enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA from basing 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. section 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petition for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 1997. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: March 4, 1997.

Jerry Clifford,

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 GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(65) A revision to the New Mexico State Implementation Plan: New Mexico Administrative Code Title 20 Chapter 2 Part 98 ''Conformity of General Federal Actions to the State Implementation Plan'', as adopted on June 14, 1996, by the New Mexico Environmental Board, and filed with the State Records Center on June 19, 1996, was submitted by the Governor on July 18, 1996.

(i) Incorporation by reference.

(A) New Mexico Administrative Code Title 20 Chapter 2 Part 98 ''Conformity of General Federal Actions to the State Implementation Plan'', as adopted on June 14, 1996, filed with the State Records Center on June 19, 1996, and effective on August 2, 1996.

[FR Doc. 97–7692 Filed 3–25–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, and 178

[Docket No. HM–181H; Amdt. Nos. 172–150, 173–255, 178–117]

RIN 2137–AC80

Performance-Oriented Packaging Standards; Final Transitional Provisions; Revisions and Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; editorial revisions and response to petitions for reconsideration.

SUMMARY: On September 26, 1996, RSPA published a final rule which amended the Hazardous Materials Regulations to incorporate a number of changes based on rulemaking petitions from industry, RSPA initiatives and comments received at public meetings, to the classification of certain hazardous materials which are poisonous by inhalation and to provisions for the manufacture, use, and reuse of hazardous materials packagings. The intended effect of the September 26, 1996 rule is to improve safety, reduce compliance costs to offerors and transporters of hazardous materials, make the regulations easier to use and correct errors. This final rule corrects errors in the September 26, 1996 final rule and responds to petitions for reconsideration. This final rule also publishes two letters denying petitions for reconsideration of a provision in the September 26, 1996 final rule.

DATES: The amendments in this final rule are effective March 26, 1997.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, telephone (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Washington DC, 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1990, RSPA published a final rule [Docket HM–181; 55 FR 52402], which comprehensively revised the HMR with respect to hazard communication, classification, and

packaging requirements based on the United Nations (UN) Recommendations on the Transport of Dangerous Goods (UN Recommendations). A document responding to petitions for reconsideration and containing editorial and substantive revisions to the final rule was published on December 20, 1991 [56 FR 66124]. On October 1, 1992, under Dockets HM–181 and HM–189, RSPA issued editorial and technical corrections to the regulations published in 1991. On September 24, 1993, RSPA issued a final rule under Docket HM–181F [58 FR 50224] which made changes to the HMR based on agency initiative and petitions for rulemaking received since the December 20, 1991 response to petitions for reconsideration. That final rule primarily revised requirements with a mandatory compliance date of October 1, 1993, as provided in the transitional provisions in § 171.14(b)(4).

RSPA published a notice of proposed rulemaking (NPRM) on June 26, 1996, under Docket HM–181H [61 FR 33216] to address most remaining issues associated with the implementation of Docket HM–181 provisions and certain other issues arising from a final rule issued December 29, 1994, under Docket HM–215A [59 FR 67390]. These issues were raised through petitions for rulemaking and agency initiative.

In the September 26, 1996 final rule, RSPA adopted changes to numerous requirements with a compliance date of October 1, 1996. These changes amended provisions concerning hazard classification, the maintenance and use of performance packaging, intermediate bulk containers (IBC), portable tanks, and regulated medical waste.

Following publication of the final rule, RSPA received several petitions for reconsideration, as well as other correspondence identifying errors or requesting clarification. This document incorporates editorial and technical revisions RSPA has determined are necessary to correct or clarify the final rule.

Because the amendments adopted herein clarify and correct certain provisions of the September 26, 1996 final rule, and impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective without the usual 30-day delay following publication.

II. Summary of Regulatory Changes Made by Section

Listed below is a section-by-section summary of the changes.

Part 172

Section 172.101. Newly added paragraph (c)(10)(iii) is revised for consistency with newly revised paragraph (c)(12)(iii).

Section 172.101; the Hazardous Materials Table (HMT). In the Docket HM–181H NPRM, a packaging exception was proposed for ''Magnesium powder *or* Magnesium alloys, powder'' in Packing Groups II and III. However, the final rule did not indicate this exception was limited to Packing Groups II and III and it could be inferred that a packaging exception is authorized for Magnesium powder in Packing Group I. This final rule clarifies that no packaging exception is authorized for this material in PG I by revising Column (8A) of the HMT to read ''None''.

Part 173

Section 173.28. The footnote to the minimum thickness table in paragraph (b)(4) is revised to clarify that drums having a minimum thickness of 0.82 mm body and 1.09 mm heads which were manufactured and marked prior to January 1, 1997 may be reused.

Section 173.134. RSPA received two petitions for reconsideration of a provision to authorize certain discarded cultures and stocks of infectious substances to be described and packaged as regulated medical waste rather than infectious substances. On February 11, 1997, RSPA denied a petition for reconsideration from Browning Ferris Industries and on February 13, 1997, RSPA denied a petition for reconsideration from the Medical Waste Institute. This document publishes verbatim the two letters as follows:

February 11, 1997.

Ms. Mary Ellen Lynch,

Director of Environmental Policy, Browning Ferris Industries, 1350 Connecticut Avenue, NW., Suite 1101, Washington, DC 20036.

Dear Ms. Lynch: This letter responds to Browning Ferris Industries'' (BFI) October 25, 1996 petition for reconsideration of the provision in the Research and Special Programs Administration's (RSPA) final rule (61 FR 50616; September 26, 1996) in Docket HM–181H that expands the definition of regulated medical waste to include waste cultures and stocks of infectious substances. RSPA denies BFI's petition for reconsideration for reasons set forth in the following paragraphs.

Prior to the HM–181H final rule, 49 CFR 173.134(a)(4) limited the definition of regulated medical waste to exclude waste cultures and stocks of infectious substances. The final rule in Docket HM–181H added a new paragraph (b)(4) to Section 173.134 authorizing certain waste cultures and stocks (i.e., those in Biosafety Levels 1, 2 and 3, as defined in the Department of Health and Human Services' (HHS) Publication No. (CDC) 93–8395, *Biosafety in Microbiological and Biomedical Laboratories*, 3rd edition, May 1993, Section II) to be described and packaged as regulated medical waste rather than infectious substances. This action resulted in those materials being authorized in non-bulk UN packagings that conform to Packing Group II performance requirements.

In its October 25, 1996 petition, BFI petitions RSPA to reconsider revisions to 49 CFR 173.134 in light of regulations proposed on June 10, 1996 (61 FR 29327), by HHS's Centers for Disease Control and Prevention (CDC). The CDC issued its final rule, entitled *Additional Requirements for Facilities Transferring or Receiving Select Agents*, on October 24, 1996 (61 FR 55190).

In its petition, BFI made three major assertions, which are quoted, as follows:

RSPA failed to consider the pending CDC regulations prior to promulgating a final regulations (sic) for packaging and transportation of cultures and stocks of infectious substances.

Given the Congressionally mandated regulatory scheme now pending before CDC, it is neither reasonable nor in the public interest for RSPA to impose another more burdensome regulatory scheme on the same materials and for the same purpose of regulating the interstate (as well as intrastate) transportation of infectious agents—including discarded cultures and stocks of infectious agents—that could have adverse consequences for human health and safety.

RSPA should reconsider the final Section 173.134 rule and promulgate a final rule that is consistent with the final CDC rule governing shipping and handling requirements for facilities that transfer and receive select infectious agents that have the potential to pose a severe threat to public health and safety. Discarded cultures and stocks of infectious substances other than those included on the CDC Appendix A list should be regulated as regulated medical waste pursuant to 49 CFR Part 173.134, including the packaging regulations of that provision.

With regard to the first assertion, when RSPA published its final rule on September 26, 1996, the CDC had not yet issued its final rule. At the time RSPA was developing its final rule, CDC had issued only a notice of proposed rulemaking (NPRM). RSPA was not in a position to prejudge the provisions of the CDC final rule. Because numerous changes could have been made before the rule was finalized, RSPA did not rely on the NPRM. In fact, CDC solicited comments regarding those agents to be added or deleted from the proposed list and in its final rule changed the list of select agents that BFI asserts RSPA should have considered. In its final rule, CDC added, revised, and removed numerous entries from its proposed rule.

With regard to the second assertion, RSPA has not imposed ''another more burdensome regulatory scheme on the same materials and for the same purpose of regulating the interstate (as well as intrastate) transportation of infectious agents''. CDC and RSPA have jointly regulated infectious substances (or

''etiologic agents'') under different statutory authority for many years and have taken steps to ensure consistency between the two agencies' regulations and avoid unnecessary overlap of requirements. The final CDC regulations address different issues than the HMR and focus on additional requirements for facilities that transfer or receive specified select agents that are capable of causing substantial harm to human health. In its preamble to its final rule, CDC states:

Several commenters were concerned about shipping select agents and about acceptable carriers and carrier responsibilities. Nothing in this final rule is intended to preempt other applicable regulations. Select agents included under this final rule are required to be packaged, labeled and shipped in accordance with all applicable federal regulations. CDC believes that compliance with existing federal regulations on packaging, labeling and shipping select agents, in combination with the transfer requirements of this final rule, provide sufficient safeguards for safe and secure transport.

In summary, the RSPA and CDC final rules address different concerns and do not impose an overlapping scheme on the same materials for the same purpose. Compliance with both rules is feasible.

Also pertaining to BFI's second assertion, RSPA has not imposed ''a more burdensome regulatory scheme''. The June 26, 1996 NPRM for HM–181H proposed only to incorporate provisions of an exemption, DOT–E 11588, into the regulations. DOT–E 11588 authorized waste cultures and stocks in Biosafety Levels 1, 2, and 3 (as defined in HHS Publication No. 93–8395) to be described and packaged as regulated medical waste rather than infectious substances. The HM–181 final rule is consistent with the NPRM and represents a relaxation of the regulatory scheme for these waste materials.

With regard to BFI's third assertion, RSPA believes that BFI's concern is that select agents could be transported as regulated medical waste rather than as infectious substances. RSPA agrees with BFI that it would be inappropriate for these virulent agents to be transported in the lower integrity packagings which are permitted for regulated medical waste. The CDC final rule makes it clear (see preamble discussion on page 55193) that select agents must be destroyed on-site and may not be transported for disposal (i.e., as waste) unless they have first been treated and destroyed. Therefore, it is RSPA's position that a culture or stock of a select agent cannot become a regulated medical waste under 49 CFR 173.134 because the CDC regulations for destruction on-site preclude its being offered for transportation as a waste.

For the above reasons, your petition for reconsideration is denied. If BFI has additional information which it believes would warrant further rulemaking action on this issue, we recommend that it submit a petition for rulemaking under 49 CFR 106.31 outlining the recommended changes it believes should be made to the HMR, and including the additional justification.

Sincerely,

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

February 13, 1997.

Richard S. Moskowitz, Esq.,

Medical Waste Institute, 4301 Connecticut Avenue, NW., Suite 300, Washington, DC 20008.

Dear Mr. Moskowitz: This letter is in response to the Medical Waste Institute's (the Institute) October 23, 1996 petition for reconsideration of the provision in the Research and Special Programs Administration's (RSPA) final rule (61 FR 50616; September 26, 1996) in Docket HM–181H that authorizes discarded cultures and stocks of infectious substances to be described and packaged as regulated medical waste. RSPA denies the Institute's petition for reconsideration of the final rule in Docket HM–181H.

The Institute alleged that RSPA dismissed two requests submitted by the Institute in its comments to the June 26, 1996 notice of proposed rulemaking (NPRM). The first request was to allow discarded cultures and stocks to be packaged in packagings (herein referred to as ''OSHA-authorized packaging'') conforming to bloodborne pathogen standards of the Department of Labor's Occupational Safety and Health Administration (OSHA), which are permitted for other regulated medical waste under Section 173.134(b)(3)(ii). The Institute also requested that RSPA allow private carriers transporting cultures and stocks of infectious substances to backhaul non-food products in trailers that are properly disinfected. The Institute asserted that these two requests were within the scope of the rulemaking in Docket HM–181H and requested that RSPA reconsider these ''dismissals.''

In support of its first request, the Institute asserted that OSHA-authorized packaging has a ''proven track record'' in ensuring that the public is protected from exposure to hazardous material and that it is aware of no incident where a failure of an OSHA-authorized packaging resulted in a harmful release of discarded cultures and stocks. The Institute also maintained, in support of its second request, that there is no evidence of a health risk nor any recorded incident of disease transmission resulting from backhauling.

In a September 20, 1995 final rule on infectious substances (Docket HM–181G), waste cultures and stocks were excluded from the definition of regulated medical waste and were subject to requirements applicable to non-waste cultures and stocks of infectious substances. In the preamble to that final rule, RSPA noted that several commenters agreed that cultures and stocks contain a high concentration of microorganisms that have the potential to cause disease in humans or animals and require special handling. The final rule required cultures and stocks of infectious substances, including waste, to be in high integrity packagings conforming to Section 178.609.

Subsequent to the Docket HM–181G final rule, RSPA issued an exemption, DOT–E 11588, which authorized discarded cultures and stocks in Biosafety Levels 1, 2, and 3 (as defined in HHS Publication No. 93–8395) to be described and packaged as regulated medical waste rather than infectious substances. As an alternative to more stringent packagings for infectious substances prescribed in Section 178.609, RSPA authorized UN standard packagings meeting Packing Group II performance levels, but imposed additional safety controls by requiring dedicated vehicles operated by specialized (i.e., private and contract) carriers. In granting this exemption, RSPA intentionally excluded non-specification OSHA-authorized packaging permitted for other regulated medical waste under Section 173.134(b)(3)(ii), and specifically stated in the exemption that this packaging was not authorized because these packagings provide a lower level of safety than other packagings authorized for infectious substances. In addition, RSPA evaluated modal requirements prior to issuance of DOT–E 11588 and concluded that only private or contract motor carriers using vehicles dedicated to the transportation of medical waste are authorized.

The June 26, 1996 NPRM proposed only to incorporate the provisions of DOT–E 11588 into Section 173.134 of the regulations. The NPRM did not propose, nor request comments concerning, any further relaxation of packaging requirements beyond that provided in the exemption. There are no regulatory provisions for use of packagings of lesser integrity and RSPA is not aware of a ''proven track record'' for such packagings. The Institute's petition for a lower level of packaging safety than adopted in the HM–181H final rule is unjustified based on the information provided by the Institute and presents safety concerns that have not been fully analyzed. Similarly, the request to allow private carriers transporting discarded cultures and stocks of infectious substances to backhaul ''non-food products'' in trailers that are ''properly disinfected'' raises technical issues not addressed in the NPRM (e.g., standards for cleaning and defining criteria for ''non-food products'') and raises safety concerns about the ''proper'' disinfection of trailers and allowing non-food products, including consumer products, to come into contact with medical waste residue.

Both of these requested changes to the HMR raise technical and safety issues that have not been fully analyzed and resolved. At the present time, RSPA does not have the information required to analyze and address these issues. Any further relaxation of packaging performance level or revisions to authorize private carriers transporting cultures and stocks of infectious substances to backhaul non-food products in the same vehicles would necessitate additional notice and opportunity for comment, as required by the Administrative Procedure Act, 5 U.S.C. 553 (b) and (c). Therefore, RSPA is denying the petition for reconsideration of the final rule in Docket HM–181H.

A petition for rulemaking may be a more appropriate means to address the two changes to the HMR proposed by the Institute. The Institute may submit a petition

for rulemaking under Section 106.31 outlining any specific changes it believes should be made to the HMR, and include information sufficient to warrant further rulemaking action.

Sincerely,

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Section 173.170. The first sentence in paragraph (c) is amended by changing the maximum net capacity of each inner metal or plastic receptacle from 450 g (15.9 ounces) to 454 g (16 ounces).

Part 178

Section 178.2. A new paragraph (f) is added to clarify that packagings may no longer be manufactured and marked to old DOT specifications which were removed in the final rule under Docket HM–181. This new paragraph replaces a similar prohibition that was removed from the transitional provisions in § 171.14 in the September 26, 1996 final rule.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

The economic impact of this rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

The September 26, 1996 final rule, as amended herein, was analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material, and requirements respecting the number, content, and placement of such documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements in the September 26, 1996 final rule will be January 1, 1997.

C. Regulatory Flexibility Act

This final rule responds to petitions for reconsideration and agency review. It is intended to make editorial and technical corrections, provide clarification of the regulations and relax certain requirements. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 172.101, paragraph (c)(10)(iii) is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(10) * * *

(iii) A mixture or solution not identified in the Table specifically by name, comprised of two or more hazardous materials in the same hazard class, shall be described using an appropriate shipping description (e.g., ''Flammable liquid, n.o.s.''). The name that most appropriately describes the material shall be used; e.g., an alcohol not listed by its technical name in the Table shall be described as ''Alcohol, n.o.s.'' rather than ''Flammable liquid, n.o.s.''. Some mixtures may be more appropriately described according to their application, such as ''Coating solution'' or ''Extracts, flavoring liquid'' rather than by an n.o.s. entry. Under the provisions of subparts C and D of this part, the technical names of at least two components most predominately contributing to the hazards of the mixture or solution may be required in association with the proper shipping name.

* * * * *

§ 172.101 [Amended]

3. In § 172.101, in the Hazardous Materials Table, for the entry

''Magnesium powder or Magnesium alloys, powder'' in PG I, in column 8A, the entry ''151'' is revised to read ''None''.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5102–5127; 49 CFR 1.53.

5. In § 173.28, in the table in paragraph (b)(4)(i), the footnote is revised to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

[1] Metal drums or jerricans with a minimum thickness of 0.82 mm body and 1.09 mm heads which are manufactured and marked prior to January 1, 1997 may be reused. Metal drums or jerricans manufactured and marked on or after January 1, 1997, and intended for reuse, must be constructed with a minimum thickness of 0.82 mm body and 1.11 mm heads.

* * * * *

§ 173.170 [Amended]

6. In § 173.170, in the first sentence of paragraph (c), the wording ''450 g (15.9 ounces)'' is revised to read ''454 g (16 ounces)''.

PART 178—SPECIFICATIONS FOR PACKAGINGS

7. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. In § 178.2, a new paragraph (f) is added to read as follows:

§ 178.2 Applicability and responsibility.

* * * * *

(f) No packaging may be manufactured or marked to a packaging specification that was in effect on September 30, 1991, and that was removed from this part 178 by a rule published in the **Federal Register** on December 21, 1990 and effective October 1, 1991.

Issued in Washington, DC on March 20, 1997, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–7558 Filed 3–25–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC00

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Plants and Threatened Status for Five Plants From Vernal Pools in the Central Valley of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for three plants, *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), and *Tuctoria greenei* (Greene's tuctoria); and threatened status for five plants, *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover), *Chamaesyce hooveri* (Hoover's spurge), *Neostapfia colusana* (Colusa grass), *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), and *Orcuttia tenuis* (slender Orcutt grass). Between publication of the proposed and final rules for these species, the Service determined that *Orcuttia inaequalis*, which was originally proposed as endangered, should be listed as threatened due to lesser immediacy and magnitude of threats to its existence. These species grow in the basins and margins of vernal pools of the Central Valley of California. Habitat loss and degradation due to urbanization, agricultural land conversion, livestock grazing, off-highway vehicle use, a flood control project, a highway project, altered hydrology, landfill projects, and competition from weedy nonnative plants imperil the continued existence of these species. This rule implements Federal protection and recovery provisions afforded by the Act for these eight plants.

EFFECTIVE DATE: April 25, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Sacramento Field Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite #130, Sacramento, California 95821–6340.

FOR FURTHER INFORMATION CONTACT: Ken Fuller at the above address or by telephone at 916/979–2120 or facsimile at 916/979–2128.

SUPPLEMENTARY INFORMATION:

Background

Vernal pools in the Central Valley of California were a common and widespread feature in pre-European times (Holland and Jain 1977). Although historic amounts of vernal pool habitat losses and annual loss rates have been disputed, Holland estimated that urbanization and other factors had eliminated 67 to 88 percent of the vernal pools in the Central Valley by 1973 (Holland 1978, and Robert Holland, consultant, *in litt.* 1992). Public comments and additional work regarding the number of remaining acres of vernal pool habitat in the Central Valley indicate the loss of vernal pool habitat is closer to 50 percent than 67 to 88 percent (59 FR 48139; R. Holland, pers. comm. 1996). The plants discussed herein grow only in vernal pools in California and have experienced minor to major population and habitat reductions throughout their respective ranges. California vernal pools are generally small, seasonally aquatic ecosystems that are inundated in the winter and dry slowly in the spring and summer, making a harsh, unique environment. Cyclical wetting and drying create an unusual ecological situation supporting a unique biota. Many plants and animals have evolved to possess such specific characteristics that these organisms cannot live outside these temporary pools. Four other listed species may occur with these plants: The vernal pool tadpole shrimp (Lepidurus packardi); conservancy fairy shrimp (Branchinecta conservatio); longhorn fairy shrimp (B. longiantenna); and vernal pool fairy shrimp (B. lynchi). However, no close associations are known between any of the listed shrimp species and the eight plants affected by this rule.

The Central Valley of California consists of the Sacramento Valley in the north half of the State and the San Joaquin Valley in the south half. Within the Central Valley, vernal pools are found in four physiographic settings, each possessing an impervious soil layer relatively close to the surface. These four settings include high terraces with iron-silicate or volcanic substrates, old alluvial terraces, basin rims with claypan soils, and low valley terraces with silica-carbonate claypans. Due to local topography and various geological populations, vernal pools are usually clustered into pool complexes. Pools within a complex typically are separated by a distance of a few to several meters and may form dense, interconnected mosaics of small pools or a more sparse scattering of large