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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 94–068–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Louisiana from a modified accredited State to an accredited-free State. We have determined that Louisiana meets the criteria for designation as an accredited-free State.

DATES: Effective Date: Interim rule effective July 19, 1994.

Comments: Consideration will be given only to comments received on or before September 19, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–068–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which is part of the regulations via incorporation by reference in part 77. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years in order to be designated as an accredited-free State.

Before publication of this interim rule, Louisiana was designated in § 77.1 of the regulations as a modified accredited State. However, Louisiana now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Louisiana from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted, as Louisiana currently meets the criteria for designation as an accredited-free State. This action provides prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

There are approximately 19,500 cattle herds in Louisiana. An estimated 905 of the herds are owned by small entities. Changing the status of Louisiana may enhance the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for *Modified accredited states*, paragraph (2) is amended by removing "Louisiana,".

3. In § 77.1, in the definition for *Accredited-free states*, paragraph (2) is amended by adding "Louisiana," immediately after "Kentucky,".

Done in Washington, DC, this 13th day of July 1994.

B. Glen Lee,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17517 Filed 7–18–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 94–AWP–10]

Revocation of Restricted Area R–3104, Island of Kahoolawe, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R–3104, Island of Kahoolawe, HI. Legislation returning Kahoolawe Island to the State of Hawaii was signed into law by the President on November 11, 1993, as part of the Defense Appropriations Bill. The Department of the Navy subsequently submitted a proposal to disestablish the restricted area.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7666.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations removes Restricted Area R–3104, Island of Kahoolawe, HI. Legislation returning Kahoolawe Island to the State of Hawaii was signed into law by the President on November 11, 1993, as part of the Defense Appropriations Bill. The Department of the Navy has terminated the use of R–3104 as a weapons range and has determined the area to be in excess of naval requirements. The Navy has requested that the FAA disestablish R–3104. This action returns formerly restricted airspace to public use. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.31 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action disestablishes restricted airspace. In accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.31 [Amended]

2. Section 73.31 is amended as follows:

R–3104 Island of Kahoolawe, HI [Removed]

Issued in Washington, DC, on July 7, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–17393 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–94–1623; FR–3028–F–02]

RIN: 2502–AF26

Changes to the Minimum Property Standards: Seismic Standards

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule would amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S, to specify that seismic design is a mandatory standard requirement for applicable housing. In addition, the rule would update a reference to a private sector seismic design standard currently incorporated into the MPS. This change to the MPS is needed to comply with the requirements of Executive Order 12699, the National Earthquake Hazards Reduction Program Reauthorization Act, and the Cranston-Gonzalez National Affordable Housing Act. These revisions

would ensure the structural integrity of applicable housing, and would protect the Department's insurance fund.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Donald R. Fairman, Acting Director, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street SW, Mail Room B133, Washington, DC 20410-8000, telephone (202) 755-7440, or (202) 708-4594 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1993, the Department published in the **Federal Register** a proposed rule (58 FR 41445) to amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. All housing constructed under the Department of Housing and Urban Development ("Department" or "HUD") mortgage insurance and low-rent public housing programs is required to meet or exceed the HUD-established MPS.

Section 526 of the National Housing Act (12 U.S.C. 1735f-4) authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of care-type facilities and one- and two-family and multifamily residential structures. Accordingly, the Secretary prescribed minimum property standards in 24 CFR part 200, subpart S. Provisions governing the health and safety criteria applicable to multifamily housing were simplified in 1984 (49 FR 18690, May 1, 1984), to rely on criteria already established in State or local codes or nationally recognized model codes.

This simplification was extended to care-type housing insured under HUD programs by a final rule published August 11, 1986 (51 FR 28696). The change implemented by that rule consolidated the requirements applicable to multifamily and care-type housing, allowing the Department to rely on established codes that have been determined by HUD to be comparable to one of the national model codes.

By a separate rule (50 FR 39586, September 27, 1985), the minimum property standards applicable to one- and two-family dwellings also were simplified to rely on criteria already established in State or local codes or one of the nationally recognized model codes. This rule was described (50 FR 39586) as being similar in many respects to the 1984 rule amending the minimum property standards for multifamily housing.

Executive and Legislative Mandates

The Department is subject to three separate directives that require it to address seismic safety issues in regulations governing programs operated by the Department. The first of these directives is an Executive Order issued by former President Bush. The other two directives are the National Earthquake Hazards Reduction Program Reauthorization Act, approved November 16, 1990 (Pub. L. 101-614) (NEHRP Reauthorization Act), and section 947 of the Cranston-Gonzalez National Affordable Housing Act, approved November 28, 1990 (Pub. L. 101-625) (NAHA).

On January 5, 1990, former-President Bush signed Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction" (Executive Order). In part, the purpose of this Executive Order is "to reduce risks to the lives of persons who would be affected by earthquake failures of federally assisted or regulated buildings, and to protect public investments, all in a cost-effective manner." The Executive Order applies only to new buildings being constructed with Federal involvement. Each Federal agency is made responsible for developing and implementing its own cost-effective seismic safety program commensurate with its specific program responsibilities. However, section 4(a) of the Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) to use consensus procedures in recommending cost-effective seismic design and construction standards that would satisfy the requirements of the Executive Order. The Department has been working with the ICSSC to identify and meet the Department's responsibilities under the Executive Order.

Although the Executive Order does not create rights that make it privately enforceable, its provisions are made mandatory by section 8(a) of the NEHRP Reauthorization Act. Under the NEHRP Reauthorization Act each Federal agency is required to issue final regulations that comply with the Executive Order.

Finally, section 947 of NAHA requires the Secretary to develop seismic safety standards for properties assisted under HUD programs. The Secretary expressly is permitted to defer to local building codes that meet the seismic safety requirements established, and is authorized to utilize the resources of the National Earthquake Hazards Reduction Program (see 42 U.S.C. 7704).

The ICSSC was established as part of this Program in 1978, in response to the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701-7706). Since that time, the ICSSC has been working with Federal agencies and the private sector to develop appropriate, generally recognized, seismic safety standards. This final rule permits the Department to benefit from the efforts of the ICSSC, by referencing private sector seismic design and construction standards, as intended under section 3(a) of the Executive Order. In accordance with ICSSC recommendations, in this final rule the Department is adopting the seismic requirements included in the American Society of Civil Engineers (ASCE) standard ASCE 7-88, Minimum Design Loads for Buildings and Other Structures.

The Department expects to follow the recommendations of the ICSSC in applying the requirements that would be established by this final rule, as long as those recommendations would promote the purposes of the Department's programs. For example, the seismic safety requirements would apply where HUD assistance is provided through loan or mortgage insurance programs, and the requirements will apply to additions and renovations to existing buildings. Further, an addition or renovation should not decrease the seismic resistance of an existing building.

Elements of Final Rule

Since 1984, most of the private standards referenced in the MPS have been changed, often because the sponsoring organization has updated a standard. ASCE 7-88, adopted by the sponsoring organization in 1988, but not published until July 1990, recently was incorporated by reference in 24 CFR part 200, Appendix A (58 FR 60246, November 15, 1993). This standard was formerly listed as ANSI A58.1-1982; with a sponsorship change of the standard from the American National Standards Institute (ANSI) to the American Society of Civil Engineers (ASCE), and the revisions published by ASCE in 1990, the Department revised its reference to this standard to be consistent with section 526 of the National Housing Act, OMB Circular A-119, and the goals of the Department. This final rule will simply mandate compliance with the seismic design requirements of ASCE 7-88.

In addition, the Department is correcting minor typographical errors in current regulatory text. Other changes that had been included in the proposed rule have already been adopted recently by the Department in a separate rulemaking and, therefore, are not included in this final rule.

This final rule concerns those property standards applicable to multifamily and care-type housing and to one- and two-family dwellings. Because manufactured homes eligible for insurance are subject to different minimum standards, the Department will propose a separate rule to mandate seismic standards appropriate for that category of housing.

Comments

Two public comments were received on the proposed rule published in the **Federal Register** on August 4, 1993. One comment was from the American Society of Civil Engineers (ASCE), and the other was from the National Institute of Standards and Technology (NIST), U.S. Department of Commerce.

The ASCE comment stated that ANSI/ASCE Standard 7–88, Minimum Design Loads for Buildings and Other Structures (November 1990) (ASCE 7–88 in this preamble), was under review for change and should be considered as an interim standard. They also pointed out that ASCE was planning to publish changes to ASCE 7–88 in late 1993 or early 1994 and requested the Department to consider waiting for these changes. Although the Department appreciates the ASCE comment, we must comply with the mandate in Executive Order 12699 and the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA), which requires HUD to adopt seismic requirements for its programs. Therefore, this rule references the standard that has been reviewed by the Department and approved for incorporation by reference. Newer ASCE requirements can be considered for possible revisions to any HUD standards to which they would apply.

The Department of Commerce, National Institute of Standards and Technology (NIST), point out that the 1982 and 1984 editions of the model codes are not considered acceptable for seismic design. The Department acknowledges this problem and has changed these references to refer to the 1993 editions of the model codes. These changes are in conformity with changes to the MPS that were made in a final rule published November 15, 1993, in the **Federal Register** (58 FR 60246).

NIST also noted that the Interagency Committee on Seismic Safety in Construction (ICSSC) has reviewed the 1991 edition of the ICBO Building Code, the 1992 edition of the BOCA National Building Code, and the 1992 edition of the SBCCI Southern Standard Building Code, and found that all provide a level of safety substantially equivalent to that defined in the NEHRP Recommended Provisions.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The major portion of the rule is designed to effectuate statutory requirements broadly, so that affected parties are permitted to choose among reasonable alternatives in complying with the statutory requirements. Generally, these requirements are imposed separately through State and local building codes that have been, or are being, updated to include the seismic safety standards. This rule would comply with the statutory requirements by specifically referencing existing standards, which have been reviewed and determined to be adequate.

Environmental Impact

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule have federalism implications, and are subject to review under the order. Specifically, the rule provides for additional building design and construction standards to be applied to certain buildings in which federal assistance is provided. Because current building standards are met largely through compliance with existing State and local building codes, the additional requirement imposed by this rule may encourage States and local jurisdictions to adopt more stringent seismic design standards. This approach would allow local contractors to continue to rely upon the State and local codes in building to meet any federal requirements.

However, this rule is intended to implement statutory requirements that are broadly applicable to federal programs government-wide, and are not limited to HUD programs. In an effort for consistency and simplification, and as a result of information provided by the Interagency Committee on Seismic Safety in Construction, a great majority of State and local governments have already adopted acceptable seismic design and construction standards in their State and local codes. In large part, the movement to include seismic standards in building design and construction was led by the national model code organizations, whose model codes are often adopted by State and local governments.

Therefore, while the Department recognizes the potential federalism implications of this rule, the Department believes any federalism impact on State and local governments would be a function of the government-wide Federal requirements, rather than this discrete rule. Therefore, a more comprehensive review under Executive Order 12612 is not required, because the implementation of the statutes and Executive Order 12699 leaves little discretion with the Department to lessen these impacts.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as Item No. 1590 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20448), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons set out in the preamble, title 24, subpart S of the Code of Federal Regulations, is amended as follows:

PART 200—INTRODUCTION

Subpart S—Minimum Property Standards

1. The authority citation for Part 200 is revised to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. Section 200.925a is amended by revising paragraph (c)(2) and by adding a sentence at the end of paragraph (c)(3), to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(c) * * *

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate the subarea for seismic design (see § 200.925b(c)(5)), or if it fails to regulate subareas in more than one of the following major areas listed in § 200.925b: fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, electrical, and elevators.

(3) * * * However, for earthquake loads (see § 200.925b(c)(5)), ASCE 7–88 is mandatory.

* * * * *

3. Section 200.925b is amended by revising the heading for paragraph (c) and paragraph (c)(5) to read as follows:

§ 200.925b Residential and institutional building code comparison items.

* * * * *

(c) *Structural loads and seismic design.* * * *

(5) Earthquake loads (in localities identified by ASCE 7–88 (formerly ANSI A58.1–82) as being in seismic zones 1, 2, 3, or 4, and Guam).

* * * * *

4. Section 200.925c is amended by revising the introductory text of paragraph (c) to read as follows:

§ 200.925c Model codes.

* * * * *

(c) *Designation of Model Codes.* When a multifamily or care-type property is to comply with a model code, it shall comply with one of the model codes designated in paragraphs (c)(1), (2), or (3) of this section, and with any other code or codes identified in the same paragraph. However, seismic design is a mandatory requirement. In addition, the property shall comply with all of the standards that are incorporated into the code or codes by reference. By the time of application for insurance or other benefits, the developer or other interested party shall notify the Department of the code or group of codes to which the developer intends to comply.

* * * * *

5. Section 200.926 is amended by revising paragraph (c)(2) and adding a sentence at the end of paragraph (c)(3), to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

* * * * *

(c) * * *

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate the subarea for seismic design (see § 200.926a(c)(5)), or if it fails to regulate subareas in more than one of the following major areas listed in § 200.926a: fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, and electrical.

(3) * * * However, for earthquake loads (see § 200.926a(c)(5)), ASCE 7–88 is mandatory.

* * * * *

6. Section 200.926a is amended by revising the heading of paragraph (c) and paragraphs (c)(3) and (c)(5), to read as follows:

§ 200.926a Residential building code comparison items.

* * * * *

(c) *Structural loads and seismic design.* * * *

(3) Snow loads (for jurisdictions with snow loading conditions identified in Section 7 of ASCE–7–88 (formerly ANSI A58.1–82); * * *

(5) Earthquake loads (for jurisdictions in seismic zones 3 or 4, as identified in Section 9 of ASCE–7–88 (formerly ANSI A58.1–82)).

* * * * *

§ 200.926c [Amended]

7. The table titled "Schedule for Model Code Supplements to Local or State Codes" in § 200.926c is amended by revising the heading, "Deficient major from § 200.926a as determined by field office review", and item (c), "Structural loads * * *", in the first (left-hand) column, to read, respectively, as follows: "Deficient major items from § 200.926a as determined by field office review" and "(c) Structural loads and seismic design * * *".

§ 200.926e [Amended]

8. Section 200.926e is amended by removing each reference to "ANSI A58.1–82" where it occurs in paragraphs (b), (c) introductory text (two occurrences), (c)(2), and (d), and replacing each occurrence with the reference "ASCE 7–88".

§ 200.937 [Amended]

9. Section 200.937(a)(2) is amended by revising the address, "1430 Broadway, New York, NY 10018", listed for the American National Standards Institute, Inc., to read as follows: "11 West 42nd Street, New York, NY 10036".

Dated: June 28, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–17403 Filed 7–18–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

RIN: 1218–AB42

Retention of DOT Markings, Placards, and Labels

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is hereby issuing a final rule that requires employers who receive a package, transport vehicle, freight container, motor vehicle or rail freight car which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with the U.S. Department of Transportation's (DOT) Hazardous Materials Regulations, to retain the markings, placards, and labels on the package, transport vehicle, freight container, motor vehicle or rail freight car. Such markings, placards and labels generally must be retained on packages until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards and retained on transport vehicles, freight containers, motor vehicles or rail freight cars until hazardous material which requires the marking or placarding is removed therefrom. This rule is issued pursuant to section 6(b) of the

Occupational Safety and Health Act of 1970 (the Act) and in accordance with section 29 of Public Law 101–615, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA).

DATES: Effective date: This final rule shall take effect on October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: Public Law 101–615, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), 104 Stat. 3244, was enacted by Congress on November 17, 1990. Section 29 of HMTUSA reads as follows:

> Not later than 18 months after the date of enactment of this Act, the Secretary of Labor, in consultation with the Secretary of Transportation and the Secretary of the Treasury, shall issue under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)) standards requiring any employer who receives a package, container, motor vehicle, rail freight car, aircraft, or vessel which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with regulations issued under the Hazardous Materials Transportation Act to retain the markings, placards, and labels, and any other information as may be required by such regulations on the package, container, motor vehicle, rail freight car, aircraft, or vessel, until the hazardous materials have been removed therefrom.

The Congressional rationale for this requirement was provided in Senate Report No. 101–449, (p. 16), as follows:

> In November 1988, six Kansas City firemen were killed when the arson-caused fire they were fighting caused the violent explosion of an unmarked truck-trailer parked at a highway construction site. Because the trailer's hazardous materials placards had been removed, the firemen were unaware of the danger it posed. The Secretaries of Labor, Transportation and the Treasury should cooperate in order to ensure that placards and labels required on hazardous materials and explosives, both in transportation and at stationary facilities, be retained until such materials have been removed to the extent that they no longer pose a safety risk.

In response to the Congressional mandate, OSHA issued a proposed rule on September 10, 1993 to address the requirements of HMTUSA (58 FR 47690). A 30-day period was provided during which interested parties were invited to submit comments and information relative to the proposed rule. All comments submitted were collected in Docket No. H–022I, Exhibit No. 5, and prefixed with "Ex. 5" or "Ex. L5" (the latter denotes comments received after the close of the comment period). All comments received were reviewed and considered in developing this final rule. Most commenters supported OSHA's proposal; however, certain issues were raised that persuaded OSHA to modify the final standard in some respects or otherwise provide further clarification.

As with the proposed rule, OSHA believes that this final rule will impose no significant compliance burdens on industry. This was also substantiated in comments to the record.

Congress was specific in its mandate to OSHA for this rule, and the rule itself is limited to implementing the Congressional mandate. In this final rule, OSHA has slightly elaborated on the statutory language to the extent necessary to ensure that its requirements are clear and do not impose undue burdens on affected employers vis-a-vis other federal regulations. This regulation is essentially a continuation of the DOT's Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). Employers may wish to consult those regulations in regard to complying with this section.

Discussion of Comments to NPRM and Summary and Explanation of the Final Rule

OSHA received 45 comments in response to its Notice of Proposed Rulemaking on the Retention of Markings and Placards. The NPRM requested specific information on costs, current practices with respect to the retention of DOT markings, placards and labels and any foreseeable problems in achieving the requirements of the proposed rule.

Most commenters supported the Agency's approach in responding to the congressional mandate for this action. However, some commenters pointed out potential sources of confusion for affected employers if appropriate modifications were not made to the final rule. Other commenters expressed a need for clarification of certain aspects of the proposal, particularly those relating to the scope of the standard and the relationship between DOT-required labeling and that required by OSHA's Hazard Communication Standard (HCS) at 29 CFR 1910.1200.

Only minimal information was submitted regarding costs. However, of those commenters who responded to this question, the majority agreed with OSHA's assessment that the rule would have only minimal economic impact. The commenters who stated that the costs would not be insignificant appeared to base their findings on what OSHA believes was a misunderstanding of the intent of the proposed rule.

Major Issues Raised

A. Scope

The NPRM did not make a distinction as to the size of packagings of hazardous materials for which employers would be required to retain the necessary DOT marking, label or placard. A significant number of commenters, however, (see, e.g., Exs. 5–3, 5–21, 5–23, 5–24, 5–25, 5–30, 5–32, 5–34, 5–35 and 5–36) pointed out that without restricting the regulation to bulk packaging, employers would be faced with confusing, redundant, and sometimes, inconsistent labeling requirements between DOT and OSHA's HCS. (There was no criticism about the retention provisions for transport vehicles, freight containers, motor vehicles or rail freight cars.)

The HCS requires, in 29 CFR 1910.1200 (f), that manufacturers, importers, and distributors label, tag, or mark any containers of hazardous materials leaving the workplace with the identity of the hazardous material, appropriate hazard warnings and the name and address of the chemical manufacturer, importer or other responsible party. The HCS further requires that such labels, tags and markings be affixed in a manner that does not conflict with the HMR. Consequently, the HCS warning labels, tags or markings do not appear on the outer packagings of combination packagings (e.g., bottles in a box). The inner packagings are required to be labeled in accordance with the HCS, while the outside packaging is marked or labeled in accordance with the HMR. However, in some cases the DOT label and marking may appear on the same non-bulk packages as those required to be labeled under the HCS. This situation caused concern among commenters who questioned the need to retain DOT labels and marking where labeling was already required under HCS.

The Amoco Corporation (Ex. 5–21) summarized its concerns as follows:

> Amoco supports OSHA's proposal requiring employers who receive bulk packages of materials defined as hazardous * * * to maintain the markings, labels, or placards in accordance with the requirements set forth in 49 CFR Part 171 to 180. However, we feel that retention and maintenance of the markings and labels for non-bulk packages would be significantly burdensome to both large and small businesses alike.
>
> * * * We approve of OSHA limiting their rulemaking to the intent expressed by Congress, and from the rationale excerpted from the report, we believe that intent focused solely on hazardous materials transported in bulk packages.

Similar concerns were expressed by the Organization Resources Counselors (Ex. 5–23):

* * * [T]he proposed rule raises concerns over the broad range of containers proposed to be covered. In achieving the congressional mandate, we believe the rule should be limited to requirements for retention and maintenance of placards on bulk containers, such as truck trailers and rail tank cars, only.

* * * ORC believes the congressional mandate does not extend to labeling of non-bulk containers for which labeling requirements already exist under other regulations.

If the final rule were to apply to non-bulk packagings, according to at least one commenter, potential liability issues could arise. With respect to replacing labels that may be lost or deteriorated, Oxychem (Ex. 5–35) cautioned:

* * * Sending a replacement placard for bulk shipping containers does not pose a liability issue for a company because the product is easy to trace through the transportation equipment number. * * * [S]ending a replacement label to be affixed by nonvendor employees to a nonbulk package raises several liability issues. The nonbulk package could be mislabeled resulting in improper handling or misuse of the product.

OSHA has crafted language which it concludes fulfills the intent of the statute, is protective of employees and meets the concerns of the commenters. All bulk packages must at all times retain their DOT marking until they are cleaned or purged. Such packages are often reshipped and the large size of the DOT marking is a safety advantage. DOT markings must be retained on non-bulk packages which will be reshipped. Clearly, the DOT marking is needed for reshipment.

However, OSHA concludes that the OSHA HCS label is fully protective for all employees and emergency responders for non-bulk packages which will not be reshipped. That label was designed to protect against all types of hazards. OSHA concludes therefore that it will be sufficient if an HCS label is on a non-bulk package when it is out of transportation, will not be reshipped and is at its final location at a factory or other worksite. This should respond to the commenters who feared that retaining both HCS and DOT labels at that stage might confuse their employees.

Additional concerns were expressed regarding the labeling of inner packagings of combination packagings. For example, Penske Truck Leasing Co. (Ex.5–20) stated:

* * * Manufacturers and distributors pack hazardous materials for transportation in various packaging, i.e., cans, plastic cases, cylinders, etc. These receptacles generally require an outer packaging for various reasons such as ease of handling, palletization, and storage. The packaging may contain one or more receptacles (containers) of the same hazardous material. The packaging is properly labeled with the DOT hazard warning. Upon entering the workplace, the employer * * * removes the packaging to find that the receptacle is not marked with the corresponding DOT hazard label and markings. * * * Under the proposed rule, it is implied that the employer would have to label and mark each container in this situation.

The above commenter was also concerned that the rule would require the labeling of packages that, when in transportation, are excepted from the labeling requirement of the DOT's HMR. It was not OSHA's intention to require labeling of containers that were not originally required to be labeled in accordance with the DOT's HMR. As previously stated, this final rule requires employers to retain labels on packages, this rulemaking does not require employers to label the packages. Inner packagings removed from an outer packaging that is required to be marked or labeled under DOT's HMR are not required to have the DOT marking or label affixed. However, those inner packages are required to have the OSHA HCS label. If the inner packages are to be reshipped, they would, of course, need the appropriate DOT label. In addition, packages which are excepted from the DOT's marking, labeling or placarding requirements, are not required under the DOT's HMR to be marked, labeled or placarded when stored at the workplace, but they would be required to be labeled under the OSHA HCS.

One commenter pointed out that sometimes employers receive hazardous materials which have the DOT-required labels affixed and subsequently store them at remote sites in trailers that are not intended for transportation and therefore are not required to be placarded (Ex. 5–2). The situation that the commenter raises is a small part of a much broader problem. OSHA believes that the communication of hazards at all storage locations (e.g. trailers, warehouses and storage tanks) is an important area for consideration. However, this issue is not within the scope of the statute directing this rulemaking.

In another matter related to the scope of this rule, the American Trucking Association requested a clarification as to whether the rule placed an obligation on operators of transport vehicles (5–22). Similarly, the Agricultural Retailers Association (Ex. L5–37) wanted assurance that the responsibility for retaining DOT placards, markings and labels transfers to the receiving employer. In response to both concerns, the final rule applies to the employer who receives the containers of hazardous materials and not the person responsible for transporting such material unless the material is still under the control of the transporter at its final destination when it is out of transportation.

B. Discrepancy Between DOT and OSHA Definitions of Flammable and Combustible

A number of commenters (Exs. 5–9, 5–25, 5–29, 5–34 and L5–41) raised the issue of the discrepancy between DOT and OSHA with respect to the definitions of flammable and combustible liquids. Commenters correctly stated that OSHA defines a flammable liquid as one with a flashpoint less than 100° F. and a combustible liquid as one with a flashpoint between 100° F and 200° F. Commenters stated that DOT defines a flammable liquid as a material with a flashpoint of below 141° F. and a combustible liquid as a material with a flash point greater than 141° F but below 200° F. OSHA has conferred with the DOT on this issue and was informed that while these statements are correct, DOT does allow in 49 CFR 173.150 (f), for domestic transportation, flammable liquids with a flash point greater than 100° F to be reclassed as a combustible liquid. A combustible liquid is not required to be labeled under DOT's HMR and, therefore, the provisions of this rule regarding the retention of required DOT labels would not apply. OSHA believes that this clarification should satisfy the concerns of commenters who raised the issue of combustible and flammable liquids being defined differently by OSHA and DOT. However, the broader issue of different definitions presents other technical, policy and legal issues and involves many institutions nationally and internationally. These issues cannot be properly addressed nor be solved in this rulemaking.

C. Duration Required for Retention of Hazard Warnings

Paragraph (a)(1) of the proposed standard required that markings, placards and labels remain on the package, freight container, etc. of hazardous material until the hazardous materials are removed therefrom so that they no longer pose a health or safety risk. A number of comments (see, e.g. Exs. 5–10, 5–13, 5–17, 5–23, 5–25, 5–27, 5–29, 5–34, 5–36, L5–40, L5–41 and L5–42) suggested that the language in this provision was ambiguous and employers would be uncertain as to when DOT labels, placards and markings could be removed without being in violation of the rule. Various suggestions were offered regarding how to clarify this issue, ranging from deleting paragraph (a)(1) (Exs. 5–25, 5–29, L5–40) to allowing removal of the markings and placards as long as no more than a *de minimis* amount of the hazardous material remains in a container (Ex 5–10).

In the final standard OSHA has amended the language in paragraphs (a) and (b) so that it is now clear. Employers need only retain the DOT label, marking or placard until such time as the packaging which contained the hazardous material is sufficiently cleaned of residue and purged of vapor to remove any potential hazard. Paragraph (b), which requires the retention of markings and placards on transport vehicles, etc., states that markings and placards may be removed from transport vehicles if the transport vehicle no longer contains hazardous material subject to the marking or placarding requirements of the DOT's HMR. In the alternative, employers will be in compliance if they choose to retain the appropriate DOT hazard warning on packaging containing only the residue of the hazardous chemical in the same manner as when it contained a greater quantity of the hazardous material.

In the case where an outside package, (including transport vehicles), contains smaller packages of hazardous materials, DOT hazard warnings need be retained on the outside packaging only until the inner packages are removed. However, if a contained package leaks into the outer packaging, the cleaning and purging requirement applies.

D. Other Issues

The Edison Electric Institute (Ex 5–26) requested an exemption from this standard for Nuclear Regulatory Commission licensees whose radioactive material handling practices are already regulated by the NRC. This request was made on the basis of a Memorandum of Understanding (MOU) between the NRC and OSHA which gives the NRC jurisdiction in regulating most situations involving hazards that may be associated with NRC-licensed nuclear facilities, including worksite conditions which affect the safety of radioactive materials and thus the health and safety of workers.

The MOU, however, is not relevant in this case since OSHA is not regulating radioactive materials themselves but is only requiring an extension of DOT requirements. Since the DOT requirements already apply to employers handling radioactive materials, this standard does not represent any change. Therefore, including an exemption in the standard is not appropriate.

There was some confusion regarding paragraph (a)(2) of the proposed rule which required that markings, placards and labels be maintained in a manner that ensures the legend is visible. In effect, all that was intended by this provision was to assure that the label, placard, or marking be kept sufficiently clean (unobscured by dust, dirt, mud, etc.) that it would be easily seen in the event of an emergency or as necessary to prevent a hazardous situation. The provision was never intended to place restrictions on how or where DOT-labeled materials should be stored. However, since one commenter (Ex. L5–42) objected to the use of the term "legend," the provision has been revised as paragraph (c) in the final rule to read: "Such markings, placards and labels shall be maintained in a manner that assures they are readily visible." This does not mean that non-bulk packages with DOT labels that are stored in a warehouse (e.g. cartons containing 4-gallon cans of a hazardous material) have to be arranged in a manner which allows every label to be in view at all times. Rather it requires that where DOT hazard warnings are required to be retained, that such warnings are maintained in a manner that ensures that the message which the hazard warning is intended to convey is not compromised. In other words, at least some labeling should be visible for each type of hazardous material.

Additional minor changes were also suggested (Exs. 5–33 and L5–42) that OSHA agrees are appropriate for completeness and has incorporated in the final rule. Specifically, the title of the final rule has been amended to include the term "label." The terms "aircraft" and "vessel" have been deleted from the regulatory text as there are no specific DOT requirements to affix warning labels to an aircraft or vessel. The term "container" was also changed to "freight container" as Ex. 5–33 suggested. The section has been editorially revised in order to be more consistent with the DOT's HMR and in order that the section is more readily understandable. For example, the requirements for packages versus transport vehicles have been separated into two separate paragraphs.

Suggestions also were made (Exs. 5–19 and 5–25) to delete the phrase "* * * and other information as may be required by such regulations * * *" from paragraph (a). The commenters were concerned that the phrase might be interpreted as requiring materials not designed for display (e.g. manifests) to be kept on the container, package, etc. by the receiving employer. While this language was consistent with Section 29 of HMTUSA, OSHA did not intend it to place an additional burden on employers. OSHA is therefore removing this language from the final rule to eliminate any misconceptions about the requirements of the final rule.

Several commenters suggested that OSHA should go beyond the Congressional mandate in developing this rule. For example, the Laborers' Health & Safety Fund of North America recommended that the rule be expanded to cover hazardous materials being loaded or stored prior to shipment (Ex. 5–8). DOT's regulations generally do not apply until a material is offered for transportation. To require marking, labeling or placarding in accordance with the HMR prior to a material being offered for transportation is beyond the scope of this rulemaking.

The New York Department of State pointed out that mixed loads of hazardous materials are identified with the all purpose "dangerous" placard. While the vehicle may be parked, the shipping papers may have been taken away by the driver, thus removing a vital asset to the identification of hazards of the contents (Ex. 5–14). OSHA interprets the Congressional mandate to be limited to the retention of DOT hazards warnings which are designed for display. Consequently, shipping papers are not included.

Finally, Growmark suggested that this rulemaking presents OSHA with an opportunity to consider making all hazard warnings on vehicles, warehouses, storage tanks, etc. more uniform so that emergency responders could recognize and respond to one type of marking instead of having to learn dual systems (Ex. 5–11).

OSHA is aware that employers and others have expressed a need for consistency in labeling practices. However, this issue is beyond the scope of the specific authorizing statute and would require a major and lengthy interagency approach to complete. Moreover, the Agency published a Request for Information in the context of the Hazard Communication Standard on May 17, 1990 (see 55 FR 20580). The issue is still being considered with respect to what action the Agency should take in the context of that standard.

In a similar matter concerning the authority granted the Agency by the HMTUSA legislation, at least one commenter (Ex. 5–4) suggested that since the real issue addressed in the legislation was hazard communication, the requirement to retain DOT hazard warnings should have been integrated in the Hazard Communication Standard in lieu of issuing a separate regulation. OSHA, however, believes that Congress was quite specific in its instructions to the Secretary of Labor that this requirement apply to DOT regulations and that it be addressed as a separate rule. Paragraph (d) does, however, make this final rule better integrated with the Hazard Communication Standard.

Finally, Amoco (Ex. 5–21) raised the issue of whether the rule would apply to an employer's current inventory of DOT-labeled materials and whether changes to the existing markings and labels would be required. In response to this comment, the Agency is allowing 90 days following publication of the final rule in the **Federal Register** for employers to come into compliance. The rule requires no changes in the content of the label. However, OSHA is providing what it believes is sufficient time for employers to replace labels, markings or placards that may have been removed, or to empty containers of hazardous materials. Once the effective date of the rule has passed, employers will be subject to OSHA citations if packages, transport vehicles, freight containers, etc. of hazardous materials covered by DOT's HMR are present in the workplace, do not have the appropriate DOT hazard warning and violate the standard. It is not possible for OSHA compliance officers to readily know the date transport vehicles or packages were received and DOT warnings were removed. The 90-day period is a realistic time in which to replace removed placards, markings or labels or to empty containers.

Because Congress has directed that OSHA issue this regulation for all employers covered by the OSH Act, this notice includes separate but identical standards for general industry (§ 1910.1201), construction (§ 1926.60), shipyards (§ 1915.100), marine terminals (§ 1917.29) and longshoring (§ 1918.100). The general industry standard will also be added to the list of Part 1910 standards which apply to agricultural operations, as a new paragraph (a)(7) of § 1928.21.

As with the proposed rule, OSHA has consulted with delegated officials of the Secretary of Transportation and the Secretary of the Treasury, as required by HMTUSA, in preparing this final rule.

Regulatory Flexibility Act

OSHA has not performed a Regulatory Impact Analysis for this standard since adoption of the proposed requirements would add no new regulatory burden on employers with respect to either cost or information collection.

Executive Orders 12866, 12612, and 12778

This rule is not a significant regulatory action for the purposes of Executive Order 12866. It also does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. This rule has been certified in accordance with Executive Order 12778 regarding Civil Justice Reform.

Paperwork Reduction Act

This rulemaking action imposes no paperwork burdens under the Paperwork Reduction Act.

List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Occupational safety and health, hazardous materials transportation, hazardous substances, explosives, chemicals, health, safety.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

Accordingly, pursuant to section 29 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244), sections 4 and 6(b) of the Occupational Safety and Health Act (29 U.S.C. 653, 655), Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR Part 1911, Parts 1910, 1915, 1917, 1918, 1926 and 1928 of 29 CFR are amended as set forth below.

Signed this 14th day of July 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

OSHA is amending Parts 1910, 1915, 1917, 1918, 1926, and 1928 of Title 29 of the Code of Federal Regulations as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

PART 1917—MARINE TERMINALS

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for subpart Z of Part 1910 is revised to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Order 12–71 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR Part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2 and Z–3 of 29 CFR 1910.1000. The latter were issued under Section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 533. Section 1910.1000, Tables Z–1, Z–2 and Z–3 not issued under 29 CFR Part 1911 except for the arsenic (organic compounds), benzene and cotton dust listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1025 also issued under 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1201 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

Section 1915.100 also issued under Section 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

3. The authority citation for part 1917 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Section 1917.129 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244) and 5 U.S.C. 553.

4. The authority citation for part 1918 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819, 5 U.S.C. 553, and 29 U.S.C. Part 1911).

5. The authority citation for subpart D of part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

Section 1926.60 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244), 5 U.S.C. 553, and 29 U.S.C. Part 1911.

PARTS 1910, 1915, 1917, 1918, AND 1926—[AMENDED]

6. Parts 1910, 1915, subpart F; 1917, subpart B; 1918, subpart I and 1926, subpart D of Title 29 of the Code of Federal Regulations are amended by adding identical sections as §§ 1910.1201, 1915.100, 1917.29, 1918.100 and 1926.61 to read as follows:

§ **.*** Retention of DOT markings, placards and labels.**

(a) Any employer who receives a package of hazardous material which is required to be marked, labeled or placarded in accordance with the U. S. Department of Transportation's Hazardous Materials Regulations (49 CFR Parts 171 through 180) shall retain those markings, labels and placards on the package until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

(b) Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle or transport vehicle until the hazardous materials which require the marking or placarding are sufficiently removed to prevent any potential hazards.

(c) Markings, placards and labels shall be maintained in a manner that ensures that they are readily visible.

(d) For non-bulk packages which will not be reshipped, the provisions of this section are met if a label or other acceptable marking is affixed in accordance with the Hazard Communication Standard (29 CFR 1910.1200).

(e) For the purposes of this section, the term "hazardous material" and any other terms not defined in this section have the same definition as in the Hazardous Materials Regulations (49 CFR Parts 171 through 180).

PART 1928—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

7. The authority citation for Part 1928 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR Part 1911.

Section 1928.21 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

PART 1928—[AMENDED]

8. Section 1928.21 is amended by adding and reserving paragraph (a)(6) and adding a new paragraph (a)(7) reading as follows:

§ 1928.21 Applicable standards in 29 CFR Part 1910.

(a) * * *

(6) [Reserved]

(7) Retention of DOT markings, placards and labels —§ 1910.1201.

* * * * *

[FR Doc. 94–17534 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN43–1–6393A; FRL–5014–1]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: United States Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties as a revision to the Indiana ozone State Implementation Plan (SIP). The emissions inventory was submitted by the State of Indiana to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address the comments received in response to this final rule in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

EFFECTIVE DATE: This action will be effective September 19, 1994, unless notice is received by August 18, 1994, that someone wishes to submit adverse comments. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. 60604. Copies of Indiana's emission inventory submittals and USEPA's technical support documents are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604 Telephone: (312) 886–6057.