§ 52.2773 EPA-APPROVED VIRGIN ISLANDS REGULATIONS—Continued

Territory regulation	Effective date	EPA approval date	Comments
Section 206–25, "Test Methods"	1/15/87	[Date and citation of this notice]	Variances adopted pursuant to subsection 206–25(c) become applicable only if approved by EPA as SIP revisions.
Section 206–26, "Permits to Construct"	1/15/87	[Date and citation of this notice].	
Section 206–27, "Permits to Operate"	1/15/87	[Date and citation of this notice].	
Section 206–28, "Permit Modifications, Suspensions or Revocations and Denials".	1/15/87	[Date and citation of this notice].	
Section 206–29, "Further Information"	1/15/87	[Date and citation of this notice].	
Section 206–30, "Appeals"	1/15/87	[Date and citation of this notice].	
Section 206–30, "Review of New Sources and Modifications".	10/11/73	8/10/75, 40 FR 42013	Subsection 206–30(f)(6) is disapproved since sources of minor significance are not identified in Section 206–30. A federally promulgated regulation (40 CFR 52.2775(g)), correcting this deficiency and a public participation deficiency, is applicable. Two separate subsections are numbered 206–30 and are listed here with their separate titles.
Section 206–31, "Review of New or Modified Indirect Sources".	10/11/73	8/10/75, 40 FR 42013.	

[FR Doc. 94–8972 Filed 4–15–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[TN–98–1–5644; TN–103–1–6087; TN–108–1–6088; TN–109–1–6089; FRL–4860–5]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Portion of the State Implementation Plan Regulating Volatile Organic Compounds and Determining General Alternate Emission Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 25, 1992, and March 22, 1993, the State of Tennessee through the Department of Environment and Conservation submitted revisions to its State Implementation Plan (SIP) regarding general definitions, control of volatile organic compounds (VOCs), and general alternate emission standards.

On November 5, 1992, and April 22, 1993, the State submitted revisions to the VOC regulations and general alternate emission standards in the Memphis-Shelby County portion of the Tennessee SIP on behalf of Memphis-Shelby County. Since Memphis-Shelby County adopts the State's regulations by reference, the submitted SIP revisions were essentially identical to the regulations in the State's submittal.

EPA is approving or conditionally approving revisions to the Tennessee SIP and the Memphis-Shelby County portion of the Tennessee SIP as meeting the requirements of the Clean Air Act as amended in 1990 (CAA). The State and Memphis submittals addressed, or committed to address, all of the deficiencies identified in the State's VOC regulations and documented by EPA in letters to the State dated November 9, 1987, June 10, 1987, and January 25, 1990, and to Memphis-Shelby County dated November 9, 1987. EPA is disapproving the deletion of rule 1200–3–18–.03 Standard for New Sources.

DATES: This final rule will be effective June 17, 1994 unless notice is received by May 18, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the material submitted by the State of Tennessee 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.

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

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

Air Pollution Control Section, Memphis-Shelby County Health Department, 814 Jefferson Avenue, room 437, Memphis, Tennessee 38105.

FOR FURTHER INFORMATION CONTACT: William Denman, Air Programs Branch, United States Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365, (404) 347–2864.

SUPPLEMENTARY INFORMATION: In May 1988, EPA released 1987 air quality data which established the degree to which areas throughout the Nation attained, or failed to attain, the ozone National Ambient Air Quality Standard (NAAQS) and issued SIP calls for areas that failed to attain. The Memphis and Nashville areas in Tennessee failed to attain the ozone NAAQS. On September 7, 1988, at 53 FR 34500, EPA gave notice that SIP calls were made to the nonattainment areas.

The SIP call letters, which were sent to Governors and State Air Pollution Control Directors, requested that the states respond to the SIP calls in two phases. The response to Phase I was due approximately one year following the issuance of final EPA policy program requirements for ozone and carbon monoxide nonattainment areas and/or reauthorization of the CAA. As part of the first phase, states were asked to upgrade SIPs to correct discrepancies in existing SIPs as compared with EPA's existing guidance under section 108 and part D (related to reasonably available control technology (RACT) for VOC emissions) and to adopt control measures to satisfy any commitments in the part D SIP's to adopt RACT measures.

In 1990, Congress amended the CAA to address, among other things, continued nonattainment of the ozone NAAQS (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Section 182(a)(2)(A) of the CAA requires states with existing areas designated nonattainment for ozone and classified as at least marginal, to submit, by May 15, 1991, revisions to the SIP that correct or add requirements concerning RACT in accordance with pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated the corrections necessary for specific nonattainment areas.

The Memphis area is classified as marginal nonattainment and the Nashville area is classified as moderate nonattainment[2] for the ozone NAAQS. Therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991, deadline.

Tennessee failed to meet the May 15, 1991, deadline for the submittal of corrections to the State (including the State's portion of the Nashville nonattainment area), Memphis-Shelby County, and some of the Nashville-Davidson County regulations[3]. EPA notified the State on June 25, 1991, that a finding of failure to submit had been made for the Memphis-Shelby County and Nashville nonattainment areas. This finding of failure to submit was published at 56 FR 54557 on October 22, 1991. The finding triggered the 18-month time clock for mandatory application of sanctions under section 179(a) of the CAA and the 2-year time clock for promulgation of Federal VOC regulations for nonattainment areas as required by section 110(c)(1).

The State submitted revisions to the Tennessee SIP, including Nashville, to EPA on June 25, 1992, and on March 22, 1993. The State submitted SIP revisions to meet the section 182(a)(2)(A) requirement on behalf of Memphis-Shelby County on November 5, 1992, and on April 22, 1993. EPA found these submittals to be complete on October 6, 1993, and June 9, 1993, respectively. This finding of completeness stopped the sanctions clock started on October 22, 1991, for the Memphis-Shelby County and Nashville nonattainment areas. However, the Federal Implementation Plan (FIP) clock continued to run. EPA's final approval action relieves EPA of the FIP obligation for those portions of the submittal that are being fully approved. EPA is approving the following revisions except where it is specifically noted that the revision is being conditionally approved or disapproved.

[1] Among other things, the pre-amendment guidance consists of the Post–87 Policy, 52 FR 45044 (November 24, 1987); the Blue Book, "Issues relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987, **Federal Register** Notice;" and the existing Control Techniques Guidelines (CTGs).

[2] The Memphis and Nashville areas retained the designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181 (a) upon enactment of the Amendments. 56 FR 56694 (November 6, 1991).

[3] On February 16, 1990, July 3, 1991, October 4, 1991, and January 2, 1992, the State submitted certain corrections to the VOC RACT rules for Nashville-Davidson County. EPA approved the February 16, 1990, revisions at 56 FR 10171 on March 11, 1991, and the rest of the amendments at 57 FR 28625 on June 26, 1992.

Chapter 1200–3–2 General Definitions

The following changes were made only to the Tennessee portion of the SIP, and not to the Memphis portion.

Rule 1200–3–2–.01 General Definitions

The definition of "air contaminant source" was revised to correct a typographical error. The revision added the phrase "portable fuel-burning equipment, and incinerators of all types, indoor and," to the definition of "air contaminant source."

The definitions of "air curtain destructor," "open burning," "Ringelmann chart," "soiling index," "silicon carbide plant," and "magnetite processing plant" were deleted.

Minor changes were made to the definitions of "modification" and "reasonably available control technology" to correct typographical errors and for clarification.

The definition of "malfunction" was revised to correct a typographical error. The revision added failures that are caused by poor maintenance, careless operation, or any other preventable upset condition to the definition of "malfunction."

The definition of "startup" was revised to specify that "startup is the setting in operation of an air contaminant source for the production of product for sale or use as raw materials or steam or heat production."

Definitions of "continuous emission monitor," "nonattainment area," "PM–10," and "total suspended particulate (TSP)" were added.

Minor revisions to the definitions of "air pollution," "board," and "cupola" were withdrawn by the State via letter dated January 11, 1993, from Mr. John W. Walton, Technical Secretary of the Tennessee Air Pollution Control Board.

Chapter 1200–3–18 Volatile Organic Compounds

Applicability—The applicability requirements have been revised to state that the rules apply to facilities having potential VOC emissions of 25 tons per year or greater in Davidson, Hamilton, and Shelby Counties, and 100 tons per year or greater in all other counties in the State. The applicability requirements have been revised in the following rules.

Rule 1200–3–18–.05 Automobile and Light Duty Truck Manufacturing;
Rule 1200–3–18–.12 Can Coating;
Rule 1200–3–18–.13 Coil Coating;
Rule 1200–3–18–.14 Fabric and Vinyl Coating;
Rule 1200–3–18–15 Metal Furniture Coating;
Rule 1200–3–18–.16 Surface Coating of Large Appliances;
Rule 1200–3–18–.17 Magnet Wire Coating;
Rule 1200–3–18–.18 Solvent Metal Cleaning;
Rule 1200–3–18–.20 Flat Wood Paneling Coating;
Rule 1200–3–18–.21 Surface Coating of Miscellaneous Metal Parts and Products;
Rule 1200–3–18–.26 Manufacture of Pneumatic Rubber Tires;
Rule 1200–3–18–.27 Manufacture of Synthesized Pharmaceutical Products; and
Rule 1200–3–18–.28 Perchloroethylene Dry Cleaning.

Compliance—The following rules have been revised to reference the compliance provisions in paragraph 1200–3–18–.01(3) and rule 1200–3–18–.22. Paragraph 1200–3–18–.01(3) contains provisions for standards that limit the pounds of VOCs per gallon of material and rule 1200–3–18–.22 concerns leaks from gasoline tank trucks and vapor collection systems.

Rule 1200–3–18–.08 Bulk Gasoline Plants;
Rule 1200–3–18–.09 Bulk Gasoline Terminals; and
Rule 1200–3–18–.10 Gasoline Service Stations Stage I.

The following rules have been revised to reference the compliance provisions in paragraph 1200–3–18–.01(3).

Rule 1200–3–18–.12 Can Coating;
Rule 1200–3–18–.14 Fabric and Vinyl Coating;
Rule 1200–3–18–.20 Flat Wood Paneling Coating;
Rule 1200–3–18–.21 Surface Coating of Miscellaneous Metal Parts and Products;
Rule 1200–3–18–.22 Leaks from Gasoline Tank Trucks and Vapor Collection Systems;
Rule 1200–3–18–.23 Petroleum Refinery Equipment Leaks;
Rule 1200–3–18–.25 Petroleum Liquid Storage in External Floating Roof Tanks;
Rule 1200–3–18–.26 Manufacture of Pneumatic Rubber Tires;
Rule 1200–3–18–.27 Manufacture of Synthesized Pharmaceutical Products;
Rule 1200–3–18–.28 Perchloroethylene Dry Cleaning; and
Rule 1200–3–18–.29 Graphic Arts–Rotogravure and Flexography.

Rule 1200-3-18-.01 Purpose and General Provisions

The following changes were made to both the Tennessee and Memphis portions of the SIP.

Paragraph (1) was revised to change the applicability of emission standards and requirements from "new and existing" sources to "certain" sources of VOCs for which applicability is specified in this chapter or other chapters of division 1200-3. This paragraph was also revised to state that "[i]n determining whether the source category at a facility satisfies the applicability standard of a specific rule, the potential emissions from all sources of the source category shall be totaled."

Paragraph (3) was added to describe the standards that limit the pounds of VOCs per gallon of material. These standards must now specify the allowable VOC content per gallon of material less water. Demonstration of compliance with the VOC content standards of chapter 1200-3-18 was also addressed in paragraph (3). This paragraph states that compliance "other than by use of complying materials, shall be demonstrated by the limitation of volatile organic compound emissions to a level equivalent to the quantities which theoretically would be emitted if complying materials would be used."

Paragraph (4) describing methods for proof of compliance with the standards in chapter 1200-3-18 was also added to this rule. EPA is conditionally approving subparagraph 1200-3-18-.01(4)(b) in the Memphis submittal because it provides for determination of the VOC content, water content, densities, volume solids, and weight solids by certification from the manufacturer, if supported by batch formulation records and approved by the Technical Secretary. Based on Attachment 4 to the May 25, 1988, "Blue Book," the reference to batch formulation data must be changed to batch analytical data. In a letter dated January 25, 1994, the State committed for Memphis to correct this deficiency by February 1, 1995. EPA is not approving this revision for the area of Tennessee outside of the Memphis-Shelby county area because the State of Tennessee revised this rule in a subsequent submittal on May 18, 1993, which will be acted on by EPA in a later notice.

Subparagraph 1200-3-18-.01(4)(c), which refers to the procedure for the determination of capture efficiency, was withdrawn by the State via letter dated August 26, 1992, from Mr. John W. Walton, Technical Secretary of the Tennessee Air Pollution Control Board. Subparagraph 1200-3-18-.01(4)(c) was not included in the Memphis-Shelby County submittal.

Paragraph (5) describing monitoring to confirm continuing compliance and daily recordkeeping procedures was added. Paragraph (6) providing for a nonrenewable exemption from the standards in chapter 1200-3-18 was also added.

Rule 1200-3-18-.02 Definitions

The definitions of "urban county," "rural county," and "approved" were deleted. The definitions of "volatile organic compound" and "coating line" were revised to correct deficiencies. Definitions of "exempt solvent," "operation," "potential VOC emissions," "potential emissions," and "legally enforceable" were added. A minor revision was made to the definition of "existing source" to change the word "process(es)" to "process."

Rule 1200-3-18-.03 Standard for New Sources

Tennessee proposed to delete this rule in its entirety. EPA is disapproving the deletion of this rule for the Tennessee submittal because Tennessee does not have federally approved New Source Review (NSR) regulations which apply to some of the sources in this chapter. EPA is approving the deletion of this rule for the Memphis submittal because the federally approved Tennessee NSR applies to the Memphis-Shelby County area. Section 110(l) of the CAA provides that EPA shall not approve a SIP revision if the revision interferes with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of the CAA. Section 110(k) of the CAA addresses the situation in which an entire submittal, or a separable portion of a submittal, meets all applicable requirements of the CAA. In the case where a separable portion of the submittal meets all of the applicable requirements, partial approval may be used to approve that part of the submittal and disapprove the remainder. EPA has determined that the proposed deletion of this rule is separable from the submittal because the other revisions apply to existing sources and this proposed revision applies only to new sources.

Tennessee may submit the deletion of this rule with the submittal of their revised NSR regulations. For the deletion to be approvable, the revised NSR regulation must meet the provisions of part D of title I of the CAA, must contain requirements that will apply to the sources under this chapter and must be at least as stringent as the rule they propose to delete.

Rule 1200-3-18-.04 Alternate Emission Standard

This rule was deleted in its entirety. Alternate emission standards for VOCs were added to chapter 1200-3-21.

Rule 1200-3-18-.05 Automobile and Light Duty Truck Manufacturing

This rule was deleted in its entirety because there were no sources subject to the rule as contained in the Tennessee SIP and the Memphis portion of the Tennessee SIP. A new regulation for such sources consistent with EPA guidance has been submitted by the State and EPA will act on this submittal in a subsequent document.

Rule 1200-3-18-.06 Paper Coating

The definition of "Paper coating" in subparagraph (1)(b) was revised to include "decorative, functional, and protective coatings." Paragraph (2) was revised to make saturation operations subject to the provisions of this rule.

Paragraph (3) was revised to clarify the discharge limitation for the owner or operator of a paper coating line subject to this rule. The limitation disallows "the discharge into the atmosphere of any volatile organic compound in excess of 0.35 kilograms per liter (2.9 pounds per gallon) of coating as applied (or as delivered to the applicator), excluding water and exempt solvents, except as provided in 1200-3-18-.01(3)."

Rule 1200-3-18-.07 Petroleum Liquid Storage

The reference to rule 1200-3-18-.41 was deleted in paragraph (4) because the rule was changed and the exemption is no longer applicable.

Rule 1200-3-18-.08 Bulk Gasoline Plants

Minor revisions were made to the exemptions in paragraph (3) for purposes of correction and clarification.

Rule 1200-3-18-.09 Bulk Gasoline Terminals

A condition was added to the loading restrictions in paragraph (3). This condition states that no person may load gasoline into any tank trucks or trailers from any bulk gasoline terminal unless all loading and vapor lines are equipped with fittings which are vapor-tight.

Paragraph (6) was added to specify the applicable test method for determining VOC emissions from bulk gasoline terminals. This paragraph included subparagraphs which describe the principle, method summary, applicability, apparatus, test requirements, basic measurements required, test procedure, calculations, and calibrations of the test method.

Rule 1200-3-18-.10 Gasoline Service Stations Stage I

The exemptions in paragraph (3) were revised. EPA is conditionally approving the exemption in subparagraph (3)(a) of the Memphis submittal because it provides for director's discretion and therefore is not approvable. The exemption specifies that gasoline dispensing facilities equipped with control devices which have been approved by the Technical Secretary as providing emission reductions equivalent to that provided by floating roofs are exempt from this rule. In a letter dated January 25, 1994, the State committed for Memphis to correct this deficiency by February 1, 1995. EPA is not approving this revision for the area of Tennessee outside of the Memphis-Shelby county area because the State of Tennessee revised this rule in a subsequent submittal on May 18, 1993, which will be acted on by EPA in a later document.

Subparagraph (3)(b) was revised to change the exemption from "stationary gasoline storage containers of less than 7,570 liters (2,000 gallons)" to "stationary gasoline storage containers of less than 2,085 liters (550 gallons) capacity used exclusively in agriculture." Subparagraph (3)(c) was revised to change the exemption to facilities in counties other than Davidson and Shelby Counties. Subparagraph (3)(d) was revised to change the exemption from "gasoline dispensing facilities with an annual throughput of less than 260,000 gallons which is serviced with a tank truck with a capacity of 4,200 gallons or less" to "gasoline dispensing facilities with an annual throughput of less than 120,000 gallons."

Conditions were added to the limitations on the transfer of gasoline described in paragraph (4). These conditions specify that, "[e]xcept as provided under paragraph (3) of this rule, no owner or operator may transfer or cause or allow the transfer of gasoline from any delivery vessel into any stationary storage tank as described in subparagraphs (a) and (b) of this paragraph, unless the tank is equipped with a submerged fill pipe and the vapors displaced from the storage tank during filling are processed by a vapor control system in accordance with paragraph (5) of this rule." Subparagraph (a) specifies "any stationary storage tank located at a gasoline dispensing facility, with a capacity of 7,580 liters (2,000 gallons) or more, which is in place before January 1, 1979." Subparagraph (b) specifies "any stationary storage tank located at a gasoline dispensing facility, with a capacity of 948 liters (250 gallons) or more, which is installed after December 31, 1978." Minor changes were made to the phrasing in paragraph (6) to clarify the conditions on the owner or operator of a gasoline dispensing facility regarding design, maintenance, and refilling of a vapor-laden delivery vessel.

Rule 1200-3-18-.11 Petroleum Refinery Sources

The reference to rule 1200-3-18-.41 was deleted in paragraph (2) because this rule was changed and is no longer applicable.

Rule 1200-3-18-.12 Can Coating

Minor revisions were made in subparagraphs (3)(a), (b), (c), and (d) to clarify the limitations on the discharge of VOCs into the atmosphere.

Rule 1200-3-18-.13 Coil Coating

This rule was added to chapter 1200-3-18. Paragraph (1) contains definitions of "Coil coating" and "Quench area." Paragraph (2) applies the rule, in accordance with 1200-3-18-.13 (3), to the coating applicator(s), oven(s), and quench area(s) of coil coating lines involved in prime and top coat or single coat operations.

Paragraph (3) disallows the discharge of VOCs from a coil coating line into the atmosphere "in excess of 0.31 kilograms per liter (2.6 pounds per gallon) of prime and topcoat or single coat as applied (or as delivered to the applicator), excluding water and exempt solvents, except as provided in 1200-3-18-.01(3)." In the Memphis submittal, EPA is conditionally approving paragraph (3) because to meet RACT, the emission limits must apply to any coating, not just prime and topcoat or single coat. In a letter dated January 25, 1994, the State committed for Memphis to correct this deficiency by February 1, 1995. EPA is not approving this revision for the area of Tennessee outside of the Memphis-Shelby county area because the State of Tennessee revised this rule in a subsequent submittal on May 18, 1993, which will be acted on by EPA in a later notice.

Rule 1200-3-18-.14 Fabric and Vinyl Coating

The definition of "Vinyl coating" in subparagraph (1)(b) was revised to exempt the application of plastisol coatings. The qualification that plastisol coatings cannot be used to bubble emissions from vinyl printing and topcoating was also added to subparagraph (1)(b).

The applicability provision in paragraph (2) was revised to include saturation operations. Minor revisions were made to the phrasing in subparagraphs (3)(a) and (b) to clarify the VOC emission limitations.

Rule 1200-3-18-.15 Metal Furniture Coating

Minor revisions were made to the phrasing in paragraph (3) to clarify the VOC emission limitations.

Rule 1200-3-18-.16 Surface Coating of Large Appliances

A minor revision was made in paragraph (3) to correctly reference the VOC emissions limitations in paragraph (4). Minor revisions were made to the phrasing in paragraph (4) to clarify the VOC emission limitations.

Rule 1200-3-18-.17 Magnet Wire Coating

Minor revisions were made to the phrasing in paragraph (2) to clarify the VOC emission limitations.

Rule 1200-3-18-.18 Solvent Metal Cleaning

The reference to rule 1200-3-18-.41 was deleted in paragraph (2) because this rule was changed and is no longer applicable.

Rule 1200-3-18-.20 Flat Wood Panelling Coating

Paragraphs (5) and (6), providing for increments of progress and proof of compliance respectively, were deleted because the dates for demonstration of compliance had expired.

Rule 1200-3-18-.21 Surface Coating of Miscellaneous Metal Parts and Products

Definitions of "High performance architectural coating" and "Refinishing" were added to paragraph (1). The definition of "High performance architectural coating" specifies that it is a coating "[a]pplied at a facility located in a county which is attainment for ozone and had a population of less that 15000 according to the 1980 census." An emission limitation of 0.75 kg/l (6.2 lb/gal) for high performance architectural coating as applied (or as delivered to the applicator), excluding water and exempt solvents, was added as subparagraph (2)(a). The emission limitation of 0.52 kg/l (4.3 lb/gal) for clear coating as applied was clarified and moved from subparagraph (2)(a) to (2)(b). The emission limitation of 0.42 kg/l (3.5 lb/gal) for air dried coating as applied was clarified and moved from subparagraph (2)(b) to (2)(c). The emission limitation of 0.42 kg/l (3.5 lb/gal)for extreme performance coating as applied was clarified and moved from subparagraph (2)(c) to (2)(d). The emission limitation of 0.36 kg/l (3.0 lb /gal) for all other coating as applied was clarified and moved from subparagraph (2)(d) to (2)(e).

The exemptions for the exterior of marine vessels and for bicycles in subparagraphs (5)(j) and (5)(m) were withdrawn by the State via letter dated March 9, 1993, fromMr. John W. Walton, Technical Secretary of the Tennessee Air Pollution Control Board. On August 30, 1993, the State sent another letter to EPA withdrawing these exemptions from the Memphis submittal. The exemption in subparagraph (5)(1) for prime and top coating aerospace components was deleted. Paragraphs (7) and (8), providing for increments of progress and proof of compliance respectively, were deleted.

Rule 1200–3–18–.22 Leaks From Gasoline Tank Trucks and Vapor Collection Systems

The limitation in subparagraph (2)(a) on loading and unloading conditions for a gasoline tank truck was further specified by the addition of the phrase "when pressurized to gauge pressure of 4,500 pascals (18 in. of H_2O)." Paragraph (3) was amended by the addition of the requirement that testing of gasoline tank trucks for leak tightness be accomplished during or before the twelfth month after the month of the last test in which compliance with the standards of (2)(a) was demonstrated.

Paragraph (4) was revised to state that the rule is also applicable to gasoline tank trucks which load or unload at applicable plants, terminals, or gasoline dispensing facilities in Shelby County. The requirement in paragraph (4) that gasoline tank trucks be equipped for gasoline vapor collection for this rule to be applicable was deleted. Paragraph (4) was also reorganized into subparagraphs for clarity.

Paragraph (5) requiring initial testing was deleted. The reference to rule 1200–3–18–.42 was deleted in paragraph (6) because this rule was changed and is no longer applicable.

Subparagraphs (6)(a) and (b) were revised to provide for EPA's approval of equivalent test procedures for proof of compliance.

Rule 1200–3–18–.23 Petroleum Refinery Equipment Leaks

Subparagraph (2)(a) was revised so that pressure relief devices which are connected to inaccessible valves are no longer exempt from inclusion in the inspection program. Paragraph (4), providing for the institution of an approved inspection program, was deleted.

Rule 1200–3–18–.25 Petroleum Liquid Storage in External Floating Roof Tanks

Paragraph (5), providing for increments of progress, was deleted.

Rule 1200–3–18–.26 Manufacture of Pneumatic Rubber Tires

Paragraphs (5) and (6), providing for increments of progress and proof of compliance respectively, were deleted.

Rule 1200–3–18–.27 Manufacture of Synthesized Pharmaceutical Products

Paragraphs (4) and (5), providing for increments of progress and proof of compliance respectively, were deleted.

Rule 1200–3–18–.28 Perchloroethylene Dry Cleaning

Paragraph (5), providing for increments of progress, was deleted. Subparagraph (6)(d), providing for consistency with the test methods and procedures in rule 1200–3–18–.43,was also deleted. The test methods for proof of compliance are now provided for in paragraph 1200–3–18–.01(4).

Rule 1200–3–18–.29 Graphic Arts—Rotogravure and Flexography

Subparagraph (2)(b) was revised to add the requirement that the ink in flexographic and packaging rotogravure contain no more than 0.5 pound VOC per pound of solids. Subparagraph (2)(b) was also reorganized into subparagraphs for clarity. Paragraphs (5) and (6), providing for increments of progress and proof of compliance respectively, were deleted.

Rule 1200–3–18–.30 Surface Coating of Aerospace Components

This rule was deleted in its entirety because aerospace sources are subject to Rule 1200–3–18–.21 Surface Coating of Miscellaneous Metal Parts and Products.

Rule 1200–3–18–.40 Regulations Required Only in Metropolitan Davidson County

This rule was renamed "Regulations Required in Nonattainment Areas." Paragraph (1) was deleted and reserved for future use. Paragraph (2) was completely revised to state that "[a]ny plant within a county designated in Part 1200–3–2–.01(1)(ffff)3 as nonattainment for ozone having sources with potential volatile organic compound emissions totaling more than 100 tons/year in the aggregate shall utilize reasonably available control technology (RACT) for volatile organic compound emission from those sources." This changes the emission requirement for implementing RACT from 1000 tons/year or greater only in the Metropolitan Davidson county to 100 tons/year or greater in the entire ozone nonattainment area which makes the rule more stringent. The State has submitted further revisions to meet the non-CTG requirements for the Nashville area and these will be addressed in a subsequent action by EPA. EPA is approving this revision for its strengthening effect.

Rule 1200–3–18–.41 Compliance Schedules

This rule was deleted and replaced with the requirement that the owner or operator of a source in existence or having a State or local agency's construction permit before June 7, 1992, and subject to a standard in chapter 1200–3–18 shall satisfy the applicable increments of progress specified in subparagraphs (a), (b), and (c). This rule also includes a certification requirement and an exemption provision.

Rule 1200–3–18–.42 Individual Compliance Schedules

Paragraph (1) was revised to state that a facility with a source satisfying the applicability provisions of rule 1200–3–18–.41 may petition for a specific compliance schedule differing from the schedules contained in 1200–3–18–.41 and other rules in chapter 18 only if one or more of the conditions specified in subparagraphs (a) and (b) are satisfied. The condition in subparagraph (1)(c) was deleted.

Paragraph (2) was revised to delete the word "alphabetical," which was a typographical error, and to require final compliance with the specified emission standard as expeditiously as possible, consistent with the limiting conditions specified in paragraph (1) of this rule. Paragraph (3) was revised to state that individual compliance schedules approved under this rule must be submitted to EPA for approval. Paragraph (4) was revised to delete the reference to Hamilton County.

Rule 1200–3–18–.43 General Provisions for Test Methods and Procedures

Rule 1200–3–18–.44 Determination of Volatile Content of Surface Coatings

Rule 1200–3–18–.45 Test Methods for Determination of Volatile Organic Compound Emissions Control Systems Efficiency

Rule 1200–3–18–.46 Test Method for Determination of Solvent Metal Cleaning Organic Compound Emissions

Rule 1200–3–18–.47 Test Procedure for Determination of VOC Emissions From Bulk Gasoline Terminals

The above listed rules were deleted in their entirety. The test methods and procedures for proof of compliance are now provided for in paragraph 1200–3–18–.01(4).

Rule 1200–3–18–.48 Capture Efficiency Test Procedures

This rule was withdrawn by the State via letter dated August 26, 1992, from Mr. John W. Walton, Technical Secretary of the Tennessee Air Pollution Control Board. On August 30, 1993, the State sent another letter withdrawing this rule from the Memphis submittal.

The State intends to adopt capture efficiency (CE) test procedures after EPA publishes its revised CE test procedures. The study to evaluate the cost and technical aspects of alternative CE methods has been completed. EPA issued a draft document on October 6, 1993. This document is currently undergoing review and comment. Where states have not yet adopted CE regulations, EPA is allowing them to defer adoption of CE test requirements while the study is underway.

Chapter 1200–3–21 General Alternate Emission Standards

Rule 1200–3–21–.01 General Alternate Emission Standard

The following changes were made to both the Tennessee and Memphis portions of the SIP.

Paragraph (1) was revised to state that in lieu of satisfying the standards and requirements of other chapters of division 1200–3, air contaminant sources with a certificate of alternate control shall not emit particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compounds in excess of the respective limits of said certificate.

Paragraph (2) was revised to allow sources of VOCs regulated by other rules in the State's regulations to apply for a Certificate of Alternate Control. Paragraph (2) was also revised to change the word "source" to "source(s)," and to change the word "must" to "may" with regard to the Technical Secretary granting a request for a Certificate of Alternate Control. In addition, the requirement that these standards and conditions be submitted to EPA for approval was included in paragraph (3).

The condition in subparagraph (2)(a) was revised to include VOCs and to replace the language regarding determination of equivalent emissions. Subparagraph (2)(b) was revised to state that if a schedule of compliance is required, it must be included as a condition on the certificate. The phrase "this date" was changed to "the final compliance date."

Subparagraph (2)(c) was revised to require the air contaminant source to use modeling consistent with *Guideline on Air Quality Models (Revised)*, EPA–450/2–78–027R, with the 1988 revisions, to verify that the alternate emission standard will yield equivalent or improved air quality for the pollutant involved. Minor revisions were also made in subparagraph (2)(c) to correct typographical errors.

Subparagraph (2)(d) was revised to correct the reference to another rule and to replace the word "old" with "existing" in reference to sources. Subparagraph (2)(d) was also revised to require compliance with all applicable standards and requirements established under paragraph 1200–3–9–.01(4), under chapters 1200–3–11 and 16, and according to a lowest achievable emission rate (LAER) determination under paragraph 1200–3–9–.01(5). These standards and requirements will not be superseded or replaced by the alternate emission standard.

Subparagraph (2)(e), providing that sources must establish a specific emission limit for each emission point, was deleted. Subparagraph (2)(f) was renamed (2)(e) and revised to increase the certificate fee for each source.

Subparagraph (2)(g) was renamed (2)(f) and a phrase was deleted for clarification. A new subparagraph, (2)(g) was added to state that the provisions of the Emissions Trading Policy Statement, 51 FR 43850, dated December 4, 1986, are being satisfied. This policy statement is more stringent than subparagraph (2)(e) which was deleted.

Paragraph (3) was revised so that alternate emission standards and certificate conditions are no longer considered to be an addition to the existing standards. In addition, the requirement that these standards and conditions be submitted to EPA for approval was included in paragraph (3).

Paragraph (4) was revised to state that "[g]ood engineering practice stack heights shall be utilized on all stack changes associated with the alternate control standards for particulate matter, sulfur dioxide, carbon monoxide, and nitrogen dioxide." Paragraph (9) was revised to delete the reference to each emission point.

Rule 1200–3–21–.02 Applicability

This rule was added to make chapter 1200–3–21 applicable "only to those air contaminant sources which apply for a certificate of alternate control or a revision to a certificate of alternate control after March 18, 1993."

Final Action

EPA is fully approving the submitted revisions to the Tennessee State Implementation Plan (SIP) and the Memphis portion of the Tennessee SIP with the exception of the proposed revisions to Rules 1200–3–18–.01 (subparagraph (4)(b)), 1200–3–18–.10 (subparagraph (3)(a), and 1200–3–18–13 (paragraph (3)) of the Memphis portion of the Tennessee SIP for which we are issuing a conditional approval and Rule 1200–3–18–.03 Standard for New Sources of the Tennessee SIP for which we are disapproving the proposed deletion.

In addition, EPA is not approving the proposed revisions to rules 1200–3–18–.01 (subparagraph (4)(b)), 1200–3–18–.10 (subparagraph (3)(a)), and 1200–3–18–13 (paragraph (3)) of the Tennessee SIP. These rules were revised in a subsequent submittal by Tennessee on May 18, 1993. Therefore, since these revisions are not approvable as submitted in this action, EPA will act on these rules in the action on the May 18, 1993, submittal.

Because Tennessee has made a commitment for the Memphis nonattainment area that EPA believes meets the requirements necessary for EPA to grant conditional approval, EPA is conditionally approving under section 110(k)(4) of the CAA. In order for EPA to take final action on the commitment, the State must meet their commitment for the Memphis nonattainment area to adopt the identified provisions by February 1, 1995, and submit them to EPA within the time specified in this schedule. If the State fails to adopt or submit these rules for Memphis-Shelby County to EPA within this time frame, this approval will become a disapproval on that date. EPA will notify the area by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Memphis-Shelby County portion of the Tennessee SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register**. If Tennessee adopts and submits these rules for Memphis-Shelby County to EPA within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved submittal will also be removed from the SIP. Moreover, the rules on which the conditional approval was based will also be disapproved at that time. If EPA approves the submittal, those newly approved rules will become a part of the SIP and will modify or replace the commitment and the rules on which the conditional approval is based.

If EPA determines that it cannot issue a final, conditional approval or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time EPA issues the final disapproval or on the date Tennessee fails to meet its commitment. In the latter case, EPA will notify the area by letter that the conditional approval has been converted to a disapproval and that the sanctions clock has begun. If the State does not submit and EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective June 17, 1994. However, if notice is received by May 18, 1994 that someone wished to submit adverse or critical comments, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the CAA, 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 June 17, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (see section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 26, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

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

SIP approvals and conditional approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

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

Dated: March 22, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2219 is added to subpart RR to read as follows:

§ 52.2219 Identification of plan—conditional approval.

EPA is conditionally approving the following revisions to the Memphis-Shelby County portion of the Tennessee SIP contingent on Memphis meeting the schedule which was committed to for Memphis by Tennessee in a letter dated December 20, 1993, and amended on January 25, 1994, from the State of Tennessee to EPA Region IV.

(a) Rule 1200–3–18–.01 Purpose and General Provisions: Subparagraph (4)(b) effective October 23, 1993.

(b) Rule 1200–3–18–.10 Gasoline Service Stations Stage I: Subparagraph (3)(a) effective October 23, 1993.

(c) Rule 1200–3–18–.13 Coil Coating: Paragraph (3) effective October 23, 1993.

3. Section 52.2220 is amended by adding paragraph (c)(115) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(115) Revisions to the rules in the State's portion of the Tennessee State Implementation Plan (SIP) regarding control of volatile organic compounds (VOCs) were submitted on June 25, 1992, and March 22, 1993, by the Tennessee Department of Environment and Conservation. Revisions to the rules in the Memphis-Shelby County portion of the Tennessee SIP regarding control of VOCs were submitted on November 5, 1992, and April 22, 1993, by the State

on behalf of Memphis-Shelby County. In these submittals, Memphis-Shelby County adopted State regulations by reference.

(i) Incorporation by reference.

(A) Revisions to the following State of Tennessee regulations were effective on June 7, 1992.

(1) Rule 1200–3–2–.01 General Definitions: Subparagraphs (1)(b), (c), (z), (aa), (gg), (vv), (zz), (ccc), (lll), (mmm), (nnn), (eeee), (ffff), (gggg), and (iiii).

(2) Rule 1200–3–18–.01 Purposes and General Provisions: Paragraphs (1), (3), (4) introductory paragraph and (4)(a), (5), and (6).

(3) Rule 1200–3–18–.02 Definitions: Subparagraphs (1)(a), (b), (c), (f), (m), (ii), and (jj).

(4) Rule 1200–3–18–.04 Alternate Emission Standard.

(5) Rule 1200–3–18–.05 Automobile and Light Duty Truck Manufacturing.

(6) Rule 1200–3–18–.06 Paper Coating: Subparagraph (1)(b) and paragraphs (2), (3), and (4).

(7) Rule 1200–3–18–.07 Petroleum Liquid Storage: Introductory paragraph of paragraph (4).

(8) Rule 1200–3–18–.08 Bulk Gasoline Plants: Paragraphs (2) and (3).

(9) Rule 1200–3–18–.09 Bulk Gasoline Plants: Paragraph (2), subparagraph (3)(d), and paragraph (6).

(10) Rule 1200–3–18–.10 Gasoline Service Stations Stage I: Paragraphs (2), (3) (except subparagraph (3)(a)), (4), and (6).

(11) Rule 1200–3–18–.11 Petroleum Refinery Sources: Paragraph (2).

(12) Rule 1200–3–18–.12 Can Coating: Paragraphs (3) and (4).

(13) Rule 1200–3–18–.13 Coil Coating: Paragraphs (1), (2), and (4).

(14) Rule 1200–3–18–.14 Fabric and Vinyl Coating: Subparagraph (1)(b) and paragraphs (2), (3), and (4).

(15) Rule 1200–3–18–.15 Metal Furniture Coating: Paragraphs (3) and (4).

(16) Rule 1200–3–18–.16 Surface Coating of Large Appliances: Paragraphs (3), (4), and (5).

(17) Rule 1200–3–18–.17 Magnet Wire Coating: Paragraphs (2) and (3).

(18) Rule 1200–3–18–.18 Solvent Metal Cleaning: Paragraphs (2) and (3).

(19) Rule 1200–3–18–.20 Flat Wood Paneling Coating: Introductory paragraph of paragraph (2), paragraphs (4), (5), and (6).

(20) Rule 1200–3–18–.21 Surface Coating of Miscellaneous Metal Parts and Products: Subparagraphs (1)(g) and (h), paragraph (2), subparagraph (5)(1), and paragraphs (6), (7), and (8).

(21) Rule 1200–3–18–.22 Leaks from Gasoline Tank Trucks and Vapor Collection Systems: Introductory paragraph of paragraph (2), subparagraph (2)(a), paragraphs (3), (4), (5), and (6).

(22) Rule 1200–3–18–.23 Petroleum Refinery Equipment Leaks: Introductory paragraph of paragraph (2), subparagraph (2)(a), and paragraph (4).

(23) Rule 1200–3–18–.25 Petroleum Liquid Storage in External Floating Roof Tanks: Introductory paragraph of paragraph (2), and paragraph (5).

(24) Rule 1200–3–18–.26 Manufacture of Pneumatic Rubber Tires: Introductory paragraph of paragraph (2), paragraphs (4), (5), and (6).

(25) Rule 1200–3–18–.27 Manufacture of Synthesized Pharmaceutical Products: Introductory paragraph of paragraph (2), paragraphs (3), (4), and (5).

(26) Rule 1200–3–18–.28 Perchloroethylene Dry Cleaning: Introductory paragraph of paragraph (2), paragraphs (4) and (5), and subparagraph (6)(d).

(27) Rule 1200–3–18–.29 Graphic Arts–Rotogravure and Flexography: Introductory paragraph of paragraph (2), subparagraph (2)(b), paragraphs (5) and (6).

(28) Rule 1200–3–18–.30 Surface Coating of Aerospace Components.

(29) Rule 1200–3–18–.40 Regulations Required in Nonattainment Areas.

(30) Rule 1200–3–18–.41 Compliance Schedules.

(31) Rule 1200–3–18–.42 Individual Compliance Schedules: Paragraphs (1), (2), (3), and (4).

(32) Rule 1200–3–18–.43 General Provisions for Test Methods and Procedures.

(33) Rule 1200–3–18–.44 Determination of Volatile Content of Surface Coatings.

(34) Rule 1200–3–18–.45 Test Method for Determination of Volatile Organic Compound Emissions Control Systems Efficiency.

(35) Rule 1200–3–18–.46 Test Method for Determination of Solvent Metal Cleaning Organic Compound Emissions.

(36) Rule 1200–3–18–.47 Test Procedure for Determination of VOC Emissions from Bulk Gasoline Terminals.

(B) Revisions to the following State of Tennessee regulations were effective on March 18, 1993.

(1) Rule 1200–3–21–.01 General Alternate Emission Standard: Paragraphs (1), (2), (3), (4), and (9).

(2) Rule 1200–3–21–.02 Applicability.

(ii) Additional material—none.

4. Section 52.2225 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 52.2225 VOC rule deficiency correction.

* * * * *

(b) Revisions to sections 1200–3–2 "Definitions", 1200–3–18 "Volatile Organic Compounds" and 1200–3–21 "General Alternate Emission Standards" of the Tennessee SIP and the Memphis portion of the Tennessee SIP were submitted to correct deficiencies pursuant to the SIP call letter for ozone from Greer Tidwell, the EPA Regional Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter dated June 10, 1988, from Winston Smith, Air, Pesticides & Toxics Management Division Director, to Harold Hodges, Director of the Tennessee Division of Air Pollution. These revisions are approved with the exception of the following which remain as deficiencies and must be corrected by Tennessee and Memphis and the deletion of section 1200–3–18–.03 "Standard for New Sources" in the Tennessee SIP which was disapproved. The deficiencies are common to both Tennessee and Memphis because Memphis adopts the Tennessee regulations by reference.

(1) Rule 1200–3–18–.01 subparagraph (4)(b) must be changed to provide for EPA Administrator approval and the reference to batch formulation data must be changed to batch analytical data.

(2) Rule 1200–3–18–.10 subparagraph (3)(a) must be changed to provide for EPA Administrator approval.

(3) Rule 1200–3–18–.13 paragraph (3) must be changed to apply to any coating, not just prime and topcoat or single coat for this rule to meet the RACT emission limits.

* * * * *

5. Section 52.2228 is amended by adding paragraph (e) to read as follows:

§ 52.2228 Review of new sources and modifications.

* * * * *

(e) The State of Tennessee proposed to delete section 1200–3–18–.03 "Standard for New Sources" from the Tennessee State Implementation Plan (SIP) and the Memphis-Shelby County portion of the Tennessee SIP. EPA is disapproving the deletion of this rule for the Tennessee SIP because Tennessee does not have federally approved New Source Review (NSR) regulations which apply to some of the sources in this chapter. EPA is approving the deletion of this rule for the Memphis submittal because the federally approved TN NSR applies to the Memphis-Shelby County area.

[FR Doc. 94–8969 Filed 4–15–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Review of Information Collection and Recordkeeping Requirements for Providers of Outpatient Physical Therapy and/or Speech Pathology

CFR Correction

In Title 42 of the Code of Federal Regulations, parts 400 to 429, revised as of October 1, 1993, on page 104, the introductory text of § 405.1720 should read as follows:

§ 405.1720 Condition of participation—rehabilitation program.

At a minimum, a rehabilitation agency provides physical therapy or speech pathology services, and a rehabilitation program that in addition to physical therapy or speech pathology services, includes social or vocational adjustment services by making provision for special, qualified staff to evaluate the social or vocational factors involved in a patient's rehabilitation, to counsel and advise on social or vocational problems arising from the patient's illness or injury, and to make appropriate referrals for required services.When hospitals, skilled nursing facilities, or Medicaid nursing facilities obtain services for their patients from the agency this requirement does not apply to those patients.

* * * * *

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-281; FCC 94-59]

Calling Number Identification

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 8, 1994, the Commission adopted a Report and Order (R&O) and Further Notice of Proposed Rulemaking (FNPM) in CC Docket 91-281. The R&O amends the rules regarding common carriers to establish federal policies and rules concerning interstate calling number identification service (caller ID). The R&O finds that a federal model for interstate delivery of calling party numbers is in the public interest, that calling party privacy must be protected, and that certain state regulation of interstate calling party number (CPN) based services, including interstate caller ID, must be preempted.

EFFECTIVE DATE: April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Suzanne Hutchings, Domestic Services Branch, Domestic Facilities Division, (202) 634-1802, or Olga Madruga-Forti, Chief, Domestic Services Branch, Domestic Facilities Division, (202) 634-1816.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's R&O in the matter of Policies and Rules Concerning Calling Number Identification Service—Caller ID (CC Docket 91-281, FCC 94-59, adopted March 8, 1994 and released March 29, 1994). The R&O and supporting file may be examined in the Commission's Public Reference Room, room 239, 1919 M Street, NW., Washington, DC, during business hours or purchased from the duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. The R&O also will be published in the FCC Record.

Analysis of Proceeding

This proceeding was initiated by the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket 91-281, FCC 91-300, 6 FCC Rcd 6752 (1991), (56 FR 57300, November 8, 1991), to establish federal policies and rules governing calling number identification service on an interstate basis.

In its NPRM, the Commission tentatively concluded that a federal model for interstate caller ID should be established; that the federal model should recognize privacy interests of both the called and the calling party; that it should do so efficiently and without interfering with other services (such as 911); that the costs of the service should be recovered from the beneficiaries, the users of the service; and that carriers should pass on the calling party number from the originating carrier to the terminating carriers. The Commission tentatively concluded that it was not necessary to propose to preempt any intrastate caller ID offerings. After reviewing the comments and/or reply comments submitted by interested parties, the Commission has adopted rules which require common carriers using Common Channel Signalling System 7 (SS7) and subscribing to or offering any service based on SS7 functionality must transmit calling party number and its associated privacy indicator on interstate calls. The rules require that carriers offering CPN based service provided automatic per call blocking at no charge to interstate callers, and that the privacy indicator be honored by terminating carriers. The Report and Order finds that the costs of interstate transmission of CPN are *de minimis*, and that the CPN should be transmitted among carriers without additional charge. The rules require that carriers participating in the offering of any service that delivers CPN on interstate calls must inform telephone subscribers regarding the availability of identification services and how to invoke the privacy protection mechanism. The rules restrict the reuse or sale of telephone numbers by subscribers to automatic number identification (ANI) or charge number services, absent affirmative subscriber consent. The rules are made a part of this publication.

Request for Comments

The Commission affirmed the tentative conclusion reached in the NPRM that deployment of interstate calling party number services should be accompanied by consumer education regarding the availability of identification services and how to invoke the privacy protection mechanism. For ANI or charge number services for which such privacy is not provided, the rules require that the notification inform telephone customers of the restrictions on the reuse or sale of subscriber information. The Commission seeks further comment on whether it should prescribe detailed instructions regarding what form education should take or prescribe more precisely responsibilities of various carriers. The Commission is also particularly interested in specific joint industry education proposals. The Commission tentatively concludes that its policies for calling party number delivery should apply equally to services delivering calling party name, and seeks comment on its tentative conclusion. The Commission also seeks comment on whether the policies for subscriber privacy should extend to other services. All proposals and other comments must reference CC Docket No. 91-281. In particular, parties should address any differences in privacy considerations that apply to calling party name delivery as opposed to calling party number delivery.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 601, *et seq.*, the Commission's final analysis in this Report and Order is as follows:

I. Need and Purpose of This Action

This Report and Order adopts policies governing the transmission of the calling party number parameter and its associated privacy indicator on interstate calls. Several commenters to the NPRM in this proceeding have identified a number of potential uses for interstate calling party number based services, including caller ID, and have indicated that it also will improve certain existing communication service offerings. We find that the potential benefits of interstate passage of calling party number far exceed any negative effects. We thus adopt the conclusion reached in the NPRM that interstate caller ID and other calling party number based services are in the public interest and should be available to interstate subscribers nationwide pursuant to the policies and rules set forth in this order.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered

The Notice of Proposed Rulemaking in this proceeding requested comments on several proposals as well as the views of commenters on other possibilities. The Commission has considered all comments and has proposed regulations which require the passage of calling party number where SS7 is deployed, facilitate interstate calling party number based services, including caller ID, and implement federal policy on privacy.

Ordering Clauses

Accordingly, It is Ordered, That, pursuant to sections 1, 4(i), 4(j), 201–205, 218 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201–205, and 218, Part 64 of the Commission's Rules and Regulations are amended as set forth below, effective April 12, 1995.

It Is Further Ordered, that pursuant to authority contained in sections 1, 4(i), 4(j), 201–205, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 154(j), 201–205, and 218, Further Notice of Proposed Rulemaking[1] is hereby provided as indicated above.

It is Further Ordered, that, the Secretary shall cause a summary of this Report and Order and Further Notice of Proposed Rulemaking to be published in the **Federal Register** which shall include a statement describing how members of the public may obtain the complete text of this Commission decision. The Secretary shall also provide a copy of this Report and Order and Further Notice of Proposed Rulemaking to each state utility commission.

[1] The further notice of proposed rulemaking is published elsewhere in this issue of the **Federal Register.**

List of Subjects in 47 CFR Part 64

Communications common carriers.

Amended Rules

Part 64 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follow:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225, 226, 227, unless otherwise noted.

2. Part 64 is amended by adding a new subpart P to read as follows:

Subpart P—Calling Party Telephone Number; Privacy

§ 64.1600 Definitions.

(a) *Aggregate Information.* The term 'aggregate information' means collective data that relate to a group or category of services or customers, from which individual customer identities or characteristics have been removed.

(b) *ANI.* The term 'ANI' (automatic number identification) refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(c) *Calling Party Number.* The term Calling Party Number refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signalling System 7 network.

(d) *Charge Number.* The term "charge number" refers to the delivery of the calling party's billing number in a Signalling System 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(e) *Privacy Indicator.* The term Privacy Indicator refers to information, contained in the calling party number parameter of the call set-up message associated with an interstate call on an Signalling System 7 network, that indicates whether the calling party authorizes presentation of the calling party number to the called party.

(f) *Signalling System 7.* The term Signalling System 7 (SS7) refers to a carrier to carrier out-of-band signalling network used for call routing, billing and management.

§ 64.1601 Delivery requirements and privacy restrictions.

(a) Delivery. Common carriers using Signalling System 7 and offering or subscribing to any service based on Signalling System 7 functionality are required to transmit the calling party number associated with an interstate call to interconnecting carriers.

(b) Privacy. Originating carriers using Signalling System 7 and offering or subscribing to any service based on Signalling System 7 functionality will only recognize *67 dialed as the first three digits of a call (or 1167 for rotary or pulse-dialing phones) as a caller's request for privacy on an interstate call. No common carrier subscribing to or offering any service that delivers calling party number may override the privacy indicator associated with an interstate call. The terminating carrier must act in accordance with the privacy indicator unless the call is made to a called party that subscribes to an ANI or charge number based service and the call is paid for by the called party.

(c) Charges. No common carrier subscribing to or offering any service that delivers calling party number may:

(1) Impose on the calling party charges associated with per call blocking of the calling party's telephone number, or

(2) Impose charges upon connecting carriers for the delivery of the calling party number parameter or its associated privacy indicator.

(d) Exemptions. Section 64.1601 shall not apply to calling party number delivery services:

(1) Used solely in connection with calls within the same limited system, including (but not limited to) a Centrex, virtual private network, or private branch exchange system;

(2) Used on a public agency's emergency telephone line or in conjunction with 911 emergency services, or on any entity's emergency assistance poison control telephone line; or

(3) Provided in connection with legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency.

§ 64.1602 Restrictions on use and sale of telephone subscriber information provided pursuant to automatic number identification or charge number services.

(a) Any common carrier providing Automatic Number Identification or charge number services on interstate calls to any person shall provide such services under a contract or tariff containing telephone subscriber information requirements that comply with this subpart. Such requirements shall:

(1) Permit such person to use the telephone number and billing information for billing and collection, routing, screening, and completion of the originating telephone subscriber's call or transaction, or for services directly related to the originating telephone subscriber's call or transaction;

(2) Prohibit such person from reusing or selling the telephone number or billing information without first: (i) Notifying the originating telephone subscriber and

(ii) Obtaining the affirmative consent of such subscriber for such reuse or sale; and

(3) Prohibit such person from disclosing, except as permitted by paragraphs (a) (1) and (2) of this section, any information derived from the automatic number identification or charge number service for any purpose other than:

(i) Performing the services or transactions that are the subject of the originating telephone subscriber's call,

(ii) Ensuring network performance security, and the effectiveness of call delivery,

(iii) Compiling, using, and disclosing aggregate information, and

(iv) Complying with applicable law or legal process.

(b) The requirements imposed under paragraph (a) shall not prevent a person to whom automatic number identification or charge number services are provided from using the telephone number and billing information provided pursuant to such service, and any information derived from the automatic number identification or charge number service, or from the analysis of the characteristics of a telecommunications transmission, to offer a product or service that is directly related to the products or services previously acquired by that customer from such person. Use of such information is subject to the requirements of 47 CFR 64.1200 and 64.1504(c).

§ 64.1603 Customer notification.

Any common carrier participating in the offering of services providing calling party number, ANI, or charge number on interstate calls must notify its subscribers, individually or in conjunction with other carriers, that their telephone numbers may be identified to a called party. Such notification must be made not later than April 12, 1995, and at such times thereafter as to ensure notice to subscribers. The notification shall inform subscribers how to maintain privacy by dialing *67 (or 1167 for rotary or pulse-dialing phones) on interstate calls. For ANI or charge number services for which such privacy is not provided, the notification shall inform subscribers of the restrictions on the reuse or sale of subscriber information.

§ 64.1604 Effective date.

The provisions of §§ 64.1601 through 64.1603 shall be effective as of April 12, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-9358 Filed 4-15-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-21; Notice 3]

RIN 2127-AE76

Federal Motor Vehicle Safety Standards; Air Brake Systems; Automatic Brake Adjusters

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule, response to petitions for reconsideration.

SUMMARY: This notice responds to petitions for reconsideration of a final rule amending Standard No. 121, *Air Brake Systems*, (49 CFR 571.121). The rule amended the standard by requiring, *inter alia*, automatic brake adjusters on all medium and heavy vehicles and establishing readjustment limits for the performance of the adjusters. NHTSA received several petitions requesting the agency to reconsider the limits on the adjusters. This document grants those petitions.

DATES: *Effective Date:* The amendment to § 571.121 becomes effective October 20, 1994.

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than May 18, 1994.

ADDRESSES: Any petition for reconsideration should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Carter, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-5274).

SUPPLEMENTARY INFORMATION: On October 20, 1992, NHTSA published a final rule that amended Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, to require, *inter alia*, automatic brake adjusters on all air-braked vehicles. (57 FR 47793.) That amendment improves the braking performance of vehicles by ensuring that each vehicle has a device that automatically maintains proper brake adjustment, thus eliminating the need for frequent inspection and manual adjustment of the brakes. To provide for a specific performance requirement for the adjusters, the rule also specified that the adjuster would have to perform such that "the readjustment limits shall be in accordance with those specified in" a regulation of the Federal Highway Administration (FHWA).[1] (*See*, S5.1.8(a) of Standard No. 121.) The readjustment limits relate to the distance that a part of the brake (the pushrod) must travel, or stroke, before engaging the brake. The readjustment limits specify maximum distances for pushrod stroke.

NHTSA received timely petitions for reconsideration of the rule from Rockwell International (Rockwell) and White GM/Volvo. Petitioners asked for reconsideration of the requirements for the readjustment limits for the adjuster. Mr. John Kourik submitted a late petition to reconsider various aspects of the rule, including the readjustment limits. NHTSA is treating Mr. Kourik's petition as a petition for rulemaking, pursuant to the agency's regulations (see 49 CFR 553.35). However, NHTSA is responding in today's document to the issues raised by Mr. Kourik about the readjustment limits, since they are

[1] Appendix G to subchapter B of Chapter III—"Minimum Periodic Inspection Standards," 49 CFR parts 200 to 399.

almost identical to those of Rockwell and White GM/Volvo.

Each petitioner was concerned about the readjustment limit. Among the petitioners' criticisms were that the requirement is not objective, is inappropriate for certain air brake systems, and is likely to restrict new brake designs. Petitioners also believed that NHTSA did not provide adequate notice about the specification in the final rule for the FHWA readjustment limits.

The concern about the adequacy of notice resulted from the development of the requirement from the original proposal in the NPRM. In the NPRM, NHTSA proposed that a brake adjuster perform so that it "maintains brake adjustment within the manufacturer's recommended adjustment limits." 56 FR 20396, 20401, May 3, 1991. Several commenters, including White GM/Volvo, GM, Ford, and Midland-Grau, believed that the proposal would not provide any significant safety benefits and might cause unnecessary complications and confusion. For example, some commenters argued that, since there is no objective criteria as to what constitutes "maintains brake adjustment," the requirement would be vague. Also, White GM/Volvo, GM and Ford believed that the proposal might be misinterpreted as requiring the manufacturer to be responsible for brake adjustment throughout the vehicle's life, even though under the National Traffic and Motor Vehicle Safety Act the manufacturer is responsible for the compliance of the new vehicle only until the first consumer purchase. One commenter, Midland-Grau, recommended that NHTSA incorporate the FHWA's requirements for brake adjustment, set forth in the Minimum Periodic Inspection Standards.

After reviewing the comments, NHTSA agreed that the proposed requirement for readjustment limits was potentially vague and misleading. However, NHTSA believed Midland-Grau's recommendation about the FHWA alternative had merit. NHTSA stated:

> As for Midland-Grau's recommendation to use FHWA's regulations for "Driver Out-of-Service Criteria" for brake adjustment, NHTSA has decided to reference these provisions in Standard No. 121 because they are relevant to in-use heavy truck operation regulated by FHWA. Because amendments to Standard No. 121 require the use of brake adjustment indicators which require the display of underadjustment, a reference to adjustment limits is necessary.

57 FR at 47796.

Petitions for Reconsideration

All the petitioners raised identical concerns about the incorporation of the FHWA requirements.

1. Design Specific Requirements

Rockwell stated that the FHWA adjustment criteria that NHTSA incorporated would eliminate most air disc brakes from the market. The petitioner said that until 1988, FHWA's readjustment limits for the brake adjuster were in the form of guidelines. These guidelines provided separate requirements for air disc brakes, recognizing that air disc brakes need a slightly longer maximum stroke limit for each chamber size than that specified for drum brakes. For example, Rockwell said, for a type 30 chamber, the old FHWA "minimum criteria" provided for a maximum stroke of 2 inches for drum brakes and 2¼ inches for air disc brakes.

Rockwell stated there are fundamental differences between air disc brakes and drum brakes that account for why the FHWA guidelines permitted air disc brakes to have a slightly longer pushrod stroke limit than drum brakes. The petitioner explained:

> In both types of systems, the pushrod stroke length is proportionate to the clearance between the brake lining and the rubbing surface (the drum or the disc). On drum brakes, the clearance and therefore the pushrod stroke gets longer as the brakes become hot and the circular drum wall expands in diameter by as much as one-eighth inch at 800 degrees F. By contrast, a disc brake pushrod stroke gets shorter as the brake gets hotter, because the expansion of the hot rotor brings it closer to the pads which are also expanding in the direction of the rotors.

Rockwell said that when FHWA adopted its rule for readjustment limits (53 FR 49402, December 7, 1988), the rule did not continue to provide separate specifications for air disc brakes, as it had previously done in its guidelines. Rockwell argued that "by omitting the separate table for disc brakes, and requiring drum brakes and air disc brakes to meet the same adjustment criteria, the FHWA Final Rule had the effect of imposing a more stringent requirement on the air disc brakes than it imposed on drum brakes."

Rockwell said that it has asked FHWA to reconsider the agency's 1988 rule and that FHWA has agreed to reopen Docket MC-90-7 for additional comment on the issue of the appropriate requirements for air disc brakes. FHWA anticipates that a notice will be issued in the near future.

Rockwell stated that the effect of incorporating the FHWA readjustment limits would be to prohibit future sales of the air disc brake in certain applications. The petitioner argued that this would be anomalous in view of what Rockwell believes is an excellent safety record for the air disc brake system. Rockwell said that the system has been in use on the road for over 10 years, and,

> [S]ince 1985, Rockwell has been the sole North American manufacturer of air disc brakes. Many using customers have purposefully selected the air disc brake because of its unique performance features. High performance requirements of fire service vehicles, frequent braking requirements of refuse vehicles and minimal brake fade requirements desired by tractor/trailer operators hauling hazardous and flammable cargos are typical air disc brake applications.

The National Transportation Safety Board in their April 1992 Heavy Vehicle Airbrake Performance Safety Study noted:

> Air disc brakes have several advantages over drum brakes. When subjected to intense braking demands, disc brakes do not suffer the same performance degradations as do drum brakes. Disc brakes also reduce down hill runaways as well as brake imbalances caused by varied brake adjustments on the same vehicle.

2. Design Restrictions

The petitioners raised concerns that the incorporation of the FHWA requirements could hinder technological development, such as that of long stroke brake chambers. (On August 2, 1993, NHTSA published an NPRM to facilitate the use of long stroke brake chambers. 58 FR 41078). Rockwell stated:

> By referencing the FHWA readjustment criteria in FMVSS 121, NHTSA has "frozen" the FHWA criteria in their current form as of October 20, 1992, for purposes of FMVSS 121. Even if FHWA later amends its criteria in response to Rockwell's petition or to accommodate new technology, NHTSA will have to take affirmative action to update its cross-reference. * * * The time consuming process of adopting future changes to FMVSS 121 will deter air brake technology or, at least, prevent its rapid introduction into the marketplace. Rockwell believes that NHTSA did not intend this result.

Agency's Decision

After reviewing the petitions, NHTSA has decided to delete reference to the FHWA's regulations at issue. It appears that the FHWA readjustment limits are suitable for conventional drum brakes, but do not account for differences between conventional drum brakes and new types of air brake systems. When the agency adopted the readjustment limits, NHTSA did not intend to impede the development of brake systems that could provide comparable performance to conventional drum brakes, such as piston-type brakes. The FHWA requirements appear to be not fully appropriate for piston-type brakes because of substantially longer stroke length air brake chambers, which are fully developed and are undergoing fleet testing. Additional air brake chamber categories will have to be added to the FHWA Schedule A inspection tables as technology moves forward. Moreover, when NHTSA adopted the readjustment limits, the agency did not intend to prevent or hinder the development of brake designs that may offer *potentially* superior performance over drum brakes in specific applications, such as the air disc brake system.

The air disc brake system is subject to the same readjustment limits in the FHWA requirements as conventional drum brakes, which does not seem appropriate, given differences between the two types of air brake systems. Rockwell's air disc brake system has a stroking distance that is about ¼ inch longer than that permitted by the current FHWA requirement. However, Rockwell submitted test data to NHTSA that show that, with this stroking distance, the air disc brake system performs well when tested to the specifications and requirements of Standard No. 121. (These data have been placed in docket 91–21, Notice 3.)

Available information indicates that the air disc brake system appears to perform to Standard 121 specifications and may perform better than conventional drum brakes in some situations. There does not appear to be any data to support the need to impose a shorter stroke limit on air disc brake systems such as Rockwell's, that would impede the development of those systems. NHTSA believes the development of alternative, potentially superior brake systems, such as the air disc brake systems, should be facilitated to the extent possible. NHTSA believes there is an alternative requirement that would address the need for readjustment limits, yet avoid the problems the petitioners addressed.

Alternative Approach

Rockwell recommended that NHTSA require that the automatic adjuster's readjustment limits "be in accordance with the manufacturer's recommended limits." It commented that this language would be sufficiently objective because NHTSA could confirm the compliance of a brake system by comparing the actual readjustment limits of a brake system with those recommended by the manufacturer. These manufacturer recommendations are routinely provided by the manufacturer with each vehicle. The petitioner stated that NHTSA has taken this approach in other circumstances, such as with respect to testing safety belts for permissible levels of slack. (See, Standard No. 208, section S7.4.2.)

The agency adopted the FHWA readjustment limits to provide a clear means of determining whether a brake adjuster was performing properly. However, as explained above, the agency now believes that the FHWA requirement is inappropriate for use by NHTSA given the differences among air brake systems. As mentioned above, FHWA's in-use inspection requirements were developed primarily with drum brake systems in mind, and thus place disc brake systems, long stroke brake chambers and piston-type systems at a competitive disadvantage.

After reviewing the petitions, NHTSA has decided to delete reference to the FHWA requirements and to adopt a requirement that "the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer." This language is similar to that of the NPRM (which would have required air brake adjusters to "maintain brake adjustment within the manufacturer's recommended adjustment limits"), in that the adjuster would be required to perform as intended by the vehicle manufacturer. However, NHTSA believes that the language adopted in this document avoids the concerns about objectivity and vagueness engendered by the NPRM.

Those concerns about the NPRM stemmed from the word "maintain" in the language quoted above. Since there was no objective criteria specified for determining whether a particular brake adjuster would "maintain adjustment" of the brakes, manufacturers were concerned that questions could arise between a manufacturer and NHTSA as to whether a particular system complied with the standard, particularly when it was unclear when exactly the determination of compliance would be made. Manufacturers were concerned that the proposed language implied that Standard 121 requires a vehicle to "maintain" conformance to the FMVSS's throughout the life of the vehicle, which is incorrect and confusing.

NHTSA concurred with the commenters that the proposed language was inappropriate (57 FR at 47796):

> The agency notes that there is no objective criteria as to what constitutes "maintains adjustment." In addition, as a general rule, the agency does not establish extended durability testing. The agency believes that to require that the adjustment be maintained throughout the lifetime of the vehicle is unrealistic, dependent upon the vehicle's exposure, and beyond the scope of NHTSA's authority.

The requirement adopted today provides an objective requirement that allows the vehicle manufacturer to evaluate conformance to the standard. As Rockwell stated, NHTSA can readily confirm the compliance of a brake system by comparing the actual readjustment limits of the system with those recommended by the manufacturer. Further, the requirement does not use "maintain" and therefore avoids the implication that compliance with Standard 121 must be maintained through a vehicle's lifetime. However, as explained below, since NHTSA is specifying a requisite level of performance for the brake adjusters, the agency must also specify when, during compliance testing, NHTSA will evaluate the brake adjusters to determine if they are performing according to the recommendations of the vehicle manufacturer.

Inspection

During NHTSA's review of the petitions for reconsideration, the agency realized that the standard had no express requirement for when the adjustment indicators are to be inspected. However, the brake adjuster amendment implicitly required that the brakes be inspected, because the amendment states that the readjustment limits must be in accordance with the FHWA inspection standards. Also implicit in this amendment is that inspection will occur at the end of the Standard No. 121 test procedures, since the need for readjustment will only occur after the vehicle has been driven. In addition, inspection of the vehicle at the end of testing for conformance with the braking standard is consistent with the specifications for hydraulic brake systems (Standard No. 105). Accordingly, in this document, NHTSA is including a "final inspection provision" at the end of the test procedures to require that the service brake system be inspected at the end of the test sequence.

Procedural Concerns

NHTSA notes that the petitioners' concerns about the adequacy of notice for the FHWA provisions are now moot. Therefore, these concerns are not further addressed.

The amendment to § 571.121 becomes effective October 20, 1994, the effective date for the automatic brake adjusters.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866, "Regulatory Planning and Review." This rulemaking has been determined to be not "significant" under the Department of Transportation regulatory policies and procedures. The amendment will not result in any additional cost impacts beyond those resulting from the initial final rule. The agency further concludes that, because the cost impacts are minimal, a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Any impact on small entities from this action will be minimal since the amendments make minimal changes to the Standard that will not impose additional costs or result in any savings. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant impact on the quality of the human environment.

D. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No state laws will be affected.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. Section 571.121 is amended by revising S5.1.8, S5.2.2, and Table I to read as follows and by adding S5.9:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.1.8 *Brake distribution and automatic adjustment.* Each vehicle shall be equipped with a service brake system acting on all wheels.

(a) *Brake adjuster.* Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. When inspected pursuant to S5.9, the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer.

(b) *Brake indicator.* For each brake equipped with an external automatic adjustment mechanism and having an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator that is discernible when viewed with 20/40 vision from a location adjacent to or underneath the vehicle, when inspected pursuant to S5.9.

* * * * *

S5.2.2 *Brake distribution and automatic adjustment.* Each vehicle shall be equipped with a service brake system acting on all wheels.

(a) *Brake Adjuster.* Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. When inspected pursuant to S5.9, the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer.

(b) *Brake Indicator.* For each brake equipped with an external automatic adjustment mechanism and having an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator in a manner that is discernible when viewed with 20/40 vision from a location adjacent to or underneath the vehicle, when inspected pursuant to S5.9.

* * * * *

Table I—Stopping Sequence

1. Burnish.

2. Control trailer service brake stops at 60 mph (for truck-tractors tested with a control trailer in accordance with S6.1.10.)

3. Control trailer emergency brake stops at 60 mph (for truck-tractors tested with a control trailer in accordance with S6.1.10.7.)

4. Stops with vehicle at gross vehicle weight rating:

(a) 20 mph service brake stops on skid number of 81.

(b) 60 mph service brake stops on skid number of 81.

(c) 20 mph service brake stops on skid number range 30.

(d) 20 mph emergency brake stops on skid number of 81.

(e) 60 mph emergency brake stops on skid number of 81.

5. Parking brake test with vehicle loaded to GVWR.

6. Stops with vehicle at unloaded weight plus 500 lbs.

(a) 20 mph service brake stops on skid number of 81.

(b) 60 mph service brake stops on skid number of 81.

(c) 20 mph service brake stops on skid number range 30.

(d) 20 mph emergency brake stops on skid number of 81.

(e) 60 mph emergency brake stops on skid number of 81.

7. Parking brake test with vehicle at unloaded weight plus 500 lbs.

8. Final inspection of service brake system for condition of adjustment.

* * * * *

S5.9 *Final Inspection.* Inspect the service brake system for the condition of adjustment and for the brake indicator display in accordance with S5.1.8 and S5.2.2.

* * * * *

Issued on April 12, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94-9226 Filed 4-15-94; 8:45 am]

BILLING CODE: 4910-59-P