

(b) **Definitions**—(1) A "DART Statement of Account Access Form" is the form provided by the Copyright Office for access to a digital audio recording product statement of account filed pursuant to 17 U.S.C. 1003, or a photocopy of said access form.

(2) "Access" to a DART Statement of Account Form consists of examining the Statement of Account Form, making notes of information contained on the form, or obtaining a certified or uncertified copy of the form from the Copyright Office.

(3) The phrase "interested copyright party" has the same meaning as the statutory phrase in section 1001 of title 17 of the United States Code, as amended by Public Law 102-563.

(c) **Persons allowed access to Statements of Account.** Access to quarterly and annual DART Statements of Account deposited under section 1003(c) of title 17 U.S.C. is limited to:

(1) Interested copyright parties or their duly authorized legal representatives;

(2) The manufacturer or importer who deposited the particular Statement of Account or its duly authorized legal representative;

(3) Staff of the Copyright Office who require access in performance of their duties under title 17 U.S.C., and,

(4) Staff of the Copyright Royalty Tribunal who require access in performance of their duties under title 17 U.S.C.

(d) **Requests for access procedure.** Requests for access to Statements of Account from interested copyright parties, or manufacturers or importers, must be accompanied by a fully completed and signed "DART Statement of Account Access Form." Requests for access submitted by mail should be addressed to: Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557. Requests for access may be made in person, at the Licensing Division, room LM-457, Madison Memorial Building, First and Independence Avenue, between 8:30 a.m. and 5 p.m., Monday through Friday (except legal holidays).

(e) **Content of DART Statement of Account Access Form.** The DART Statement of Account Access Form shall include the following information:

(1) Identification by name of the Statement of Account to be accessed, including the quarter and year to be accessed.

(2) The name of the interested copyright party or manufacturer or importer on whose behalf the request is made. A full street address, not a post office box number, must be included.

(3) The name and address of the person making the request for access and his/her relationship to the party on whose behalf the request is made.

(4) The purpose for the request for access, whether it is for an actual or potential audit or verification of the statement, for inspection by the manufacturer or importer, or for some other reason.

(5) The actual signature of the attorney or authorized representative of the party requesting access.

(f) **Fees.** (1) DART Statement of Account Access forms are provided free of charge.

(2) The following fees must be paid:

(i) To obtain an uncertified copy of a DART Statement of Account, \$10;

(ii) To obtain a certified copy of a DART Statement of Account, \$18;

(iii) For each page of other file material, \$0.50 per page.

(3) Payment of these fees may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to the Register of Copyrights. No requests will be processed until the appropriate filing fees are received.

Dated: April 22, 1993.

Ralph Oman,
Register of Copyrights.

Approved by:

James H. Billington,
The Librarian of Congress.

[FR Doc. 93-10776 Filed 5-6-93; 8:45 am]

BILLING CODE 1410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-45-1-5805; FRL-4652-9]

Conditional Approval of California's Substitute Program for the Clean-Fuel Fleet Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: EPA is proposing to conditionally approve the State of California's commitment to submit a substitute plan to "opt-out" of the Clean-Fuel Fleet program of the Clean Air Act (CAA or Act). The California Air Resources Board (CARB) requested EPA's conditional approval of its commitment to submit a substitute plan for the CAA Clean-Fuel Fleet program (fleet program) by the November 15, 1992 due date. The federal fleet program provisions, in section 182(c)(4) of the

Act, require states, in order to opt-out of the fleet program, to submit a substitute program for all or a portion of the program[s] which achieve at least equal long-term emission reductions of ozone-producing and toxic air emissions. Provisions of the Act require certain states to revise their state implementation plans (SIPs) to create fleet programs. These fleet programs must require that, beginning with the 1998 model year, a specified percentage of new vehicles purchased by certain fleet owners (owners of 10 or more vehicles that are centrally fueled) be clean-fuel vehicles operated in states with the worst ozone or carbon monoxide nonattainment areas. The programs will promote clean-fuel vehicles, such as those using methanol, ethanol or compressed natural gas, reformulated fuel, or other vehicle/fuel combinations able to meet the tougher standards. EPA has determined that, in limited circumstances, it may accept committal SIPs to perform CAA requirements. See General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 [57 FR 13498 (April 16, 1992)] (General Preamble). In this Action, EPA proposes conditional approval under section 110(k)(4) of this commitment and thereby proposes to preserve the opportunity of California to opt-out of the Clean-Fuel Fleet program.

DATES: EPA will accept written comments on this NPR until June 7, 1993.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) for EPA consideration by addressing them to Public Docket No. CA-93-FT at the following address: U.S. EPA, Region 9, A-2-1, Attention: Docket No. CA-93-FT, 75 Hawthorne Street, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Mobile Sources Section, A-2-1, Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1227.

A copy of the committal SIP is available for inspection in this docket. The docket is available for public inspection from 8:30 until 4. EPA may charge a reasonable fee for copying docket materials.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this introduction is to describe the Clean Air Act fleet program in order to provide a context from which to view the opt-out committal SIP approval being proposed today.

A. The Fleet Program

On November 15, 1990, Congress enacted amendments to the 1977 CAA, Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The fleet program is contained under part C, entitled "Clean Fuel Vehicles", of title II of the 1990 CAA, as amended. Part C was added to the CAA to establish two programs: a clean-fueled vehicle pilot program in the State of California (the California Pilot Test Program) and a national clean-fueled vehicle fleets program. The fleet program is to introduce (in 22 nonattainment cities) lower pollution emitting vehicles into centrally fueled fleets of vehicles in areas with the worst air quality problems. Congress chose centrally fueled fleets because operators of these fleets have more control over obtaining fuel than the general public. Additionally, the control which operators must maintain over their fleets simplifies the issues of maintenance and refueling of these special vehicles. Finally, because fleet vehicles typically travel more miles on an annual basis than do non-fleet vehicles, they provide greater opportunity to improve air quality on a per vehicle basis.

The CAA fleet program applies to those vehicles which are in a class for which clean fuel vehicle standards apply, and which are in covered fleets that are centrally fueled or capable of being centrally fueled.

Section 246 of the Act directs certain states containing "covered areas," as defined in section 246(a), to revise their state implementation plans to require that "at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operated in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area." Three vehicle classes are covered by the fleet program: light-duty vehicles and trucks (LDVs and LDTs) under 6000 lbs. gross vehicle weight rating (GVWR), LDTs between 6000 lbs and 8500 lbs GVWR and heavy-duty vehicles (HDVs) over 8500 lbs GVWR but under 26,000 lbs. Vehicles over 26,000 lbs. are not covered by the fleet program. Three types of clean fuel vehicles satisfy the purchase requirement: Low-emission vehicles (LEVs), ultra low-emission vehicles (ULEVs) and zero-emission vehicles (ZEVs).

The goal of the fleet program is to reduce emissions of non-methane organic gases (NMOG) (includes a reactivity adjustment) and oxides of nitrogen (NOx), and, to demonstrate the

feasibility of using clean-fuel vehicles in centrally-fueled fleets.

II. EPA Evaluation and Proposed Action

Section 182(c)(4) of the Act allows states to opt-out of the Clean-Fuel Fleet Program by submitting for EPA approval a SIP revision consisting of a program[s] resulting in as much or greater long-term reductions in ozone-producing and toxic air emissions. EPA may approve such a revision "only if it consists exclusively of provisions other than those required under [this Act] for the area." Such SIP revisions were due by November 15, 1992. Section 182(c)(4) further provides that EPA is to approve or disapprove the revision by May 15, 1993, and that EPA is to publish the revision upon receipt, with such notice being deemed to be a notice of proposed rulemaking on whether or not to approve the revision.

EPA made the determination that states intending to opt-out of the fleet program should do so by committing by November 15, 1992, and should at that time submit a substitute plan. If EPA conditionally approves that commitment, the state will be required to submit a fully adopted SIP revision fulfilling that commitment by a date certain, but no later than May 15, 1994 (the deadline for submitting SIP revisions to implement the fleet program pursuant to section 246(a) of the Act). If the state fails to submit a SIP revision fulfilling its commitment, the conditional approval will be treated as a disapproval and the state will have an obligation to submit a fully-adopted SIP revision to implement the fleet program in accordance with section 246. EPA believes this approach is consistent with the provisions of the Act and will ensure that, by May 15, 1994, the deadline for the submission of the fleet program SIP revisions, a SIP revision either implementing the fleet program or a substitute achieving equivalent air quality benefits will have been submitted to EPA.

The State of California has submitted by the statutory deadline a commitment to adopt a substitute program to opt-out of the Clean-Fuel Fleet program. California currently contains six serious and above non-attainment areas for either one or both ozone and carbon monoxide and is therefore subject to the requirement. The nonattainment areas in California include: Los Angeles-South Coast Air Basin; Sacramento Metro; San Diego; San Joaquin Valley; Southeast Desert Modified AQMA; and Ventura County. California has proposed to revise its SIP to opt-out of the federal program by submitting

California's low-emission vehicle (LEV) regulations as a substitute program. The SIP revision will commit California to achieve emission reductions equivalent to those predicted to occur with full implementation of the federal fleet program. A copy of California's commitment is available for public review at the address listed in the ADDRESSES section above. EPA is today proposing conditional approval of this commitment under section 110(k)(4) of the Act as part of the review process given to California's proposal to revise its SIP.

EPA will require much greater detail describing why and how the substitute program is sufficient to provide long-term reductions in ozone-producing and toxic air emissions equal to or greater than those provided by the federal fleet program in California's submittal to meet its commitment. A failure to submit the necessary detail in the SIP submittal would result in EPA disapproval. EPA expects that California will consider its reasonable further progress goals (as defined in section 171 of the CAA) in deciding whether to opt-out of the fleet program.

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

III. California's LEV Substitute Program

The California LEV regulations were adopted and approved in July 1991, by the Office of Administrative Law. The regulations apply statewide to passenger cars, light-duty trucks, and medium-duty vehicles. Beginning with model year 1994, each vehicle manufacturer will be required to meet an annual fleet average NMOG requirement for their light-duty vehicles that decreases with each succeeding model year. Beginning with the 1998 model year, LEV and ULEV emission levels will also be required for medium-duty vehicles. Tighter exhaust emission standards are established for transitional low-emission vehicles (TLEV), LEV, ULEV, and ZEV. Exhaust emission standards are identified for non-methane organic gases (NMOG), carbon monoxide (CO), NOx, particulate matter (PM), and formaldehyde (HCHO).

California estimates that, in total, its state regulations require more than "ten times as many LEVs than the federal program." California contends that its program will result in an additional four percent of new light-duty vehicles being

lower emitting ULEVs and ZEVs and that the introduction of LEVs prior to the 1998 model year will provide even greater emission benefits. The California program regulation does not have LEV standards for vehicles beyond 14,000 lbs., GVWR, while the federal program regulates HDVs through 26,000 lbs., GVWR. California contends that HDVs in this weight category in the South Coast Air Basin represent less than one percent of new vehicle purchases and that the net effect of emissions attributable to HDVs is more than offset by emissions reductions from other vehicle categories.

California has fulfilled SIP revision requirements for public notice through public hearings, workshops, and other administrative proceedings that have been held for the LEV program in accordance with the California Administrative Procedure Act.

IV. California Waiver Approval

On January 7, 1993, the Administrator of EPA granted California a waiver of federal preemption pursuant to section 209(b) to enforce motor vehicle emission standards and test procedures so that California may phase in more stringent LEV standards beginning with the 1994 model year. EPA's decision affects not only persons in California but also manufacturers outside the state who must comply with California's requirements in order to produce motor vehicles for sale in California. (For additional information, see 58 FR 4166, January 13, 1993.) This decision means the state can proceed phasing in and enforcing exhaust emission control standards for cars and trucks beginning with the 1994 model year that are more stringent than the Federal Tier I standards.

The California motor vehicle program (CMVP) was the first program in the United States to require a vehicle emission control program. In the Air Quality Act of 1967 (Pub. L. 90-148), Congress allowed California a waiver of the Air Quality Act's preemption section on motor vehicle emissions control. The 1977 amendments to the CAA expanded California's flexibility (H.R. Rep. No. 294, 95th Cong., 1st Sess. 301-2(1977)) so long as California's motor vehicle standards are "in the aggregate" at least as protecting of public health and welfare as applicable federal standards. Automakers have produced the "California Car" since the early 1960's. Subsequent passage of federal laws during that decade included the federal vehicle emission control program (FVECP) and prohibited the states, with the exception of California, from

adopting standards different from the federal program unless they adopt California's standards in accordance with section 177 of the Clean Air Act. California has since sought and received waivers to set its own vehicle standards.

V. Regulatory Process

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

Conditional approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, EPA certifies that this proposed rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-266 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

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

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Air pollution control for Hydrocarbons, Intergovernmental relations, Motor vehicles pollution, Nitrogen oxide, Reporting and recordkeeping requirements.

VI. Statutory Authority

42 U.S.C. 7401-7671q.

Dated: April 20, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93-10833 Filed 5-6-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 721

[OPPTS-50585D; FRL-4171-7]

Amide of Polyamine and Organic Acid; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to health.

DATES: Written comments must be submitted to EPA by June 7, 1993.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substance covered in this SNUR is OPPTS-50585D-293. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551. **SUPPLEMENTARY INFORMATION:** In the Federal Register of September 28, 1990 (55 FR 39899), EPA issued a SNUR establishing significant new uses for amide of polyamine and organic acid. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS-50585 (P-89-1062). This record

includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P-89-1062

Chemical name: (generic) Amide of polyamine and organic acid.
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: April 30, 1992.
Basis for revocation of section 5(e) consent order: The consent order for the chemical substance designated as P-89-1062 was revoked based on the results of a bioconcentration study submitted pursuant to the terms of the order. Following the Agency's review and analysis of the study, EPA determined, for purposes of section 5 of TSCA, that the PMN substance will not present an unreasonable risk of injury to human health and will not result in significant or substantial human exposure from ingestion of fish. Therefore, further regulation under section 5 is not warranted at this time.
Toxicity testing results: The test results indicated that the bioconcentration factor (BCF) for the PMN substance is 60. A BCF of 60 indicates that the PMN substance would accumulate in fish only at low levels. Consequently, human exposure to the PMN substance via fish ingestion no longer presents a potential health risk.
CFR citation: 40 CFR 721.293.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered

necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 30, 1993.

Victor J. Kimm,
 Acting Assistant Administrator for
 Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:
 Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.293 [Removed]

2. By removing § 721.293.

[FR Doc. 93-10851 Filed 5-6-93; 8:45 am]
 BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-120, RM-8217]

Radio Broadcasting Services; New Boston, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Louis M. Basso, III proposing the allotment of Channel 236A to New Boston, Texas, as the community's second local FM service. Channel 236A can be allotted to New Boston in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 236A at New Boston are 33-27-36 and 94-25-18.

DATES: Comments must be filed on or before June 24, 1993, and reply comments on or before May 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marjorie R. Esman, Esq., Hardy and Carey, 111 Veterans Boulevard, suite 255, Metairie, Louisiana 70005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-120, adopted April 15, 1993, and released May 3, 1993. The full text of this Commission decision is available for inspection and copying during

normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-10754 Filed 5-6-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 174

[Docket No. HM-197; Notice No. 93-11]

RIN 2137-AC26

Hazardous Materials in COFC and TOFC Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to permit the use of certain portable tanks to transport hazardous materials that pose a relatively low or moderate degree of hazard in container-on-flatcar (COFC) service or trailer-on-flatcar (TOFC) service, without obtaining prior approval from the Associate Administrator for Safety, Federal Railroad Administration (FRA). This notice proposes to require persons holding approvals who are unable to meet the specified standards to submit a new application to the Associate Administrator for Safety, FRA.

The intended effect of this action is to facilitate domestic and international

commerce and to reduce the need for obtaining written approvals for certain COFC and TOFC services.

DATES: Comments must be received on or before July 12, 1993.

ADDRESSES: Address comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Edward W. Pritchard, Telephone (202) 366-9178, Chief, Hazardous Materials Division, RRS-12, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-0897 or Hattie L. Mitchell, Telephone (202) 366-4488, Chief, Exemptions and Regulations Termination, DHM-12, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

Under §§ 174.61 and 174.63 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180), a rail carrier may not transport a cargo tank, portable tank, IM portable tank or multi-unit tank car tank containing hazardous materials in container-on-flat car (COFC) service or trailer-on-flat-car (TOFC) service, except under conditions approved by the Associate Administrator for Safety, FRA. These approvals generally are issued on a case-by-case basis.

On April 30, 1985, RSPA published in the *Federal Register* an advance notice of proposed rulemaking (ANPRM) titled "Shippers; Use of Cargo Tanks, Portable Tanks, IM Portable Tanks, and Multi-Unit Tank Car Tanks in COFC and TOFC Service," under Docket No. HM-197, Notice No. 85-2 (50 FR 18278). In the ANPRM, RSPA solicited comments and information to assist in the identification and development of safety criteria for COFC and TOFC service of tanks transporting hazardous materials. RSPA stated in the ANPRM that the safety criteria would be used as the basis to guide the case-by-case approval

process or to establish regulatory standards. Specific comments were requested on the adequacy of means used to secure a highway chassis (trailer) or a container to a flatcar, and the trailer's potential vulnerability in COFC/TOFC service. Comments were also requested on other safety issues involving the double stacking of containers, securement and cushioning of trailers and containers, liquid surge prevention, tank thermal protection, tank puncture resistance, and train placement. The ANPRM also announced a public hearing that was held on June 11, 1985.

RSPA received about 20 written comments in response to the ANPRM, and about ten persons made oral presentations at the public hearing. These comments and presentations were made by representatives of trade associations, rail carriers, motor carriers, shippers, a cargo tank manufacturers association, and state enforcement agencies.

Commenters to the ANPRM objected to cargo tanks being allowed to be transported in TOFC service. The reasons most often cited included: (1) Absence of an extended framework offering protection to the cargo tank; (2) large surge forces during "humping" operations; (3) adverse center of gravity; (4) outage concerns; and (5) increased likelihood of lading being released through the safety relief devices. The National Tank Truck Carriers, Inc. (NTTC) pointed out that the rail environment is very different from the highway environment. NTTC stated that the continuous "rock and roll" of a flat car, when translated into lateral surge in the cargo tank, and the relationship to "tie down" mechanisms for securing the cargo tank to the rail car must be studied carefully. NTTC further stated that the humping impacts of partially loaded cargo tanks create large surge forces on the front and rear tank heads, which would need to be of heavier construction to survive these impacts. The Railway Progress Institute (RPI) expressed similar concerns and stated that cargo tanks in TOFC service are less stable and have different centers of gravity than tank cars. RPI and several other commenters recommended further study on the influence of outage on surging and on the release of lading through cargo tanks' pressure relief devices.

With regard to the transport of multi-unit tank car tanks (DOT specifications 106 and 110), FRA believes that less than ten units are being transported under FRA approval. In testimony presented at the June 11, 1985 public hearing, a representative of the

Association of American Railroads (AAR) stated that AAR was not aware of any COFC/TOFC movement of these units except in dry vans or trailers, where existing blocking and bracing practices are sufficient.

The public hearing and written comments to the ANPRM offered diverse views on the suitability of transporting portable tanks containing hazardous materials in COFC and TOFC service. With regard to COFC service, commenters expressed no opposition to the use of portable tanks to transport hazardous materials with a low or moderate hazard potential. Commenters stated that IM portable tanks in COFC service offer the safest and most economical method of transporting hazardous materials by rail. However, there were diverse opinions on the suitability of using portable tanks to transport hazardous materials with high hazards in COFC service. The reason cited most often by commenters was the need for portable tanks to have insulation or thermal protection and safety relief devices similar to those required for tank cars carrying similar hazardous materials.

With regard to the use of portable tanks in TOFC service, commenters expressed concern because two interface systems are used—the system between the tank and the vehicle chassis and the system between the vehicle chassis and the rail car. Several commenters expressed support for using portable tanks in TOFC service, but several other commenters opposed using this configuration until existing securement practices and end-of-car cushioning devices have been more thoroughly field-tested. Concerns about the securement of portable tanks in TOFC service were also raised in an earlier rulemaking proceeding under Docket HM-177 ("Public Hearing and Request for Comments on Transportation of Hazardous Materials in TOFC," January 26, 1991, 46 FR 8055). The presentations at the public hearing and the written comments to Docket HM-177 failed to document any adverse shipping experience or safety-related problems when transporting hazardous materials in TOFC service. Commenters stated that their own shipping experience revealed no evidence of excessive railcar "rock and roll" or securement problems with the two interface securement systems used for portable tanks. In view of the favorable comments supporting portable tanks in TOFC service, Docket HM-177 was terminated.

II. The FRA Approval Process

Under procedures followed by FRA, an applicant submits a complete application containing detailed information on a tank, its securement system, and other necessary data to support the application. Upon receipt of an application, FRA staff members review the submitted data to determine the extent to which the requested method offers protection to the tank and the suitability of the securement system.

FRA has issued approvals for transporting portable tanks containing hazardous materials in COFC/TOFC service for approximately 10 years. Since 1984, FRA has issued approvals where the applicant demonstrated use of an authorized portable tank and a proven securement system. For TOFC service, the approvals require the use of portable tanks having equipment for secure mating to a container trailer chassis, and the trailer chassis having standard ISO twist-lock pins and corner castings. For COFC service, the approvals require the use of portable tanks having equipment for secure attachment to a railroad container car equipped with an ISO standard COFC basic pedestal system designed for container support and securement, and the railcars having a cushioning system meeting the requirements of AAR Specification M-952, titled "Intermodal Container Support and Securement Systems for Freight Cars".

III. Features of This NPRM

Based on the merits of written and oral comments received in response to the ANPRM and the safety record achieved in transporting more than 50,000 portable tanks in COFC and TOFC service, RSPA proposes in this NPRM to authorize the transport of portable tanks containing low-to-moderate hazard materials in COFC and TOFC service under conditions prescribed in the HMR, without the need for an approval. Only those low-to-moderate risk materials having a bulk packaging authorization of § 173.240, 173.241, 173.242, or 173.243 would be authorized for transport in portable tanks in COFC or TOFC service. RSPA and FRA agree with commenters that portable tanks containing higher risk materials in COFC or TOFC service may need to meet certain additional safety standards. Therefore, those portable tanks would remain subject to the approval process for evaluation on a case-by-case basis.

As recommended by commenters, RSPA is proposing in this NPRM that all portable tanks and flatcars used in COFC or TOFC service would have to

meet the requirements contained in AAR.600, "Specifications for Acceptability of Tank Containers", Chapter 4, of the AAR Manual of Standards and Recommended Practices, Section C—Part III. AAR.600 contains requirements on construction, certification of tank containers, approved materials, closures, safety relief devices, and marking. The trailer chassis used in TOFC service and the container support and securement systems used in COFC service would be subject to certain requirements contained in AAR specifications M-943 and M-952, of the AAR Manual of Standards and Recommended Practices, Section I. These performance specifications prescribe securement systems that permit standard ISO twist-locks. Therefore, RSPA and FRA believe that most configurations used in COFC or TOFC service under FRA approval would meet the requirements contained in these AAR standards, which are proposed to be incorporated into § 174.63. A new applicant or any person currently holding an FRA approval for the transport of a portable tank or an IM portable tank in COFC or TOFC service, who is unable to comply with the requirements prescribed in proposed § 174.63(a) and (b), would be required to submit a new request for approval to the Associate Administrator for Safety, FRA, stating the reason for the non-conformance.

Because of the strong concerns raised by commenters on the transport of cargo tank motor vehicles in TOFC service, cargo tanks would continue to be subject to the approval process. Cargo tanks are used on rare occasions in TOFC service. Also, because of the limited availability of experience data, the use of multi-unit tank car tanks in COFC and TOFC service would remain under FRA approval.

On February 28, 1991, FRA published a notice in the *Federal Register* (56 FR 8388), extending the expiration date of all existing approvals, granted under 49 CFR 174.61 and 174.63 for the movement of multimodal containers in TOFC and/or COFC service, until after issuance of a final rule under this docket. As proposed in this notice, all outstanding approvals issued under these sections will expire on the date stated in the approval letter or six months after the effective date of a final rule, whichever is later. Persons currently holding an FRA approval who are unable to comply with the requirements in proposed § 174.63 would have to re-apply for approval. Such persons would include those holding approvals for portable tanks and IM portable tanks containing hazardous

materials not authorized for packaging under §§ 173.240, 173.241, 173.242, and 173.243, and those holding approvals for cargo tanks or multi-unit tank car tanks transporting hazardous materials in COFC or TOFC service.

RSPA plans to address other issues raised in the ANPRM (e.g., pressure relief devices, identification/markings, thermal protection, puncture resistance, and special handling requirements) in future rulemaking actions.

IV. Section by Section Review

Section 171.7

In paragraph (a)(3), the table would be amended by removing the entry "AAR Specification for Tank Cars". The entry for "AAR Specification for Tank Cars, Specification M-1002, Section C" would be revised to show that this standard is contained in the AAR Manual of Standards of Recommended Practices and to include other applicable section references. A new entry would be added to incorporate by reference the AAR standard "Specially Equipped Freight Car and Intermodal Equipment," Section I, which is also contained in the AAR Manual of Standards and Recommended Practices.

Section 174.61

This section would be revised to contain requirements for transport vehicles and freight containers containing packages of hazardous materials. The section heading would be revised to read "Transport Vehicles and Freight Containers on Flatcars." Because the term "rupture" generally refers to failure of a packaging from internal pressure rather than the type of damage sustained from improper loading of packages within a transport vehicle or freight container, in paragraph (a), the words "rupture or" would be removed. The requirement currently in paragraph (c) that a cargo tank or multi-unit tank car tank containing hazardous materials may not be transported in COFC or TOFC service without prior approval would be redesignated as proposed § 174.63(d).

Section 174.63

This section would be revised to contain requirements for portable tanks, IM portable tanks, cargo tanks, and multi-unit tank car tanks transported by rail. In paragraph (a), certain minor editorial changes would be made to requirements that portable tanks and IM portable tanks must be designed and loaded so that they maintain their integrity during transportation. In addition, this paragraph would incorporate requirements for DOT 51,

52, 53, 56 and 57 portable tanks that are currently contained in paragraph (c). Proposed paragraph (b) would contain requirements for the transport of portable tanks and IM portable tanks in COFC or TOFC service. Paragraph (c), containing the proposed requirement that approval by the Associate Administrator for Safety, FRA, must be obtained for COFC or TOFC movements of portable tanks and IM portable tanks, would limit such approval to tanks not meeting the requirements specified in paragraph (a) or (b). Proposed paragraph (d) would retain the requirement currently contained in § 174.61(d) that cargo tanks and multi-unit tank cars tanks containing hazardous materials may only be transported in COFC or TOFC service after receiving approval of the Associate Administrator for Safety, FRA.

V. Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies

This proposed rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and (1) is determined not to be "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034); and (3) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). The rule proposed in this docket will impose no additional costs on the regulated industry and will bring benefit in the form of reduced information collection. A regulatory evaluation is available for review in the public docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism").

The Hazardous Materials Transportation Act (49 App. U.S.C. 1801-1819) contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if (1) compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. Covered subjects include:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4)(A) and (B).

This proposed rule concerns the handling of hazardous materials. If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning this subject unless the non-Federal requirements are "substantively the same" (56 FR 20424, May 13, 1992) as the Federal requirements. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

The provisions of this proposed rule would impact shippers of hazardous materials by COFC/TOFC service and would have the net result of reducing costs to persons affected by a final rule. Based on available information, I certify that this rule would not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act. The need to further evaluate economic consequences will be reviewed on the basis of comments submitted in response to this notice.

D. Paperwork Reduction Act

The requirements for information collection contained in current §§ 174.61 and 174.63 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) under OMB Control number 2137-0558. The proposed revised information collection requirements are being submitted for approval to OMB. Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Transportation. All comments must reference the title for

this notice "Hazardous Materials in COFC and TOFC Service."

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

In consideration of the foregoing, 49 CFR parts 171 and 174 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 33 U.S.C. 1321; 49 CFR part 1.

§ 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes would be made:

a. The entry "AAR Specification for Tank Cars, Specification M-1002, 1988" would be removed from Column 1 and, in Column 2, captioned "49 CFR reference," the entries "173.31; 179.100" would be removed.

b. The entry "AAR Specification for Tank Cars, Specification M-1002, Section C—Part III, September, 1988" in column 1 would be revised to read "AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M-1002, 1990", and the entry in column 2 would be revised to read: "173.31; 174.63; 179.6; 179.12; 179.100; 179.101; 179.102; 179.103; 179.105; 179.200; 179.201; 179.220; 179.300; 179.400."

c. The entry "AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment, (800 Series), 1990" would be added in column 1 and the entry "174.63" would be added in column 2.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 33 U.S.C. 1321; 49 CFR 1.53(e), 1.53, app. A to part 1.

4. In § 174.61, paragraph (c) would be removed and the section heading and the first sentence in paragraph (a) would be revised to read as follows:

§ 174.61 Transport vehicles and freight containers on flat cars.

(a) A transport vehicle or freight container containing a hazardous material must be designed and loaded so that it will not become seriously damaged under conditions normally incident to transportation. * * *

5. Section 174.63 would be revised to read as follows:

§ 174.63 Cargo tanks, multi-unit tank car tanks, portable tanks, and IM portable tanks.

(a) A Specification 51, 52, 53, 56, 57, IM 101, or IM 102 portable tank may be transported inside a transport vehicle or container body provided the tank is secured with a restraint system that will prevent the tank from changing position, sliding into other tanks, or contacting the side or end walls (including doors) under conditions normally incident to transportation.

(b) A portable tank or IM portable tank may be transported in COFC service or TOFC service subject to the following conditions:

(1) The tank contains a material authorized to be packaged in accordance with § 173.240, 173.241, 173.242, or 173.243;

(2) The tank and flatcar conform to requirements in "Specifications for Acceptability of Tank Containers", (AAR 600), Section C-Part III, Chapter 4, of the "Specifications for Tank Cars", AAR Manual of Standards and Recommended Practices;

(3) The tank may not be in a double-stack;

(4) For TOFC service, the trailer chassis conforms to requirements in paragraphs 3, 4, 5, and 6 of AAR Specification M-943 "Container Chassis For TOFC Service", and the AAR Specification M-952 "Intermodal Container Support and Securement Systems for Freight Cars", of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment";

(5) For COFC service, the container support and securement systems conform to requirements in Specification M-952 "Intermodal Container Support and Securement Systems for Freight Cars", of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment"; and

(6) All securement fittings are fully engaged and in the locked position.

(c) A carrier may not transport a portable tank or IM portable tank that does not conform to paragraph (a) or (b) of this section unless approved for transportation by the Associate Administrator for Safety, FRA.

Approvals in effect on February 28, 1991 for the transportation of portable tanks or IM portable tanks in TOFC or COFC service expire on the date stated in the approval letter or [6 MONTHS FROM THE DATE THE FINAL RULE IS ISSUED], whichever is later.

(d) A carrier may not transport a cargo tank or multi-unit tank car tank containing a hazardous material in TOFC or COFC service unless approved for transportation by the Associate Administrator for Safety, FRA.

Issued in Washington, DC on May 4, 1993, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93-10829 Filed 5-6-93; 8:45 am]

BILLING CODE 4910-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition to List the Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service finds that listing of the spotted frog (*Rana pretiosa*) as threatened in some portions of its range is warranted but precluded by other higher priority listing actions.

DATES: The finding announced in this notice was approved on April 23, 1993. Comments and information may be submitted until further notice.

ADDRESSES: Questions, comments and additional information regarding this finding should be sent to Mr. Larry Shanks, Chief, Endangered Species and Environmental Contaminants, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the Service's Denver Regional Office, 134 Union Boulevard, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Patricia Worthing at the Denver Regional Office (see ADDRESSES above), telephone (303) 236-7398.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a 90-day finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. If the finding is positive, the Service is also required to promptly commence a status review of the species. Section 4(b)(3)(B) requires that the Service make a 12-month finding as to whether the petition presenting substantial information is (i) warranted, (ii) not warranted, or (iii) warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species.

A petition dated May 1, 1989, from the Board of Directors of the Utah Nature Study Society was received by the Service on May 4, 1989. The petitioners requested that the Service add the spotted frog (*Rana pretiosa*) to the List of Threatened and Endangered Species and to specifically consider the status of the Wasatch, Utah, population.

The Service published a notice of a 90-day finding in the Federal Register (54 FR 42529) on October 17, 1990, indicating that there was substantial information to indicate that the petitioned action may be warranted. Concurrent with publishing the notice, the Service initiated a status review. The period of the status review was prolonged because, throughout its wide range, there was a lack of quantitative information documenting the spotted frog's current distribution and status. Additionally, the discovery that spotted frog genetics research was being conducted raised questions regarding the appropriateness of the current taxonomic classification of the various populations of spotted frog.

The Service sponsored an interagency workshop in 1991 in order to clarify the distribution, taxonomy, and current status of the spotted frog. The subject 12-month petition finding utilized information and comments provided at this workshop plus available literature and information obtained from university and agency personnel familiar with the species and the habitat conditions in specific areas.

The petitioners stated that "the spotted frog's present range in the lower 48 states is greatly reduced from its historic range," and that "the current status [of the species] is greatly reduced from historic times." The petitioners further indicated that the "scientific

importance of the spotted frog is that this species lives in many disjunct populations that reflect Pleistocene populations."

Threats identified by the petitioners include loss of habitat (caused by dam and reservoir construction, alteration of drainage patterns, urban and agricultural use of water, and highway and bridge construction); impacts as a result of introductions of exotic species; lack of inventories of native wetland animals and insufficient impact analyses conducted prior to development; inadequate mitigation activities; and Federal and State laws and regulations that do not protect wetlands and riparian areas.

The two subspecies identified by the petitioners, *R. p. pretiosa* and *R. p. luteiventris*, are no longer generally recognized by the scientific community (Green 1991, Nussbaum et al. 1983). Currently, the spotted frog is considered a monotypic species, *Rana pretiosa*, throughout its range (Nussbaum et al. 1983). However, genetic studies currently being conducted by Green (1991). However, genetic studies currently being conducted by green (1991) suggest that the species may actually consist of an additional one or more species and subspecies.

Adult frogs have large, dark spots on their backs and pigmentation on their abdomens ranging from yellow to red (Turner 1959). Spotted frogs in Utah are reported to have fewer and lighter colored spots (Colborn, U.S. Fish and Wildlife Service, pers. comm., 1992; Shirley, Utah Department of Wildlife Resource, pers. comm., 1992). The spotted frog is closely associated with water (Dumas 1966, Nussbaum et al. 1983). Habitat includes the marshy edges of ponds, lakes, and slow-moving cool water streams (Licht 1974, Nussbaum et al. 1983) and cold water springs (Morris and Tanner 1969, Hovingh 1987a, Stebbins 1985 in Toone 1991).

The historic range of the spotted frog includes portions of Alaska, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and Alberta and British Columbia, Canada (Turner and Dumas 1972; Nussbaum et al. 1983; Hovingh 1986). The species' range is highly subdivided at its southern extent with various groups of frogs occurring in isolated habitats such as high elevation wetlands or in desert springs. This fragmented range indicates that there may be considerable, and previously undetected, genetic divergence among *R. pretiosa* populations, even to the extent that this taxon may actually represent a complex of similar species (Green 1991).

The present distribution of the spotted frog includes a main population in southeast Alaska, Alberta, British Columbia, eastern Washington, northeastern Oregon, northern and central Idaho, and western Montana and Wyoming. Additional disjunct populations occur in northeastern California, southern Idaho, Nevada, Utah, and western Washington and Oregon.

Based on geographic and climatic separation and supported by genetic separation as determined by Green (1991) and David Green (McGill University, pers. comm., 1992), the Service identifies the following distinct vertebrate populations of the spotted frog: (1) The main population (Alaska, British Columbia, Alberta, Wyoming, Montana, northern and central Idaho, eastern Washington, and northeastern Oregon), (2) Great Basin (southern Idaho and Nevada), (3) west coast (western Washington and Oregon and northeastern California), (4) Wasatch Front (Utah), and (5) West Desert (Utah). Green (1991) did not separate the two Utah groups. However, the Service identified the Wasatch Front and West Desert spotted frogs as two populations based primarily on geographic separation but supported by evidence of some genetic variation from Green (1991) and by other anecdotal evidence of possible morphological differences (Leon Colborn, pers. comm., 1992; David Green, pers. comm., 1992; Peter Hovingh, University of Utah, pers. comm., 1992). The southernmost populations (southern Idaho, Nevada, and Utah) are believed to be relict populations occurring in small patches of suitable habitat remaining since the last ice age. The extreme western population (western Washington and Oregon and northeastern California) is believed to be a separate ecologic form confined to the warmer, milder climatic conditions of the west coast. These population divisions may be modified due to redefinition of the taxonomy of the spotted frog based on final genetic results, or by additional scientific information.

The Service believes that each of the disjunct populations is isolated from each other and from the main population by large distances with intervening stretches of unsuitable habitat or by distinct climatic variations that form substantial geographic or ecological barriers. Each of these disjunct populations is thus separated from any other population throughout its entire life cycle and at all times of the year. These ecological and geographic barriers are believed to

effectively prevent any interchange between any of the populations.

The main population of spotted frogs (in Alaska, Alberta, British Columbia, eastern Washington and Oregon, northern and central Idaho, and western Montana and Wyoming) occurs over a large area with a variety of habitat conditions and threats. While there are activities occurring within this region that potentially impact spotted frogs, and while some declines have been documented or are suspected, spotted frogs are believed to be still abundant in many areas. However, the disjunct populations in the southern and western part of the species' range are either severely declining or nearly extirpated or are faced with significant threats altering or eliminating the species' habitat. Reduction, elimination, or alteration of wetland habitats has been a primary factor in each of these populations.

In the west coast population (western Washington and Oregon and northeastern California), spotted frogs have been nearly extirpated west of the Cascades from the Willamette Valley and Puget Trough and have disappeared from most locations in the Cascades and in northeastern California (Nussbaum et al. 1983; Marshall 1989; Storm 1966 in McAllister and Leonard 1990; McAllister and Leonard 1991; Marc Hayes, Portland State University, pers. comm., 1992). Modification of river hydrology from completion of a series of dams in the Willamette Valley and the Puget Trough has significantly reduced the amount of shallow overflow wetland habitat historically utilized by the spotted frog (Marc Hayes, pers. comm., 1992; Kelly McAllister, Washington Department of Wildlife, pers. comm., 1992). According to Hayes (pers. comm., 1992), impacts to spotted frogs in the Cascades have resulted from grazing and from the construction of reservoirs which have inundated large marsh complexes and fragmented remaining marshes, thereby reducing the survival of spotted frogs in these areas. In northeastern California, Mark Jennings (California Academy of Sciences, pers. comm., 1992) indicates that grazing coupled with degraded water quality caused by irrigation and other agricultural activities have impacted spotted frog populations. Next to loss of habitat, Hayes (pers. comm., 1992) believes the second major factor affecting the west coast spotted frog population is the introduction and naturalization of nonnative predaceous fishes and other nonnative aquatic species that are believed to prey on tadpoles of spotted frogs and other native western *Rana* species.

Spotted frogs of the Great Basin population (Nevada and southern Idaho) have undergone significant declines (Turner 1962; Peter Hovingh, pers. comm., 1992). Extensive loss of habitat has occurred from conversion of wetland habitats to irrigated pasture and dewatering of river areas by irrigation practices; in addition, there has been extensive impact on riparian habitats primarily due to intensive livestock grazing (Peter Hovingh, pers. comm., 1992).

In the Wasatch Front population in Utah, spotted frogs have undergone significant decline (Hovingh 1988; Dennis Shirley, pers. comm., 1992). Habitat loss and modification from reservoir construction and from urban and agricultural developments, compounded with predation by nonnative species, are the primary causes of the decline (Dennis Shirley, pers. comm., 1992).

While less habitat loss has occurred with the West Desert population of Utah than with the other southern and western populations, habitat availability is limited. Degradation of spring habitats and water quality from cattle grazing and other agricultural activities in these limited habitats are potential threats to the spotted frogs of this population (Hovingh 1987b; Peter Hovingh, pers. comm., 1992; Dennis Shirley, pers. comm., 1992).

Finding

The Act requires that the Service make determinations regarding listing solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts being made by States and others to protect the species. On the basis of the best available scientific and commercial information, the Service finds that the petitioned action to list the spotted frog throughout its entire range is not warranted.

The Service has the authority to list a distinct population segment of any vertebrate fish or wildlife species which interbreeds when mature. However, Congressional language indicates that the Service is "to use the ability to list populations sparingly and only when the biological evidence indicates that such action is warranted" (Senate Report No. 96-151, 96th Congress, 1st Session 7, 1979).

It is the opinion of the Service that, although the spotted frog appears to be common and abundant in its main population, it is known to be severely declining in the southern and western portions of its historic range. Based on the extensive loss of alteration of

wetland habitat, compounded by the introduction of nonnative species, the Service finds that listing the west coast spotted frog population (western Washington and Oregon and northeastern California), the Great Basin population (Nevada and southern Idaho), and the Wasatch Front population (Utah) is warranted but precluded by work on other species having higher priority for listing. Based on the limited habitat and the potential for significant habitat destruction or alteration, the Service finds that the listing of the West Desert population (Utah) is also warranted but precluded.

In making this warranted-but-precluded finding for the four vertebrate populations identified above, the Service transfers these populations from Category 2 candidates to Category 1. The main populations of the spotted frog is retained in Category 2.

Section 4(b) of the Act states that the Service may make warranted-but-precluded findings only if it can demonstrate that (1) an immediate proposed rule is precluded by other pending proposals, and that (2) expeditious progress is being made on other listing actions. On September 21, 1983 (48 FR 43098), the Service published in the *Federal Register* its priority system for listing species under the Act. The system considers three factors in assigning species numerical listing priorities on a scale of 1 to 12. The three factors are magnitude of threat, immediacy of threat, and taxonomic distinctiveness.

As discussed above, the spotted frog faces threats primarily from habitat alteration and destruction, and predation and competition by nonnative species. The Service considers the magnitude of these threats in the west coast population, the Wasatch Front population and the Great Basin population to be high and imminent. As distinct population segments, the three populations of spotted frog have a lower listing priority than full species or monotypic genera under comparable threats. Therefore, the listing priority for these three populations is 3. The threats facing the West Desert population (Utah) are considered moderate to low. The listing priority for that population is 9. Service policy is to propose the highest priority species first. Priority 1 and 2 species currently warrant more immediate listing consideration than the spotted frog populations.

The Service believes that expeditious progress is being made on other listing actions. In fiscal year 1990 (October 1, 1989, to September 30, 1990), the Service proposed 106 species for listing and added 47 species to the lists of

endangered and threatened wildlife and plants. In fiscal year 1991 (October 1, 1990, to September 30, 1991), 87 species were proposed for listing and 52 species were added to the lists. In fiscal year 1992 (October 1, 1991, to September 30, 1992), 114 species were proposed for listing and 92 were added to the lists. As of March 31 in fiscal year 1993, the Service had proposed 79 species for listing and added 49 species to the lists. The Service attempts to increase listing efficiency through multi-species listing actions when appropriate.

Further investigation and biological research on the species status in all populations is encouraged. If data become available in the future indicating that the spotted frog in the main population may qualify for listing

under the Act, or if further information becomes available to indicate a greater abundance of spotted frogs or a decrease in threats in any of the southern and western populations, the Service will reassess the status of these populations as necessary. More detailed information regarding the above decisions may be obtained from the Denver Office (see ADDRESSES above).

References Cited

A complete list of all references cited herein is available upon request from the Denver Office (see ADDRESSES above).

Author

This notice was prepared by Patricia Worthing (see ADDRESSES above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: April 23, 1993.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 93-10813 Filed 5-6-93; 8:45 am]

BILLING CODE 4310-55-M