. At subsection 2(b), applicants who fail to qualify in the blaster's certification examination after two attempts must reapply for certification. Current subsections (6) and (7) which required an annual fee and annual renewal of certificates are deleted. At subsection (4)(a), the term of certification is changed from one year to three years. At subsection (4)(b), the contents of the certification and the blaster's identification card are identified. At new subsection (5), the procedures for renewal of certification are specified. A certified blaster must apply for recertification no later than 90 days prior to expiration of the term of certification and must make certain demonstrations relating to employment and job knowledge.

The Federal regulations at 30 CFR 850.14 and 850.15 pertaining to the examination and certification of blasters require that the regulatory authority ensure that blaster certification candidates are examined and qualified candidates are certified for a fixed period of time. The regulatory authority shall specify the conditions for maintaining certification. The Director finds that the proposed regulations at 880–X–12A–.07 are no less effective than the Federal regulations at 30 CFR 850.14 and 850.15.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the July 27, 1993, Federal Register (58 FR 40104) ended on August 26, 1993. No comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Alabama program. The Department of the Army, Corps of Engineers; the Department of Agriculture, Soil Conservation Service, and Forest Service; the Department of the Interior, Bureau of Land Management, Bureau of Mines, and Fish and Wildlife Service; and the Alabama Historical Commission concurred without comment.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories.

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Alabama program submitted on June 23, 1993.

The Federal rules at 30 CFR part 901 concerning the Alabama program are being amended to implement the

Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This final rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the Federal Register.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 15, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 901.15, a new paragraph (p) is added to read as follows:

Section 901.15 Approval of Regulatory Program Amendments

* * * * *

(p) The following amendment submitted to OSM on June 23, 1993, is approved effective October 21, 1993.

1. Revision of the following Alabama Surface Mining Commission regulations:

880–X–8D–.09(2)—Permit Term
880–X–8G–.09(2)—Permit Term
880–X–8I–.16(1)—Coal Mine Waste
880–X–8K–.10(1)(a)—Permit Applications
880–X–10C–.41(1)—Coal Mine Waste
880–X–10J–.03(f)—Coal Processing Plants
880–X–12A–.07—Blasting Certification

2. Addition of the following Alabama Surface Mining Commission regulations:

880–X–8D–.05(8)—Permit Applications
880–X–8F–.08(2)(j)—Permit Maps
880–X–8G–.05(8)—Identification of Interests
880–X–8I–.07(2)(j)—Permit Maps

[FR Doc. 93–25851 Filed 10–20–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD09–93–032]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: The Coast Guard hereby provides notice that the City of Chicago, Illinois, has been granted permission to temporarily deviate from the regulations governing the opening of certain drawbridges over the Chicago River, from October 1 through November 30, 1993, for the purpose of further evaluating the reasonableness of possible changes to the permanent regulations. This deviation requires the City to open the bridges on signal after receiving an advance notice of a vessel's intended time of passage through the draws without regard to the number of vessels to be afforded passage, and establishes specific periods of time in which these bridge openings are to be scheduled. The City is being granted this deviation to reduce the frequency with which it must open its drawbridges. This deviation is experimental in nature and is intended to provide the Coast Guard with evaluation periods from which to test the reasonableness of the current regulatory structure.

EFFECTIVE DATE: The period of deviation begins on Friday, October 1, 1993, and continues through Tuesday, November 30, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to room 2083D at the same address between the hours of 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing bridges operated by the City of Chicago by submitting written data, views, or arguments to the address above. Persons submitting comments should include their name and address, this docket number (CGD09–032), the basis for each comment and specific provisions of the deviation to which each comment applies. If acknowledgment of the receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard will publish a Notice of Proposed Rulemaking which will again request comments. A public hearing might also be held.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert W. Bloom, Jr., Project Manager, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District.

Background and Purpose

The bridges owned and operated by the City of Chicago are presently governed in accordance with 33 CFR 117.391, which states that most bridges will open on signal, with exceptions of certain bridges that need not open unless advance notice is given of a vessel's time of intended passage. Additionally, the current regulation authorizes the City to not open the draws during peak vehicle traffic periods, i.e., morning and afternoon rush hours.

There are two vessel traffic periods, breakout and return, when there are as many as five to twenty-five boats on given days, leaving boatyards through the Chicago River system in the spring and returning in the fall. During the summer period, the boat traffic in the Chicago area consists of recreational vessels in need of repair which are returning to the yards on a temporary basis.

Thus, including the winter period, there appear to be four distinct periods in the Chicago River area, during which the need for bridge openings changes substantially. Therefore, it might be appropriate for the bridge regulations to vary by these four seasons.

The City requests that multiple boat transits be restricted to only Saturday and Sunday mornings, unless there is a special event on these days, during which time a bridge would not be required to open at all for vessel traffic to pass. The City submits that it is unduly burdensome to open the bridges for the passage of single recreational vessels within the Chicago River System. The City feels there is a need to schedule vessel movement on Saturdays and Sundays because of high volumes of vehicular traffic on these days.

A series of deviations has been granted to the city in order to evaluate the reasonableness of possible changes to the permanent regulations. The Coast Guard previously granted three temporary deviations to the regulations for bridges owned and operated by the City of Chicago.

On Wednesday, May 12, 1993, the Coast Guard published a temporary deviation in the **Federal Register**, 58 FR 27933, granting the City of Chicago permission to open their bridges from 6 a.m. on Saturdays through 7 p.m. on Sundays for the passage of vessels consisting of no less than five and not more than twenty-five boats; on Tuesdays and Thursdays the draws were required to open for the passage of vessels consisting of no less than five and not more than twenty-five boats, from 6:30 p.m. until all organized trips had safely completed.

On Wednesday, June 16, 1993, the Coast Guard published a second temporary deviation in the **Federal Register**, 58 FR 33191, which changed the starting times for scheduled trips on Tuesdays and Thursdays to start one half-hour earlier, from 6:30 p.m. to 6 p.m., and added a Wednesday trip to the regulated periods when vessels would be allowed to pass through the draws of the bridges. Thus, bridge openings for scheduled trips started at 6 p.m. on Tuesdays, Wednesdays, and Thursdays.

On Thursday, August 12, 1993, the Coast Guard published a third temporary deviation in the **Federal Register**, 58 FR 42856, which changed the Wednesday starting time to 11 a.m. The earlier starting time of 11 a.m. on Wednesdays was changed to provide recreational vessels returning to the boatyards for repairs, or returning to their regular moorings outside the Chicago River System, with more daylight hours to navigate the river. In addition, the requirement that a particular number of vessels accumulate before bridges need open for the passage of masted recreational vessels was eliminated.

This is the fourth temporary deviation being granted to the City of Chicago. The times that the bridges will be required to open for the passage of masted recreational vessels has been changed for Saturdays, Sundays, Tuesdays, Wednesdays and Thursdays. Also, a special Monday opening date has been included in this deviation because it is a holiday and opening the bridges on this day will not disrupt a great number of people transiting to and from work. The requirement that vessels give at least 24 hours notice in advance of the time of intended passage through the Chicago River System has not changed.

The Tuesday and Thursday requirement for the bridges to open starting at 6 p.m. has been changed to 6:30 p.m.

Comments received from the first three temporary deviations indicated concern with vessels navigating at night and the danger of a large number of vessels navigating the river at the same time. The city feels there is a need to schedule vessel movement on Saturdays and Sundays because of high volumes of vehicular traffic on these two days. Therefore, the starting time on Saturdays and Sundays has been changed. On Saturdays and Sundays the draws shall open for the passage of masted recreational vessels between the hours of 7 a.m. and 2 p.m. each day instead of from 6 a.m. on Saturdays through 7 p.m. on Sundays. A daylight opening during the week is necessary for those vessel operators who are not able to schedule a trip on weekends, and for those vessel operators who do not feel safe navigating during the hours of darkness. Therefore, the bridges shall open for the passage of masted recreational vessels between the hours of 10:30 a.m. and 2 p.m. on Wednesdays. The openings during the time frame of this temporary deviation are necessary because of the large number of masted recreational vessels returning to the boatyards for winter storage. However, the new Wednesday opening times should put the returning vessels through and past the main vehicle thoroughfares before the afternoon rush hours begin. This temporary deviation also includes a special opening on Monday, October 11, 1993, which will allow for the passage of masted recreational vessels between the hours of 10:30 a.m. and 2 p.m. The special Monday bridge opening is being added to enable vessels to transit the Chicago River System during a period when most businesses are closed for Columbus Day.

This temporary deviation is intended to best accommodate the City of Chicago while still providing for the reasonable needs of masted recreational vessels transiting the Chicago River System. The entire series of deviations will provide the Coast Guard with evaluation periods from which to test the reasonableness of the City's cited needs, the needs of navigation, and the current regulatory structure.

Deviation

Notice is hereby given that:

(1) The Coast Guard has granted the City of Chicago, Department of Transportation, a temporary deviation

from operating requirements of 33 CFR 117.391 governing certain bridges owned by the City of Chicago over the Chicago River, as follows:

Main branch	South branch	North branch
Lake Shore Drive.	Lake Street ..	Grand Avenue.
Columbus Drive.	Randolph Street.	Ohio Street.
Michigan Avenue.	Washington Street.	Chicago Avenue.
Wabash Avenue.	Madison Avenue.	North Halsted Street.
State Street ..	Monroe Street.	
Dearborn Street.	Adams Street	
Clark Street ..	Jackson Boulevard.	
La Salle Street.	Van Buren Street.	
Wells Street ..	Eisenhower Expressway.	
Franklin-Orleans Street.	Harrison Street.	
	Roosevelt Road.	
	18th Street ...	
	Canal Street .	
	South Halsted Street.	
	South Loomis Street.	
	South Ashland Avenue.	

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.43, for the purpose of evaluating possible changes to the permanent regulations. This temporary deviation applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago shall open on signal for the passage of recreational vessels after receiving a 24 hour advance notice during the following periods, subject to the conditions indicated:

(a) From 7 a.m. to 2 p.m. on Saturdays and on Sundays.

(b) At 6:30 p.m. on Tuesdays and Thursdays.

(c) From 10:30 a.m. to 2 p.m. on Wednesday.

(d) On Monday, October 11, 1993, between the hours of 10:30 a.m. and 2 p.m.

(3) During the periods of time the bridges shall open on signal as specified in 2 (a), (b), (c), and (d) above, the bridges shall be operated in such a manner so as to allow all vessels to complete safe passage through the Chicago River System, and shall open without restriction as to the minimum or maximum number of vessels desiring passage.

(4) Notwithstanding this deviation, the City of Chicago, after receiving a minimum of twenty-four hours advance notice of the intended passage of vessels through the draws of the bridges, shall ensure that:

(a) The necessary bridgetenders are provided for the safe and prompt opening of the draws;

(b) The operating machinery of each draw is maintained in good condition; and

(c) The draws are operated at sufficient intervals to assure their satisfactory operation.

(5) The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

(6) All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, government vessels of the United States, state and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

(7) This period of deviation is effective from Friday, October 1, 1993, through Tuesday, November 30, 1993.

Dated: September 29, 1993.

W. R. Wilkins,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District Acting.

[FR Doc. 93-25651 Filed 10-20-93; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 13-2-5846; FRL4782-6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On March 2, 1993, USEPA proposed to approve a request by the State of Illinois to revise its State Implementation Plan (SIP) for particulate matter (PM). The purpose of the SIP revision is to satisfy the federal requirements for an approvable PM SIP for LaSalle County, Illinois area, which is designated as a moderate nonattainment area as specified under the Clean Air Act (Act) as amended by the Clean Air Act Amendments (CAAA) of 1990. The Act requires that a state have an approved SIP to achieve the federal air quality standards. The CAAA requires submission of a PM SIP for all initial PM nonattainment areas by November 15, 1991. This rule approves the SIP revision for the LaSalle County PM nonattainment area. USEPA's action is based upon a revision request that was submitted by the State on October 16, 1991, with supplementary material submitted on November 13, 1991.

EFFECTIVE DATE: This action will be effective on November 22, 1993.

ADDRESSES: A copy of this revision to the Illinois SIP is available for inspection at:

Regulation Development Section, Regulation Development Branch (AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604

Jerry Kurtzweg (ANR-443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Gustavo Felix, Regulation Development Branch, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-6009.

SUPPLEMENTARY INFORMATION:

I. Background

Previously, USEPA published a rule announcing the designations and classifications for PM occurring by operation of law upon enactment of the CAAA (see 56 FR 11101, March 15, 1991). In addition, USEPA has published a follow-up rule correcting the boundaries and designations of some areas in light of comments addressing the March 1991 notice (see 56 FR 37654, August 8, 1991). Both of these rules provide a detailed discussion of the history and current status of PM areas nationwide.

By November 15, 1991, States were to adopt and submit to USEPA a SIP rule for all those areas that were classified as moderate PM nonattainment areas by operation of law upon enactment of the 1990 CAAA (see subpart 4 of Part D of title I of the Act (section 189)). SIP rules submitted by States to meet this requirement were to comply with both the general requirements for nonattainment areas identified in section 172 of the Act, and the requirements specific to PM in subpart 4 of part D. In particular, section 189(a) of the Act required that all States with initial moderate PM nonattainment areas were to submit responsive SIP regulations by November 15, 1991, which were to include:

(1) Either a demonstration (including air quality modeling) that the plan will provide for attainment by December 31, 1994, or a demonstration that attainment by that date is impracticable.

(2) Provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM are implemented by December 10, 1993.

An additional requirement imposed by the CAAA, a new source permit program meeting the requirements of part D of the Act is required for the construction and operation of new and modified major stationary sources of PM (including, in some cases, PM precursors), and is due by June 30, 1992, for all of the initial moderate PM nonattainment areas. This requirement will be addressed in a separate rule.

Summary of State Submittal

What follows is a brief discussion of the State's submittal. For more detailed discussion of the State's submittal and USEPA's analysis of it, the reader is directed to the March 2, 1993 (58 FR 12006) proposed rule and to the rationale documents for these proposed and final rules which are part of the rulemaking docket and available from the Region 5 office listed above.

The revision is applicable to a single facility which is owned and operated by Lone Star Industries (Lone Star) in Oglesby, Illinois. Lone Star operates a Portland Cement manufacturing plant. The revision amends Part 212 Visible and Particulate Emissions of Chapter I Subtitle B of Title 35 of the Illinois Administrative Code (35 IAC), specifically Sections 212.110, 212.423, and 212.424 and Part 211, Definitions and General Provisions, 35 IAC, Section 211.122, of the Illinois State rules.

The titles of the revised sections are as follows:

Section 211.122 Definitions
Section 212.110 Measurement Methods
Section 212.111 Abbreviations and Units
Section 212.113 Incorporation by Reference
Section 212.423 Emission Limits for Portland Cement Manufacturing Plants Located in LaSalle County, South of the Illinois River.
Section 212.424 Fugitive Particulate Matter Control for the Portland Cement Manufacturing Plant and Associated Quarry Operations Located in LaSalle County, South of the Illinois River.

Control Strategy

A total of 32 point sources and 14 areas sources were identified as contributing to the PM nonattainment problem in LaSalle County. As presented in the accompanying table, four of the point sources will be controlled by specific mass emission limits contained in Section 212.423(b) of 35 IAC. The four point sources are a kiln, a clinker cooler, finish mill high efficiency air separator, and a raw mill roller mill (RMRM). See table below.

	PM–10 emission limits			
	Rate		Concentration	
	kg/hr	(lb/hr)	mg/scm	(gr/scf)
A. Clinker Cooler	4.67	(10.3)	28.147	(0.012)
B. Finish Mill High Efficiency Air Separator	2.68	(5.9)	26.087	(0.011)
	PM–10 emission limits including condensible PM–10			
	Rate		Concentration	
	kg/hr	(lbs/hr)	mg/scm	(gr/scf)
A. Raw Mill, Roller Mill (RMRM)	6.08	(13.4)	27.5	(0.012)
B. Kiln without RMRM Operating	19.19	(42.3)	91.5	(0.040)
C. Kiln with RMRM	11.43	(25.2)	89.2	(0.039)

It should be noted that the kiln has two emission limits. One limit applies when the RMRM is operating and the other applies when the RMRM is not operating. The reason for the two emission limits is that some of the kiln exhaust is fed to the RMRM when the RMRM is operating to help reduce the kiln emissions. However, when the RMRM is not operating and the kiln is in operation, the kiln's emission limit must be increased to include emissions not being fed to the RMRM.

All other point sources at the cement plant are regulated by a no visible emission limit specified in Section 212.423(c) of 35 IAC. The no visible emission limit assures that the baghouses controlling emissions from the point sources such as the conveyor transfer points will be operating properly. A list of point sources may be found in the Technical Support Documents for this rulemaking. Complete descriptions of the individual point sources may be found in the State submittal. Both are available for inspection at the Region 5 office listed above.

The area sources will be controlled by fugitive dust suppression methods such as intermittent water applications on roads and foam suppressant applications to material processes. These fugitive dust controls are required by Section 212.424(d) of 35 IAC. The fugitive dust sources that require controls include unpaved roads and open areas traversed by motor vehicles, and crushing, screening, and conveying operations at the quarry that provide raw materials for the Portland cement manufacturing process.

Attainment Demonstration

Illinois prepared an attainment demonstration using dispersion modeling for LaSalle County. The State's demonstration indicates that the National Ambient Air Quality Standards (NAAQS) for PM will be attained by 1994 in LaSalle County and maintained in future years. The 24-hour primary and secondary PM NAAQS are both 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one. See 40 CFR 50.6. The annual primary and secondary PM NAAQS are both 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$. The dispersion modeling in the attainment demonstration predicted 148 µg/m³ as the 24-hour design concentration, thereby demonstrating attainment of the 24-hour PM NAAQS. The dispersion modeling in the attainment demonstration predicted 47 µg/m³ as the annual design concentration, thus demonstrating attainment of the annual PM NAAQS. A copy of the dispersion modeling analysis and USEPA's review of it are available at the Region 5 office listed above.

The requested SIP submittal includes air quality status, ambient monitoring, modeling, emission inventory, control strategies, and reporting requirements. The individual elements of the SIP revision provide the degree of emission reductions necessary for attainment and maintenance of the PM NAAQS. The emission reductions come from implementing specific mass emission limits on four sources, from visible emission limits on any other portland cement manufacturing process, and from requiring control measures on fugitive sources such as roadways, conveyors, crushing, and screening.

Response to Public Comment

Comments were received in response to the proposed rule from Lone Star. In general, Lone Star is in agreement with USEPA's proposed action, but requested that their comments be made part of the administrative record of this requested SIP revision. Lone Star's comments and USEPA's responses are summarized below.

Comment: Lone Star questioned the appropriateness of USEPA's Method 202, 40 Code of Federal Regulations, part 51, appendix M, to test for condensible PM. The SIP revision requires the raw mill roller mill and the kiln to be tested for condensible PM. Lone Star believes this test method has two potential deficiencies.

(1) Ammonia gas in the kiln will react in the Method 202 impinger solution to form ammonium chloride, ammonium sulfate, and possibly other ammonium salts. This would result in ammonium salts being measured as condensible PM. Lone Star requested that USEPA declare that for the purpose of determining compliance of the raw mill roller mill and kiln with the PM emission limits, the weight of all the ammonium salts found in the Method 202 impinger solution shall be deducted in calculating condensible PM.

(2) All the condensible particulate are treated as PM–10 (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers). Lone Star believes that some of the particles that condense may reach particle sizes greater than 10 microns.

USEPA Response on Both Deficiencies: The State regulations already exclude the ammonium chloride from the measurement of condensible PM. As for the ammonium sulfate, the calculation procedures used in Method 202 automatically subtracts the ammonium portion of ammonium sulfate. Any ammonium sulfate formed in the Method 202 impinger train would be collected as inorganic condensible PM. Equation 202–2 from Method 202 calculates the total inorganic condensibles.

$$m_i = m_r \frac{V_{ic}}{V_{ic} - V_b} - m_c$$

Eq. 202–2

m_i = Mass of inorganic condensibles, mg
m_r = Mass of dried sample from inorganic fraction, mg
V_{ic} = Volume of impinger contents sample, ml
V_b = Volume of aliquot taken for sulfate analysis, ml
m_c = Mass of Ammonium Ions (NH_4^+) from ammonium sulfate, mg

The mass of the ammonium from ammonium sulfate is calculated from

$$m_c = KC_{SO_4} V_{ic}$$

Eq. 202–1

K = −0.0205, when correcting for NH_4^+ and H_2O (use this factor when adding back two water molecules and 2 hydrogen molecules)
= .3542, when only correcting for NH_4^+ (two hydrogen molecules are added back)
C_{SO4} = Concentration of sulfate ions in the sample, mg/ml

It should be noted that 40 CFR 51, Appendix M list the K factors at +0.0205 and 0.184. These values are incorrect and a rule correction will be published in the near future correcting the K factors. The second K factor is calculated as followed:

$$K = \frac{\text{molecular weight (MW) of two } NH_4^+ \text{ molecules} - \text{MW of two H molecules}}{\text{MW of } SO_4^{-2}}$$

The first K factor is calculated in a similar fashion.

As for other ammonium salts, there is no evidence that any other ammonium salts besides ammonium chloride and ammonium sulfate would be produced in the Method 202 impinger train. Lone Star has not provided any evidence that other ammonium salts are formed in the Method 202 impinger train.

It should be noted that Method 202 is cited in the State regulations as 55 FR 41546 (October 12, 1990). The requested SIP revision is approvable with this citation for Method 202 because the condensible emission calculations are more conservative then to the correct calculations. However, once USEPA makes the needed correction to Method 202, it would be appropriate for the State to revise its regulations to cite the correct reference for Method 202.

In response to the second deficiency identified by Lone Star, particulate matter that condenses from a gaseous state to a liquid or solid state is likely to condense to very small particles. There is no evidence that condensible particles reach sizes greater than 10 microns. Lone Star has not provided any evidence that a significant amount of condensible particulate matter may reach sizes greater than 10 microns.

Comment: Another Lone Star comment concerns contingency measures, as required by section 172(c)(9) of the Act. See generally 57 FR 13543–44. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State, upon a determination by USEPA that the area has failed to make Reasonable Further Progress or attain the PM NAAQS by the applicable statutory deadline.

Lone Star believes it would be unfair and unreasonable to assume that additional emission reductions could come only from Lone Star sources, which are already controlled.

USEPA Response: Contingency measures for the LaSalle County nonattainment area are not due until November 15, 1993. It is the State of Illinois' responsibility to adopt additional control measures and submit them to USEPA as the contingency plan for LaSalle County. USEPA's responsibility is to determine if the contingency control strategy Illinois submits meets the requirements of the Act. If the State of Illinois fails to submit an approvable contingency plan for LaSalle County, sanctions may be imposed and a Federal Implementation Plan may be required. Contingency measures are a separable requirement for the LaSalle nonattainment area PM SIP, and are not germane to this rulemaking. This issue will be addressed in a future rulemaking.

Final Rulemaking Action

Based on the March 2, 1993, proposed rule and in consideration of the public comments received in response to the proposed rule, USEPA approves the requested plan revision submitted to USEPA on October 16, 1991, and November 13, 1991, for the LaSalle County nonattainment area. The State of Illinois has demonstrated that the LaSalle County moderate PM nonattainment area will attain the PM NAAQS by December 31, 1994. As noted above, additional submittals for the initial moderate PM nonattainment areas are due subsequent to this rule. USEPA will determine the adequacy of any such submittal once any are received.

USEPA specifically approves the incorporation of the revisions and additions to the following State rules into the Illinois SIP: 35 IAC, Sections 211.122, 212.110, 212.111, 212.113, and 212.423. Section 212.424 was already approved for incorporation into the SIP in an earlier Final Rule. See 40 CFR 52.720 (58 FR 3847, January 12, 1993).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 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

Incorporation by reference, Particulate matter.

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

Dated: September 23, 1993.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(95) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(95) On October 16, 1991, and November 13, 1991, the State submitted particulate matter regulations adopted as part of Pollution Control Board Proceeding R91–6. These regulations concern particulate matter controls for LaSalle County, Illinois.

(i) *Incorporation by reference.* Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board.

(A) The addition of definitions for "Condensible PM–10", "PM–10", "Portland Cement Manufacturing Process Emission Source", and the modification of the definition of "Portland Cement Process" to Part 211 Definitions and General Provisions: Section 211.122 Definitions; adopted at 15 Illinois Register 15673, effective October 14, 1991.

(B) Part 212 Visible and Particulate Matter Emissions: Section 212.110 Measurement Methods; the addition of an abbreviation for pounds per hour to Section 212.111 Abbreviations and Units; additions and deletions to Section 212.113 Incorporations by Reference including the addition and/or renumbering of paragraphs (a), (b), (c), (d), (e), and (h) and the deletion of paragraphs earlier numbered as (a) and (f); Section 212.423 Emission Limits for Portland Cement the Manufacturing Plant Located in LaSalle County, South of the Illinois River; adopted at 15 Illinois Register 15708, effective October 4, 1991.

[FR Doc. 93–25906 Filed 10–20–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300258A; FRL–4631–8]

RIN 2070–AB78

Revocation of Exemption from Requirement of a Tolerance for Certain Inert Chemicals in Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the exemptions from the requirement of a tolerance for seven pesticidally inert ingredients in or on raw agricultural commodities (RACs) listed in 40 CFR 180.1001(c)—hexane, methyl chloride, perchloroethylene, and propylene oxide; 40 CFR 180.1001(d)—chloroform, epichlorohydrin, ethylene dichloride (1,2-dichloroethane), and hexane (including isomeric hexanes); and 40 CFR 180.1001(e)—ethylene dichloride (1,2-dichloroethane), perchloroethylene, and propylene oxide. EPA initiated this action because the data base for these inerts is so deficient that the Agency cannot conclude that a tolerance is not necessary to protect the public health.

EFFECTIVE DATE: This regulation becomes effective October 21, 1993.

ADDRESSES: Written objections, identified by document control number [OPP–300258A], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Melissa Chun, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8318.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of January 13, 1993 (57 FR 4131), which proposed the revocation of the exemptions from the requirement of a tolerance for residues of seven pesticidally inert ingredients in or on RACs established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, listed in 40 CFR 180.1001(c)—hexane, methyl chloride, perchloroethylene, and propylene oxide; 40 CFR 180.1001(d)—chloroform, epichlorohydrin, ethylene dichloride (1,2-dichloroethane), and hexane (including isomeric hexanes); and 40 CFR 180.1001(e)—ethylene dichloride (1,2-dichloroethane), perchloroethylene, and propylene oxide.

No public comments or requests for referral to an advisory committee were received in response to the proposed rule. Therefore, based on the information considered by EPA and discussed in detail in the January 13, 1993 proposal and in this final rule, the Agency is hereby revoking the exemptions from the requirement of a tolerance for these seven inert ingredients listed in 40 CFR 180.1001(c), (d), and (e) in or on various RACs. Since these inerts have been eliminated from products or product registrations have been canceled or suspended, there is no legal sale or distribution in the United States. EPA believes there has been adequate time for legally treated agricultural commodities to have gone through channels of trade. Since sufficient time has elapsed in order for residues to dissipate, residues are not expected to appear in any domestically produced commodities. Consequently, the Agency is not recommending the establishment of action levels in place of these exemptions from the requirement of a tolerance.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objection (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor's contentions must include a statement of factual contentions on each issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published January 13, 1993, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these exemptions from the requirement of a tolerance will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the January 13, 1993 proposal.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 27, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

Part 180—[Amended]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C 346a and 371.

2. In § 180.1001(c), (d), and (e) tables, by removing the following entries, as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Hexane [Removed]	[Removed]	[Removed]
* * * * * * *		
Methyl chloride [Removed]	[Removed]	[Removed]
* * * * * * *		
Perchloroethylene [Removed]	[Removed]	[Removed]
* * * * * * *		
Propylene oxide [Removed]	[Removed]	[Removed]
* * * * * * *		

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Chloroform [Removed]	[Removed]	[Removed]
* * * * * * *		
Epichlorohydrin [Removed]	[Removed]	[Removed]
Ethylene dichloride (1,2-dichloroethane) [Removed]	[Removed]	[Removed]

Inert ingredients	Limits	Uses
* * *	*	* * *
Hexane (including isomeric hexanes) [Removed]	[Removed]	[Removed]
* * *	*	* * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	*	* * *
Ethylene dichloride (1,2-dichloroethane) [Removed] ...	[Removed]	[Removed]
* * *	*	* * *
Perchloroethylene [Removed]	[Removed]	[Removed]
* * *	*	* * *
Propylene oxide [Removed]	[Removed]	[Removed]
* * *	*	* * *

[FR Doc. 93-25939 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1E4033/R2015; FRL-4644-7]

RIN 2070-AB78

Pesticide Tolerance for Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide clopyralid in or on the raw agricultural commodity mint hay. The regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective October 21, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 1E4033/R2015], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1993 (58 FR 41453), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 1E4033 to EPA on behalf of the Agricultural Experiment Stations of Idaho, Oregon, Washington, and Wisconsin. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodity mint hay at 3.0 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations, or raising tolerance levels or food additive regulations, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.431(a) in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Mint, hay	3.0
* * * * *	

* * * * *

[FR Doc. 93-25933 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 300

[FRL-4786-3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Aidex Corporation Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces the deletion of the Aidex Corporation Site in Glenwood, Iowa, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Iowa have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Iowa have determined that remedial actions conducted at the site, to date, have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 21, 1993.

ADDRESSES: Comprehensive information on this site is available at the following addresses:

EPA Region VII Waste Management Division Records Center, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Glenwood, Iowa City Hall, City of Glenwood, 107 S. Locust Street, Glenwood, Iowa. 51534.

FOR FURTHER INFORMATION CONTACT: Steve Sanders, Remedial Project Manager, Waste Management Division/ Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66201, telephone 913-551-7578.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Aidex Corporation Superfund Site, Glenwood, Iowa.

A notice of intent to delete for this site was published in the **Federal Register** August 12, 1993 (58 FR 42916). The closing date for comments on the notice of intent was September 13, 1993. EPA received no comments on the proposed deletion. Therefore, no responsiveness summary was prepared.

Based on a review of monitoring and other data for the site, EPA in consultation with the State of Iowa, has determined that the site does not pose a significant risk to human health or the environment. The site shall continue to be monitored by the Iowa Department of Natural Resources (IDNR). EPA and IDNR will review the groundwater monitoring as part of each five-year review.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites deleted from the NPL when conditions warrant. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air Pollution control, Chemicals, Environmental protection, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 28, 1993.

Susan Gordon,

Acting Regional Administrator.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300-[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B-[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site for "Aidex Corporation, Glenwood, Iowa" and by revising the total number of sites from 1,077 to read 1,076.

[FR Doc. 93-25932 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Part 52e

RIN 0905-AD48

National Heart, Lung, and Blood Institute Grants for Prevention and Control Projects

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the Public Health Service (PHS) Act, as amended, to correct the authority citation and PHS Act section numbers included in the regulations, and references to several HHS regulations that apply to grants awarded under the regulations and make minor language changes.

EFFECTIVE DATE: Effective November 22, 1993.

FOR FURTHER INFORMATION CONTACT: John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B-11, 9000 Rockville Pike, Bethesda, Maryland 20892, or telephone (301) 496-2832 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the PHS Act, as amended (42 U.S.C. 285b–1), were last amended on February 25, 1980 (45 FR 12249). Subsequently, on November 20, 1985, the Health Research Extension Act of 1985 (Pub. L. 99–158) was enacted, amending the provisions of the PHS Act that authorize NIH programs. As a result of this statutory amendment, the sections of the PHS Act that authorized various National Heart, Lung, and Blood Institute programs were renumbered which necessitates changing the section numbers referenced in the regulations at 42 CFR part 52e. The NIH is amending part 52e to make these changes and to add references to several HHS regulations that apply to awards made under this part. Additionally, NIH is revising the section headings in accordance with Department efforts to simplify the language in its regulations, and is making several minor language changes.

The NIH announced its intention to make these changes in the notice of proposed rulemaking published in the **Federal Register** on August 19, 1992 (57 FR 37502). We gave the public 60 days to comment. We received no substantive comments. Consequently, these regulations are the same as the proposed regulations except for minor editorial changes. The following statements are provided as public information.

1. Regulatory Impact Statement

This rule has been reviewed in accordance with the requirements of Executive Order No. 12291. The Secretary has determined that it does not constitute a major rule as specified in the Order, and that a Regulatory Impact Analysis is not required.

2. Regulatory Flexibility Analysis

This rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). The Secretary has determined that compliance with the regulations will not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

3. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by these proposed regulations are:

93.837—Heart and Vascular Diseases Research
93.838—Lung Diseases Research
93.839—Blood Diseases and Resources Research

List of Subjects in 42 CFR Part 52e

Grant programs—health; Health; Medical research.

Dated: September 23, 1993.

Philip R. Lee,
Assistant Secretary for Health.

Approved: September 30, 1993.

Donna E. Shalala,
Secretary.

Accordingly, part 52e of title 42 of the Code of Federal Regulations is amended to read as set forth below.

PART 52e—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE GRANTS FOR PREVENTION AND CONTROL PROJECTS

1–2. Revise the authority citation for part 52e to read as follows:

Authority: 42 U.S.C. 216, 285b–1.

3. Revise the headings for §§ 52e.1, and 52e.3—52e.7 to read as follows:

§ 52e.1 To what programs do these regulations apply?

* * * * *

§ 52e.3 Who is eligible to apply?

§ 52e.4 How to apply.

§ 52e.5. What are the project requirements?

§ 52e.6 How will NIH evaluate applications?

§ 52e.7 What are the terms and conditions of awards?

* * * * *

4. Amend § 52e.1 by revising paragraph (a) to read as follows:

§ 52e.1 To what programs do these regulations apply?

(a) This part applies to grants under section 419 of the Act (42 U.S.C. 285b–1) for projects to:

(1) Demonstrate and evaluate the effectiveness of new techniques or procedures for the diagnosis, prevention, and treatment of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis and treatment of these diseases in children;

(2) Develop and evaluate methods of educating health practitioners concerning the prevention and control of these diseases; and

(3) Develop and evaluate methods of educating the public concerning the prevention and control of these diseases.

* * * * *

5. Revise § 52e.2 to read as follows:

§ 52e.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.)

Council means the National Heart, Lung, and Blood Advisory Council, established under section 406 of the Act (42 U.S.C. 284a).

Director means the Director of the National Heart, Lung, and Blood Institute and any official to whom the authority involved may be delegated.

Emergency medical services means the services utilized in responding to the perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

HHS means the Department of Health and Human Services.

National program means the National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program referred to in section 421 of the Act (42 U.S.C. 285b–3).

Nonprofit as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

PHS means the Public Health Service.

6. Amend § 52e.4 by removing ", NHLBI," in paragraphs (a) and (c).

7. Amend § 52e.6 by revising paragraph (a) introductory text to read as follows:

§ 52e.6 How will NIH evaluate applications?

(a) Within the limits of funds available, after consultation with the Council, the Director may award grants to applicants with proposed projects which in the Director's judgment will best promote the purposes of section 419 of the Act, taking into consideration among other pertinent factors:

* * * * *

8. Revise § 52e.8 to read as follows:

§ 52e.8 Other HHS regulations that apply.

Several other regulations apply to grants under this part. These include but are not necessarily limited to:

42 CFR Part 50, Subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science
42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments
45 CFR Part 93—New restrictions on lobbying
51 FR 16958 or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules
"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986), or successor

§§ 52e.5, 52e.7, and 52e.9 [Amended]

9. Remove, "NHLBI," each place it appears in the following provisions:
a. Section 52e.5(a) and (b);
b. Section 52e.7(b); and
c. Section 52e.9.

[FR Doc. 93-25525 Filed 10-20-93; 8:45 am]
BILLING CODE 4140-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815 and 1870

Approval Authorities for Conducting Multiple Rounds of Discussions and Negotiation With Multiple Offerors

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has revised the NASA FAR Supplement to make editorial corrections and administrative changes to clarify internal approval procedures for source selection procedures.

DATES: This final rule is effective October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358-0482.

SUPPLEMENTARY INFORMATION:

Background

NASA source selection procedures permit multiple rounds of written/oral discussions and negotiation with multiple offerors. Existing agency regulations are not clear regarding which agency official has the authority to approve use of these procedures, and the NASA FAR Supplement is revised to clarify the appropriate approval authorities. These revisions affect internal procedures only and have no direct impact on external entities. The revisions are issued as a final rule to ensure immediate implementation.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815 and 1870

Government procurement.

Tom Luedtke,
Acting Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815 and 1870 are amended as follows:

1. The authority citation for 48 CFR parts 1815 and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

1815.611 [Added]

2. Section 1815.611 is added to read as follows:

1815.611 Best and final offers.

After receipt of Best and Final Offers (BAFOs), the SSO may consider the evaluation findings not sufficiently comprehensive to make a selection decision. In this rare circumstance, it may be necessary to reopen discussions and issue an additional request for BAFOs to all offerors in the competitive range. For competitive procurements of $25 million or more, approval of the Associate Administrator for Procurement (Code HS) is required for this course of action. For competitive procurements with values less than $25 million, approval of the Procurement Officer is required.

1815.613-71 [Amended]

3. In section 1815.613-71, paragraph (b)(5)(i) is revised to read as follows:

1815.613-71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.

* * * * *

(b) * * *

(5) *Conduct of written or oral discussions.*

(i) *General.* Careful judgment must be exercised in determining the extent of discussions. The SEB should consider such factors as the time available, the expense and administrative limitations, and the size and significance of the procurement in deciding on the type, duration, and depth of the discussions. Normally, written or oral discussions are completed with each offeror in the competitive range in one round. In some cases, however, good business practice may warrant having more than one round of discussions with the offerors whose proposals are in the competitive range. In these cases, when discussions have been declared closed and BAFOs requested, the approval of the Associate Administrator for Procurement (or the Procurement Officer when the value of the procurement is less than $25 million) is required to reopen discussions (see 1815.611). Each subsequent round of discussions is subject to the same groundrules as the initial round (e.g., no discussion of weaknesses where such discussion is otherwise prohibited).

* * * * *

4. In section 1815.613-71, paragraph (b)(6) is removed and paragraphs (b)(7) and (b)(8) are redesignated (b)(6) and (b)(7), respectively.