making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 26, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1580 is amended in paragraph (b) by alphabetically adding a new entry under the headings "List of Substances" and "Limitations" to read as follows:

§ 177.1580 Polycarbonate resins.

* * * * *

(b) * * *

List of Substances	Limitations
* * *	* *
p-Cumylphenol (CAS Reg. No. 599–64–4).	For use only as a chain terminator at a level not to exceed 5 percent by weight of the resin.
* * *	* *

* * * * *

Dated: August 16, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–20982 Filed 8–24–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AB82

Commercial Vehicles in Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule defines the management and regulation of commercial traffic on roads in Yellowstone National Park, including that portion of U.S. Highway 191 that traverses the northwest corner of the park. The regulations are intended to authorize the operation of commercial vehicles on U.S. Highway 191, to prohibit the transport of hazardous materials on U.S. Highway 191 except under certain circumstances, and to update and consolidate permit procedures related to commercial vehicle operation on all park roads.

EFFECTIVE DATE: September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Dan R. Sholly, Chief Ranger, P.O. Box 168, Yellowstone National Park, Wyoming 82190. Telephone: 307–344–2101.

SUPPLEMENTARY INFORMATION:

Background

U.S. Highway 191 passes through the northwest corner of Yellowstone National Park for approximately twenty-two miles. It is a federally funded highway and is maintained within Yellowstone by the State of Montana under the provisions of a Special Use Permit issued by the National Park Service (Yellowstone National Park).

The wagon road which eventually became U.S. Highway 191 was constructed through Yellowstone in 1910 with the approval of the Secretary of the Interior at the sole expense of Gallatin County, Montana. The road was constructed "to facilitate travel and commerce" between residents in the southern portion of Gallatin County and the county seat located in Bozeman, Montana. From its inception, the purpose, historical use, and management of U.S. Highway 191 indicate that the highway was constructed, regulated, and maintained as a connecting route between Bozeman and West Yellowstone, Montana, for the principal purposes of commerce and convenience and only incidentally for access to Yellowstone National Park.

The early differentiation of this route from other park roads was articulated in the Superintendent's Annual Report for 1913 and 1914, which stated in part:

> This is the only road in the park on which motor propelled vehicles are allowed and it is not a part of the regular tourist route.

The ongoing intent to exempt U.S. Highway 191 from the general regulations related to commercial vehicles which govern other park roads is indicated in 36 CFR 5.4 (1993), which reads as follows:

> **Sec. 5.4 Commercial passenger-carrying motor vehicles.**
>
> (a) The commercial transportation of passengers by motor vehicles except as authorized under a contract or permit from the Secretary or his authorized representative is prohibited in * * * Yellowstone (prohibition does not apply to non-scheduled tours as defined in Section 7.13 of this chapter, nor to that portion of U.S. Highway 191 traversing the northwest corner of the park) * * *

Although use of U.S. Highway 191 has since expanded to include interstate travel, local commercial and non-commercial traffic remains the predominant use of the highway.

In response to public interest in the management and regulation of commercial traffic on U.S. Highway 191 within Yellowstone National Park, the park conducted a series of three public meetings in 1987 and completed two environmental assessments (1990 and 1992) to evaluate the potential impacts of commercial traffic on natural and cultural resources and on visitor safety and experience.

Among the concerns identified during this process was the potential for a hazardous material spill from a commercial vehicle accident to cause irreparable damage to riverine areas adjacent to the road; and the potential social and economic impacts of redirecting some or all of the commercial vehicle traffic to alternative routes.

The alternative proposed in both environmental assessments was to authorize the continued use of U.S. Highway 191 by commercial vehicles, but to prohibit the transport of hazardous materials on U.S. Highway 191 through the park. Local deliveries and removal of hazardous materials would be allowed under permits and conditions established by the superintendent. This alternative would significantly reduce the potential of a hazardous material spill in the park, yet would not cause significant economic impacts to local communities or the trucking industry that would result from a complete ban on commercial vehicles.

Other concerns identified and evaluated in the environmental assessments included potential impacts to wildlife, visitor safety, and visitor experience created by the continued presence of, and noise levels created by, commercial traffic on U.S. Highway 191 through the park. These impacts were determined to be minor and temporary in effect. The NPS found that continued use of the highway by commercial traffic, excluding the transport of hazardous materials, caused no significant impact to resources or to the experience of park visitors.

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on September 15, 1993 (58 FR 48336). Based on this discussion, the NPS is today publishing final regulations as discussed below.

Purpose for Regulation

The historical and current use of U.S. Highway 191 by commercial vehicles through Yellowstone National Park is in conflict with 36 CFR 5.6. With the existing levels of interstate and local commercial vehicle traffic on U.S. Highway 191, there is significant public concern about the potential for hazardous materials spills in the park resulting from motor vehicle accidents.

The general purpose of the regulations is to authorize the use of U.S. Highway 191 through the park by commercial vehicles; to prohibit the transport of hazardous materials on U.S. Highway 191 except when permitted under certain conditions; to delete out-of-date sections of the special regulations for Yellowstone related to speed limits and trucking permits; to establish general procedures for issuing permits to commercial vehicles operating on all park roads; to prohibit operating without a permit or in violation of a term or condition of a permit; and to provide for the suspension or revocation of a permit for failure to comply with a term or condition.

Analysis of Comments

NPS received 125 timely comments on the proposed regulations during the comment period from September 15, 1993 to November 15, 1993. The majority (116) of the comments came from individuals, many of whom stated they live or own property in or near the Big Sky, Montana, area. Nine comments came from organizations or government entities. Of the total comments, 117 expressed general support of the proposed regulations and 8 expressed opposition. Of the 117 comments in favor of the proposed regulations, 72 expressed support without qualification. Twenty-eight expressed qualified support with a preference that a complete ban on commercial trucking on U.S. Highway 191 be imposed.

This issue has been very controversial since public meetings were first held in 1987. Many local citizens have wanted a total ban on trucking through the park in order to reduce trucking outside the park near Big Sky, while the trucking industry has wanted no change whatsoever in the historical use. Considering the diverse, polarized points of view on this issue, the preference stated in this group of 28 comments is not unexpected. A number of these comments also mentioned concerns about the speed limit and encouraged NPS to actively enforce the speed limit.

Eight comments expressed qualified support for the proposal with a primary preference for a speed limit less than 55 mph for trucks. NPS believes that a reduced speed limit was adequately reviewed in the 1992 environmental assessment that determined that an aggressively enforced 55 mph speed limit would address safety, operational, and environmental concerns and would be consistent with the purposes for which the roadway was established. NPS intends to actively enforce the speed limit to the extent that staffing allows.

Five comments expressed qualified support for the proposal with a preference for more restrictive regulation of the size/type of large trucks that are not carrying hazardous materials. It was specifically suggested that tandem and triple trailer rigs be prohibited. NPS notes that triple trailer rigs do not currently travel U.S. Highway 191 since they are already restricted under Mont. Code Ann. §61–10–124. A variety of alternative restrictions were considered and rejected in the environmental assessments, but restricting tandem trailer rigs was not one of them. The primary environmental and safety concerns identified in the two environmental assessments relate to the transport of hazardous materials. NPS has no traffic accident data to suggest that tandem trailer rigs are involved in or contribute to any more safety or environmental problems in the park than other types of commercial trucks.

One of these comments also expressed concern that highly toxic materials such as biological or nuclear weapons may be transported without placarding for national security reasons. It was suggested that the language of the rule make clear that such materials may not be transported through the park. NPS is not aware of any unmarked biological warfare or nuclear materials being transported through the park. For the sake of consistency with standards currently followed by the transportation industry, the NPS rule purposefully relies upon the U.S. Department of Transportation for definitions and regulations related to the identification and placarding or marking of hazardous materials.

One of these comments also suggested that wording be added so that operators transporting hazardous materials are held responsible for restoration, repair, or restitution for any and all environmental, property, or personal damage resulting from a hazardous material spill. NPS believes that this responsibility is already established under 42 U.S.C. 9607, 33 CFR 153.405, and 40 CFR 263.30–31, which are applicable to park roads.

In addition, a standard condition of all special use permits issued by the National Park Service (Form 10–114) is that "the permittee shall pay the United States for any damage resulting from use of the permit which [sic] would not reasonably be inherent in the use which [sic] is being permitted". NPS believes that hazardous materials spills are not "reasonably inherent" in the transport, when permitted, of hazardous materials through the park.

Two trucking organizations and the Montana Department of Transportation expressed support for the proposed rule with recommendations for a clarification of permitting procedures and/or concern about the potential for permits to be required for nonhazardous materials commercial vehicles on U.S. Highway 191. These concerns are discussed further in the Section-by-Section Analysis.

One comment expressed support with a recommendation that a restriction be imposed to require trucks to maintain a 500 foot distance from other trucks. For the most part, national park areas assimilate traffic codes from the state where the park is located. In the case of U.S. Highway 191, portions of the road are within Montana and portions are within Wyoming. Both state motor vehicle codes have existing sections related to "following too closely" (Mont. Code Ann. § 61–8–329 and Wyo. Stat. § 31–5–210). Neither State stipulates that trucks maintain a minimum separation of 500 feet. The NPS believes that the applicable State regulations are adequate and that imposing a 500 foot distance standard in the park is not justified by available traffic accident information and would be confusing to the public.

Of the 8 responses opposed to the proposed regulations, 6 expressed that authorizing commercial vehicle use of U.S. Highway 191 was inappropriate, undesirable, or inconsistent with the intent of existing regulations. The original purpose and historical commercial use of the road predates the general regulations prohibiting commercial vehicles in national parks.

Moreover, as discussed earlier, the NPS found that continued use of the highway by commercial traffic, excluding the transport of hazardous materials, would not adversely affect park resources or visitor experience. For these reasons, the NPS proposed the rule primarily to resolve the conflict between current regulation and existing use, with the intent being to authorize general commercial use of U.S. Highway 191 subject to certain restrictions.

Two commenters expressed that any restriction on commercial vehicles, such as the prohibition on hazardous materials transports, was unfair or unnecessary. NPS acknowledges that the rule is a compromise between two opposing viewpoints and that not all interested parties are supportive of the compromise.

Section by Section Analysis

Although portions of the proposed rule apply to all park roads, virtually all comments focused primarily on the issues related specifically to U.S. Highway 191. Based on this response, the order of sections in the final rule has been changed slightly from that in the NPRM to improve the flow from Highway 191-specific sections to more general sections applicable to all park roads. Comments are addressed according to the section numbering used in the final rule.

Section 7.13(a)(1). This section authorizes commercial vehicles to use U.S. Highway 191. One commenter expressed support for the authorization of commercial vehicles to use U.S. Highway 191 in Yellowstone, but was concerned that the restriction of hazardous materials transport on U.S. Highway 191 in Yellowstone may establish a precedent that would be expanded to include restrictions on commercial vehicles traveling on that portion of U.S. Highway 191 which passes through Grand Teton National Park. The Yellowstone special regulation is being promulgated primarily to address a particular and unique situation regarding the specific twenty-mile portion of U.S. Highway 191 that travels through the northwest corner of Yellowstone National Park. The highway that travels from the West Entrance through the interior of the park to the South Entrance is not considered a portion of U.S. Highway 191 and is not opened to commercial vehicle use by this rule. Any future consideration of the regulations at Grand Teton National Park is not related to the Yellowstone situation and would require a separate rulemaking process with public review.

As proposed, Section 7.13(a)(2), which was identified in the NPRM as section (a)(3), would have prohibited the transport of hazardous materials on all park roads including U.S. Highway 191 except under certain circumstances requiring a permit. This section was developed primarily to address issues related to U.S. Highway 191. All comments received on this section related only to U.S Highway 191. In part as a result of the focus of these comments, the NPS has realized that the general application of this section to other park roads raises complex issues related to park suppliers and hazardous materials deliveries to the Cooke City, Montana, area that were not evaluated in the two environmental assessments or addressed in the NPRM. To minimize confusion regarding hazardous materials transports on other park roads, which are currently managed under other permitting processes, the wording of this section in the final rule has been revised to limit its applicability specifically to U.S. Highway 191.

Two commenters representing the commercial trucking industry suggested that the language as published in the NPRM for section 7.13(a)(2) is "overly broad" when referring to Department of Transportation definitions and regulations found in 49 CFR Subtitle B. These commenters offered conflicting suggestions as to the most appropriate sections to cross-reference. The NPS agrees that more specific wording is appropriate and has revised the final wording of this section as follows:

> The transporting on U.S. Highway 191 of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste *as defined in 49 CFR 171.8* that requires placarding *of the transport vehicle in accordance with 49 CFR 177.823,* or any marine pollutant that requires marking, as defined in 49 CFR Subtitle B, is prohibited; provided, however, that * * * (additional wording is *italicized*)

One commenter suggested that the superintendent's authority to issue permits established in this section was essentially redundant with the permit authority established in § 7.13(a)(4). In light of the changes in wording, the NPS disagrees. Section 7.13(a)(4) applies to commercial vehicles on all park roads and replaces, in part, section 7.13(c), which is being deleted. Section 7.13(a)(2) applies specifically to the transport of hazardous materials on U.S. Highway 191.

With regard to U.S. Highway 191, the NPS believes that a clear distinction must be made between these two sections, in part because there are non-commercial vehicles, such as those from cooperating highway departments or land management agencies, that at times transport hazardous materials through the park. Since the overwhelming public concern identified in the two environmental assessments is the concern about the potential environmental impacts of a hazardous materials spill along U.S. Highway 191 in the park, the NPS believes it is appropriate to manage all hazardous materials transports, including commercial and non-commercial, under section 7.13(a)(2).

The last portion of this section, as worded in the NPRM, received no specific public comments; however, it received considerable discussion within the NPS. As written in the NPRM, it stated as follows:

> * * * provided, however, that the Superintendent may issue permits for the transportation of such substance or combination of substances, including hazardous waste, in emergencies, and shall issue permits when such transportation is necessary for access to lands within or adjacent to the park area to which access is otherwise not available.

It was noted that the wording was dissimilar to that of section (a)(4) with regard to establishing terms and conditions of a permit. It was also noted that the phrase "shall issue permits when such transportation is necessary to access to lands within or adjacent to the park area to which access is not otherwise available" may be subject to differing interpretations by constituencies on opposing sides of the issue.

The development of this regulation as it applies to U.S. Highway 191 has been very controversial locally and it has been the NPS's intent to resolve, rather than perpetuate, the ongoing controversy. It has also been and continues to be the intent of the NPS to allow that small proportion of operators who are delivering hazardous materials to the West Yellowstone area to continue to travel on U.S. Highway 191 through the park as they have done in the past, subject to terms and conditions addressing resource protection, safety and other concerns as appropriate. Therefore, it is the NPS's intent that these regulations not specifically prohibit the superintendent from issuing permits to operators of motor vehicles making local deliveries of hazardous materials to that portion of Gallatin County, Montana, that is south or west of the park boundary at Milepost 11 on U.S. Highway 191.

Upon further legal review, it was felt that the original language in NPRM would have denied the NPS the discretion to continue this practice. The last portion of this section has been revised in the final rule as follows:

> * * * provided however, that the superintendent may issue permits and establish terms and conditions for the transportation of hazardous materials on park roads in emergencies or when such transportation is necessary for access to lands within or adjacent to the park area.

These changes in wording from that which was published in the NPRM are meant to clarify, but not alter, the intent and substance of the regulation.

Finally, one commenter suggested that NPS clearly set forth the requirements for a permit so that it is not left to the subjective discretion of the superintendent. This concern is discussed below in *Summary of Final Regulations and Required Permit Criteria*.

Section 7.13(a)(3), which was identified as section (a)(4) in the NPRM, states that operators who are permitted to transport hazardous materials through the park are not relieved from complying with applicable state and federal hazardous materials regulations. This section received only one comment suggesting that the reference to 49 CFR Subtitle B was overly broad and that the reference should be to one specific section within the title. NPS disagrees with this commenter and believes that a broad reference is appropriate since it is the intent of this rule that all applicable U.S. Department of Transportation regulations related to the transport of hazardous materials by motor vehicles on public roadways are applicable in the park.

Section 7.13(a)(4), which was identified as section (a)(2) in the NPRM, provides for the superintendent's authority to require permits and to establish terms and conditions for the operation of a commercial vehicle on any park road. This section, in part, replaces deleted Section 7.13(c), which established trucking permit procedures for emergency situations and for trucks traveling between the north and northeast entrances to the Cooke City, Montana, area. In addition, the deleted section also established a fixed permit fee schedule which is out-of-date and does not reflect current administrative costs.

Several commenters representing the trucking industry or State departments of transportation expressed concern that the general wording of this section is overly broad in that the superintendent would potentially have the authority to administratively restrict or eliminate general commercial vehicle use of U.S. Highway 191 through the permitting process. The commenters were concerned that this would be in conflict with the proposal articulated in the Final Environmental Assessment and that the superintendent may become the focal point for political pressure should he or she have the discretion to restrict commercial traffic through permits. The NPS acknowledges these concerns, but for several reasons, disagrees with the perceived implications.

First, the alternative adopted in the Final Environmental Assessment proposed "to allow commercial traffic continued use of U.S. Highway 191 but to restrict the transportation of quantities and types of hazardous materials." Provisions included that the superintendent shall have the authority to issue permits specifically for the transportation of quantities and types of hazardous materials through the park under certain circumstances. This alternative did not propose to relinquish the superintendent's existing authority to establish public use limits as defined in section 1.5, or the authority to issue permits as defined in section 1.6.

NPS believes that the general wording of Section 7.13(a)(4) is needed to address the management of commercial vehicle traffic on all park roads and is not limited to U.S. Highway 191. NPS also believes that requiring a permit for all commercial vehicles traveling on park roads other than U.S. Highway 191 is appropriate and consistent with the current regulations and existing practice.

With regard to park roads other than U.S. Highway 191, the primary current commercial vehicle permittees are companies supplying goods, including petroleum products such as gasoline, propane and heating oil, to the Cooke City, Montana, area. It is the intent of the NPS that the superintendent would continue to issue permits to commercial vehicles which are providing the Cooke City area communities and tourism industry with essential goods and services. Under the terms and conditions of permit, the superintendent will exclude commercial uses of these roads which are not related to community or visitor services.

As stated in the NPRM, the NPS has no intention of requiring a permit under existing conditions for "general" commercial traffic that is not transporting hazardous materials on U.S. Highway 191 through the park as authorized by section 7.13(a)(1). The NPS believes that it currently is neither justifiable nor administratively feasible to require permits for such traffic. However, consistent with the authority granted in 36 CFR 1.5 to establish public use limits and in 36 CFR 1.6 to manage those limits through the permit process, the NPS reserves the authority to manage that use through a permit process should unforeseeable circumstances occur in the future.

The NPS believes that section 1.5 contains adequate safeguards to prevent a superintendent from being politically coerced into establishing arbitrary or unjustified public use limits relative to commercial vehicle use of U.S. Highway 191. Section 1.5(b) states:

> Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in the public use pattern of the park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives of the unit, or is a highly controversial nature, shall be published as rulemaking in the **Federal Register**."

Clearly, significant restrictions or changes in use limits relative to U.S. Highway 191 would require the promulgation of regulations allowing for public input. Since the new 36 CFR 7.13(a)(1) explicitly authorizes commercial traffic not carrying hazardous materials to use U.S. Highway 191, the NPS believes that the superintendent is not empowered to prohibit such use through a permit requirement. The superintendent's authority would be to issue permits to impose use limits, which would have to meet the criteria defined in Section 1.5.

One of these commenters went further to suggest that the authority of the superintendent under 36 CFR 1.6(a) to issue permits applies only when necessary to allow an otherwise prohibited or restricted activity. The commenter stated that once the use of U.S. Highway 191 by commercial vehicles transporting commodities other than hazardous materials is authorized by Section 7.13(a)(1), then the Superintendent would not have the authority to issue permits related to that use. 36 CFR 1.6(a) states:

When authorized by regulations set forth in this chapter, the Superintendent may issue a permit to authorize an otherwise prohibited or restricted activity *or* (italics added for emphasis) impose a public use limit.

There is clear legal precedence that the superintendent may issue permits to impose a public use limit on an activity that is not otherwise prohibited or restricted. Therefore, the NPS believes there is no ambiguity raised by the wording of this section.

One commenter expressed that should the NPS choose to require a permit in the future for general commercial vehicle use of U.S. Highway 191, then all commercial traffic, interstate and intrastate, would have to be permitted according to the Commerce Clause of the U.S. Constitution, Art. 1, Section 8, Clause 3. The NPS disagrees with this contention. The NPS promulgates regulations governing activities in the National Park System pursuant to the delegation of authority from Congress in 16 U.S.C. 3. That delegation by Congress was made under the Property Clause, Art. 4, Section 3, Clause 2, of the Constitution. While this regulation imposes limits on commerce, it does so incidentally to the necessary and appropriate exercise of Property Clause powers.

One commenter expressed concern that the "permit fee" may be misconstrued as a "fee for use", which in the commenter's opinion would be inappropriate. National Park Service Guideline NPS–53, Special Park Uses, provides for charging a permit fee based, in part, on the administrative costs of issuing a permit and monitoring and enforcing permit conditions, which is the intent of the proposed rule as described in the NPRM.

Section 7.13(a)(5) prohibits violating a term or condition of the permit and provides for the suspension or revocation of a permit should a violation occur. This section received one comment expressing concern about what sorts of "violation" may constitute grounds to suspend or revoke the permit to transport a hazardous material. It was pointed out that a minor, technical violation, such as the inadvertent loss of one of the four required hazardous material placards, may constitute a technical violation of a permit condition. The commenter questioned whether such a violation was significant enough to warrant loss of the permit and asked that NPS clarify what kind of violation will actually result in the revocation of a permit to haul hazardous materials on U.S. Highway 191 within Yellowstone National Park.

NPS does not disagree with this concern. However, general wording such as this is standard in all sections of 36 CFR relating to permits including Sections 1.6 and 5.6. This issue is discussed below under *Required Permit Criteria*.

Section 7.13(f) changes the name of the existing section from "Commercial automobiles and buses" to "Commercial passenger carrying vehicles". No comments were received related to the name change of this section. The intent is to make the title of this section parallel to that of general regulation Section 5.4, the section upon which Section 7.13(f) is based.

Summary of Final Regulations and Required Permit Criteria

In general, permit procedures for commercial vehicles and/or hazardous materials transports will be in accordance with 36 CFR 1.6 and NPS guidelines (as amended or supplemented). The special use permit form (10–114) will be used for commercial vehicle and hazardous materials permits. Park suppliers are permitted through a different process. Permits may be applied for during normal business hours by visiting, telephoning, or telefaxing the Visitor Services Office (VSO) in the administration building at Mammoth Hot Springs. The VSO telephone number is 307–344–2115; FAX number is 307–344–2104.

These regulations differentiate between the transportation of hazardous materials on U.S. Highway 191 and commercial vehicle use. The special use permit form will be used to manage either or both activities. Specific terms and conditions of the permit may vary depending upon the use(s) requested. In most cases, one permitting document will be utilized to authorize and manage the specific use.

Vehicles regularly or frequently requiring a special use permit will generally be issued a permit which is valid for a period of one year. Vehicles that have a one-time, limited duration, or emergency need for a permit will be issued short term permits with a limited period of validity. Permit fees will be established in accordance with NPS guidelines (as amended or supplemented). A permit fee schedule will be reviewed, adjusted if appropriate, and published in the superintendent's compendium annually.

General conditions of a special use permit are stated on the permit form (10–114). These conditions include that the permittee is expected to comply with applicable State and Federal regulations, which in the case of commercial vehicles includes motor vehicle codes and may include hazardous materials regulations depending upon the situation. Another standard condition of the permit is that the permittee is financially responsible for any damage resulting from the authorized use that would not reasonably be inherent in the use, such as a hazardous material spill.

In accordance with applicable NPS guidelines, special park conditions may be appended to the form. Depending upon the circumstances, these may include time-of-travel restrictions, safety requirements, damage mitigation requirements, and provisions for revoking or terminating a permit.

As with all other NPS permits, violations of terms or conditions of a special use permit will be administratively reviewed on a case by case basis to determine if suspension or revocation is appropriate. In general, permits will not be suspended or revoked unless violations occur that threaten or damage park resources, that create or sustain an imminent hazard to public health or safety, or that indicate recurring non-compliance with applicable regulations.

Effective Date

This final regulation is effective 30 days after publication in the **Federal Register**.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information will be used to document and authorize special uses of public lands that are otherwise restricted. Permits are necessary to determine whether a proposed activity is authorized by law and to evaluate the potential effects on park resources. Response is required to obtain a benefit in accordance with 36 CFR 7.13. Public reporting burden for this information is estimated to average one-half hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 North Capitol, P.O. Box 37127, Washington, DC. 20013–7127; and the Office of Management and Budget, Paperwork Reduction Project (1024–0026) Washington, DC. 20503.

Compliance With Other Laws

The National Park Service prepared two environmental assessments for regulation of commercial traffic on U.S. Highway 191. The first was released for public review in 1990. Since that assessment did not fully analyze alternative routes, impacts to commodity distribution, and other economic factors, a revised environmental assessment was prepared. The latter assessment was made available for public review October 16, 1991 through December 1, 1991. On July 31, 1992, the National Park Service signed a Finding of No Significant Impact (FONSI) for the proposal, which would allow commercial traffic on U.S. Highway 191, but prohibit the transportation of hazardous materials requiring placarding through Yellowstone National Park. Copies of these Environmental Assessments are available from the Chief Ranger's Office at the above address.

This rule was not subject to Office of Management and Budget review under Executive Order 12866. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which became effective January 1, 1981, the Service has determined that these proposed regulations will not have a significant economic effect on a substantial number of small entities, nor will they require the preparation of a regulatory analysis. The proposed regulations would impose no significant costs on any class or group of small entities. This conclusion is based on the fact that no existing uses are being curtailed, except for the proposed prohibition on a very small percentage of vehicles which are carrying hazardous materials.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and record keeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 3.

2. Section 7.13 is amended by revising paragraph (a), removing and reserving paragraph (c), and revising the heading of paragraph (f) to read as follows:

§ 7.13 Yellowstone National Park.

(a) *Commercial Vehicles.* (1) Notwithstanding the prohibition of commercial vehicles set forth in Section 5.6 of this Chapter, commercial vehicles are allowed to operate on U.S. Highway 191 in accordance with the provisions of this Section.

(2) The transporting on U.S. Highway 191 of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste as defined in 49 CFR 171.8 that requires placarding of the transport vehicle in accordance with 49 CFR 177.823 or any marine pollutant that requires marking as defined in 49 CFR Subtitle B, is prohibited; provided, however, that the superintendent may issue permits and establish terms and conditions for the transportation of hazardous materials on U.S. Highway 191 in emergencies or when such transportation is necessary for access to lands within or adjacent to the park area.

(3) The operator of a motor vehicle transporting any hazardous substance, hazardous material, hazardous waste, or marine pollutant in accordance with a permit issued under this section is not relieved in any manner from complying with all applicable regulations in 49 CFR Subtitle B, or with any other State or federal laws and regulations applicable to the transportation of any hazardous substance, hazardous material, hazardous waste, or marine pollutant.

(4) The superintendent may require a permit and establish terms and conditions for the operation of a commercial vehicle on any park road in accordance with section 1.6 of this Chapter. The superintendent may charge a fee for permits in accordance with a fee schedule established annually.

(5) Operating without, or violating a term or condition of, a permit issued in accordance with this section is prohibited. In addition, violating a term or condition of a permit may result in the suspension or revocation of the permit.

* * * * *

(c) [Reserved]

* * * * *

(f) Commercial passenger-carrying vehicles. * * *

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Dated: August 18, 1994.

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–20863 Filed 8–24–94; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 940415–4212]

RIN 0651–AA68

Revision of Patent Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of final rulemaking and lifting of suspension.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent cases, Part 1 of title 37, Code of Federal Regulations, to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operation. The PTO also is providing notice that, beginning on October 1, 1994, the suspension of the fee for access to the Automated Patent System's Full Text Search capability (APS-Text) at a Patent and Trademark Depository Library (PTDL) will be lifted. However, the PTO is rescinding this hourly fee, which was established by 37 CFR 1.21(p), and in its place assessing an annual subscription fee on PTDLs providing such service. On October 1, 1994, the PTO also will begin collecting a fee for access to the Automated Patent System's Classified Search and Image Retrieval capability (APS–CSIR) from the search facilities in Arlington, Virginia.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Kopson by telephone at (703) 305–8510, fax at (703) 305–8525, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This rule change is designed to adjust the PTO fees in accordance with the applicable provisions of title 35, United States Code, and section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub.

L. 101–508), all as amended by the Patent and Trademark Office Authorization Act of 1991 (Pub. L. 102–204).

There are two objectives of this final rule package. The first objective is to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operation.

The second objective is to provide notice that PTO is lifting the suspension on the fee for access to APS-Text at a Patent and Trademark Library (PTDL). This fee was established by rule on October 1, 1992 (published in the **Federal Register** on August 21, 1992 at 57 FR 38190). Collection of the fee was immediately suspended by the Commissioner to provide additional time for the PTO to solicit input from the private sector on alternative collection methods, and other options for accessing patent search and retrieval in the Libraries. In response to public comments, the PTO will rescind the fee established by 37 CFR 1.21(p), and assess a subscription fee under 37 CFR 1.21(k) on each PTDL that provides its patrons with access to APS-Text. The basis for the subscription amount is less than the fee amount that was established in 37 CFR 1.21(p). Each participating library will be responsible for establishing policies for providing access to their patrons.

The PTO also will begin charging a fee for on-line access to APS–CSIR at the Patent Search and Image Retrieval Facility (PSIRF) in Arlington, Virginia. Free access to APS–CSIR has been offered at the PSIRF since July 12, 1993. The PTO now will begin recovering the cost of providing this on-line access in accordance with 37 CFR 1.21(k).

The PTO will make any necessary adjustments to these automated system fees based upon actual fiscal year 1995 usage. Future adjustments will be made based upon deviations in system costs and/or public usage.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A fifty percent reduction in the fees paid under 35 U.S.C. 41(a) and 41(b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is required by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index (CPI) over the previous 12 months.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) provides that there shall be a surcharge on all fees established under 35 U.S.C. 41(a) and 41(b) to collect $107 million fiscal year 1995.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, and for each black and white copy of a patent.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty (PCT).

Subsection 41(i)(3) of title 35, United States Code, authorizes the Commissioner to establish reasonable fees for access to automated search systems of the PTO.

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under Section 41 may take effect thirty days after notice in the **Federal Register** and the Official Gazette of the Patent and Trademark Office.

Recovery Level Determinations

This rule adjusts patent fees for a planned recovery of $571,439,000 in fiscal year 1995, as proposed in the Administration's budget request to the Congress. The fee amounts established for automated access to PTO's data bases will recover reasonable costs of providing these services to the public. The total amount expected to be collected is consistent with the budgeted amount.

The patent statutory fees established by 35 U.S.C. 41(a) and 41(b) are being adjusted on October 1, 1994, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index (CPI–U). In calculating these fluctuations, the Office of Management and Budget (OMB) has determined that the PTO should use CPI–U data as determined by the Secretary of Labor. However, the Department of Labor does not make public the CPI–U until approximately 21 days after the end of the month being calculated. Therefore, the latest CPI–U information available is for the month of May 1994. In accordance with previous rulemaking methodology, the PTO uses the Administration's projected CPI–U for the 12-month period ending September 30, 1994, which is 3.0 percent. Based on this projection, patent statutory fees are being adjusted by 3.0 percent. Before the final fee schedule is published, the fees may be slightly adjusted based on actual data available from the Department of Labor.

Certain non-statutory patent processing fees established under 35 U.S.C. 41(d) and PCP processing fees established under 35 U.S.C. 376 are being adjusted up to the three percent fluctuation in the CPI in order to recover their estimated average costs in 1995. Three patent service fees that are set by statute are not adjusted. The three fees that are not being adjusted are assignment recording fees, printed patent copy fees and photocopy charge fees.

The Office calculated unit costs for all fees based on OMB Circular A–25, "User Fees", and OMB Circular A–130, "Management of Federal Information Resources". Costs were determined from the best available records (for example, financial statements of the Office) and included direct and indirect costs to the Office for carrying out the activity, as directed by OMB Circular A–25. The patent statutory fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user.

Fees of $100 or more were rounded to the nearest $10. Fees between $2 and $99 were rounded to an even number so that the comparable small entity fee would be a whole number.

The Office has detailed cost calculation worksheets fro each fee amount. These worksheets are available for public inspection in Suite 507 of Crystal Park 1, 2011 Crystal Drive, Arlington, Virginia.

Workload Projections

Determination of workloads varies by fee. Principal workload projection techniques are as follows:

Patent application workloads are projected from statistical regression models using recent application filing trends. Patent issues are projected from an in-house patent production model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 80 percent, 57 percent and 25 percent, respectively. Service fee workloads follow linear trends from prior years' activities.

Any fee amount that is paid on or after October 1, 1994, would be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing or Transmission, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A Certificate of Mailing or Transmission under Section 1.8 is not "proper" for items which are specifically excluded from the provisions of Section 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing or Transmission is not "proper." Such items include, inter alia, the filing of national and international applications for patents. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee (including patent applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

Cost Calculations

APS–Text at a Patent and Trademark Depository Library (PTDL)

The costs for one hour terminal session time on APS–Text at a PTDL include license fees that must be paid to Chemical Abstracts Service (CAS) for its proprietary text and structure search software. Other costs are included for a portion, projected at 3.65 percent, of the lease of a computer mainframe for memory storage purposes; all costs associated with training PTDL staff (equipment rental, materials and time); personnel to provide client support to the PTDLs; telecommunication costs. A summary of the costs are listed below.

APS–TEXT COST OF ONE HOUR OF TERMINAL SESSION TIME AT A PATENT AND TRADEMARK DEPOSITORY LIBRARY

Cost element	Public share
Client Support Overtime	$10,203
Additional Mainframe Costs	43,216
Software (license fee)	273,000
Training Costs	10,000
Subtotal	336,419
General & Admin. Overhead @ 12.2%	40,976
Total Cost	377,395
Estimated Annual Usage (hours)	54,600
Unit Cost (per hour)	6.91
Telecommunication Costs (per hour)	8.00
Total Cost (per hour)	14.91
Total Cost (per hour-rounded)	15.00

The PTDLs will pay an annual maximum use subscription rate based on one of five tier levels, roughly equivalent to one to five hours of use per day, five days per week. Each PTDL will select a maximum use subscription tier based on its anticipated usage and be responsible for monitoring their own use. The PTDLs will also be responsible for establishing their own policies regarding the provision of APS–Text in their library. If during the year a PTDL is about to exceed its chosen level of maximum use, the PTDL will be allowed to move to a higher tier (and pay the additional subscription rate) or to use up to the subscribed level and cease continued access mid-year.

Tiers	Annual usage	Annual subscription rate
I	0–300 hours	$2,250
II	301–600 hours	6,750
III	601–900 hours	11,250
IV	901–1200 hours	15,750
V	1201–1500 hours	20,250

The subscription rates were derived using the $15.00 per hour access charge previously calculated. There will be no additional charges or refunds to each library. For each tier, a discount mechanism is included in the annual subscription calculation. For example, the annual subscription rate of $2,250 for Tier I is calculated by taking the mean average of the annual usage range (in this case 150 hours is the mean of zero and 300 hours) and multiplying it by the $15.00 per hour access charge. Therefore, for a PTDL in Tier I, any usage over 150 hours is free to the library. But if a PTDL in Tier I were to not use at least 150 hours, the PTO would not be required to refund the amount of the subscription fee that was not used.

APS–CSIR at the Patent Search and Image Retrieval Facility (PSIFR)

The costs for one hour terminal session time on APS–CSIR at the PSIRF include license fees that must be paid to Chemical Abstracts Service (CAS) for its proprietary text and structure search software. It is estimated that 40 percent of the terminal time will be used for text searching, which requires the search software from CAS.

Other costs are included for a portion, projected at 2.25 percent, of the lease of a computer mainframe for memory storage purposes; additional personnel for the PSIRF and the Office of Computer and Telecommunications Operations; computer acquisition, installation, and maintenance; supplies and equipment dedicated to public use; and general and administrative overhead. A summary of the costs are listed below.

APS–CSIR COST OF ONE HOUR OF TERMINAL SESSION TIME AT THE PATENT SEARCH AND IMAGE RETRIEVAL FACILITY

Cost element	Total cost
Compensation and Benefits	$250,813
Additional Hardware and Mainframe Costs	226,792
Software (license fee)	25,000
Supply Costs	10,512
Installation Costs (amortized)	25,366
Subtotal	538,483
Space Costs	41,759
General & Admin Overhead @ 12.2%	65,695
Total Cost	645,937
Estimated Annual Usage (hours)	13,000
Unit Cost (per hour)	49.68
Rounded Fee Amount (per hour-prorated)	50.00

A comparison of existing and revised fee amounts is included as an Appendix to this notice of final rulemaking.

In order to ensure clarity in the implementation of the revised fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), and (f)–(i), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application Processing Fees

Section 1.17, paragraphs (b)–(g) and (m), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17, paragraphs (j), and (n)–(p), is revised to adjust fees established therein to recover costs.

37 CFR 1.18 Patent Issue Fees

Section 1.18, paragraphs (a)–(c), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post-issuance Fees

Section 1.20, paragraphs (c), (i)(1), and (j), is revised to adjust fees established therein to recover costs.

Section 1.20, paragraphs (e)–(g), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21 is amended to remove paragraph (p).

37 CFR 1.445 International Application Filing, Processing, and Search Fees

Section 1.445, paragraph (a), is revised to adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.482 International Preliminary Examination Fees

Section 1.482, paragraphs (a)(1) and (a)(2)(ii), is revised to adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a), (b) and (d), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Response to Comments on the Rules

Patent Fee Increase

A notice of proposed rulemaking to adjust patent fees was published in the **Federal Register** on May 27, 1994, at 59 FR 27519, and in the Official Gazette on June 7, 1994, at 1163 OG 14.

A public hearing was held on June 28, 1994. Three comments were received and considered in adopting the rules set forth herein.

Comments: The respondents, although not objecting to the three percent fee increase, strongly oppose any fee increase for the purpose of making up patent fee surcharge money that is being withheld from the PTO. The respondents support the Administration's proposal to ensure that all user fees assessed by the PTO are used exclusively by the PTO.

Response: The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) requires the PTO, in fiscal year 1995, to collect $107 million in patent fee surcharges and to deposit these collections to the Patent and Trademark Office Fee Surcharge Fund. In the past, Congress has only appropriated part of these deposits back to the PTO. Deposits not made available to the Office reside in the Fund. To date, the reserve in the Fund is slightly in excess of $35 million. For fiscal year 1995, the PTO requested that all patent fees be provided directly to the Office, thereby eliminating reliance on appropriations from the Fee Surcharge Fund. This language will not be enacted. The House of Representatives has recommended that an additional $18.7 million in patent fee surcharges not be made available to the Office in fiscal year 1995. Final action on the 1995 appropriations bill is pending. The Administration does not propose to increase patent fees in fiscal year 1995 other than the increase that reflects fluctuations in the Consumer Price Index.

Collection of the Fee for Access to APS-Text at the PTDLs

A fee for access to APS-Text at a PTDL was set in the final rule package published in the **Federal Register** on August 21, 1992 (57 FR 38189). The final rule became effective October 1, 1992. On that date, the fee took effect but collection was immediately suspended by the Commissioner to provide additional time to solicit input from the private sector on alternative collection methods, and other options for accessing patent search and retrieval in the Libraries.

The Office received six comments.

Comment: Two respondents stated that many of the PTDLs already have considerable experience in collecting fees for access to on-line patent and trademark services provided by private sector vendors. They suggested that mechanisms already in place could be adapted to the collection of fees for PTO-provided services.

These respondents also suggested that the PTO procure access for the PTDLs to private sector on-line patent and trademark services, using a Federal procurement mechanism, such as Fedlink.

Response: The PTO encourages the PTDLs to provide a variety of patent and trademark services for their patrons. However, the PTDLs are not required to provide access to private sector on-line services, and the PTO can only provide support and training to the PTDLs for products and services it develops.

In the case of APS access, participation on the part of the PTDLs will be voluntary. With respect to other services, the PTDLs will make the decision as to which ones best fit the needs of their user communities. Fedlink, which provides on-line services to Government agencies, cannot extent its charter to include the PTDLs.

Under the proposed subscription method, libraries should develop policies and procedures which best suit their particular circumstances.

Comment: One respondent suggested that the access to APS be expanded beyond the PTDLs, with a small fee for general use, and discounted fees for independent inventors and/or off-peak usage.

Response: At this time, allowing direct access by the public would impact internal PTO operations. Access at PTDLs will ensure usage in a controlled environment, where end-users will have access to knowledge and skills of trained librarians.

Comment: One respondent suggested that the PTO permit voluntary participation by the individual PTDLs.

Response: Participation on the part of the PTDLs will be voluntary. The level of participation by the PTDLs will not affect their relationship with the PTO in any manner.

Comment: One respondent suggested that the PTO provide access to APS-Text on a subscription basis. This method would set a fee for anticipated usage over a determined period of time.

Response: The PTO will provide access to APS-Text to the PTDLs on an annual subscription basis. All of the libraries will have the option of subscribing. Each library that chooses to subscribe will establish a policy for providing the public with access to APS-Text.

Comment: One respondent suggested that the PTO set up a system that allows users to input credit or debit card numbers.

Response: Currently, the PTO is studying this collection option. The current equipment in use does not allow access via a credit or debit card. This option may be feasible in the near future.

Other Considerations

This final rule change is in conformity with the requirements of Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to these patent fee rules. This final rule has been determined to be significant for purposes of Executive Order 12866.

The PTO has determined that this final rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the final rule change would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The final rule change increases fees by changes in the CPI as authorized by 35 U.S.C. 41(f). The principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h), which provides small entities with a 50-percent reduction in the major patent fees.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, Chapter 1, Part 1, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a), (b), (d), and (f) through (i) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:	
By a small entity (§ 1.9(f))	$365.00
By other than a small entity	730.00
(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:	
By a small entity (§ 1.9(f))	38.00
By other than a small entity	76.00

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(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:	
By a small entity (§ 1.9(f))	120.00
By other than a small entity	240.00

(If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

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(f) For filing each design application:	
By a small entity (§ 1.9(f))	150.00
By other than a small entity	300.00
(g) Basic fee for filing each plant application:	
By a small entity (§ 1.9(f))	245.00
By other than a small entity	490.00
(h) Basic fee for filing each reissue application:	
By a small entity (§ 1.9(f))	365.00
By other than a small entity	730.00
(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:	
By a small entity (§ 1.9(f))	38.00
By other than a small entity	76.00

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3. Section 1.17 is amended by revising paragraphs (b) through (g), (j), and (m) through (p) read as follows:

§ 1.17 Patent application processing fees.

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(b) Extension fee for response within second month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	$185.00
By other than a small entity	370.00
(c) Extension fee for response within third month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	435.00
By other than a small entity	870.00
(d) Extension fee for response within fourth month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	680.00
By other than a small entity	1,360.00
(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:	
By a small entity (§ 1.9(f))	140.00
By other than a small entity	280.00
(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:	
By a small entity (§ 1.9(f))	140.00
By other than a small entity	280.00
(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:	
By a small entity § 1.9(f))	120.00
By other than a small entity	240.00

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(j) For filing a petition to institute a public use proceeding under § 1.192	1,390.00

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(m) For filing a petition:

(1) For revival of an unintentionally abandoned application, or	
(2) For the unintentionally delayed payment of the fee for issuing a patent:	
By a small entity (§ 1.9(f))	605.00
By other than a small entity	1,210.00
(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—$840.00 reduced by the amount of the application basic filing fee paid.	
(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—$1,690.00 reduced by the amount of the application basic filing fee paid.	
(p) For submission of an information disclosure statement under § 1.97(c)	210.00

4. Section 1.18 is revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:	
By a small entity (§ 1.9(f))	$605.00
By other than a small entity	1,210.00
(b) Issue fee for issuing a design patent:	
By a small entity (§ 1.9(f))	210.00
By other than a small entity	420.00
(c) Issue fee for issuing a plant patent:	
By a small entity (§ 1.9(f))	305.00
By other than a small entity	610.00

5. Section 1.20 is amended by revising paragraphs (c), (e) through (g), (i)(1), and (j) to read as follows:

§ 1.20 Post issuance fees.

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(c) For filing a request for reexamination (§ 1.510(a))	$2,320.00

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(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:	
By a small entity (§ 1.9(f))	480.00
By other than a small entity	960.00
(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:	
By a small entity (§ 1.9(f))	965.00
By other than a small entity	1,930.00
(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:	
By a small entity (§ 1.9(f))	1,450.00
By other than a small entity	2,900.00

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(i) * * *	
(1) unavoidable	640.00

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(j) For filing an application for extension of the term of a patent (§ 1.740)	1,030.00

§ 1.21 [Amended]

6. Section 1.21 is amended by removing paragraph (p).

7. Section 1.445 is amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:	
(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)	$210.00
(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:	
(i) No corresponding prior United States national application with basic filing fee has been filed	640.00
(ii) A corresponding prior United States national application with basic filing fee has been filed	420.00
(3) A supplemental search fee when required, per additional invention	180.00

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8. Section 1.482 is amended by revising paragraphs (a)(1) and (a)(2)(ii) to read as follows:

§ 1.482 International preliminary examination fees.

(a) * * *

(1) A preliminary examination fee is due on filing the Demand:
(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of $460.00
(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Offfice, a preliminary examination fee of 690.00
(2) * * *
(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office 240.00

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9. Section 1.492 is amended by revising paragraphs (a) (1) through (5), (b), and (d) to read as follows:

§ 1.492 National stage fees.

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(a) * * *
(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the Untied States Patent and Trademark Office:
By a small entity (§ 1.9(f)) $330.00
By other than a small entity 660.00
(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:
By a small entity (§ 1.9(f)) 365.00
By other than a small entity 730.00
(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:
By a small entity (§ 1.9(f)) 490.00
By other than a small entity 980.00
(4) Where an international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):
By a small entity (§ 1.9(f)) 46.00
By other than a small entity 92.00
(5) Where a search report on the international application has been prepared by the European Patent Office of the Japanese Patent Office:
By a small entity (§ 1.9(f)) 425.00
By other than a small entity 850.00
(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:
By a small entity (§ 1.9(f)) 38.00
By other than a small entity 76.00

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(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:
By a small entity (§ 1.9(f)) 120.00
By other than a small entity 240.00

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Dated: August 18, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Appendix to This Final Rule

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS

37 CFR Section	Description	October 1993	October 1994
1.16(a)	Basic Filing Fee	$710	$730
1.16(a)	Basic Filing Fee (Small Entity)	355	365
1.16(b)	Independent Claims	74	76
1.16(b)	Independent Claims (Small Entity)	37	38
1.16(c)	Claims in Excess of 20	22	(1)

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Section	Description	October 1993	October 1994
1.16(c)	Claims in Excess of 20 (Small Entity)	11	(1)
1.16(d)	Multiple Dependent Claims	230	240
1.16(d)	Multiple Dependent Claims (Small Entity)	115	120
1.16(e)	Surcharge—Late Filing Fee	130	(1)
1.16(e)	Surcharge—Late Filing Fee (Small Entity)	65	(1)
1.16(f)	Design Filing Fee	290	300
1.16(f)	Design Filing Fee (Small Entity)	145	150
1.16(g)	Plant Filing Fee	480	490
1.16(g)	Plant Filing Fee (Small Entity)	240	245
1.16(h)	Reissue Filing Fee	710	730
1.16(h)	Reissue Filing Fee (Small Entity)	355	365
1.16(i)	Reissue Independent Claims	74	76
1.16(i)	Reissue Independent Claims (Small Entity)	37	38
1.16(j)	Reissue Claims in Excess of 20	22	(1)
1.16(j)	Reissue Claims in Excess of 20 (Small Entity)	11	(1)
1.17(a)	Extension—First Month	110	(1)
1.17(a)	Extension—First Month (Small Entity)	55	(1)
1.17(b)	Extension—Second Month	360	370
1.17(b)	Extension—Second Month (Small Entity)	180	185
1.17(c)	Extension—Third Month	840	870
1.17(c)	Extension—Third Month (Small Entity)	420	435
1.17(d)	Extension—Fourth Month	1,320	1,360
1.17(d)	Extension—Fourth Month (Small Entity)	660	680
1.17(e)	Notice of Appeal	270	280
1.17(e)	Notice of Appeal (Small Entity)	135	140
1.17(f)	Filing a Brief	270	280
1.17(f)	Filing a Brief (Small Entity)	135	140
1.17(g)	Request for Oral Hearing	230	240
1.17(g)	Request for Oral Hearing (Small Entity)	115	120
1.17(h)	Petition—Not All Inventors	130	(1)
1.17(h)	Petition—Correction of Inventorship	130	(1)
1.17(h)	Petition—Decision on Questions	130	(1)
1.17(h)	Petition—Suspend Rules	130	(1)
1.17(h)	Petition—Expedited License	130	(1)
1.17(h)	Petition—Scope of License	130	(1)
1.17(h)	Petition—Retroactive License	130	(1)
1.17(h)	Petition—Refusing Maintenance Fee	130	(1)
1.17(h)	Petition—Refusing Maintenance Fee—Expired Patent	130	(1)
1.17(h)	Petition—Interference	130	(1)
1.17(h)	Petition—Reconsider Interference	130	(1)
1.17(h)	Petition—Late Filing of Interference	130	(1)
1.20(b)	Petition—Correction of Inventorship	130	(1)
1.17(h)	Petition—Refusal to Publish SIR	130	(1)
1.17(i)(1)	Petition—For Assignment	130	(1)
1.17(i)(1)	Petition—For Application	130	(1)
1.17(i)(1)	Petition—Late Priority Papers	130	(1)
1.17(i)(1)	Petition—Suspend Action	130	(1)
1.17(i)(1)	Petition—Divisional Reissues to Issue Separately	130	(1)
1.17(i)(1)	Petition—For Interference Agreement	130	(1)
1.17(i)(1)	Petition—Amendment After Issue	130	(1)
1.17(i)(1)	Petition—Withdrawal After Issue	130	(1)
1.17(i)(1)	Petition—Defer Issue	130	(1)
1.17(i)(1)	Petition—Issue to Assignee	130	(1)
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.53	130	(1)
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.60	130	(1)
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.62	130	(1)
1.17(i)(2)	Petition—Make Application Special	130	(1)
1.17(j)	Petition—Public Use Proceeding	1,350	1,390
1.17(k)	Non-English Specification	130	(1)
1.17(l)	Petition—Revive Abandoned Appl	110	(1)
1.17(l)	Petition—Revive Abandoned Appl. (Small Entity)	55	(1)
1.17(m)	Petition—Revive Unintentionally Abandoned Appl	1,170	1,210
1.17(m)	Petition—Revive Unintent Abandoned Appl. (Small Entity)	585	605
1.17(n)	SIR—Prior to Examiner's Action	820	840
1.17(o)	SIR—After Examiner's Action	1,640	1,690
1.17(p)	Submission of an Information Disclosure Statement (§ 1.97)	200	210
1.18(a)	Issue Fee	1,170	1,210
1.18(a)	Issue Fee (Small Entity)	585	605
1.18(b)	Design Issue Fee	410	420
1.18(b)	Design Issue Fee (Small Entity)	205	210
1.18(c)	Plant Issue Fee	590	610

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Section	Description	October 1993	October 1994
1.18(c)	Plant Issue Fee (Small Entity)	295	305
1.19(a)(1)(i)	Copy of Patent	3	([1])
1.19(a)(1)(ii)	Patent Copy—Expedited Local Service	6	([1])
1.19(a)(1)(iii)	Patent Copy Ordered Via EOS—Expedited Service	25	([1])
1.19(a)(2)	Plant Patent Copy	12	([1])
1.19(a)(3)(i)	Copy of Utility Patent or SIR in Color	24	([1])
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed	12	([1])
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed, Expedited	24	([1])
1.19(b)(2)	Cert or Uncert Copy of Patent-Related File Wrapper/Contents	150	([1])
1.19(b)(3)	Cert. or Uncert. Copies of Office Records, per Document	25	([1])
1.19(b)(4)	For Assignment Records, Abstract of Title and Certification	25	([1])
1.19(c)	Library Service	50	([1])
1.19(d)	List of Patents in Subclass	3	([1])
1.19(e)	Uncertified Statement—Status of Maintenance Fee Payment	10	([1])
1.19(f)	Copy of Non-U.S. Patent Document	25	([1])
1.19(g)	Comparing and Certifying Copies, Per Document, Per Copy	25	([1])
1.19(h)	Duplicate or Corrected Filing Receipt	25	([1])
1.20(a)	Certificate of Correction	100	([1])
1.20(c)	Reexamination	2,250	2,320
1.20(d)	Statutory Disclaimer	110	([1])
1.20(d)	Statutory Disclaimer (Small Entity)	55	([1])
1.20(e)	Maintenance Fee—3.5 Years	930	960
1.20(e)	Maintenance Fee—3.5 Years (Small Entity)	465	480
1.20(f)	Maintenance Fee—7.5 Years	1,870	1,930
1.20(f)	Maintenance Fee—7.5 Years (Small Entity)	935	965
1.20(g)	Maintenance Fee—11.5 Years	2,820	2,900
1.20(g)	Maintenance Fee—11.5 Years (Small Entity)	1,410	1,450
1.20(h)	Surcharge—Maintenance Fee—6 Months	130	([1])
1.20(h)	Surcharge—Maintenance Fee—6 Months (Small Entity)	65	([1])
1.20(i)(1)	Surcharge—Maintenance After Expiration—Unavoidable	620	640
1.20(i)(2)	Surcharge—Maintenance After Expiration—Unintentional	1,500	
1.20(j)	Extension of Term of Patent	1,000	1,030
1.21(a)(1)	Admission to Examination	300	([1])
1.21(a)(2)	Registration to Practice	100	—
1.21(a)(3)	Reinstatement to Practice	15	([1])
1.21(a)(4)	Certificate of Good Standing	10	—
1.21(a)(4)	Certificate of Good Standing, Suitable Framing	20	([1])
1.21(a)(5)	Review of Decision of Director, OED	130	([1])
1.21(a)(6)	Regrading of Examination	130	([1])
1.21(b)(1)	Establish Deposit Account	10	([1])
1.21(b)(2)	Service Charge Below Minimum Balance	25	([1])
1.21(b)(3)	Service Charge Below Minimum Balance	25	([1])
1.21(c)	Filing a Disclosure Document	10	([1])
1.21(d)	Box Rental	50	([1])
1.21(e)	International Type Search Report	40	([1])
1.21(g)	Self-Service Copy Charge	.25	([1])
1.21(h)	Recording Patent Property	40	([1])
1.21(i)	Publication in the OG	25	([1])
1.21(j)	Labor Charges for Services	30	([1])
1.21(k)	Unspecified Other Services	([2])	([1])
1.21(k)	Terminal Use APS-TEXT by the PTDL's	70	([3])
1.21(k)	Terminal Use APS-CSIR	—	50
1.21(l)	Retaining Abandoned Application	130	([1])
1.21(m)	Processing Returned Checks	50	([1])
1.21(n)	Handing Fee—Incomplete Application	130	([1])
1.21(o)	Terminal Use APS-TEXT	40	([1])
1.24	Coupons for Patent and Trademark Copies	3	([1])
1.296	Handing Fee—Withdrawal SIR	130	([1])
1.445(a)(1)	Transmittal Fee	200	210
1.445(a)(2)(i)	PCT Search Fee—No U.S. Application	620	640
1.445(a)(2)(ii)	PCT Search Fee—Prior U.S. Application	410	420
1.445(a)(3)	Supplemental Search	170	180
1.482(a)(1)(i)	Preliminary Exam Fee	450	460
1.482(a)(1)(ii)	Preliminary Exam Fee	670	690
1.482(a)(2)(i)	Additional Invention	140	([1])
1.482(a)(2)(ii)	Additional Invention	230	240
1.492(a)(1)	Preliminary Examining Authority	640	660
1.492(a)(1)	Preliminary Examining Authority (Small Entity)	320	330
1.492(a)(2)	Searching Authority	710	730
1.492(a)(2)	Searching Authority (Small Entity)	355	365
1.492(a)(3)	PTO Not ISA nor IPEA	950	980

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Section	Description	October 1993	October 1994
1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	475	490
1.492(a)(4)	Claims—IPEA	90	92
1.492(a)(4)	Claims—IPEA (Small Entity)	45	46
1.492(a)(5)	Filing with EPO/JPO Search Report	830	850
1.492(a)(5)	Filing with EPO/JPO Search Report (Small Entity)	415	425
1.492(b)	Claims—Extra Individual (Over 3)	74	76
1.492(b)	Claims—Extra Individual (Over 3) (Small Entity)	37	38
1.492(c)	Claims—Extra Total (Over 20)	22	(1)
1.492(c)	Claims—Extra Total (Over 20) (Small Entity)	11	(1)
1.492(d)	Claims—Multiple Dependents	230	240
1.492(d)	Claims—Multiple Dependents (Small Entity)	115	120
1.492(e)	Surcharge	130	(1)
1.492(e)	Surcharge (Small Entity)	65	(1)
1.492(f)	English Translation—After 20 Months	130	(1)
2.6(a)(1)	Application for Registration, Per Class	245	(1)
2.6(a)(2)	Amendment to Allege Use, Per Class	100	(1)
2.6(a)(3)	Statement of Use, Per Class	100	(1)
2.6(a)(4)	Extension for Filing Statement of Use, Per Class	100	(1)
2.6(a)(5)	Application for Renewal, Per Class	300	(1)
2.6(a)(6)	Surcharge for Late Renewal, Per Class	100	(1)
2.6(a)(7)	Publication of Mark Under § 12(c), Per Class	100	(1)
2.6(a)(8)	Issuing New Certificate of Registration	100	(1)
2.6(a)(9)	Certificate of Correction of Registrant's Error	100	(1)
2.6(a)(10)	Filing Disclaimer to Registration	100	(1)
2.6(a)(11)	Filing Amendment to Registration	100	(1)
2.6(a)(12)	Filing Affidavit Under Section 8, Per Class	100	(1)
2.6(a)(13)	Filing Affidavit Under Section 15, Per Class	100	(1)
2.6(a)(14)	Filing Affidavit Under Sections 8 & 15, Per Class	200	(1)
2.6(a)(15)	Petitions to the Commissioner	100	(1)
2.6(a)(16)	Petition to Cancel, Per Class	200	(1)
2.6(a)(17)	Notice of Opposition, Per Class	200	(1)
2.6(a)(18)	Ex Parte Appeal to the TTAB, Per Class	100	(1)
2.6(a)(19)	Dividing an Application, Per New Application Created	100	(1)
2.6(b)(1)(i)	Copy of Registered Mark	3	(1)
2.6(b)(1)(ii)	Copy of Registered Mark, Expedited	6	(1)
2.6(b)(1)(iii)	Copy of Registered Mark Ordered, Via EOS, Expedited, Svc	25	(1)
2.6(b)(2)(i)	Certified Copy of TM Application as Filed	12	(1)
2.6(b)(2)(ii)	Certified Copy of TM Application as Filed, Expedited	24	(1)
2.6(b)(3)	Cert. or Uncert. Copy of TM-Related File Wrapper/Contents	50	(1)
2.6(b)(4)(i)	Cert. Copy of Registered Mark, Title or Status	10	(1)
2.6(b)(4)(ii)	Cert. Copy of Registered Mark, Title or Status—Expedited	20	(1)
2.6(b)(5)	Certified or Uncertified Copy of TM Records	25	(1)
2.6(b)(6)	Recording Trademark Property, Per Mark, Per Document	40	(1)
2.6(b)(6)	For Second and Subsequent Marks in Same Document	25	(1)
2.6(b)(7)	For Assignment Records, Abstracts of Title and Cert	25	(1)
2.6(b)(8)	Terminal Use X-SEARCH	40	(1)
2.6(b)(9)	Self-Service Copy Change	0.25	(1)
2.6(b)(10)	Labor Charges for Services	30	(1)
2.6(b)(11)	Unspecified Other Services	(2)	(1)

(1) These fees are not affected by this rulemaking.
(2) Actual cost.
(3) Subscription.

[FR Doc. 94-20900 Filed 8-24-94; 8:45 am]
BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID2-1-5552a; FRL-5012-8]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) approves the State Implementation Plan (SIP) submitted by the State of Idaho for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The implementation plan was submitted by the State and satisfied certain Federal requirements for an acceptable moderate nonattainment area PM-10 SIP for Pinehurst, Idaho.

DATES: This final rule will be effective on October 24, 1994 unless adverse or critical comments are received by September 26, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

Documents which are incorporated by reference are available for inspection during normal business hours at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, and the State of Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83720.

FOR FURTHER INFORMATION CONTACT: Stephen Fry, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, (206) 553-2575.

SUPPLEMENTARY INFORMATION:

I. Background

The Shoshone County, Pinehurst, Idaho area was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990[1] (see 56 FR 56694 (November 6, 1991) and 40 CFR 81.313 (codified air quality designation for the Pinehurst area)). The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act.[2] EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this rulemaking action on the State of Idaho's moderate PM-10 SIP for the Pinehurst nonattainment area, EPA is applying its interpretations taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above.

Those states containing initial moderate PM-10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;
2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;
3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and
4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area (see sections 172(c), 188, and 189 of the Act).

States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992 (see section 189(a) of the CAA). This permit program element, also known as the New Source Review (NSR) program, was submitted by the State of Idaho on May 17, 1994. EPA notified Idaho in a June 10, 1994 letter to the Administrator of the Idaho Division of Environmental Quality that the NSR program submittal was complete. EPA is currently in the process of reviewing the NSR program to determine if the program meets the requirements of the CAA. EPA intends to take action on Idaho's NSR program when EPA has completed its review.

In addition, states containing initial moderate PM-10 nonattainment areas were required to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-13544). Contingency measures for the Pinehurst PM-10 nonattainment area have not yet been submitted by IDEQ. A findings letter, dated January 13, 1994, was mailed to the Governor of Idaho which informed him that the State had failed to make the required PM-10 contingency measures submittal for Pinehurst. The State has until July 13, 1995 to correct this deficiency for Pinehurst, or it will face Federal highway or offset sanctions (see section 179 of the CAA and 58 FR 51270 (October 1, 1993)).

EPA intends to take action on the contingency measures for the Pinehurst PM-10 nonattainment area when this requirement is submitted or intends to impose sanctions in the event this deficiency is not corrected.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittal (see 57 FR 13565-13566). In this action, EPA is granting approval of the plan revision submitted to EPA on April 14, 1992. EPA has determined that the submittal meets the applicable requirements of the Act, with respect to moderate area PM-10 submittal.

Analysis of State Submission

1. Procedural Background

The Act requires states to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA has also determined whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act" or "CAA"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM-10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

The Idaho Division of Environmental Quality (IDEQ) held a public hearing on the Pinehurst PM–10 plan on January 22, 1992 in Pinehurst and, after IDEQ reviewed the oral testimony, the plan was adopted by the IDEQ Administrator on April 7, 1992. The submitted plan was received by EPA on April 14, 1992 as a revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated June 8, 1992 was forwarded to the Administrator of IDEQ indicating the completeness of the submittal and the next steps to be taken in the review process. In this action EPA is approving the State of Idaho's PM–10 SIP submittal for the Pinehurst PM–10 nonattainment area.

Since the Pinehurst PM–10 SIP requirements due on November 15, 1991 were not submitted by that date as required by section 189(a)(2)(A) of the CAA, EPA made a finding, pursuant to section 179 of the Act, that the State failed to submit the SIP revision and notified the Governor in a letter dated December 18, 1991 (see 57 FR 19906 (May 8, 1992)). EPA's June 8, 1992 determination that the State had made a complete submittal corrected the State's failure to submit the PM–10 SIP requirements for Pinehurst due on November 15, 1991 and, therefore, terminated the 18-month sanctions clock for that deficiency under section 179 of the CAA.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area (see section 110(a)(2)(K) of the CAA). Because the submission of such inventories is necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The base year emission inventory (1988) developed for the Pinehurst nonattainment area identified the major sources of PM–10 concentrations during 24-hour worst case winter days as residential wood combustion (59%), fugitive dust (38%) and other sources (3%). Annual emissions for 1988 were residential wood combustion (41%), fugitive dust (38%), building construction (18%) and other sources (3%).

EPA is approving the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.[4] For further details see the Technical Support Document (TSD).

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) were implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

a. Residential Wood Combustion Program. Attainment of the 24-hour and annual standards is based on control strategies designed to reduce wood smoke. Attainment is demonstrated through the establishment of a voluntary residential wood combustion curtailment program, wood stove replacement program and home weatherization program. The specific control measures are supported and enhanced through an aggressive air pollution public awareness program. More details regarding these control measures are as follows:

(1) Episodic Wood Burning Curtailment Program. The IDEQ is in charge of declaring episodic voluntary wood burning curtailments in the Pinehurst nonattainment area. A voluntary burn ban is declared when 24-hour PM–10 levels in the nonattainment area, as estimated by nephelometer, are measured to exceed 100 $\mu g/m^3$. To keep the public informed regarding particulate air quality levels, a 24-hour PM–10 prediction is made for the Pinehurst/Silver Valley area after an IDEQ meteorologist calculates lower atmospheric stability and evaluates nephelometer, upper air temperature sounding, snow cover, surface temperature, delta temperature, wind speed, cloud cover, National Weather Service and occasionally commercial weather service data.

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the amended Act; therefore, EPA may continue to rely on this guidance (see section 193 of the CAA).

Wood burning advisories are made in conjunction with the air quality report and are issued weekdays and, as necessary on weekends and holidays, by 9 a.m., from November 1 through the end of February. The advisory is recorded on a telephone answering machine for both the public and media. When a voluntary wood burning curtailment is declared, the IDEQ directly contacts the media and conducts radio and television interviews to publicize the existence of a burn ban. Voluntary curtailment declarations are also carried routinely by the local radio station and newspaper.

IDEQ requests a 25 percent emission reduction credit for its voluntary curtailment program in the Pinehurst nonattainment area during 24-hour worst case periods. The 25 percent credit is greater than the ten percent generally suggested by EPA for voluntary curtailment programs. The recommended ten percent credit is viewed by EPA as a "starting point in assessing the effectiveness of residential wood combustion control programs." However, final judgement of the amount of credit to be granted is determined by EPA's regional offices based on the program features outlined in EPA's Guidance Document for Residential Wood Combustion Emission Control Measures, September 1989, (EPA–450/2–89–015). More than ten percent credit may be granted based on the program's effectiveness.

IDEQ cites residential wood heating surveys that were conducted in the Ada County/Boise PM–10 nonattainment area, that indicate a 43 percent effectiveness rate for the voluntary curtailment program in that part of Idaho. The State points out in the Pinehurst SIP that the Pinehurst City Council adopted a resolution (on November 11, 1991) supporting the curtailment program and requesting all Pinehurst citizens, except those who must rely on wood burning as their sole source of heat, to not burn wood during a curtailment episode. Therefore, the features of the Pinehurst curtailment program, the effectiveness data obtained from Ada County/Boise coupled with the demonstrated local support for the curtailment program by the leaders of Pinehurst is the basis for IDEQ's 25 percent emission reduction claim. According to IDEQ calculations this 25 percent reduction is equivalent to a PM–10 emission reduction of 51.3 lbs/day and a 24-hour PM–10 ambient reduction of 20 $\mu g/m^3$.

Based upon the surveys conducted in Ada County/Boise, the support by Pinehurst City officials and the recent success during the 1992–1993 and 1993–1994 wood burning seasons in preventing PM–10 concentrations from exceeding the 24-hour NAAQS, EPA is satisfied that at least a 25 percent emission reduction is occurring when voluntary episodic wood burning curtailments are declared in Pinehurst. Therefore, EPA is accepting the 25 percent credit claimed for this control measure. Further description of this program and justification for EPA's action is set out in the TSD, contained in the public record corresponding with this action.

(2) Public Awareness Program. The wood smoke public awareness program for the Pinehurst/Silver Valley area plays a critical role in ensuring that the residential wood combustion program is successful. Public awareness of the problems associated with wood smoke has a significant effect on how well the different components of the wood smoke control program are accepted. IDEQ has utilized the following methods to promote public awareness about the wood smoke problem in Pinehurst: education brochures for each household, utility bill inserts, newspaper articles—public service announcements (PSA's), educational materials for elementary schools, surveys to determine the level of awareness and response to programs, radio interviews, radio PSA's, outreach to wood stove dealers and wood/pellet fuel outlets, and Speakers Bureau through service clubs and community meetings. IDEQ's well-established public awareness program was enhanced in 1991, when $14,550 was awarded by the Pacific Northwest and Alaska Bioenergy Program to provide wood energy education in Idaho's Silver Valley (which includes Pinehurst). For the 1993–1994 and 1994–1995 residential heating seasons, a wood stove advocate has been hired by IDEQ to serve as an information outlet regarding wood stove issues and also track the progress of reducing wood stove emissions.

IDEQ is claiming a five percent credit for the Pinehurst wood smoke public awareness program. This credit is based upon the increased effectiveness of the public awareness program since 1991, the fact that Pinehurst is a small town (population 1,722 in 1990)—which makes it relatively easy to keep in contact with the citizens, and the fact that IDEQ has hired a Pinehurst wood stove advocate to work on increasing the public's awareness of the availability of cleaner-burning residential heating devices.

Considering IDEQ's aforementioned reasons for claiming a five percent emission reduction credit (which equals a PM–10 emission reduction of 10.8 lbs/day, and a 24-hour PM–10 ambient reduction of 4 μg/m^3), EPA is accepting the five percent credit requested by the IDEQ.

(3) Uncertified Wood Stove Change-out Program. IDEQ is in the process of replacing 90 uncertified wood stoves in the Pinehurst nonattainment area with cleaner heating devices. The uncertified wood stoves are replaced as part of a combined Federal assistance grant, and State and local loan program. Ninety grants ranging from $500–$1,750 each will be offered to the residents of Pinehurst as financial incentive to replace their uncertified stoves with natural gas furnaces, pellet stoves or phase II wood stoves. In addition, 50 of these participants will be offered low interest loans, up to a maximum amount of $1,500 per homeowner, using Idaho Department of Water Resources (IDWR) funds. These loans will cover the additional costs of upgrading the qualifying resident's heating system, including the cost of installation. IDWR will allow the loans to be paid back over a five-year period. The combined grant and loan program will be administered by the Northern Idaho Community Action Agency (NICAA).

It is estimated by IDEQ that the combined grant/loan program will replace 90 uncertified wood stoves with 40 natural gas furnaces, 25 pellet stoves and 25 phase II wood stoves. This change is projected to result in a PM–10 emission reduction of 43.4 lbs/day (which equals a 17 μg/m^3 24-hour PM–10 reduction) in the Pinehurst nonattainment area (based upon a 100%, 95% and 55% emission reduction credits for replacing uncertified wood stoves with natural gas furnaces, pellet stoves and phase II wood stoves, respectively; a 0.56 lbs/day PM–10 emission rate for a uncertified wood stove in Pinehurst; and the determination that a PM–10 emission rate of 393 lbs/day equals a 24-hour ambient PM–10 concentration of 150 μg/m^3 at Pinehurst).

Thus, IDEQ is estimating that the wood stove change-out program will reduce PM–10 emissions from residential wood combustion devices in Pinehurst by 16.5 percent (or 43.4 lbs of PM–10 reduced/day divided by 263.8 lbs of PM–10 emitted on the worst case day in 1994). EPA believes that the program will reduce PM–10 emissions in the Pinehurst nonattainment area because the program is receiving broad based support and has secure funding sources. Therefore, EPA is accepting the 16.5 percent PM–10 emission reduction credit that IDEQ claims will result from implementation of the wood stove change-out program.

(4) Home Weatherization Program. Wood stove emissions can be reduced slightly through comprehensive weatherization programs that result in a reduction of the amount of fuel utilized. The Idaho Economic Opportunity Office offers free weatherization assistance to low income families. This assistance takes the form of an energy audit, which may result in insulation, weather stripping and heating system improvements.

Home weatherization improvements will be applied to all 90 households in which wood stove change-outs occur, using loans and grant money from Idaho Department of Water Resources, Farmers Home Administration, Washington Water Power and North Idaho Community Action Agency's Weatherization Division. At least 30 other homes will be targeted for weatherization improvements.

EPA's Guidance Document for Residential Wood Combustion Emission Control Measures, September 1989, generally recommends less than a five percent credit for home weatherization programs. However, IDEQ is claiming an eight percent credit for the Pinehurst home weatherization program for the following three reasons: a. Pinehurst has a higher than normal percentage of older, uninsulated homes; b. Shoshone County, which contains Pinehurst, has a high percentage of low income households, who in the past were unable to afford weatherization; and c. Pinehurst's cold winter climate results in a high number of heating degree days, which enables a home weatherization program to have more impact than it would in an area that possesses a warmer winter climate.

The eight percent reduction claimed from the program is only equivalent to a PM–10 decrease of 3.5 lbs/day (which equals a daily ambient PM–10 reduction of 1 μg/m^3). Therefore, this program will have only a slight impact on PM–10 levels during worst case days. Nonetheless, in light of IDEQ's reasoning that homes in Pinehurst are in need of weatherization, and that weatherizing 120 homes will result in lower fuel consumption and correspondingly less PM–10 emissions in the Pinehurst nonattainment area, EPA is accepting the eight percent credit claimed by IDEQ.

b. Other Sources. RACM (including RACT) does not require the imposition of controls on emissions from sources that are insignificant (i.e. de minimis) and does not require the implementation of all available control measures where an area demonstrates timely attainment and the implementation of additional controls would not expedite attainment (see 57 FR 13540–44).

IDEQ has determined, through its emission inventory analysis of the nonattainment area, that road dust contributed 38 percent of the PM–10 concentration on the worst case days in base year 1988. IDEQ demonstrated timely attainment of the 24-hour PM–10 NAAQS by controlling wood smoke. Therefore, RACM does not require road dust control measures. Furthermore, RACM does not require the implementation of controls for prescribed silvicultural and agricultural burning for the Pinehurst nonattainment area, because the area is not significantly impacted by those activities on worst case days, according to the emission inventory analysis.

Similarly, RACT does not require the implementation of control technology for sources of PM–10 in the nonattainment area, because the area is primarily characterized by residential and commercial uses which are not subject to RACT requirements. There are no major stationary sources operating in the Pinehurst PM–10 nonattainment area.

A more detailed discussion of the control measures contained in the SIP and an explanation as to why certain available control measures were not implemented, can be found in IDEQ's submittal and in the TSD. EPA has reviewed IDEQ's submittal and associated documentation and concluded that they adequately justify the control measures to be implemented. The implementation of the Pinehurst, Idaho PM–10 nonattainment plan control strategy will result in the attainment of the PM–10 NAAQS as expeditiously as practicable—by December 31, 1994. By this notice, EPA is approving IDEQ's control strategy as satisfying the RACM (including RACT) requirement.

4. Demonstration

Moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, the State must show attainment by December 31, 1994, is impracticable. The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter (μg/m^3), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m^3 is equal to or less than one (see 40 CFR 50.6). The annual PM–10 NAAQS is 50 μg/m^3, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m^3 (id.).

IDEQ utilized an attainment demonstration for Pinehurst based upon proportional rollback modeling supported by a complete emission inventory, receptor modeling and WYNDvalley, a non-guideline dispersion model.

The receptor modeling consisted of using the Chemical Mass Balance (CMB) version 7.0 air quality model to analyze for days during 1988–1990 when 24-hour PM–10 concentrations were either elevated or exceeded the NAAQS. CMB results from ten PM–10 filters showed that on the average residential wood smoke and fugitive dust were responsible for 77 and 18 percent, respectively, of the PM–10 on high concentration days. The CMB percentages for residential wood smoke and fugitive dust are greater and lower, respectively, than those that were determined from the emission inventory, but the CMB analysis still confirms that residential wood combustion is the major source of PM–10 on worst case days in the Pinehurst nonattainment area. Therefore, these results support IDEQ's reliance on wood smoke control strategies to attain the PM–10 standard.

The IDEQ used version 3.06 of the WYNDvalley dispersion model to simulate PM–10 concentrations in Pinehurst during a wintertime stagnation episode. WYNDvalley was chosen because of the model's ability to handle both the light wind conditions and complex terrain that significantly help trap PM–10 air pollution in the Pinehurst PM–10 nonattainment area. Also, the WYNDvalley dispersion model was used because Pinehurst is dominated by area sources (wood smoke and fugitive road dust) and lacks any major point source impacts. The modeled stagnation event began on January 20, 1988 and continued through January 30, 1988. Pinehurst's design value exceedance of 183 μg/m^3 was measured on January 28, during this stagnant period. The WYNDvalley model showed that the maximum PM–10 values occurred at or near the Pinehurst school, agreeing with results found in the January-March 1989 CMB/saturation study. Therefore, the model helped verify that the Pinehurst PM–10 monitor is situated in the area of maximum PM–10 impact.

The attainment demonstration indicates that Pinehurst will attain the 24-hour PM–10 NAAQS by December 31, 1994, with the maximum 24-hour concentration predicted to be 143 μg/m^3 (which is the result of the proposed control measures reducing the projected 1994 maximum PM–10 emissions from 484.8 to 375.9 lbs/day).

According to EPA's review, which identified incomplete quarterly data in 1986 and corrected for the use of non-reference PM–10 data in 1986 and 1987 (i.e. Hi-Vol SA321A gravimetric PM–10 sampler), Pinehurst has never violated the annual arithmetic mean PM–10 standard. The highest valid three-year annual average at Pinehurst is 46 μg/m^3, during 1987–1989, while the lowest three-year average is 36 μg/m^3, during 1990–1992. Therefore, IDEQ and EPA believe that because the annual PM–10 standard has never been violated at Pinehurst, and the 24-hour PM–10 controls have helped reduce annual concentrations (as evidenced in the downward trend in the annual average concentrations), it is reasonable to predict that the area will continue to meet the annual standard and the standard will not be violated in 1994.

EPA is finding that the modeling analysis is adequate to demonstrate timely attainment of the PM–10 NAAQS in Pinehurst. The control strategies used to achieve attainment are summarized in the section titled "RACM (including RACT)." A more detailed description of the attainment demonstration is contained in the TSD accompanying this notice.

It should be noted that the 1997 maintenance demonstration, supplied by IDEQ, shows that Pinehurst will remain in attainment for both the 24-hour and annual PM–10 NAAQS through 1997. According to IDEQ's calculations, which were partially based on a 1994 Washington Water Power residential heating survey for the Pinehurst area, the maximum 24-hour PM–10 concentration in 1997 will be 127 μg/m^3. This 1997 24-hour value is equivalent to a PM–10 emission rate of 332 lbs/day. Furthermore, the annual arithmetic standard will be maintained from 1994–2000, with the maximum annual average value of 47.2 μg/m^3 (occurring in the year 2000). This aforementioned concentration is equivalent to a PM–10 emission rate of 47.0 tons/year. This 1997 maintenance demonstration satisfies part of the quantitative milestones/reasonable further progress requirement (see CAA section 189(c)).

5. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the CAA).

While section 189(c) plainly provides that quantitative milestones are to be achieved until an area is redesignated attainment, it is silent in indicating the starting point for counting the first three-year period or how many milestones must be initially addressed. In the General Preamble, EPA addressed the statutory gap in the starting point for counting the three-year milestones, indicating that it would begin from the due date for the applicable implementation plan revision containing the control measures for the area (i.e., November 15, 1991 for initial moderate PM–10 nonattainment areas) (see 57 FR 13539).

As to the number of milestones, EPA believes that at least two milestones must be initially addressed. Thus, submittal to address the SIP revisions due on November 15, 1991 for the initial moderate PM–10 nonattainment areas must demonstrate that two milestones will be achieved (First milestone: November 15, 1991 through November 15, 1994; Second milestone: November 15, 1994 through November 15, 1997).

For the initial PM–10 nonattainment areas that demonstrate attainment, the emissions reduction progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (46 days beyond the November 15, 1994 milestone date) will satisfy the first quantitative milestone. The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations (see 57 FR 13539). For such areas that demonstrate timely attainment of the PM–10 NAAQS, the second milestone should, at a minimum, provide for continued maintenance of the standards.[5]

This SIP demonstrates attainment by December 31, 1994 and maintenance through December 31, 1997, satisfying two milestones. Therefore, the submittal satisfies the quantitative milestones currently due. Accordingly, EPA is approving the SIP for Pinehurst relative to the quantitative milestone requirement.

Finally, once a milestone has passed, the State will have to demonstrate that the milestone was, in fact, achieved for the Pinehurst area as provided in section 189(c)(2) of the Act.

6. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–13540 and 13541–13542).

The filter analyses (chemical mass balance) indicated that, on average, less than 4 percent of the PM–10 mass was comprised of secondary particulate on high concentration days. EPA believes that this is an insignificant portion and, therefore, is proposing to grant the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM–10 precursors.

Note that while EPA is making a general finding for this area about precursor contribution to PM–10 NAAQS exceedances, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by IDEQ and EPA (see sections 172(c)(6), 110(a)(2)(A) of the CAA and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions are set forth in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et. al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C) of the CAA).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to residential wood combustion activities. The SIP provides that the control measures for the affected activities apply throughout the entire nonattainment area.

The SIP provided that all affected activities would be in full compliance with the implementation of applicable control measures by December 10, 1993. However, funding problems has delayed implementation of the wood stove change-out and home weatherization programs until the summer of 1994.

IDEQ is responsible for running the voluntary episodic wood burning curtailment and public awareness programs. The curtailment program for Pinehurst is part of a statewide program that evaluates air quality and meteorological parameters in the PM–10 nonattainment areas on a daily basis, during November 1 through the end of February, and declares burning bans as necessary. The public awareness program is a broad-based strategy designed for the entire Silver Valley (which includes the Pinehurst NAA). IDEQ, through the Pinehurst Particulate (PM–10) Air Quality Improvement Plan and supporting documentation, commits to carrying out the curtailment and public awareness programs in Pinehurst. If either of these two measures are discontinued without EPA and public approval, then the State of Idaho would be subject to a findings letter for non-implementation of an approved part of the plan (see section 179(a)(4) of the CAA). This in turn could result in Federal sanctions imposed against the State and the loss of State base grant funds.

IDEQ's submittal and the TSD contain further information on enforceable requirements. The TSD also contains a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543–13544). These measures were required to be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon

[5] Section 189(c) of the Act provides that quantitative milestones are to be achieved "until the area is redesignated attainment." However, this endpoint for quantitative milestones is speculative because redesignation of an area as attainment is contingent upon several factors and future events. Therefore, EPA believes it is reasonable for States to initially address at least the first two milestones. Addressing two milestones will ensure that the State continues to maintain the NAAQS beyond the attainment date for at least some period during which an area could be redesignated attainment. However, in all instances, additional milestones must be addressed if an area is not redesignated attainment.

a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline.

Contingency measures for the Pinehurst PM–10 nonattainment area have not yet been submitted by IDEQ. A findings letter, dated January 13, 1994, was mailed to the Governor of Idaho which informed him that the State had failed to make the required PM–10 contingency measures submittal for Pinehurst. The State has until July 13, 1995 to correct this deficiency for Pinehurst, or it will face federal highway or offset sanctions (see section 179 of the CAA).

EPA intends to take action on the contingency measures for the Pinehurst PM–10 nonattainment area when the requirement is submitted, or intends to impose sanctions in the event this deficiency is not corrected.

III. Implications of This Action

EPA is approving the plan revision submitted to EPA on April 14, 1992 for the Pinehurst nonattainment area. Among other things, IDEQ has demonstrated that the Pinehurst moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994.

IV. Administrative Review

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

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 24, 1994 unless, by September 26, 1994 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 24, 1994.

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

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

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 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review 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), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: July 5, 1994.

Gerald A. Emison,

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 N—Idaho

2. Section 52.670 is amended by adding paragraph (c)(28) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(28) On April 14, 1992, the State of Idaho submitted a revision to the SIP for Pinehurst, ID, for the purpose of bringing about the attainment of the national ambient air quality standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

(i) Incorporation by reference.

(A) April 7, 1992 letter from Idaho Department of Health and Welfare to EPA Region 10 submitting the Pinehurst Particulate Air Quality Improvement Plan as a revision to the Implementation Plan for the Control of Air Pollution in the State of Idaho. The plan has been adopted in accordance with the authorities and requirements of the Federal Clean Air Act and the Idaho Environmental Protection and Health Act (Idaho Code section 39–10/*et seq*).

(B) SIP revision for Pinehurst Particulate Air Quality Improvement Plan, February 5, 1992 (adopted on April 7, 1992).

[FR Doc. 94–20810 Filed 8–24–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 83–2–6581a FRL–5030–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.