

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In Section 117.997, paragraphs (c), (d), (e), and (f) are redesignated as (d), (e), (f), and (g) and a new paragraph (c) is added to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

(c) The draw of the Gilmerton (US13/460) bridge, mile 5.8, in Chesapeake:

(1) Shall open on signal at any time for public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial and/or public vessels assisting in any emergency situation.

(2) From 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays the bridge:

(i) Need not open for the passage of pleasure craft or commercial vessels that do not qualify under paragraph (c)(2)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Gilmerton Bridge at (804) 545-1512.

(3) Shall open on signal at all other times.

Dated: November 30, 1994.

M.K. Cain,

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

[FR Doc. 94-32226 Filed 12-29-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 151

[CGD 94-003]

RIN 2115-AE76

Ballast Water Management for Vessels Entering the Hudson River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations to implement an amendment to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (the Act). The regulations require ballast water management practices for each vessel entering the Hudson River, north of the George Washington Bridge, after operating on waters beyond the Exclusive Economic Zone. These rules will help to prevent the additional introduction of nonindigenous aquatic nuisance species into the Great Lakes through the ballast water of vessels operating on the Hudson River.

EFFECTIVE DATE: January 30, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan C. Burton, Project Manager, Marine Environmental Protection Division (G-MEP-1), (202) 267-6714.

SUPPLEMENTARY INFORMATION:**Drafting Information**

The principal persons involved in drafting this document are Lieutenant Jonathan C. Burton, Project Manager, Marine Environmental Protection Division, and Ms. Helen Boutros, Project Counsel, Office of Chief Counsel.

Regulatory History

On June 21, 1994, the Coast Guard published a notice of proposed rulemaking entitled "Ballast Water Management for Vessels Entering the Hudson River" in the *Federal Register* (59 FR 31959). The Coast Guard received no letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

Historical records suggest that over 100 non-native species have been introduced into the Great Lakes and its

tributaries. The primary medium for their introduction is believed to be ballast water from vessels. Many vessels take on water in foreign harbors or in the near shore waters which are often rich in living organisms. When these vessels arrive to take on cargo, they discharge ballast water and any organisms contained in the water enter the local ecosystem. While many of these species do not survive in this new environment, those that do quickly adapt, and in some instances thrive, particularly where there are no natural predators.

The Zebra Mussel provides a good example of the harmful effects of a newly introduced species. In 1988, this small bivalve mollusk native to the Black, Azov, and Caspian Seas in the Ukraine and southern Russia, was discovered in the Western Basin of Lake Erie. Scientists believe that it was introduced in 1986 by the discharge of freshwater ballast of a vessel from Northern Europe. Hundreds of millions of Zebra Mussels can now be found on and in pipes, screens, conduits, boat bottoms, floats, buoys, rocks, submerged objects, and native animals and plants. As a filter feeding organism, it removes vast quantities of microscopic organisms from the water, the same organisms that fish larvae and young fish rely upon for their food supply. It also completely covers rocks and other substances normally used by native fish for laying eggs. Since its introduction into the Great Lakes the Zebra Mussel has reproduced and spread throughout the Great Lakes and its tributaries and has been found as far south as New Orleans.

The Coast Guard issued ballast water control regulations on April 8, 1993, for vessels entering the Great Lakes after operating beyond the exclusive economic zone (EEZ). Such vessels are required to exchange their ballast water beyond the EEZ. While the regulations are viewed as an excellent start toward addressing the nonindigenous aquatic nuisance species introduction problem, Congress now realizes that it is necessary to implement ballast water controls for vessels entering the Hudson River after operating beyond the EEZ. The Hudson River is connected to the Great Lakes through the New York State Barge Canal System which allows for the movement of commercial and recreational vessels throughout waterways of New York State and provides direct access to the Great Lakes. As a result of this connection, species released from vessels' ballast water into the Hudson River can migrate, or can be transferred by vessels navigating the canal system into the Great Lakes.

Solutions

Congress has noted that high seas ballast exchange is "not a panacea" for prevention of unintentional introductions of nonindigenous aquatic species. Other means of infestation such as attachment to anchor chains and vessel hulls contribute to infiltration. Moreover, the effects of ballast water exchange on high seas and coastal ecosystems are not yet completely known. Nevertheless, ballast water exchange currently appears to be the most cost and labor effective means of reducing the probability of new infestations. Alternative approaches may be warranted in some situations, or may replace ballast exchange entirely, depending upon knowledge obtained through a Task Force set up by the Act.

International Recognition

The need for control of the introduction of nonindigenous species has also been recognized by the international maritime community. The ballast water control regulations for vessels entering the Great Lakes that were issued by the Coast Guard on April 8, 1993, in large part, were based on ballast water control guidelines adopted by the Marine Environment Protection Committee of the International Maritime Organization at its 31st session in July 1991. The resolution (MEPC 50(31)) which accompanied the issuance of the guidelines recommends that member countries issue guidelines for the control of nonindigenous species into their ports.

United States Legislation

On November 4, 1992, Congress amended (Pub. L. 102-587) the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (the Act) (16 U.S.C. 4711(b)). This amendment extends the Act's applicability to vessels entering the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ. The Act, as amended, attempts to prevent the spread of injurious nonindigenous species into the Great Lakes through the ballast water of these vessels. The Act mandates that the Coast Guard, in consultation with the Task Force created by the Act, issue regulations to prevent the introduction and spread of aquatic nuisance species in the Great Lakes through the ballast water of vessels entering a U.S. port, north of the George Washington Bridge, on the Hudson River, after operating beyond the EEZ.

The current regulations contained in 33 CFR part 151, subpart C, issued

under the Act, cover vessels entering the Great Lakes after operating beyond the EEZ and require the retention of ballast water or the exchange of ballast water beyond the EEZ, by vessels subject to the Act. Further, as authorized under the Act, those regulations permit the use of environmentally sound alternative ballast water management methods that the Coast Guard determines are as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species, thereby providing the needed flexibility to approve additional ballast water management methods that, in the future, may prove to be even more effective than ballast water exchange. These requirements, as well as the other requirements contained in subpart C of part 151, will satisfy the requirements of the amendments to the Act if applied to vessels navigating on the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ. Therefore, few changes to the regulations issued by the Coast Guard on April 8, 1993, covering vessels entering a U.S. port on the Great Lakes after operating beyond the EEZ, are required to implement the requirements of the amendments to the Act.

The Act provides for civil and criminal penalties (16 U.S.C. 4711 (c) and (d)). Any person who violates the regulations shall be liable for a civil penalty not to exceed \$25,000. Each day of a continuing violation will constitute a separate violation. A vessel operated in violation of the regulations will be liable in rem for any civil penalty assessed for that violation. Any person who knowingly violates the regulations will be guilty of a class C felony. A class C felony is punishable by imprisonment of not more than 12 years (18 U.S.C. 3581(b)(3)) and a fine of not more than \$250,000 for an individual or not more than \$500,000 for an organization (18 U.S.C. 3571(c)(3)).

Discussion of Comments and Changes

The Coast Guard received no public comments on the proposed rule. This final rule adopts the proposed regulations without change.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

No comments were received on the draft Regulatory Evaluation. A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under ADDRESSES. The Evaluation is summarized as follows.

In 1992, 112 visits were made by vessels to the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ. The most recent data available from the U.S. Army Corps of Engineers concerning Hudson River vessel traffic reveals that vessels operating on the Hudson River after operating beyond the EEZ are primarily foreign importer vessels. Vessels carrying cargo, such as vessels engaged in importing, are generally not carrying ballast water. These vessels do not have to comply with the regulations. Vessels carrying ballast, but not discharging it, are only subject to the recordkeeping requirements. The Coast Guard has identified no vessels that have actually discharged ballast into the Hudson River. Therefore, the only aspect of the regulations that these vessels will be subject to is the recordkeeping requirements of 33 CFR 151.1516. It is estimated that it takes one half hour to complete. At the cost of \$35.00 per half hour and assuming 120 visits by vessels subject to these regulations, the annual cost will be \$4,200.

Small Entities

No comments were received on the affect of these regulations on small entities. Owners of vessels that will be engaging in ballast water management in the affected area are large corporations. No small entities have been identified as being affected. The economic affect on all entities will be minimal. No U.S. vessels have been identified as being subject to the regulations. The total cost per vessel has been determined to be \$35 per visit for each vessel with a total annual cost in 1995 of \$4,200 for all vessels. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has

approved them. The section number is § 151.1516 and the corresponding OMB approval number is OMB Control Number 2115-0598.

Federalism

No comments were received on the Federalism implications of this rule. The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The authority to issue regulations requiring ballast water management practices for vessels navigating the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ, has been committed to the Coast Guard by the Act. Standardizing the minimum requirements for these vessels is necessary to effectively prevent further introductions of nonindigenous species. Therefore, the Coast Guard intends it to preempt state and local regulations that are inconsistent with the requirements of this final rule. These regulations were developed in consultation with the Task Force which is charged with coordinating among, and providing technical assistance to, regional, State, and local entities regarding environmentally sound approaches to prevention and control of aquatic nuisance species.

Environment

No comments were received on the environmental implications of this rule. The Coast Guard considered the environmental impact of this final rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available for inspection or copying where indicated under ADDRESSES. The exchange of ballast water in open ocean will benefit the Hudson River environment and the Great Lakes environment by helping to prevent potential infestations of nonindigenous species through ballast water emptied into the Hudson River north of the George Washington Bridge and transferred through the Hudson River and into the Great Lakes. Introduction of nonindigenous nuisance species through the ballast water of vessels has caused millions of dollars of damage to date in the Great Lakes area.

Initial study has concluded that the amount of vessels' seawater ballast to be discharged into the Hudson River will constitute such a small volume that no change in the salinity or temperature

levels will occur. Species contained in water collected from the open ocean are unlikely to survive a fresh water environment. Any nuisance species contained in the ballast water will not therefore, create a new infestation.

While these regulations will help to prevent potential infestations of species introduced through the ballast water of vessels, data from the Army Corps of Engineers shows that no vessel traveled north of the George Washington Bridge in a light cargo load condition after operating beyond the EEZ. This indicates that these vessels carried no ballast water. Therefore, it is anticipated that few vessels will actually be discharging water into the Hudson River. Therefore, the Coast Guard has concluded that the regulations will have no negative impact on the environment.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 151, subpart C as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart C—Ballast Water Management for Control of Nonindigenous Species

1. The authority citation for subpart C of part 151 continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

2. Section 151.1502 is revised to read as follows:

§ 151.1502 Applicability.

This subpart applies to each vessel that carries ballast water and that after operating on the waters beyond the Exclusive Economic Zone during any part of its voyage enters the Snell Lock at Massena, New York, or navigates north of the George Washington Bridge on the Hudson River, regardless of other port calls in the United States or Canada during that voyage.

3. In § 151.1504, the definitions of *Captain of the Port (COTP)* and *Voyage* are revised to read as follows:

§ 151.1504 Definitions.

Captain of the Port (COTP) means the Coast Guard officer designated as COTP of either the Buffalo, NY, Marine Inspection Zone and Captain of the Port Zone or the New York, NY, Captain of the Port Zone described in part 3 of this

chapter or an official designated by the COTP.

* * *

Voyage means any transit by a vessel destined for the Great Lakes or the Hudson River, north of the George Washington Bridge, from a port or place outside of the EEZ, including intermediate stops at a port or place within the EEZ.

4. Section 151.1506 is revised to read as follows:

§ 151.1506 Restriction of operation.

No vessel subject to the requirements of this subpart may be operated in the Great Lakes or the Hudson River, north of the George Washington Bridge, unless the master of the vessel has certified, in accordance with § 151.1516, that the requirements of this subpart have been met.

5. In § 151.1510, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 151.1510 Ballast water management.

(a) * * *

(1) Carry out an exchange of ballast water on the waters beyond the EEZ, in a depth exceeding 2000 meters, prior to entry into the Snell Lock, at Massena, New York, or prior to navigating on the Hudson River, north of the George Washington Bridge, such that, at the conclusion of the exchange, any tank from which ballast water will be discharged contains water with a minimum salinity level of 30 parts per thousand.

(2) Retain the vessel's ballast water on board the vessel. If this method of ballast water management is employed, the COTP may seal any tank or hold containing ballast water on board the vessel for the duration of the voyage within the waters of the Great Lakes or the Hudson River, north of the George Washington Bridge.

* * *

Dated: December 21, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-32223 Filed 12-29-94; 8:45 am]

BILLING CODE 4910-14-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86-7B]

Cable Compulsory License; Definition of Cable System

AGENCY: Copyright Office, Library of Congress.

ACTION: Amendment of cable license regulation.

SUMMARY: The Copyright Office is repealing the provision of its regulations regarding the eligibility of multipoint distribution service and multichannel multipoint distribution service operators for compulsory licensing under section 111 of the Copyright Act, and is amending other regulatory provisions necessitated by the Satellite Home Viewer Act of 1994.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT:

Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/L&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: On

October 18, 1994, the President signed into law the Satellite Home Viewer Act of 1994 (1994 Home Viewer Act). Public Law 103-369, 108 Stat. 3477. The 1994 Home Viewer Act extends the Copyright Act's section 119 compulsory license for satellite carriers another five years, until December 31, 1999, and amends the section 111 cable compulsory license definitions of a "cable system" and the "local service area of a primary transmitter." These legislative amendments to the Copyright Act require certain changes in Subchapter A, Part 201 of the Copyright Office's regulations, 37 C.F.R.

Definition of a Cable System—Wireless Cable Systems

The 1994 Home Viewer Act amends the definition of a "cable system" in the section 111 cable compulsory license to include what are known as "wireless" cable systems. "Wireless" cable operators, which provide video retransmission in the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS), are eligible for section 111 compulsory licensing for the broadcast signals that they retransmit to their subscribers.

By clarifying the section 111(f) definition of a "cable system" to include "wireless" cable operators, the 1994 Home Viewer Act expressly overruled a

prior decision of the Copyright Office that "wireless" cable operators did not come within the section 111(f) definition. On January 29, 1992, the Office concluded its inquiry into the definition of a "cable system" in Docket No. 86-7B and issued a regulation denying both "wireless" cable operators and satellite carriers eligibility for the cable compulsory license. 57 FR 3284 (1992). This regulation added a new subsection (k) to section 201.17 of the Office's rules, the pertinent part of which provided:

Satellite Carriers and MMDS Not Eligible

Satellite carriers, satellite resale carriers, multipoint distribution services, and multichannel multipoint distribution services are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code.

Subsequent to the issuance of this regulation, the Copyright Office delayed its effective date until January 1, 1995. 58 FR 40363 (July 28, 1993).

In light of the 1994 Home Viewer Act change to the "cable system" definition, the Office is amending § 201.17(k) to conform to the law and will treat "wireless" cable operators as being eligible for the cable compulsory license since January 1, 1978, the effective date of the Copyright Act and section 111. Satellite carriers, however, continue to remain ineligible for the section 111 license and the regulation is revised to notify satellite carriers when they may request a refund of royalties submitted to the Copyright Office under section 111.

Local Service Area of a Primary Transmitter

The other change to the cable compulsory license made by the 1994 Home Viewer Act is the broadening of the section 111(f) definition of the "local service area of a primary transmitter." The definition is used to determine when a broadcast station is local or distant to a cable operator, which in turn determines whether the operator must pay a royalty fee for that station. Effective July 1, 1994, the local service area of a broadcast station for copyright purposes also includes the area in which the station is entitled to insist upon carriage of its signal by a cable system (i.e. its must-carry zone), in accordance with the rules of the Federal Communications Commission in effect on September 18, 1993, and any subsequent modification of those rules.

Satellite Carriers

Section 201.11(a) and (b) are amended to reflect passage of the 1994 Home Viewer Act, including the royalty rate and the definitional changes to section 119 of the Copyright Act.

List of Subjects in 37 CFR Part 201

Cable systems, satellite carriers, compulsory license.

Proposed Regulation

In consideration of the foregoing, part 201 of title 37, Code of Federal Regulations, is amended as follows:

PART 201—[AMENDED]

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702.

§ 201.11 [Amended]

2. Section 201.11 is amended by removing "100-667" every place it appears and adding "103-369".

3. Section 201.11(e)(6) is amended by removing "twelve (12) cents per subscriber" and adding "17.5 cents per subscriber, or in the case of syndex-proof superstations as defined in 37 CFR 258.2, 14 cents".

4. Section 201.11(e)(7) is amended by removing "three (3)" and adding "six (6)".

§ 201.17 [Amended]

5. Section 201.17(a) is amended by removing "as amended by Pub. L. 94-553,".

6. Section 201.17(b)(2) is amended in the first sentence by adding "microwave," after "cables,"; by removing "Notices required to be recorded by this section, and the"; and by removing "(i) On the date of recordation with the Copyright Office, in the case of the preparation and filing of an Initial Notice of Identity and Signal Carriage Complement or notice of Change of Identity or Signal Carriage Complement; or (ii)".

6a. Section 201.17(b)(5) is amended by adding "and Pub. L. 103-369" at the end of the sentence before the period.

7. Section 201.17(h)(1)(i) is amended by removing "308.2(a)" and adding "256.2(a)".

7a. Section 201.17 in paragraphs (h)(1)(iii), (h)(2)(i), and (h)(3)(iii)(A) is amended by removing "308.2(c)" and adding "256.2(c)".

7b. Section 201.17(h)(9) is amended by removing "308(c)(2)" and adding "308.2(c)".

8. Section 201.17(k) is revised to read as follows:

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

(k) Satellite carriers not eligible. Satellite carriers and satellite resale carriers are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code. Any such entity who paid copyright royalties into the Copyright Office in an attempt to comply with 17 U.S.C. 111 may obtain a refund of such royalties by submitting a written request to the Chief, Licensing Division, Copyright Office, Library of Congress, Washington DC 20557 no later than March 1, 1995.

Dated: December 22, 1994.

Marybeth Peters,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94-32045 Filed 12-29-94; 8:45 am]

BILLING CODE 1410-30-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 95

[FRL-5131-5]

Mandatory Patent Licenses Under Section 308 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On occasion, a party attempting to comply with a standard of the Clean Air Act (CAA) may be unable to meet the standard without resort to a patented technology. CAA section 308 provides a mechanism by which such a non-complying party may obtain a patent license where it has been unsuccessful in its attempts to obtain a license on its own. Under CAA section 308, the United States may require the owner of the patented technology to grant the non-complying party a patent license in exchange for a reasonable royalty if the patented technology is necessary to meet the requirements in certain sections of the CAA.

The North American Free Trade Agreement (NAFTA) imposes certain limits on the ability of the United States to force patent owners to grant licenses under their patents. Section 104(b) of the North American Free Trade Implementation Act requires EPA to issue a regulation conforming CAA section 308 with the mandatory patent

licensing restrictions found in NAFTA article 1709(10).

EPA is issuing this rule to ensure that EPA's implementation of CAA section 308 conforms with the requirements of NAFTA article 1709(10). The rule establishes the policies and procedures EPA will follow prior to applying to the Attorney General for a mandatory license under a patent covering a technology necessary to enable compliance with the new stationary sources standards, hazardous air pollutants standards, or motor vehicle emission standards of the CAA.

EFFECTIVE DATE: January 30, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in EPA Air Docket No. A-94-51: Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Air and Radiation Docket and Information Center is located in room M-1500, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Dockets may be inspected from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Thomas Gorman, Patent Counsel (Mail Code 2379), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Phone: (202) 260-1339.

SUPPLEMENTARY INFORMATION:

I. Authority

This rule is promulgated under the authority of CAA section 308, as amended, 42 U.S.C. 7608, and the North American Free Trade Agreement Implementation Act, Public Law No. 103-182, section 104, 107 Stat. 2057, 2064 (1993).

II. Background

Section 308 of the Clean Air Act provides for mandatory licensing of patented technologies needed to meet certain CAA requirements. Under section 308, the United States can require the owner of a patented technology that is necessary to enable another party's compliance with certain limitations of the Clean Air Act to permit the other party to practice the patented technology in exchange for a reasonable royalty set by a Federal court. In order to compel the licensing of a patent under section 308, the EPA Administrator must ask the Attorney General to certify to a Federal district court that the following conditions are satisfied:

(a) The patent must be necessary for compliance with the standards of the CAA sections 111, 112 or 202;

(b) The patent right must be actively in use or intended for public or commercial use and not otherwise reasonably available;

(c) No reasonable alternatives to licensing the patent can exist for meeting the specified CAA standards; and

(d) Failure to license the patent may cause reduced competition or monopoly conditions in any area of trade.

Upon certification of the above conditions to a Federal district court by the Attorney General, the court may then order the patent holder to license the patent under terms and conditions determined by the court after a hearing.

Chapter 17 of the NAFTA addresses intellectual property issues generally and article 1709 addresses patents specifically. NAFTA article 1709 promotes the availability of patent protection for a broad range of inventions and also limits the scope of permissible violations of patent rights. The latter function is performed by paragraph 10 of article 1709, which sets conditions for violating a patent holder's right to decide the conditions for practice of the holder's patent.

NAFTA Article 1709(10) sets specific conditions that must be met by the compulsory patent licensing statutes of any member country. The conditions are as follows:

(a) Authorization of each compulsory license of a patent must be considered on the individual merits;

(b) Any proposed compulsory licensee already must have made efforts to obtain authorization from the patent holder;

(c) The scope and duration of an authorized compulsory patent license must be limited;

(d) An authorized compulsory patent license must be non-exclusive;

(e) An authorized compulsory patent license must be non-assignable;

(f) An authorized compulsory patent license must be predominantly for supply of the domestic market;

(g) The authorization of the compulsory patent license must be terminable when the circumstances that led to the authorization cease to exist;

(h) Patent holders must be paid adequate compensation;

(i) Authorization decisions must be subject to judicial or other independent review;

(j) Compensation rates must be subject to judicial or other independent review;

(k) When an authorized compulsory use is necessary to remedy a practice determined after judicial or