

the High Density Rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The DOT requests that persons participating in the meeting provide five copies of all materials to be presented for distribution to the DOT representatives; other copies may be provided to the audience at the discretion of the participant.

(8) Statements made by DOT representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a DOT representative is not intended to be, and should not be construed as, a position of the DOT.

(9) The meetings are designed to solicit public views and more complete information on the High Density Rule. Therefore, the meetings will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, DOT representatives may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC on September 30, 1994.

Dale E. McDaniel,

Deputy Assistant Administrator for Policy, Planning and International Aviation.

[FR Doc. 94-24957 Filed 10-7-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Contents of Records and Reports

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim rule.

SUMMARY: This interim rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to clarify what records shall be adequate to satisfy recordkeeping requirements for Listed Chemical transactions under provisions of the Controlled Substances Act (CSA) as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA) and the Domestic Chemical Diversion Control Act of 1993 (DCDCA). Specifically, the amendment clarifies that for prescription drug products, prescription and hospital records shall be adequate to satisfy recordkeeping requirements.

EFFECTIVE DATE: November 10, 1994.

DATES: Written comments and objections must be received by November 10, 1994.

ADDRESSES: Written comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION: On March 17, 1994, the Acting Administrator of the DEA published a proposed rule in the *Federal Register* (59 FR 12562) to eliminate the threshold for ephedrine under provisions of the Controlled Substances Act (CSA) as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA) and the Domestic Chemical Diversion Control Act of 1993 (DCDCA). This would require that recordkeeping, reporting and notification requirements of 21 CFR 1310 and 21 CFR 1313 apply to all transactions involving bulk ephedrine and single entity ephedrine products. Interested parties had until May 2, 1994 to submit comments and objections.

A comment submitted by Abbott Laboratories requested that prescription injectable ephedrine products continue to be exempt under the definition of "regulated transaction". Abbott further stated that there is no evidence of diversion of these products which are dispensed pursuant to a prescription.

While the DEA agrees that it is not currently aware of the diversion of these single entity ephedrine injectable products, the CSA does not provide for the exemption of a specific form of single entity ephedrine product. Therefore, recordkeeping, reporting and notification requirements will apply to these prescription injectable products. However, prescription and hospital records kept in the normal course of medical treatment are adequate to meet the recordkeeping requirements of 21 CFR 1310. Therefore 21 CFR 1310.06(b) is being modified to reflect that for purposes of this section, prescription and hospital records kept in the normal course of medical treatment shall be adequate to meet these recordkeeping requirements for each record required under 21 CFR 1310.03. Reports, as specified in 21 CFR 1310.05, must be filed although it is anticipated that they will rarely be necessary. In addition, notification requirements as set forth in 21 CFR 1313 must still be satisfied for these products.

This action is being published as an interim rule with an effective date coinciding with the final rule which

eliminates the threshold for ephedrine since this will reduce the burden on hospitals and other institutions which dispense ephedrine prescription products.

The Attorney General has delegated authority under CSA and all subsequent amendments to the CSA to the Administrator of the DEA (28 CFR 0.100). The Administrator, in turn, has delegated this authority to the Deputy Administrator pursuant to 28 CFR 0.104 (59 FR 23637 (May 6, 1994)). The Deputy Administrator hereby certifies that this interim rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This interim rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

For reasons as set out above, 21 CFR Part 1310 is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.06 is amended by revising paragraph (b) to read as follows:

§ 1310.06 Contents of records and reports.

* * * * *

(b) For purposes of this section, normal business records shall be considered adequate if they contain the information listed in paragraph (a) of this section and are readily retrievable from other business records of the regulated person. For prescription drug products, prescription and hospital records kept in the normal course of medical treatment shall be considered adequate.

* * * * *

Dated: August 24, 1994.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 94-25069 Filed 10-7-94; 8:45 am]

BILLING CODE 4410-09-M

21 CFR Parts 1310 and 1313

Elimination of Threshold for Ephedrine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to eliminate the threshold for ephedrine under provisions of the Controlled Substances Act (CSA) as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA) and the Domestic Chemical Diversion Control Act of 1993 (DCDCA) in order to reduce the diversion of ephedrine to clandestine laboratory operators. This will subject all transactions involving bulk ephedrine and single entity ephedrine drug products to the applicable provisions of the Controlled Substances Act (CSA).

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 Telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION: On March 17, 1994, the Acting Administrator of the DEA published a proposed rule in the *Federal Register* (59 FR 12562) to eliminate the threshold for ephedrine under provisions of the Controlled Substances Act (CSA) as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA) and the Domestic Chemical Diversion Control Act of 1993 (DCDCA). Interested parties had until May 2, 1994 to submit comments and objections.

Ephedrine is the primary precursor utilized in the clandestine synthesis of methamphetamine and methcathinone, both potent central nervous system (CNS) stimulants controlled under the CSA. The public health risks from the abuse of these drugs are well known and documented.

Ephedrine is a listed chemical under the Chemical Diversion and Trafficking Act of 1988 (CDTA) (Pub. L. 100-690). Under provisions of the CDTA (21 U.S.C. 802 (39)(A)), thresholds were originally assigned to each listed chemical. The CDTA imposes reporting, recordkeeping and notification requirements for regulated transactions which meet or exceed these threshold amounts of a listed chemical.

The Domestic Chemical Diversion Control Act (DCDCA) of 1993 (Pub. L. 103-200) became effective on April 16, 1994. This Act amends the CSA via modification of 21 U.S.C. 802 (39)(A) by

redefining the term "regulated transaction" as a "distribution, receipt, sale, importation, or exportation, or an international transaction involving shipment of a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a threshold amount, including a cumulative threshold amount for multiple transactions" of a listed chemical. All regulated transactions in a listed chemical, regardless of size, are subject to CSA reporting, recordkeeping and notification requirements if no threshold is established.

In addition, the DCDCA further modifies the definition of a "regulated transaction" by removing the exemption for those transactions involving products which are marketed or distributed lawfully in the U.S. under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), if these products contain ephedrine (or its salts, optical isomers, or salts of optical isomers) as the only active medicinal ingredient or contain ephedrine (or its salts, optical isomers, or salts of optical isomers) in combination with therapeutically insignificant quantities of another active medicinal ingredient (21 U.S.C. 802 (39)(A)(iv)). The DCDCA also provides that the Attorney General shall by regulation remove this exemption for drug products that the Attorney General finds are being diverted in order to obtain a listed chemical for use in the illicit production of a controlled substance.

The threshold for ephedrine was originally established as 1.0 kilogram for domestic, import and export transactions (54 FR 31657). The threshold of 1.0 kilogram of ephedrine base is equivalent to greater than 48,000 ephedrine 25 mg dosage units.

Thresholds are continuously reviewed by DEA to determine if they are satisfactory to prevent diversion. Current evidence shows that the threshold for ephedrine of 1.0 kilogram is not adequate to prevent the diversion of ephedrine to clandestine laboratory operators in the United States. Clandestine laboratory operators are obtaining ephedrine in quantities much less than the current 1.0 kilogram threshold for use in the illicit production of methamphetamine and methcathinone. DEA had determined that in order to ensure the maximum effectiveness of the CSA in curtailing the diversion of ephedrine, there should be no threshold for ephedrine. Subsequently, all regulated transactions of ephedrine would be subject to reporting, recordkeeping and notification requirements of the CSA regardless of size.

Comments

Seven comments were received in response to the March 17, 1994, Notice of proposed rulemaking. Some comments pertained to provisions of the DCDCA which are not related to the ephedrine threshold. These comments will not be addressed in this Federal Register Notice, but DEA will consider them in preparing the Notice of Proposed Rulemaking pertaining to the DCDCA. A summary of relevant comments received is provided below:

A comment submitted by the National Wholesale Druggist Association (NWDA) did not raise any objections to the elimination of the ephedrine threshold. NWDA, however, raised the issue that the March 17, 1994, Notice of Proposed Rulemaking does not change the definition of "regulated transaction" in Section 1310.01 (f) to be consistent with the DCDCA. This will be remedied when the DEA publishes proposed regulations which implement the DCDCA in the near future.

A comment was also received from the National Association of Boards of Pharmacy (NABP). The NABP strongly supports the elimination of the ephedrine threshold. Furthermore, the NABP expresses its support for the more restrictive actions taken by certain state authorities whereby single entity ephedrine products have been placed in controlled substance schedules or placed on prescription-only status. The NABP also states that a nationwide Federal effort is needed to better monitor the distribution of single entity ephedrine products.

A comment was submitted on behalf of BDI Pharmaceuticals and raised the following issues:

BDI's comment states that the elimination of the threshold is prohibitory and will remove single entity ephedrine products from retail stores. However, the elimination of the threshold only imposes recordkeeping, reporting and notification requirements and will not remove products from the market. BDI states that the increased recordkeeping burden from the elimination of the threshold will decrease the number of retail stores willing to sell ephedrine products. BDI states that 21 CFR 1310.06(d) estimates that it will take approximately ten minutes to fulfill the recordkeeping requirements for each sale. BDI further states that this is an excessive burden which will be a major factor in a merchant's decision to drop the product. However, 21 CFR 1310.06(d) does not provide an estimate of the time required to keep sales records of each regulated chemical transaction and it is

estimated that creating and storing a transaction record requires an average of only one minute per record. Conversely, 21 CFR 1310.06(d) pertains to the amount of time needed for the filing of reports of suspicious transactions, unusual losses or domestic regulated transactions in a tableting or encapsulating machine as outlined in 21 CFR 1310.05. These situations, whereby reports should be filed, occur infrequently.

BDI's comment makes the point that asthma is a serious condition and elimination of the threshold for ephedrine will have an adverse impact upon asthma patients because the single entity product will become unavailable. DEA recognizes that asthma is a serious condition for which ephedrine has an approved treatment indication. DEA, in an effort to ensure that the elimination of the ephedrine threshold would not adversely effect the availability of medications for the treatment of patients suffering from this condition, has circulated the March 17, 1994, Notice of Proposed Rulemaking to the U.S. Food and Drug Administration (FDA). Within FDA, this Notice of Proposed Rulemaking was circulated to several offices for review and consideration. DEA has received an official response that FDA supports the proposed threshold elimination in order to address the misuse, diversion and trafficking associated with single entity ephedrine products. In addition, FDA's formal response also states that FDA believes that there may be other ephedrine products that may also need to be considered for regulation under the CSA as amended by the CDTA and DCDCA.

The comment received from the National Association of Boards of Pharmacy (NABP) which strongly supports the elimination of the ephedrine threshold also states that "NABP agrees that adoption of the proposed rule should have no significant impact on pharmacies, hospitals, or points of distribution that distribute medications containing ephedrine for the treatment of asthma and other conditions." The NABP comment also notes that other products are also available for the treatment of asthma.

BDI's comment claims that DEA is biased against single entity ephedrine products while many advertised combination products are not considered safe and effective. On the contrary, DEA is not supporting the use of one product over another for the treatment of asthma or any other medical condition. It is not DEA's mandate to make such determinations.

It is, however, DEA's responsibility to prevent the diversion of chemicals for the illicit production of controlled substances. The DCDCA removes the exemption for single entity ephedrine products. However, it is important to note that the DCDCA also provides for the removal of an exemption for any drug or group of drugs that are being diverted to obtain the listed chemical for use in the illicit production of a controlled substance. Under such provisions, combination products used in the illicit production of controlled substances can lose their exemptions and thus be subjected to recordkeeping, reporting, notification and registration requirements. DEA plans to closely monitor such activity, and is prepared to pursue the removal of exemptions for those products.

BDI's comment implies that the high retail cost of its product line prevents these products from being a cost effective source of ephedrine for clandestine laboratory use. Depending upon the package size, BDI reports that 48,000 ephedrine 25 mg tablets would cost \$3,000 to \$9,000 at a retail outlet. In contrast, however, based on data available to DEA regarding the national range of street prices for methamphetamine in 1993, these products are a cost effective source of ephedrine for clandestine laboratory use.

BDI's comment states that the comment period should be extended. However, BDI's request for extension was denied by the Administrator on the grounds that sufficient information was included in the March 17, 1994, Notice of Proposed Rulemaking and ample time given for comments to be submitted.

BDI's comment states that the likely source of ephedrine at clandestine laboratories is bulk ephedrine from Canada. This is not substantiated by DEA information. Ephedrine tablets have been seized at many clandestine laboratories. It is important to note, however, that DEA has emphasized that smuggling from Mexico is also an important source of ephedrine for clandestine laboratory usage.

BDI's comment states that Congress did not contemplate the complete elimination of the ephedrine threshold. On the contrary, the language in the DCDCA is specific, i.e. the DCDCA uses the language "or if the Attorney General establishes a threshold amount for a specific listed chemical". Such language makes it clear that the normal case would be that listed chemicals would not have a threshold unless the Attorney General decides that a threshold is warranted and that the Attorney General

may remove the threshold from chemicals already listed.

BDI's comment states that DEA has no evidence of retail package diversion. On the contrary, DEA does have evidence of the retail diversion of ephedrine tablets as a source of precursor material for clandestine laboratory use. In addition to the smuggling of ephedrine and purchase via mail order, ephedrine is obtained through the purchase of ephedrine tablets from gas stations, convenience stores and other retail outlets. This includes small 6 count packets of ephedrine and bottles of 24 dosage units. Investigative information shows that individuals have gone from store to store to buy out the stock of ephedrine until they obtain sufficient material for desired batch sizes.

T&M Distributing commented that DEA has not demonstrated that the current threshold is insufficient to control diversion, and has failed to consider the burden to public health. These specific issues have been addressed earlier in this Federal Register Notice.

A comment submitted by Abbott Laboratories requested that prescription injectable products continue to be exempt under the definition of "regulated transaction". Abbott further states that there is no evidence of diversion of these products which are sold by prescription only. While the DEA agrees that it is not currently aware of the diversion of these single entity ephedrine injectable products, the CSA does not provide for the exemption of a specific form of single entity ephedrine products. Therefore, recordkeeping, reporting and notification requirements will apply to these prescription injectable products. However, prescription and hospital records kept in the normal course of medical treatment are adequate to meet the recordkeeping requirements of 21 CFR part 1310. An Interim Rule, which modifies 21 CFR part 1310 to clarify this, will be published in the Federal Register.

Several comments proposed alternatives to the elimination of the threshold. BDI proposed that there be no monthly cumulative threshold for retail stores which stock only packages of 100 tablets or less and limit sales to 2.5 grams per transaction. A comment submitted by The Hammer Corporation suggested an alternative threshold of 61 tablets per individual transaction and 6000 tablets per month. Mr. G's Manufacturer and Wholesale Distributors suggested that 6 count or 42 count package sizes should be exempt at the retail level. T&M Distributing suggested that a threshold of 12,000

capsules or tablets per month be instituted.

DEA has considered all of these comments and suggested alternatives. However, given the small batch sizes encountered at U.S. clandestine methamphetamine and methcathinone laboratories, evidence of the diversion of ephedrine from various types of outlets, and the public health threat imposed by the diversion of these ephedrine products, DEA has determined that none of the suggested alternatives are sufficient to prevent the diversion of ephedrine consistent with the intentions of the Domestic Chemical Diversion Control Act of 1993 (DCDCA). Therefore DEA had determined that the elimination of the ephedrine threshold is necessary.

In making this determination, DEA recognizes that additional entities which distribute ephedrine products will not be required to keep records. Many of the entities which distribute ephedrine products are truckstops, convenience stores, gas stations and liquor stores. DEA has determined that (1) the sale of ephedrine is not a principal business activity of these entities and (2) the recordkeeping, reporting and notification requirements resulting from the elimination of the threshold are essential to prevent and detect the diversion of ephedrine products to clandestine laboratories.

The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to the Administrator of the DEA (28 CFR 0.100). The Administrator, in turn, has redelegated this authority to the Deputy Administrator pursuant to 28 CFR 0.104 (59 FR 23637 (May 6, 1994)). The Deputy Administrator hereby certifies that this proposed rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This position is further supported by The National Association of Boards of Pharmacy (NABP) which commented that the elimination of the ephedrine threshold "should have no significant impact on pharmacies, hospitals, or points of distribution that distribute medications containing ephedrine for the treatment of asthma and other conditions".

This final rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1313

Drug traffic control, Chemical importation and exportation requirements. For reasons as set out above, 21 CFR part 1310 is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.04 is amended by revising the introductory text to paragraph (f); removing paragraph (f)(1)(iii); redesignating paragraphs (f)(1)(iv) through (f)(1)(xxiv) as (f)(1)(iii) through (f)(1)(xxiii) respectively; and adding a new paragraph (g) to read as follows:

§ 1310.04 Maintenance of records.

(f) For those listed chemicals for which thresholds have been established, the quantitative threshold or the cumulative amount for multiple transactions within a calendar month, to be utilized in determining whether a receipt, sale, importation or exportation is a regulated transaction is as follows:

(g) For listed chemicals for which no thresholds have been established, the size of the transaction is not a factor in determining whether the transaction meets the definition of a regulated transaction as set forth in § 1310.01(f). All such transactions, regardless of size, are subject to recordkeeping and reporting requirements as set forth in this part 1310 and notification provisions as set forth in part 1313 of this chapter.

(1) Listed Chemicals For Which No Thresholds Have Been Established:

- (i) Ephedrine, its salts, optical isomers, and salts of optical isomers
- (ii) [Reserved]
- (2) [Reserved]

For reasons as set out above, 21 CFR part 1313 is amended as follows:

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.12 is amended by revising the introductory text to paragraph (a) to read as follows:

§ 1313.12 Requirement of authorization to import.

(a) Each regulated person who imports a listed chemical that meets or exceeds the threshold quantities identified in § 1310.04(f) or is a listed chemical for which no threshold has been established as identified in § 1310.04(g) of this chapter, shall notify the Administrator of the importation not later than 15 days before the transaction is to take place.

3. Section 1313.21 is amended by revising the introductory text to paragraph (a) to read as follows:

§ 1313.21 Requirement of authorization to export.

(a) No person shall export or cause to be exported from the United States any chemical listed in § 1310.02 of this chapter, which meets or exceeds the threshold quantities identified in § 1310.04(f) or is a listed chemical for which no threshold has been established as identified in § 1310.04(g) of this chapter, until such time as the Administrator has been notified. Notification must be made not later than 15 days before the transaction is to take place. In order to facilitate the export of listed chemicals and implement the purpose of the Act, regulated persons may wish to provide notification to the Administration as far in advance of the 15 days as possible.

Dated: August 24, 1994.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 94-25070 Filed 10-7-94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

[Public Notice 2092]

Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended; Failure To Comply with INA

AGENCY: Bureau of Consular Affairs, State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements the provisions of section 506(a) of Pub. L. 103-317. This section prohibits the issuance of an immigrant visa to an alien for ninety days following an alien's departure from the U.S. unless

the alien was maintaining a lawful nonimmigrant status at the time of departure, or unless the alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act (INA) or section 202 of the Immigration Reform and Control Act of 1986 (IRCA). Section 506(b) extends the benefits of adjustment of status to permanent resident status to aliens who entered the U.S. without inspection and to certain other aliens.

DATES: This rule shall take effect on October 1, 1994. Interested persons are invited to submit written comments on or before November 10, 1994.

ADDRESSES: Written comments with a reference to this rule to insure proper and timely handling may be submitted in duplicate to: Chief, Legislation and Regulation Division, Visa Office, Washington, DC 20522-1013.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202-663-1204.

SUPPLEMENTARY INFORMATION:

Expansion of INA 245 Adjustment of Status

On August 26, 1994 the President signed into law the appropriations bill for the Department of State, Pub. L. 103-317. Section 506(b) thereof amends INA 245 to permit qualified immigrants to acquire permanent residence through adjustment of status in the United States even though they entered the United States without inspection or violated their nonimmigrant status after entry. The specific amendment to INA 245 is a new subsection (i) which reads as follows:

(i)(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States who—

(A) entered the United States without inspection; or

(B) is within one of the classes enumerated in subsection (c) of this section, may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equalling five times the fee required for the processing of applications under this section as of the date of receipt of the application, but such sum shall not be required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or permanent resident status

under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986;

(ii) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(iii) applied for benefits under section 301(a) of the Immigration Act of 1990. The sum specified herein shall be in addition to the fee normally required for the processing of an application under this section.

(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if—

(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(B) an immigrant visa is immediately available to the alien at the time the application is filed.

We note that two section 245(i)'s of the INA have been enacted into law in the last two months. The other section 245(i) was enacted in the Crime Bill, Pub. L. 103-322, which created the "S" visa category and accompanying provisions enabling adjustment of status for "s" visa holders. The State Department and the INS view both section 245(i)'s as co-existing and will seek a legislative technical correction to rename one of the sections as 245(j).

As the provisions of INA 245 are administered by the Immigration and Naturalization Service (INS), appropriate regulations and/or implementing instructions will be promulgated by that agency. It is anticipated that many aliens benefiting from this amendment will indeed take advantage of the adjustment procedures rather than seek immigrant visa issuance abroad.

Companion Provision

This Act further amends the INA at section 212 by adding subsection "(o)", which reads as follows:

(o) An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless—

(1) the alien was maintaining a lawful nonimmigrant status at the time of such departure, or

(2) the alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986 at any date, who

(A) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986;

(B) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(C) applied for benefits under section 301(a) of the Immigration Act of 1990.

This amendment to INA 212 encourages aliens who can benefit from the broadened INA 245 adjustment of status provisions to take advantage of them by discouraging them from seeking immigrant visa issuance from a U.S. consular post abroad. To induce such aliens to seek INA 245 adjustment of status, Congress imposed a requirement that an immigrant visa applicant be physically absent from the United States for ninety days since the last departure before an immigrant visa can be issued. Under this amendment, an alien who departs from the United States would be eligible to receive an immigrant visa on the 91st day following the departure. As can be seen in the statutory language quoted above, two classes of aliens are exempted from this provision. The first class consists of aliens maintaining lawful nonimmigrant status at the time of departure. The second class consists of the spouses and children of certain aliens who benefited from the special agricultural worker program, the legalization program, and the Cuban-Haitian adjustment provisions of IRCA, and who sought benefits under the family unity provisions of the Immigration Act of 1990.

Interim Rule

This regulation is being promulgated to implement the INA 212(o) prohibitions of issuance on immigrant visas to aliens who have not complied with the ninety day physical absence requirement, unless the aliens fall within either one of the two specific excepted classes of aliens. Pursuant to this regulation, consular officers shall refuse to issue immigrant visas to aliens who have been physically present in the

United States unless 90 days have passed since their departure or unless they are members of either of the two excepted classes of aliens.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith and vetted with INS through OMB to ensure interagency coordination.

List of Subjects in 22 CFR Part 40

Immigrants, Ineligibilities, Passports and Visas

In view of the legislative mandate of Public Law 103-317, Part 40 to Title 22 is amended as follows:

PART 40—[Amended]

1. The authority citation for Part 40 is revised to read as follows:

Authority: 8 U.S.C. 1104; sec. 506(a), Pub. L. 103-317, 108 Stat. 1724.

2. The heading for Subpart K is revised to read as follows:

Subpart K—Failure To Comply with INA

3. Subpart K is amended by adding a § 40.104 to read as follows:

§ 40.104 Certain Immigrant Visa Applicants.

An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless:

(a) the alien was maintaining a lawful nonimmigrant status at the time of such departure, or

(b) the alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under INA 210 or 245A or section 202 of the Immigration Reform and Control Act of 1986 at any date, who:

(1) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under INA 210 or 245A or section 202 of the Immigration Reform and Control Act of 1986;

(2) entered the United States before May 5, 1988, resided in the United

States on May 5, 1988, and is not a lawful permanent resident; and

(3) applied for benefits under section 301(a) of the Immigration Act of 1990.

Dated: October 4, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94-24954 Filed 10-7-94; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8566]

RIN 1545-AN82

General Asset Accounts Under the Accelerated Cost Recovery System

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the election to maintain general asset accounts for depreciable assets to which section 168 of the Internal Revenue Code applies. These regulations reflect changes to the law made by the Tax Reform Act of 1986. The regulations will simplify certain depreciation calculations.

EFFECTIVE DATE: October 11, 1994.

For dates of applicability of these regulations, see *Dates* under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kathleen Reed at (202) 622-3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations 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. 3504(h)) under control number 1545-1331. The estimated annual burden per respondent or recordkeeper varies from .20 to .30 hours, depending on individual circumstances, with an estimated average of .25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On August 31, 1992, the IRS published a notice of proposed rulemaking in the *Federal Register* (57 FR 39374 [PS-55-89, 1992-2 C.B. 870]) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 168(i)(4). These amendments were proposed to reflect the amendments made by section 201 of the Tax Reform Act of 1986. The preamble to the notice contains an explanation of the proposed regulations.

Written comments responding to the notice were received, and a public hearing was held on November 4, 1992. After considering all written and oral comments, the proposed regulations under section 168(i)(4) are adopted as revised by this Treasury decision.

Explanation of Provisions

In General

The final regulations would simplify the computation of depreciation by allowing taxpayers an election to group assets into one or more general asset accounts under section 168(i)(4). The assets in any particular general asset account are depreciated as a single asset. Unlike the rules under section 168 as in existence before enactment of the Tax Reform Act of 1986, general asset account treatment is not limited to "mass assets."

As required by section 168(i)(4), the final regulations provide generally that the amount realized upon the disposition of an asset from a general asset account is recognized as ordinary income. In addition, special rules are provided for terminating general asset account treatment upon certain dispositions. For transactions described in section 168(i)(7)(B), the transferee generally is bound by the transferor's general asset account election.

Changes to the Proposed Regulations

This Treasury decision generally adopts the rules in the proposed regulations. Certain changes to the proposed regulations have been made, however, in response to comments. These changes and the comments that were not adopted in the final regulations are discussed below.

Assets Subject to Recapture. One commentator recommended that the proposed regulations be amended to allow general asset account treatment for assets qualifying for the credit under section 47 or 48. After considering this comment, the IRS and Treasury Department have concluded that it is appropriate to allow taxpayers greater flexibility in determining what assets will be included in a general asset

account. Therefore, the proposed rule that prohibits general asset account treatment for investment credit property has been deleted. Accordingly, under the final regulations, a general asset account may include any depreciable asset for which a credit or deduction is allowable.

A new rule, however, has been added in the final regulations to account for any basis increase upon recapture. The final regulations provide that upon recapture, the asset is removed from the general asset account as of the first day of the taxable year in which the recapture event occurs. In addition, corresponding adjustments to the unadjusted depreciable basis and depreciation reserve of the account must be made. This rule was formulated in view of the limited types of property currently eligible for the investment credit. The IRS, however, may consider other alternatives to take into account the basis increase upon recapture if the scope of property that qualifies for the investment credit is expanded.

Assets Used in a Personal Activity. The final regulations retain the rule of the proposed regulations that a general asset account may not include an asset if a taxpayer uses the asset both in a trade or business (or for the production of income) and in a personal activity at any time during the taxable year in which the asset is first placed in service by the taxpayer. Consistent with the retention of this rule in the final regulations, a new rule has been added providing that an asset in a general asset account becomes ineligible for general asset account treatment if a taxpayer uses the asset in a personal activity in a taxable year after the taxable year the asset is placed in service. If this change in use occurs, the final regulations provide that the taxpayer must use the method provided in § 1.168(i)-1(e)(3)(iii)(C) for adjusting a general asset account when an asset becomes ineligible for general asset account treatment.

Assets that Generate Foreign Source Income. A commentator suggested that the proposed regulations be amended to allow general asset account treatment for assets generating foreign source income.

In response to this comment, the final regulations allow general asset account treatment for assets generating foreign source income. If, however, the inclusion of these assets in a general asset account results in a substantial distortion of income, the Commissioner may disregard the general asset account election and make reallocations of income or expense as necessary to clearly reflect income.

The final regulations provide a rule coordinating the general asset account rules with the rules in § 1.8611-9T(g)(3) relating to allocation and apportionment of interest expense under the asset method. A general asset account will be treated as a single asset for purposes of applying the rules in § 1.8611-9T(g)(3). If the general asset account generates income in more than one separate grouping (statutory and residual), then the account is a multiple category asset, as defined in § 1.8611-9T(g)(3)(ii), and the income yield from the general asset account must be computed as if the account were a single multiple category asset.

The final regulations also provide rules for determining the source of income from a disposition of an asset in a general asset account. If the general asset account includes assets generating both United States and foreign source income, any amount of ordinary income, gain, or loss recognized on the disposition must be apportioned between United States and foreign sources based on the allocation and apportionment of depreciation allowed for the general asset account or for the disposed asset, as applicable. If the general asset account includes assets that generate foreign source income in more than one separate category under section 904(d)(1) or another section of the Internal Revenue Code, or under a United States income tax treaty that requires the foreign tax credit limitation to be determined separately for specified types of income, then the amount of ordinary income, gain, or loss recognized on the disposition that is treated as foreign source income must be allocated and apportioned to the applicable separate category or categories.

Disposition of All Assets or the Last Asset. One commentator questioned whether the rule under the proposed regulations that provided that a general asset account terminates on the disposition of all of the assets in the account or the last asset in the account was mandatory. In response to this comment, the final regulations clarify that this rule is an optional rule for taxpayers that maintain records showing the disposition of assets in a general asset account. The final regulations also provide that a taxpayer adopts the rule by reporting the gain or loss on the taxpayer's income tax return for the taxable year in which the disposition of all of the assets, or the last asset, in the general asset account occurs.

Qualifying Dispositions. Under the proposed regulations, a qualifying disposition of an asset in a general asset account occurs when the asset is

disposed of as a direct result of a cessation, termination, curtailment, or disposition of a business, manufacturing or other income producing process, operation, facility, plant, or other unit (other than by transfer to a supplies, scrap, or similar account). One commentator recommended that the final regulations should provide an example showing that the sale of an undivided interest in mineral property, along with the related operating equipment, is a curtailment of a taxpayer's business and, thus, constitutes a qualifying disposition. A curtailment was intended to be limited to a genuine business contraction and not to include transactions involving the sale of an undivided interest, other than the taxpayer's entire interest in assets. To avoid any further misinterpretation, the final regulations delete the term "curtailment." The final regulations also clarify that a taxpayer adopts the rule to terminate general asset account treatment for an asset in a qualifying disposition by reporting the gain, loss, or other deduction on the taxpayer's income tax return for the taxable year in which the qualifying disposition occurs.

Anti-abuse rule. The final regulations add examples of transactions subject to the anti-abuse rule.

Election. Some commentators noted that the proposed regulations do not address whether the election is made by the common parent corporation or each member of an affiliated group, by a partnership or its partners, or by an S corporation or the S corporation shareholders. The final regulations clarify that the election is made by each member of an affiliated group, by the partnership, or by the S corporation, respectively.

The proposed regulations provide that the election to apply the regulations generally is binding on the taxpayer for computing taxable income as well as computing alternative minimum taxable income. A commentator suggested that the final regulations should allow taxpayers the option to make the election for either the regular income tax, the alternative minimum tax, or both. This rule was not adopted because of the separate and parallel nature of the regular tax and alternative minimum tax systems. Except as otherwise provided by statute or regulations, all Code provisions that apply in determining the regular taxable income of a taxpayer also apply in determining the alternative minimum taxable income of the taxpayer. The final regulations have not been expanded to include any exceptions. Consequently, an election to apply section 168(i)(4) for determining regular taxable income also applies for

determining alternative minimum taxable income. Therefore, the language "as well as alternative minimum taxable income" in the proposed rule is redundant and has been deleted from the final regulations.

Effective Date. For assets placed in service after December 31, 1986, in taxable years ending before the effective date of the final regulations, one commentator recommended that the final regulations should provide a retroactive election or, alternatively, a prospective election. Another commentator also requested a provision allowing a prospective election. The final regulations retain the rule of the proposed regulations that, for prior periods, a taxpayer may use any reasonable method that is consistently applied to the taxpayer's general asset accounts.

Dates

The final regulations are effective for property placed in service in taxable years ending on or after October 11, 1994. For property placed in service after December 31, 1986, in taxable years ending before October 11, 1994, the IRS will allow any reasonable method that is consistently applied to the taxpayer's general asset accounts.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kathleen Reed, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.168(i)-1 also issued under 26 U.S.C. 168(i)(4). * * *

Par. 2. Section 1.56(g)-1 is amended by adding a sentence at the end of paragraph (b), introductory text, to read as follows:

§ 1.56(g)-1 Adjusted current earnings.

(b) * * * See § 1.168(i)-1(k) for an election to use general asset accounts.

Par. 3. Sections 1.168(i)-0 and 1.168(i)-1 are added to read as follows:

§ 1.168(i)-0 Table of contents for the general asset account rules.

This section lists the major paragraphs contained in § 1.168(i)-1.

§ 1.168(i)-1 General asset accounts.

- (a) Scope.
- (b) Definitions.
 - (1) Unadjusted depreciable basis.
 - (2) Unadjusted depreciable basis of the general asset account.
 - (3) Adjusted depreciable basis of the general asset account.
 - (4) Expensed cost.
- (c) Establishment of general asset accounts.
 - (1) Assets eligible for general asset accounts.
 - (i) General rules.
 - (ii) Special rules for assets generating foreign source income.
 - (2) Grouping assets in general asset accounts.
 - (i) General rules.
 - (ii) Special rules.
- (d) Determination of depreciation allowance.
 - (1) In general.
 - (2) Special rule for passenger automobiles.
- (e) Disposition of an asset from a general asset account.
 - (1) Scope.
 - (2) General rules for a disposition.
 - (i) No immediate recovery of basis.
 - (ii) Treatment of amount realized.
 - (iii) Effect of disposition on a general asset account.

- (iv) Coordination with nonrecognition provisions.
- (v) Examples.
- (3) Special rules.
 - (i) In general.
 - (ii) Disposition of all assets remaining in a general asset account.
 - (iii) Disposition of an asset in a qualifying disposition.
 - (iv) Transactions subject to section 168(i)(7).
 - (v) Anti-abuse rule.
- (f) Assets generating foreign source income.
 - (1) In general.
 - (2) Source of ordinary income, gain, or loss.
 - (i) Source determined by allocation and apportionment of depreciation allowed.
 - (ii) Formula for determining foreign source income, gain, or loss.
 - (3) Section 904(d) separate categories.
- (g) Assets subject to recapture.
- (h) Changes in use.
 - (1) Conversion to personal use.
 - (2) Other changes in use.
- (i) Identification of disposed or converted asset.
- (j) Effect of adjustments on prior dispositions.
- (k) Election.
 - (1) Irrevocable election.
 - (2) Time for making election.
 - (3) Manner of making election.
- (l) Effective date.

§ 1.168(i)-1 General asset accounts.

(a) **Scope.** This section provides rules for general asset accounts under section 168(i)(4). The provisions of this section apply only to assets for which an election has been made under paragraph (k) of this section.

(b) **Definitions.** For purposes of this section, the following definitions apply:

(1) **Unadjusted depreciable basis** is the basis of an asset for purposes of section 1011 without regard to any adjustments described in sections 1016(a)(2) and (3).

(2) **Unadjusted depreciable basis of the general asset account** is the sum of the unadjusted depreciable bases of all assets included in the general asset account.

(3) **Adjusted depreciable basis of the general asset account** is the unadjusted depreciable basis of the general asset account less the adjustments to basis described in sections 1016(a)(2) and (3).

(4) **Expensed cost** is the amount of any allowable credit or deduction treated as a deduction allowable for depreciation or amortization for purposes of section 1245 (for example, a credit allowable under section 30 or a deduction allowable under section 179, 179A, or 190).

(c) *Establishment of general asset accounts*—(1) *Assets eligible for general asset accounts*—(i) *General rules*. Assets that are subject to either the general depreciation system of section 168(a) or the alternative depreciation system of section 168(g) may be accounted for in one or more general asset accounts. An asset may be included in a general asset account only to the extent of the asset's unadjusted depreciable basis (for example, if, in 1995, a taxpayer places in service an asset that costs \$20,000 and elects under section 179 to expense \$17,500 of that asset's cost, the unadjusted depreciable basis of the asset is \$2,500 and, therefore, only \$2,500 of the asset's cost may be included in a general asset account). However, an asset is not to be included in a general asset account if the asset is used both in a trade or business (or for the production of income) and in a personal activity at any time during the taxable year in which the asset is first placed in service by the taxpayer.

(ii) *Special rules for assets generating foreign source income*—(A) Assets that generate foreign source income, both United States and foreign source income, or combined gross income of a FSC (as defined in section 922), DISC (as defined in section 992(a)), or possessions corporation (as defined in section 936) and its related supplier, may be included in a general asset account if the requirements of paragraph (c)(2)(i) of this section are satisfied. If, however, the inclusion of these assets in a general asset account results in a substantial distortion of income, the Commissioner may disregard the general asset account election and make any reallocations of income or expense necessary to clearly reflect income.

(B) A general asset account shall be treated as a single asset for purposes of applying the rules in § 1.861-9T(g)(3) (relating to allocation and apportionment of interest expense under the asset method). A general asset account that generates income in more than one grouping of income (statutory and residual) is a multiple category asset (as defined in § 1.861-9T(g)(3)(ii)), and the income yield from the general asset account must be determined by applying the rules for multiple category assets as if the general asset account were a single asset.

(2) *Grouping assets in general asset accounts*—(i) *General rules*. If a taxpayer makes the election under paragraph (k) of this section, assets that are subject to the election are grouped into one or more general asset accounts. Assets that are eligible to be grouped into a single general asset account may be divided into more than one general

asset account. Each general asset account must include only assets that—

(A) Have the same asset class (for further guidance, see Rev. Proc. 87-56, 1987-2 C.B. 674, and § 601.601(d)(2)(ii)(b) of this chapter);

(B) Have the same applicable depreciation method;

(C) Have the same applicable recovery period;

(D) Have the same applicable convention; and

(E) Are placed in service by the taxpayer in the same taxable year.

(ii) *Special rules*. In addition to the general rules in paragraph (c)(2)(i) of this section, the following rules apply when establishing general asset accounts—

(A) Assets without an asset class, but with the same characteristics described in paragraphs (c)(2)(i)(B), (C), (D), and (E) of this section, may be grouped into a general asset account;

(B) Assets subject to the mid-quarter convention may only be grouped into a general asset account with assets that are placed in service in the same quarter of the taxable year;

(C) Assets subject to the mid-month convention may only be grouped into a general asset account with assets that are placed in service in the same month of the taxable year; and

(D) Passenger automobiles for which the depreciation allowance is limited under section 280F(a) must be grouped into a separate general asset account.

(d) *Determination of depreciation allowance*—(1) *In general*. Depreciation allowances are determined for each general asset account by using the applicable depreciation method, recovery period, and convention for the assets in the account. The depreciation allowances are recorded in a depreciation reserve account for each general asset account. The allowance for depreciation under this section constitutes the amount of depreciation allowable under section 167(a).

(2) *Special rule for passenger automobiles*. For purposes of applying section 280F(a), the depreciation allowance for a general asset account established for passenger automobiles is limited for each taxable year to the amount prescribed in section 280F(a) multiplied by the excess of the number of automobiles originally included in the account over the number of automobiles disposed of during the taxable year or in any prior taxable year in a transaction described in paragraph (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(iv) (transactions subject to section 168(i)(7)), (e)(3)(v) (anti-abuse rule), (g) (assets subject to recapture), or (h)(1)

(conversion to personal use) of this section.

(e) *Disposition of an asset from a general asset account*—(1) *Scope*. This paragraph (e) provides rules applicable to dispositions of assets included in a general asset account. For purposes of this paragraph (e), an asset in a general asset account is disposed of when ownership of the asset is transferred or when the asset is permanently withdrawn from use either in the taxpayer's trade or business or in the production of income. A disposition includes the sale, exchange, retirement, physical abandonment, or destruction of an asset. A disposition also occurs when an asset is transferred to a supplies, scrap, or similar account. A disposition does not include, however, the retirement of a structural component of real property.

(2) *General rules for a disposition*—(i) *No immediate recovery of basis*.

Immediately before a disposition of any asset in a general asset account, the asset is treated as having an adjusted basis of zero for purposes of section 1011. Therefore, no loss is realized upon the disposition of an asset from the general asset account. Similarly, where an asset is disposed of by transfer to a supplies, scrap, or similar account, the basis of the asset in the supplies, scrap, or similar account will be zero.

(ii) *Treatment of amount realized*. Any amount realized on a disposition is recognized as ordinary income (notwithstanding any other provision of subtitle A of the Internal Revenue Code (Code)) to the extent the sum of the unadjusted depreciable basis of the general asset account and any expensed cost (as defined in paragraph (b)(4) of this section) for assets in the account exceeds any amounts previously recognized as ordinary income upon the disposition of other assets in the account. The recognition and character of any excess amount realized are determined under other applicable provisions of the Code (other than sections 1245 and 1250 or provisions of the Code that treat gain on a disposition as subject to section 1245 or 1250).

(iii) *Effect of disposition on a general asset account*. The unadjusted depreciable basis and the depreciation reserve of the general asset account are not affected as a result of a disposition of an asset from the general asset account.

(iv) *Coordination with nonrecognition provisions*. For purposes of determining the basis of an asset acquired in a transaction described in paragraph (e)(3)(iii)(B)(4) of this section (relating to certain nonrecognition provisions), the amount of ordinary income recognized

under this paragraph (e)(2) is treated as the amount of gain recognized on the disposition.

(v) *Examples.* The following examples illustrate the application of this paragraph (e)(2).

Example 1. (i) *R*, a calendar-year corporation, maintains one general asset account for ten machines. The machines cost a total of \$10,000 and were placed in service in June 1995. Of the ten machines, one machine costs \$8,200 and nine machines cost a total of \$1,800. Assume this general asset account has a depreciation method of 200 percent declining balance, a recovery period of 5 years, and a half-year convention. *R* does not make a section 179 election for any of the machines. As of January 1, 1996, the depreciation reserve of the account is \$2,000 $[(\$10,000 - \$0) \times 40\%] / 2$.

(ii) On February 8, 1996, *R* sells the machine that cost \$8,200 to an unrelated party for \$9,000. Under paragraph (e)(2)(i) of this section, this machine has an adjusted basis of zero.

(iii) On its 1996 tax return, *R* recognizes the amount realized of \$9,000 as ordinary income because such amount does not exceed the unadjusted depreciable basis of the general asset account (\$10,000), plus any expensed cost for assets in the account (\$0), less amounts previously recognized as ordinary income (\$0). Moreover, the unadjusted depreciable basis and depreciation reserve of the account are not affected by the disposition of the machine. Thus, the depreciation allowance for the account in 1996 is \$3,200 $[(\$10,000 - \$2,000) \times 40\%]$.

Example 2. (i) The facts are the same as in Example 1. In addition, on June 4, 1997, *R* sells seven machines to an unrelated party for a total of \$1,100. In accordance with paragraph (e)(2)(i) of this section, these machines have an adjusted basis of zero.

(ii) On its 1997 tax return, *R* recognizes \$1,000 as ordinary income (the unadjusted depreciable basis of \$10,000, plus the expensed cost of \$0, less the amount of \$9,000 previously recognized as ordinary income). The recognition and character of the excess amount realized of \$100 $(\$1,100 - \$1,000)$ are determined under applicable provisions of the Code other than section 1245 (such as section 1231). Moreover, the unadjusted depreciable basis and depreciation reserve of the account are not affected by the disposition of the machines. Thus, the depreciation allowance for the account in 1997 is \$1,920 $[(\$10,000 - \$5,200) \times 40\%]$.

(3) *Special rules—(i) In general.* This paragraph (e)(3) provides the rules for terminating general asset account treatment upon certain dispositions. While the rules under paragraphs (e)(3)(ii) and (iii) of this section are optional rules, the rules under paragraphs (e)(3)(iv) and (v) of this section are mandatory rules. A taxpayer applies paragraph (e)(3)(ii) or (iii) of this section by reporting the gain, loss, or other deduction on the taxpayer's timely

filed (including extensions) income tax return for the taxable year in which the disposition occurs. For purposes of applying paragraph (e)(3)(iii) through (v) of this section, see paragraph (i) of this section for identifying the unadjusted depreciable basis of a disposed asset.

(ii) *Disposition of all assets remaining in a general asset account—(A) Optional termination of a general asset account.* Upon the disposition of all of the assets, or the last asset, in a general asset account, a taxpayer may apply this paragraph (e)(3)(ii) to recover the adjusted depreciable basis of the general asset account (rather than having paragraph (e)(2) of this section apply). Under this paragraph (e)(3)(ii), the general asset account terminates and the amount of gain or loss for the general asset account is determined under section 1001(a) by taking into account the adjusted depreciable basis of the general asset account at the time of the disposition. The recognition and character of the gain or loss are determined under other applicable provisions of the Code, except that the amount of gain subject to section 1245 (or section 1250) is limited to the excess of the depreciation allowed or allowable for the general asset account, including any expensed cost (or the excess of the additional depreciation allowed or allowable for the general asset account), over any amounts previously recognized as ordinary income under paragraph (e)(2) of this section.

(B) *Example.* The following example illustrates the application of this paragraph (e)(3)(ii).

Example. (i) *T*, a calendar-year corporation, maintains a general asset account for 1,000 calculators. The calculators cost a total of \$60,000 and were placed in service in 1995. Assume this general asset account has a depreciation method of 200 percent declining balance, a recovery period of 5 years, and a half-year convention. *T* does not make a section 179 election for any of the calculators. In 1996, *T* sells 200 of the calculators to an unrelated party for a total of \$10,000 and recognizes the \$10,000 as ordinary income in accordance with paragraph (e)(2) of this section.

(ii) On March 26, 1997, *T* sells the remaining calculators in the general asset account to an unrelated party for \$35,000. *T* chooses to apply paragraph (e)(3)(ii) of this section. As a result, the account terminates and gain or loss is determined for the account.

(iii) On the date of disposition, the adjusted depreciable basis of the account is \$23,040 (unadjusted depreciable basis of \$60,000 less the depreciation allowed or allowable of \$36,960). Thus, in 1997, *T* recognizes gain of \$11,960 (amount realized of \$35,000 less the adjusted depreciable basis of \$23,040). The gain of \$11,960 is subject to section 1245 to the extent of the depreciation

allowed or allowable for the account (plus the expensed cost for assets in the account) less the amounts previously recognized as ordinary income $(\$36,960 + \$0 - \$10,000 = \$26,960)$. As a result, the entire gain of \$11,960 is subject to section 1245.

(iii) *Disposition of an asset in a qualifying disposition—(A) Optional determination of the amount of gain, loss, or other deduction.* In the case of a qualifying disposition of an asset (described in paragraph (e)(3)(iii)(B) of this section), a taxpayer may apply this paragraph (e)(3)(iii) (rather than having paragraph (e)(2) of this section apply). Under this paragraph (e)(3)(iii), general asset account treatment for the asset terminates as of the first day of the taxable year in which the qualifying disposition occurs, and the amount of gain, loss, or other deduction for the asset is determined by taking into account the asset's adjusted basis. The adjusted basis of the asset at the time of the disposition equals the unadjusted depreciable basis of the asset less the depreciation allowed or allowable for the asset, computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included. The recognition and character of the gain, loss, or other deduction are determined under other applicable provisions of the Code, except that the amount of gain subject to section 1245 (or section 1250) is limited to the lesser of—

(1) The depreciation allowed or allowable for the asset, including any expensed cost (or the additional depreciation allowed or allowable for the asset); or

(2) The excess of—

(i) The original unadjusted depreciable basis of the general asset account plus, in the case of section 1245 property originally included in the general asset account, any expensed cost; over

(ii) The cumulative amounts of gain previously recognized as ordinary income under either paragraph (e)(2) of this section or section 1245 (or section 1250).

(B) *Qualifying dispositions.* A qualifying disposition is a disposition that does not involve all the assets, or the last asset, remaining in a general asset account and that is—

(1) A direct result of a fire, storm, shipwreck, or other casualty, or from theft;

(2) A charitable contribution for which a deduction is allowable under section 170;

(3) A direct result of a cessation, termination, or disposition of a business, manufacturing or other

income producing process, operation, facility, plant, or other unit (other than by transfer to a supplies, scrap, or similar account); or

(4) A transaction, other than a transaction described in paragraph (e)(3)(iv) of this section (pertaining to transactions subject to section 168(i)(7)), to which a nonrecognition section of the Code applies (determined without regard to this section), such as section 1031 or 1033.

(C) *Effect of a qualifying disposition on a general asset account.* If the taxpayer applies this paragraph (e)(3)(iii) to a qualifying disposition of an asset, then—

(1) The asset is removed from the general asset account as of the first day of the taxable year in which the qualifying disposition occurs;

(2) The unadjusted depreciable basis of the general asset account is reduced by the unadjusted depreciable basis of the asset as of the first day of the taxable year in which the disposition occurs;

(3) The depreciation reserve of the general asset account is reduced by the depreciation allowed or allowable for the asset as of the end of the taxable year immediately preceding the year of disposition, computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included; and

(4) For purposes of determining the amount of gain realized on subsequent dispositions that is subject to ordinary income treatment under paragraph (e)(2)(ii) of this section, the amount of any expensed cost with respect to the asset is disregarded.

(D) *Example.* The provisions of this paragraph (e)(3)(iii) are illustrated by the following example.

Example. (i) Z, a calendar-year corporation, maintains one general asset account for 12 machines. Each machine costs \$15,000 and was placed in service in 1995. Of the 12 machines, nine machines that cost a total of \$135,000 are used in Z's Kentucky plant, and three machines that cost a total of \$45,000 are used in Z's Ohio plant. Assume this general asset account has a depreciation method of 200 percent declining balance, a recovery period of 5 years, and a half-year convention. Z does not make a section 179 election for any of the machines. As of January 1, 1997, the depreciation reserve for the account is \$93,600.

(ii) On May 27, 1997, Z sells its entire manufacturing plant in Ohio to an unrelated party. The sales proceeds allocated to each of the three machines at the Ohio plant is \$5,000. Because this transaction is a qualifying disposition under paragraph (e)(3)(iii)(B)(3) of this section, Z chooses to apply paragraph (e)(3)(iii) of this section.

(iii) For Z's 1997 return, the depreciation allowance for the account is computed as

follows. As of December 31, 1996, the depreciation allowed or allowable for the three machines at the Ohio plant is \$23,400. Thus, as of January 1, 1997, the unadjusted depreciable basis of the account is reduced from \$180,000 to \$135,000 (\$180,000 less the unadjusted depreciable basis of \$45,000 for the three machines), and the depreciation reserve of the account is decreased from \$93,600 to \$70,200 (\$93,600 less the depreciation allowed or allowable of \$23,400 for the three machines as of December 31, 1996). Consequently, the depreciation allowance for the account in 1997 is \$25,920 $((\$135,000 - \$70,200) \times 40\%)$.

(iv) For Z's 1997 return, gain or loss for each of the three machines at the Ohio plant is determined as follows. The depreciation allowed or allowable in 1997 for each machine is \$1,440 $((\$15,000 - \$7,800) \times 40\%) / 2$. Thus, the adjusted basis of each machine under section 1011 is \$5,760 (the adjusted depreciable basis of \$7,200 removed from the account less the depreciation allowed or allowable of \$1,440 in 1997). As a result, the loss recognized in 1997 for each machine is \$760 $(\$5,000 - \$5,760)$, which is subject to section 1231.

(iv) *Transactions subject to section 168(i)(7).* If an asset in a general asset account is transferred in a transaction described in section 168(i)(7)(B) (pertaining to treatment of transferees in certain nonrecognition transactions), the transferor must remove the transferred asset from the general asset account as of the first day of the taxable year in which the transaction occurs. In addition, the adjustments to the general asset account described in paragraph (e)(3)(iii)(C)(2) through (4) of this section must be made. The transferee is bound by the transferor's election under paragraph (k) of this section with respect to so much of the asset's basis in the hands of the transferee as does not exceed the asset's adjusted basis in the hands of the transferor. If all of the assets, or the last asset, in a general asset account are transferred, the transferee's basis in the assets or asset transferred is equal to the adjusted depreciable basis of the general asset account as of the beginning of the transferor's taxable year in which the transaction occurs, decreased by the amount of depreciation allocable to the transferor for the year of the transfer.

(v) *Anti-abuse rule—(A) In general.* If an asset in a general asset account is disposed of by a taxpayer in a transaction described in paragraph (e)(3)(v)(B) of this section, general asset account treatment for the asset terminates as of the first day of the taxable year in which the disposition occurs. Consequently, the taxpayer must determine the amount of gain, loss, or other deduction attributable to the disposition in the manner described in paragraph (e)(3)(iii)(A) of this section

(notwithstanding that paragraph (e)(3)(iii)(A) of this section is an optional rule) and must make the adjustments to the general asset account described in paragraph (e)(3)(iii)(C)(1) through (4) of this section.

(B) *Abusive transactions.* A transaction is described in this paragraph (e)(3)(v)(B) if the transaction is not described in paragraph (e)(3)(iv) of this section and the transaction is entered into, or made, with a principal purpose of achieving a tax benefit or result that would not be available absent an election under this section. Examples of these types of transactions include—

(1) A transaction entered into with a principal purpose of shifting income or deductions among taxpayers in a manner that would not be possible absent an election under this section in order to take advantage of differing effective tax rates among the taxpayers; or

(2) An election made under this section with a principal purpose of disposing of an asset from a general asset account in order to utilize an expiring net operating loss or credit. The fact that a taxpayer with a net operating loss carryover or a credit carryover transfers an asset to a related person or transfers an asset pursuant to an arrangement where the asset continues to be used (or is available for use) by the taxpayer pursuant to a lease (or otherwise) indicates, absent strong evidence to the contrary, that the transaction is described in this paragraph (e)(3)(v)(B).

(f) *Assets generating foreign source income—(1) In general.* This paragraph (f) provides the rules for determining the source of any income, gain, or loss recognized, and the appropriate section 904(d) separate limitation category or categories for any foreign source income, gain, or loss recognized, on a disposition (within the meaning of paragraph (e)(1) of this section) of an asset in a general asset account that consists of assets generating both United States and foreign source income. These rules apply only to a disposition to which paragraph (e)(2) (general disposition rules), (e)(3)(ii) (disposition of all assets remaining in a general asset account), (e)(3)(iii) (disposition of an asset in a qualifying disposition), or (e)(3)(v) (anti-abuse rule) of this section applies.

(2) *Source of ordinary income, gain, or loss—(i) Source determined by allocation and apportionment of depreciation allowed.* The amount of any ordinary income, gain, or loss that is recognized on the disposition of an asset in a general asset account must be apportioned between United States and

foreign sources based on the allocation and apportionment of the—

(A) Depreciation allowed for the general asset account as of the end of the taxable year in which the disposition occurs if paragraph (e)(2) of this section applies to the disposition;

(B) Depreciation allowed for the general asset account as of the time of the disposition if the taxpayer applies paragraph (e)(3)(ii) of this section to the disposition of all of the assets, or the

last asset, in the general asset account; or

(C) Depreciation allowed for the disposed asset for only the taxable year in which the disposition occurs if the taxpayer applies paragraph (e)(3)(iii) to the disposition of the asset in a qualifying disposition or if the asset is disposed in a transaction described in paragraph (e)(3)(v) (anti-abuse rule) of this section.

(ii) *Formula for determining foreign source income, gain, or loss.* The amount of ordinary income, gain, or loss recognized on the disposition that shall be treated as foreign source income, gain, or loss must be determined under the formula in this paragraph (f)(2)(ii). For purposes of this formula, the allowed depreciation deductions are determined for the applicable time period provided in paragraph (f)(2)(i) of this section. The formula is:

Foreign Source Income, Gain, or Loss from the Disposition of an Asset

=

Total Ordinary Income, Gain, or Loss from Disposition of an Asset

×

Allowed Depreciation Deductions Allocated and Apportioned to Foreign Source Income Total Allowed Depreciation Deductions for the General Asset Account or for the Disposed Asset (as applicable)

(3) *Section 904(d) separate categories.* If the assets in the general asset account generate foreign source income in more than one separate category under section 904(d)(1) or another section of the Code (for example, income treated as foreign source income under section 904(g)(10)), or under a United States

income tax treaty that requires the foreign tax credit limitation to be determined separately for specified types of income, the amount of "foreign source income, gain, or loss from the disposition of an asset" (as determined under the formula in paragraph (f)(2)(ii) of this section) must be allocated and

apportioned to the applicable separate category or categories under the formula in this paragraph (f)(3). For purposes of this formula, the allowed depreciation deductions are determined for the applicable time period provided in paragraph (f)(2)(i) of this section. The formula is:

Foreign Source Income, Gain, or Loss In a Separate Category

=

Foreign Source Income, Gain, or Loss from the Disposition of an Asset

×

Allowed Depreciation Deductions Allocated and Apportioned to a Separate Category Total Allowed Depreciation Deductions and Apportioned to Foreign Source Income

(g) *Assets subject to recapture.* If the basis of an asset in a general asset account is increased as a result of the recapture of any allowable credit or deduction (for example, the basis adjustment for the recapture amount under section 30(d)(2), 50(c)(2), 179(d)(10), or 179A(e)(4)), general asset account treatment for the asset terminates as of the first day of the taxable year in which the recapture event occurs. Consequently, the taxpayer must remove the asset from the general asset account as of that day and must make the adjustments to the general asset account described in paragraph (e)(3)(iii)(C)(2) through (4) of this section.

(h) *Changes in use—(1) Conversion to personal use.* An asset in a general asset account becomes ineligible for general asset account treatment if a taxpayer uses the asset in a personal activity during a taxable year. Upon a conversion to personal use, the taxpayer must remove the asset from the general asset account as of the first day of the taxable year in which the change in use occurs and must make the adjustments to the general asset account described in

paragraph (e)(3)(iii)(C)(2) through (4) of this section.

(2) *Other changes in use.* [Reserved].

(i) *Identification of disposed or converted asset.* A taxpayer may use any reasonable method that is consistently applied to the taxpayer's general asset accounts for purposes of determining the unadjusted depreciable basis of a disposed or converted asset in a transaction described in paragraph (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(iv) (transactions subject to section 168(i)(7)), (e)(3)(v) (anti-abuse rule), (g) (assets subject to recapture), or (h)(1) (conversion to personal use) of this section.

(j) *Effect of adjustments on prior dispositions.* The adjustments to a general asset account under paragraph (e)(3)(iii), (e)(3)(iv), (e)(3)(v), (g), or (h)(1) of this section have no effect on the recognition and character of prior dispositions subject to paragraph (e)(2) of this section.

(k) *Election—(1) Irrevocable election.* If a taxpayer makes an election under this paragraph (k), the taxpayer consents to, and agrees to apply, all of the provisions of this section to the assets

included in a general asset account. Except as provided in paragraph (c)(1)(ii)(A), (e)(3), (g), or (h)(1) of this section, an election made under this section is irrevocable and will be binding on the taxpayer for computing taxable income for the taxable year for which the election is made and for all subsequent taxable years. An election under this paragraph (k) is made separately by each person owning an asset to which this section applies (for example, by each member of a consolidated group, at the partnership level (and not by the partner separately), or at the S corporation level (and not by the shareholder separately)).

(2) *Time for making election.* The election to apply this section shall be made on the taxpayer's timely filed (including extensions) income tax return for the taxable year in which the assets included in the general asset account are placed in service by the taxpayer.

(3) *Manner of making election.* In the year of election, a taxpayer makes the election under this section by typing or legibly printing at the top of the Form 4562, "GENERAL ASSET ACCOUNT ELECTION MADE UNDER SECTION

168(i)(4)," or in the manner provided for on Form 4562 and its instructions. The taxpayer shall maintain records (for example, "General Asset Account #1 - all 1995 additions in asset class 00.11 for Salt Lake City, Utah facility") that identify the assets included in each general asset account, that establish the unadjusted depreciable basis and depreciation reserve of the general asset account, and that reflect the amount realized during the taxable year upon dispositions from each general asset account. (But see section 179(c) and § 1.179-5 for the recordkeeping requirements for section 179 property.) The taxpayer's recordkeeping practices should be consistently applied to the general asset accounts. If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(l) *Effective date.* This section applies to depreciable assets placed in service in taxable years ending on or after October 11, 1994. For depreciable assets placed in service after December 31, 1986, in taxable years ending before October 11, 1994, the Internal Revenue Service will allow any reasonable method that is consistently applied to the taxpayer's general asset accounts.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

§ 602.101(c) [Amended]

Par. 5. Section 602.101(c) is amended by adding the entry "1.168(i)-1....1545-1331" in numerical order to the table.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: September 9, 1994

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-24949 Filed 10-7-94; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO23-1-6540; FRL-5080-7]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy Review of Class I Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves revisions to the long-term strategy of Colorado's State Implementation Plan (SIP) for Visibility Protection, as submitted by the Governor with a letter dated November 18, 1992. The revisions address requirements to review periodically and, if necessary, revise the long-term strategy for visibility protection for states containing mandatory Class I Federal areas. EPA also corrects its error in a previous action on the State's Visibility protection provisions.

EFFECTIVE DATE: This rule will become effective on November 10, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

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

Colorado Department of Health, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Air Programs Branch, Environmental Protection Agency, Region VIII, (303) 293-1769.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Clean Air Act¹ establishes as a National goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas² which impairment results from man-made air pollution. Section 169A called for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National goal, section 169A(a)(4), including requiring each State with a mandatory Class I Federal area to revise its State implementation plan (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. Section 169A(b)(2).

¹ The Clean Air Act ("the Act") is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, et seq.

² Mandatory class I Federal areas are certain national parks, wildernesses and international parks described in section 162(a). These areas are the responsibility of "Federal land managers" (FLMs), the Secretary of the department with authority over such lands. See section 302(i) of the Act.

EPA promulgated regulations that, in broad outline, required affected States to: (1) Coordinate development of SIPs with appropriate Federal land managers (FLMs); (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term strategy to assure reasonable progress toward the National visibility goal. 45 FR 80084 (December 2, 1980) (codified at 40 CFR 51.300-51.307). The regulations provided for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations required that the SIPs provide for periodic review and revisions, as appropriate, of the long-term strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs and that the State report to the public and EPA a specified assessment of its progress toward the National goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), EPA disapproved SIPs of states that failed to comply with the requirements of, among others, the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility long-term strategy). EPA also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the Act. The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 and consisted of five major sections: existing impairment, new source review, consultation with FLMs, monitoring strategy, and the long-term strategy. EPA approved this SIP revision in an August 12, 1988 Federal Register notice (53 FR 30428), and these revisions replaced the Federal plans and regulations in the Colorado Visibility SIP.

On May 13, 1994, EPA announced its proposed approval of revisions to the long-term strategy of Colorado's Class I Visibility SIP and revisions concerning the long-term strategy in the Colorado Air Quality Control Commission's (AQCC) Regulation No. 3 (59 FR 25002-25004). In that proposed rulemaking action, EPA described in detail its rationale for proposing approval, considering the specific factual issues presented. Rather than repeating that entire discussion in this notice, it is incorporated by reference here. Thus, the public should review the notice of proposed rulemaking for relevant background on this final rulemaking action.

EPA requested public comments on all aspects of the proposal (please reference 59 FR 25004). Comments were received and are discussed below. This final action on the revisions to the long-term strategy of Colorado's Class I Visibility SIP and revisions concerning the long-term strategy in Colorado AQCC's Regulation No. 3 is unchanged from the May 13, 1994 proposed approval action.

II. Response to Public Comments

One commenter responded to EPA's request for comments on its proposed rulemaking. These comments were received on June 17, 1994, in a letter dated June 12, 1994. Although the comment period ended on June 13, 1994, EPA is endeavoring to respond to these comments in an effort to facilitate the public's understanding of this action.

On July 14, 1993, the U.S. Forest Service (USFS) certified to the State of Colorado the existence of visibility impairment at the Mount Zirkel Wilderness Area, a mandatory Class I Federal area located in Colorado. (See July 14, 1993 letter from Elizabeth Estill, USFS, to Governor Roy Romer, which is included in the docket for this action.) The comments in response to EPA's proposed approval of Colorado's review and revision of its Long-Term Strategy address concerns that Colorado has not appropriately responded to the USFS's certification.

More specifically, the commenter asserts that EPA's proposed approval of the long-term strategy revision adopted by Colorado on November 18, 1992 is problematic because:

[I]t ignores numerous deficiencies in the State's efforts to implement the visibility protection program since that time. In particular, Colorado has failed to respond in a timely or effective manner to the certification of visibility impairment in the Mount Zirkel Wilderness Area that was filed by the U.S. Forest Service on July 13, 1993.

The commenter asserts that EPA has a duty to notify the State of Colorado that its visibility protection plan, as currently being implemented, is deficient and to explain what actions are needed to remedy those deficiencies. The commenter recommends that, in any event, EPA should attach conditions to any final decision to approve the State's submittal. In particular, the commenter states that EPA must notify the State of Colorado that its next long-term strategy revision "must include emission limitations representing the best available retrofit technology (BART) and schedules for compliance with BART in response to the U.S. Forest Service's certification of visibility

impairment in the Mount Zirkel Wilderness Area."

EPA does not agree with the commenter that the SIP revision that is the subject of this action (*i.e.*, the November 18, 1992 Visibility SIP revision regarding the long-term strategy review and report) should be conditioned with requirements involving the Mount Zirkel issue or that the State's response to the USFS's certification of visibility impairment for the Mount Zirkel Wilderness Area should otherwise affect the approvability of this relatively limited action. The November 18, 1992 submittal was adopted prior to the U.S. Forest Service's certification of impairment of the Mount Zirkel Wilderness Area on July 14, 1993. Therefore, EPA assessed the adequacy of the SIP revision relevant to the time and conditions of the submittal and found it approvable (as discussed in further detail in the proposed rulemaking at 59 FR 25002-25004, May 13, 1994).

EPA believes it would be unreasonable to expect that the State's long-term strategy review would address circumstances that have not yet transpired, especially when EPA's regulations require periodic review and revision, as appropriate, at least every three years. See 40 CFR 51.306(c). Thus, the applicable regulatory scheme itself has a built-in on-going assessment of the State's progress in addressing visibility impairment in light of new developments and circumstances.

Even if the State's response to the USFS's certification of visibility impairment at the Mount Zirkel Wilderness Area was within the scope of the this rulemaking action, the commenter has requested inappropriate relief in that it presupposes a particular result. The commenter requested that EPA direct the State to include emission limitations representing BART in its next long-term strategy review. While it ultimately may be appropriate for the State to include emission limitations in its next long-term strategy review and revision, a necessary adjunct to the imposition of such emission limitations is that the State has identified existing stationary facilities which may reasonably be anticipated to cause or contribute to visibility impairment at the Mount Zirkel Wilderness Area. See 40 CFR 51.302(c)(4)(i).

Nevertheless, EPA is aware that significant changes have occurred since the November 18, 1992 submittal. Further, EPA is concerned about the visibility protection progress the State makes between the November 18, 1992 submittal and the next long-term strategy review and revision due by

September 1, 1995. EPA's concern is heightened by the USFS's certification of visibility impairment at the Mount Zirkel Wilderness Area. The State's interim efforts must be guided by its responsibility to make reasonable progress toward the national visibility protection goal. See, *e.g.*, Clean Air Act section 169A(a)(1) and 40 CFR 51.302(c)(2)(i), 51.300(a), 51.306(a)(3) and 51.306(c).

By finalizing this action, the submittal of the next long-term strategy review and report is a federally-enforceable obligation due by September 1, 1995 (see 59 FR 25003). Federal regulations (see 40 CFR 51.306) require the State to coordinate with the FLM in its long-term strategy review process and to report on the following:

- (1) The progress achieved in remedying existing impairment of visibility in any mandatory Class I Federal area;
- (2) The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I Federal area;
- (3) Any change in visibility since the last such report;
- (4) Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;
- (5) The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy;
- (6) The impact of any exemption granted under section 303;
- (7) The need for BART to remedy existing visibility impairment of any integral vista listed in the plan since the last such report.

EPA's regulations call for the State to make progress in remedying existing visibility impairment in mandatory Class I Federal areas and to report on measures that may be necessary to assure reasonable progress toward the national visibility goal. The State should move expeditiously to assess the visibility impairment at the Mount Zirkel Wilderness Area. Further, the State should prioritize its assessment by examining the potential sources of visibility impairment identified in the USFS's certification. The State's assessment should be designed to provide results that can be addressed in the next long-term strategy report, due by September 1, 1995. See the July 29, 1994 letter from John Seitz, EPA Office of Air Quality Planning and Standards, in response to a letter from the commenter to Mary Nichols, EPA Assistant Administrator for Air and Radiation. In its letter to Mary Nichols, which was incorporated in its

comments on this action, the commenter expressed concerns about the State's response to the USFS certification.

EPA expects the State to address the U.S. Forest Service's certification of impairment at the Mt. Zirkel Wilderness Area in its next long-term strategy review and report, due by September 1, 1995. In order for EPA to assess the progress the State achieves in remedying the existing visibility impairment at the Mt. Zirkel Wilderness Area, that report should include the results to date of the State's reasonable attribution study, results of any other relevant analyses, and a decision on whether or not there is adequate information to determine if the visibility impairment at Mt. Zirkel Wilderness Area is reasonably attributable to any specific stationary source/sources. If the State concludes that it has adequate information, it follows that the State should determine whether or not the impairment is attributable to specific sources. If the State concludes that it has insufficient information, the State should indicate the steps that are being taken to collect the necessary information and by what date such information will be available.

EPA will carefully review the State's next long-term strategy to ensure that it meets applicable statutory and regulatory requirements. In the interim, EPA will provide guidance to help achieve these ends. Finally, should EPA determine that the State's visibility protection plan is substantially inadequate to ensure that the applicable statutory and regulatory requirements are met, EPA has discretion to call for a revision to the plan to correct the inadequacies. See Clean Air Act section 110(k)(5).

III. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). In a letter dated November 18, 1992, the Governor of Colorado submitted to EPA revisions to the State's long-term strategy of the Class I Visibility Protection SIP. As described in EPA's proposed action (59 FR 25002-25004, May 13, 1994), these revisions were made to address the Federal and Colorado requirements to review and, if necessary, revise the long-term strategy at least every three years. This submittal updates the State's visibility long-term strategy. Pursuant to section 110(k)(1) of the Act, EPA found the submittal to be complete and so notified the Governor in a letter dated January 15, 1993.

In this final rulemaking, EPA announces its approval of these

revisions to the Colorado's long-term strategy of the Class I Visibility Protection SIP, including revisions to AQCC Regulation No. 3. See Clean Air Act section 110(k)(3). The revisions were made to address when subsequent long-term strategy review and revision report cycles would occur. The revision indicates that the long-term strategy report will be made available by September 1 at least every third year following the submittal of the previous report. With this final approval, the submittal of the next report by September 1, 1995 will be a federally-enforceable obligation.

Regulation No. 3 was also revised to clarify a discrepancy with EPA requirements regarding the scope of review of the long-term strategy. The State revised the language to indicate that the long-term strategy must be reviewed, among other reasons, to determine "[t]he need for BART to remedy existing impairment in an integral vista declared since plan approval." This change brings the State's program into conformance with EPA regulations. See 40 CFR 51.306(c)(7). Declaration of an integral vista allows for protection of visibility resources outside a mandatory Class I area affecting views from within the area. See 40 CFR 51.301(n). The State has not identified any integral vistas at this time, but may do so in the future at its discretion.

Finally, this SIP revision consists of replacing the original long-term strategy with the revised long-term strategy adopted by the State in August, 1992. The SIP revisions address when the long-term strategy review is to be completed, factors to be assessed in periodic long-term strategy reviews, and components of the long-term strategy plan (e.g., existing impairment, prevention of future impairment, smoke management practices, FLM consultation and communication, and annual visibility data reports).

Please see EPA's proposed rulemaking for further details on the above revisions (59 FR 25002-25004).

EPA is also correcting, under section 110(k)(6) of the Clean Air Act, the provision of 40 CFR 52.344(a) ("Visibility protection"). In a previous rulemaking action, EPA should have revised the provision to indicate that Colorado's visibility protection program was approved, except for visibility new source review (NSR) as it applied to certain industrial source categories. With this action, EPA corrects § 52.344(a) to reflect accurately the status of program approval in Colorado. (Please reference EPA's proposed

rulemaking for further details on this correction (59 FR 25002-25004).)

IV. Final Action

This document announces EPA's final rulemaking on the action proposed on May 13, 1994 (59 FR 25002). EPA is taking final action to approve the action it proposed. See Clean Air Act section 110(k)(3). This includes approving revisions to Colorado AQCC Regulation No. 3 to bring it into conformance with Federal requirements for the long-term strategy and to revise the reporting schedule. EPA has determined that these revisions are consistent with applicable Federal requirements for long-term strategy review under the Clean Air Act's visibility protection program for mandatory Class I Federal areas.

Further, EPA is correcting its error in failing to reflect accurately Colorado's Visibility SIP approval status in a previous action on the State's Visibility protection provisions.

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 economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act 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, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 12, 1994. 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 must 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)).

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 21, 1994.
William P. Yellowtail,
Regional Administrator.

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 G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(60) to read as follows:

§ 52.320 Identification of plan.

(c) ***
(60) Revisions to the Long-Term Strategy of the Colorado State Implementation Plan for Class I Visibility Protection were submitted by the Governor in a letter dated November 18, 1992. The submittal completely replaces the previous version of the Long-Term Strategy and includes amendments to Air Quality Control Commission Regulation No. 3, "Air Contaminant Emissions Notices."

(i) Incorporation by reference.
(A) Revisions to the Visibility Chapter of Regulation No. 3 as follows: XV.F.1.c. as adopted on August 20, 1992, and effective on September 30, 1992.

3. Section 52.344 (a) is revised to read as follows:

§ 52.344 Visibility protection.

(a) A revision to the SIP was submitted by the Governor on December 21, 1987, for visibility general plan

requirements, monitoring, and long-term strategies.

* * * * *
[FR Doc. 94-24913 Filed 10-7-94; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 52

[M129-02-6658; FRL-5079-1]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving a revision to the Michigan State Implementation Plan (SIP) for attainment of the National Ambient Air Quality Standards for ozone. On November 12, 1993 and on July 19, 1994 Michigan submitted a SIP revision request to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act, as amended in 1990 (Act), and the Federal motor vehicle inspection and maintenance (I/M) rule at 40 CFR part 51, subpart S. This revision establishes and requires the implementation of an I/M program in the Grand Rapids and Muskegon ozone nonattainment areas. On July 15, 1994, the EPA published a notice of proposed rulemaking (NPRM) for the State of Michigan. The NPRM proposed approval of the Michigan I/M SIP provided that the State submitted materials sufficient to address the deficiencies found in the original submittal. No public comments were received on the NPRM and the State submitted materials sufficient to remedy all the deficiencies in the original submittal, therefore, the EPA is publishing this final action.

EFFECTIVE DATE: This rule will become effective on November 10, 1994.

ADDRESSES: Copies of the State's submittals and the EPA's technical support document (TSD) are available for public review at U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson, at the EPA, Region 5, (312) 353-4779.

SUPPLEMENTARY INFORMATION

I. Introduction

The Act requires States to make changes to improve existing I/M programs or implement new ones. Section 182 requires any ozone nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the Act) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in the past the EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, all ozone nonattainment areas classified as moderate or worse must implement a "basic" or an "enhanced" I/M program depending upon its classification, regardless of previous requirements.

In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the Act to have an I/M program.

II. Background

The State of Michigan currently contains 3 ozone nonattainment areas which are required to implement I/M programs in accordance with the Act. The Detroit-Ann Arbor ozone nonattainment area is classified as moderate and contains the following 7 counties: Wayne, Oakland, Macomb, Washtenaw, St. Clair, Livingston, and Monroe. The Grand Rapids ozone nonattainment area is classified as moderate and contains 2 counties: Kent and Ottawa. The Muskegon ozone nonattainment area is classified as moderate and is comprised of Muskegon county. These designations for ozone were published in the *Federal Register* (FR) on November 6, 1991 and November 30, 1992 and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300 through 81.437.

On November 12, 1993 the Michigan Department of Natural Resources (MDNR) submitted to the EPA a revision that provided for an I/M program in Western Michigan (i.e., the Grand

Rapids and Muskegon nonattainment areas). Under the requirements of the EPA completeness review procedures (40 CFR Part 51, appendix V) and the requirements of section 110(k) of the Act, the submittal, as it applies to Western Michigan, was deemed complete by the EPA on April 18, 1994.

In its original review, the EPA found several areas in the State's submittal that did not meet the requirements of the I/M rule. The sections of the State's submittal found to be insufficient included: Motorist compliance enforcement program oversight; enforcement against contractors, stations, and inspectors; public information and consumer protection; improving repair effectiveness; and compliance with recall notices.

While the EPA found the State's submittal deficient in several respects, the EPA published on July 15, 1994 at 59 FR a document 36123 proposing to approve the majority of the State's submittal, and to conditionally approve or disapprove the insufficient sections of the original submittal unless necessary, appropriate, and approvable materials were submitted by the State 2 weeks prior to the close of the public comment period.

III. State's Supplemental Submittal

On July 19, 1994 the Michigan Department of Natural Resources (MDNR) submitted supplementary materials to the EPA related to the I/M program in Western Michigan. The supplementary submittal was made to remedy the deficiencies in the State's original submittal.

IV. The EPA's Analysis of the State's Supplemental Submittal

The EPA has reviewed the State's supplemental submittal for consistency with the statutory requirements of the EPA regulations. A summary of the EPA's analysis is provided below. The following summary is limited to the sections of the State's original submittal that were deficient. For a discussion of the rest of the State's submittal, see the July 15, 1994 (59 FR 36123) NPRM.

A. Motorist Compliance Enforcement Program Oversight

While the original submittal addressed some of the required elements of this section (40 CFR 51.362), it did not fully satisfy all the elements, in particular procedures through which the activities of enforcement personnel are quality-controlled.

However, the State's original and supplemental submittals taken together provide an approvable basis for this

section. The original and supplemental submittals provide for regular auditing of the State's enforcement program and the following of effective management practices, including adjustments to improve the program when necessary. These program oversight and information management activities are described in the State's submittals and include: the establishment of written procedures for personnel engaged in I/M document handling and processing and an I/M database which will be compared to the registration database to determine program effectiveness.

B. Enforcement Against Contractors, Stations and Inspectors

While the initial SIP submittal established an innovative Total Quality Management (TQM) program for ensuring that the I/M program will be run effectively, the submittal did not satisfy all the elements of the I/M rule, 40 CFR 51.364.

The State's supplemental submittal together with the original submittal, however, includes sufficient materials to approve this section. The original and supplemental submittals, in addition to the TQM program, include specific penalties for offenses committed by contractors, stations, and inspectors in accordance with the Federal I/M rule. The SIP also includes the State's enforcement procedures. The MDOT has the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits. The enforcement procedures also include the authority to immediately dismiss inspectors that intentionally cause a vehicle to improperly pass or fail.

C. Public Information and Consumer Protection

The State's original submission addressed all the elements of this section (40 CFR 51.368), except for a provision to automatically supply test repair facility performance data and diagnostic information to motorists that fail the emissions test.

However, the supplemental submittal details the information that will be provided to motorists that fail the emissions test, including test repair facility performance data and diagnostic information. Therefore, taken together, the original and supplemental submittals sufficiently address all the elements of this section.

D. Improving Repair Effectiveness

The original submittal sufficiently addressed all the elements of the section (40 CFR 51.369), except for the issue of repair facility performance monitoring.

The State's supplemental submittal, however, provides the necessary materials to establish an acceptable system of repair facility performance monitoring. The supplemental submittal establishes a program to provide motorists whose vehicles fail the I/M test with performance monitoring statistics of certified repair facilities. Therefore, the supplemental submittal together with the original submittal sufficiently addresses all the elements of this section.

E. Compliance with Recall Notices

The State's original submittal did not sufficiently address the elements required by this section, 40 CFR 51.370.

However the State's supplemental submission along with the original submittal provides a sufficient basis for approval of this section. The original and supplemental submittals ensure that vehicles included in either a voluntary emission recall or a remedial plan determination pursuant to the CAA, have had the appropriate repair made prior to the inspection. The managing contractor will identify vehicles which have not been identified as having completed recall repairs. Motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection. The SIP also commits to comply with the policies of the National Recall Committee and additional the EPA rulemaking when available.

F. Concluding Statement

The EPA has reviewed the Western Michigan I/M SIP revision submitted to the EPA, using the criteria stated above. The State's original submittal along with the supplemental submittal represent an acceptable approach to the I/M requirements and meet all the criteria required for approvability.

A more detailed analysis of the State's supplemental submittal and how it meets Federal requirements is contained in the EPA's Technical Support Document (TSD), dated August 30, 1994 which is available from the Region 5 Office, listed above.

V. Response to Comments

On July 15, 1994 (59 FR 36123), the EPA published an NPRM for the State of Michigan. The NPRM proposed approval in part, and conditional approval or disapproval depending upon the materials submitted by the State 2 weeks prior to close of the comment period. No public comments were received on the NPRM.

Final Action

By this action, the EPA is fully approving this submittal. The EPA has reviewed the State submittal against the statutory requirements and for consistency with the EPA regulations and finds it to be acceptable. The rationale for the EPA's action is explained in the NPRM and will not be restated here.

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 a SIP shall be considered in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

As noted elsewhere in this action, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures published in the FR on January 19, 1989 (54 FR 2214), and revisions to these procedures issued on October 4, 1993 in an the EPA memorandum entitled "Changes to State Implementation Plan (SIP) Tables."

Regulatory Process

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the 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, the 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 of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act 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, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the

Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Incorporation by reference, Nitrogen oxide, Ozone, Volatile organic compounds.

Dated: September 15, 1994.

Robert Springer,

Acting Regional Administrator.

40 CFR part 52 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 X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(97) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(97) On November 12, 1993, the State of Michigan submitted a revision to the State Implementation Plan (SIP) for the implementation of a motor vehicle inspection and maintenance (I/M) program in the Grand Rapids and Muskegon ozone nonattainment areas. This revision included House Bill No. 4165 which establishes an I/M program in Western Michigan, SIP narrative, and the State's Request for Proposal (RFP) for implementation of the program. House Bill No. 4165 was signed and effective on November 13, 1993.

(i) Incorporation by reference.
(A) House Bill No. 4165; signed and effective November 13, 1993.

(ii) Additional materials.

(A) SIP narrative plan titled "Motor Vehicle Emissions Inspection and Maintenance Program for Southeast Michigan, Grand Rapids MSA, and Muskegon MSA Moderate Nonattainment Areas," submitted to the EPA on November 12, 1993.

(B) RFP, submitted along with the SIP narrative on November 12, 1993.

(C) Supplemental materials, submitted on July 19, 1994, in a letter to EPA.

[FR Doc. 94-25074 Filed 10-7-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[TX-44-1-6665, FRL-5088-4]

Transportation Conformity; Petition for Exemption From Nitrogen Oxides Provisions, Victoria County, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: The EPA published without prior proposal a Federal Register notice approving a petition from the State of Texas requesting that Victoria County, an incomplete data ozone nonattainment area, be exempted from the requirement to perform the oxides of nitrogen (NOx) portion of the build/no-build test required by the Federal transportation conformity rule. This petition for exemption was submitted by the State of Texas on May 4, 1994. EPA's direct final approval was published on August 12, 1994 (59 FR 41416).

The EPA subsequently received adverse comments on the action. Accordingly, the EPA is withdrawing its direct final approval. All public comments received will be addressed in a subsequent final rule.

EFFECTIVE DATE: This withdrawal will be effective on October 11, 1994.

ADDRESSES: Copies of the petition submitted by the State of Texas and other information relevant to this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Anyone wishing to review this petition at the U.S. EPA Region 6 office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T-AP), EPA Region 6, telephone (214) 665-7219.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, and Volatile organic compounds.

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

Therefore, the final rule appearing at 59 FR 41416, August 12, 1994, which was to become effective October 11, 1994, is withdrawn.

Dated: September 26, 1994.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 94-25073 Filed 10-7-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[FL09049091095818a; FRL095067092]

Approval and Promulgation of Implementation Plans State: Approval of Revisions to Florida Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP). These revisions were submitted to EPA through the Florida Department of Environmental Protection (FDEP) on January 8, 1993. The revisions correct minor deficiencies in the Motor Vehicle Inspection Program (MVI) and revise the air quality classifications to coincide with the 1990 Clean Air Act Amendments in Florida's SIP. This plan has been submitted by the FDEP as an integral part of the program to achieve and maintain the National Ambient Air Quality Standards (NAAQS) for ozone, carbon dioxide, and nitrogen dioxide. These regulations meet all of the requirements and therefore EPA is approving the SIP revisions.

DATES: This direct final rule will be effective December 12, 1994, unless adverse or critical comments are received by November 10, 1994. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by Florida may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399092400.

FOR FURTHER INFORMATION CONTACT:

Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The telephone number is 404/347092864. Reference file FL0491095818.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act as amended in 1990 (CAA) includes new requirements for the improvement of air quality in ozone nonattainment areas. Under section 181(a) of the CAA, nonattainment areas were categorized by the severity of the ozone problem, and progressively more stringent control measures were required for each category of higher ozone concentrations. The basis for classifying an area in a specific category was based on the ambient air quality data obtained in the three year period 1987-1989. The Jacksonville area (Duval County) was classified as transitional because it did not have any ozone violations; the Tampa/St. Petersburg (Hillsborough and Pinellas counties) area was classified as a marginal ozone nonattainment area, and the South Florida (Broward, Palm Beach, and Dade counties) area was classified as a moderate ozone nonattainment area. The CAA delineates the SIP requirements for ozone nonattainment areas based on their classifications in section 182.

On January 8, 1993, Florida through the FDEP submitted a revision to the Florida SIP that made minor corrections to the emissions testing program and revised the air quality classifications to coincide with the CAA. The revisions address requirements of section 182 of the CAA.

Rule 1709242, Motor Vehicles Emissions Standards and Test Procedures

The regulation for this rule was originally approved March 3, 1992 (57 FR 7550). The revisions to this rule address several minor problems which have arisen during the first years of operation of the MVI. Specifically, definitions have been changed to correct some ambiguity in testing requirements, and the pass/fail criteria for emissions testing are amended to test based on vehicle weight only instead of vehicle body type. The latter change was made to make the testing criteria consistent with the vehicle registration databases. The regulation also shortens the equipment calibration requirement time

frame from 7 days to 72 hours and establishes specific training requirements for vehicle emissions inspectors. The Florida I/M regulation meets all of the pre-enactment guidance as required by section 182(a)(2)(b) of the CAA.

Rule 1709275, Air Quality Areas

These changes coincide with the 1990 Clean Air Act Amendments definition for nonattainment areas. The rule specifies current ozone nonattainment areas and outlines redesignation procedures. These changes reaffirm EPA's promulgation of designations and classifications for areas of the country with respect to the NAAQS for ozone, CO, PM₁₀ and lead in accordance with the requirements of the CAA (56 FR 56694, November 16, 1991).

Final Action

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 12, 1994, unless by November 11, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 12, 1994.

The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 12, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality