recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. The average price for Native spearmint oil in 1997 was $11.00.

Alternatives to the proposal included not regulating the handling of spearmint oil during the 1999–2000 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1.3 million pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Thirty days is deemed appropriate because this rule would need to be effective as soon as possible to provide producers sufficient time prior to the beginning of the 1999–2000 marketing year to adjust their cultural and marketing plans accordingly. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.218 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.218 Salable quantities and allotment percentages—1999–2000 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,199,290 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,125,755 pounds and an allotment percentage of 55 percent.

Dated: November 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30673 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[FRL–6187–5]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program and Revision of the Specification for the Mixing Chamber Associated with Animal Toxicity Testing of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule extends the time period during which certain alternative analytical test methods may be used in the Federal reformulated gasoline (RFG) program to September 1, 2000. The time period for use of these alternative methods originally expired on January 1, 1997 and was previously extended to September 1, 1998. The purpose of today's proposed extension

is to grant temporary flexibility until a final performance-based analytical test method approach rulemaking is promulgated. EPA expects to finalize the performance-based analytical test method approach rulemaking before September 1, 2000. This proposed rule also makes certain revisions to the procedures applicable to health effects testing of fuels and fuel additives.

DATE: Comments must be received in writing by December 17, 1998.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed and to Joseph R. Sopata, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW (6406J), Washington, D.C. 20460. Materials relevant to this direct final rule have been placed in docket A–98–21 located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, D.C. 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Joseph R. Sopata, Chemist, Fuels & Energy Division, at (202) 564–9034. To notify EPA of an intent to submit an adverse comment or public hearing request, contact Joseph R. Sopata, (202) 564–9034, or Anne-Marie C. Pastorkovich, Attorney/Advisor, Fuels & Energy Division, (202) 564–8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this action are those that use analytical test methods to comply with the RFG program and manufacturers of fuels and fuel additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, analytical testing laboratories. Manufacturers of gasoline and diesel fuel. Manufacturers of additives for gasoline and diesel fuel.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists all types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in this table could also be regulated. To determine whether your business is regulated by this proposed action, you should carefully examine the applicability criteria in parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. RFG Standards & Test Methods Utilized at § 80.46

Section 211(k) of the Clean Air Act (the Act) requires that EPA establish standards for RFG to be used in specified ozone nonattainment areas (covered areas), as well as anti-dumping standards for non-reformulated, or conventional gasoline, used in the rest of the country, beginning in January 1995. The Act requires that RFG reduce VOC and toxics emissions from motor vehicles, not increase NO_X emissions, and meet certain content standards for oxygen, benzene, and heavy metals. EPA published the final RFG regulations in the **Federal Register** on February 16, 1994.[1]

Refiners, importers, and oxygenate blenders are required, among other things, to test RFG and conventional gasoline for various gasoline parameters or qualities, such as sulfur levels, aromatics, benzene, and so on. Based upon comments received from the regulated industry during the RFG and anti-dumping rulemaking, EPA concluded that it would be appropriate to temporarily allow the use of alternative analytical test methods for measuring the parameters of aromatics and oxygenates. Language was adopted in §§ 80.46(f)(3) and (g)(9)(i), which permitted the use of alternative analytical test methods for aromatics and oxygenates, respectively, until January 1, 1997. These sections were later amended by a November 13, 1996 final rule published in the **Federal Register** to permit the use of alternative analytical test methods for these two parameters until September 1, 1998.[2]

As explained in the February 16, 1994 final rule, the Agency will undertake a rulemaking to consider establishing a performance-based analytical test method approach for the measurement of the reformulated gasoline (RFG) parameters at § 80.46. The Agency envisions that a performance-based approach could provide additional flexibility to the regulated industry in its choice of analytical test methods to be utilized for compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method. The Agency further believes that establishment of a performance-based test method approach may help advance the purposes of the ''National Technology Transfer and Advancement Act of 1995,'' section 12(d) of Public Law 104–113 and Office of Management and Budget (OMB) Circular A–119.[3] In general, the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 are designed to encourage the adoption of standards developed by ''voluntary consensus bodies'' and to reduce reliance on government-unique standards ''where an existing voluntary standard would suffice.''[4] Today's proposed rule provides an extension of deadline for use of certain alternative test methods until such time as a notice-and-comment rulemaking to establish performance-based standards is

[1] The RFG and anti-dumping regulations are located at 40 CFR part 80, subparts D, E, and F. The final rule establishing the RFG and anti-dumping standards was published in the February 16, 1994 **Federal Register** at 59 FR 7716. Amendments were published at 59 FR 36944 (June 20, 1994), 59 FR 39258 (August 2, 1994), 59 FR 60715 (November 28, 1994), 60 FR 2699 (January 11, 1995), 60 FR 6030 (February 1, 1995), 60 FR 35488 (July 10, 1995), 60 FR 40006 (August 1, 1995), 60 FR 65571 (December 20, 1995), 61 FR 12030 (March 25, 1996), 61 FR 20736 (May 8, 1996), 61 FR 35673 (July 8, 1996), 61 FR 58304 (November 13, 1996), 62 FR 9872 (March 4, 1997), 62 FR 12572 (March 17, 1997), and 62 FR 30260 (June 3, 1997). EPA proposed several additional modifications to the RFG and anti-dumping regulations at 62 FR 37338 (July 11, 1997). Some of these proposed modifications were included in a final rule published at 62 FR 68196 (December 31, 1997), while others will be the subject of a future final rule. Please refer to the December 31, 1997 final rule for more information.

[2] See 61 FR 58304 (November 13, 1996).

[3] *See* ''OMB Circular A–119; Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' 63 FR 8546 (February 19, 1998).

[4] *Id.*

completed. Issues related to the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 will be appropriately explored in detail in connection with that rulemaking.

EPA originally expected to finalize action on such a rulemaking by September 1, 1998; however, the Agency now realizes that it will not complete rulemaking until after that date. Refiners and importers will need several months to determine whether these alternative methods qualify under the envisioned performance-based analytical test method approach. Therefore the Agency is proposing to extend the deadline for the use of alternative test methods at §§ 80.46(f)(3) and 80.46(g)(9) until September 1, 2000. This extension of the deadline would allow parties to make long-term purchasing decisions based on all the testing options that could be made available at the conclusion of the performance-based rulemaking. EPA reasonably expects to complete rulemaking before September 1, 2000.

III. Proposed Revision of the Specification for the Mixing Chamber Associated With Animal Toxicity Testing of Fuels and Fuel Additives at § 79.57(e)(2)(iii)(C)

The fuels and fuel additives registration program is authorized by section 211 of the Clean Air Act and codified at 40 CFR part 79. In accordance with sections 211(a) and (b)(1) of the Act, basic registration requirements applicable to gasoline and diesel fuel have been in existence since 1975. On June 27, 1994, EPA published a **Federal Register** document announcing final additional regulations for registration of designated fuels and fuel additives as authorized by sections 211(b)(2) and 211(e) of the Clean Air Act as amended in 1990.[5] The additional regulations require manufacturers, as part of the registration program, to conduct tests and submit information related to the health effects of their fuel and fuel additive products. The health effects testing requirements are organized in three tiers. Tier 1 requires analysis of combustion and evaporative emissions of fuels and fuel additives and a survey of existing scientific information on the public health and welfare effects of these emissions. Tier 2 requires manufacturers to conduct specified health effects tests to screen for adverse health effects of fuel and fuel additive emissions. Additional testing may be required under Tier 3 at EPA's discretion.

A provision of the health effects testing regulations requires that the emission moderation apparatus must function such that the average concentration of hydrocarbons leaving the apparatus shall be within 10 percent of the average concentration of hydrocarbons entering the mixing chamber. The Agency now believes that this specification for the mixing chamber (or any alternative emission moderation apparatus) at §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B) is likely unachievable in a typical laboratory setting. Additionally, the regulations require that the mean exposure concentration in the inhalation test chamber shall be within 10 percent of the target concentration for the single species being controlled on 90 percent or more of the exposure days and that daily monitoring of CO, CO_2, oxides of nitrogen, oxides of sulfur and total hydrocarbons in the exposure chamber shall be required. 40 CFR 79.57(e)(2)(iv)(B). EPA now believes that the required mean exposure concentration in the inhalation test chamber is unachievable for total hydrocarbons and particulate. The Agency believes that the reason that these specifications are unachievable for hydrocarbons and particulate is because of the cohesive qualities that such compounds share. These shared cohesive tendencies result in a tendency to fall out of the exposure atmosphere as it passes through the apparatus.

EPA believes that a more appropriate specification for particulate and hydrocarbon compounds would be 15%. The Agency believes the modified emission dilution requirements at §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B) will provide for sufficient quality control assurances and thereby negate the need for §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B).[6] Accordingly, the Agency is proposing to delete §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), and proposing to modify §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B).

IV. Additional Changes Related to Animal Toxicity Testing of Fuels and Fuel Additives

A. Vascular Perfusion Technique

Section 79.66(e)(5)(iii)(B) states that for the vascular perfusion technique, the animals shall be perfused in situ by a generally recognized technique.[7] Section 79.62(d)(7)(v) states that the lungs and trachea of the whole-body perfusion-fixed test animals are examined for inhaled particle distribution.

The methods for vascular perfusion cited in the regulation perfuse only the systemic vascular system with fixative. Using the methods cited, the lungs are neither fixed nor inflated. This is because no pressure (either air or fixative) is applied to the airways to counteract the pressure being applied through the blood vessels, so that the airspaces of the lungs collapse under the pressure from the vascular fixation. The collapsed, unfixed lungs are not useful for histopathological examination, or for examination of inhaled particle distribution.

EPA is proposing to modify the systemic vascular perfusion fixation procedure by including intratracheal instillation of the lungs with fixative via the trachea during the fixation process. This would preserve the lungs for examination and achieve the whole-body fixation needed for neurotoxicity endpoints.

B. Correction of Animal Numbers

Section 79.62(d)(1)(ii)(B) states, in part, ''Forty rodents, 25 females and 10 males . . .'' EPA is proposing to amend the section to reflect a correct total of 35 rodents.

V. Environmental and Economic Impacts

This proposed rule is expected to have no negative environmental impact. The proposed change in the deadline for the use of certain alternative test methods preserves the status quo of the RFG program and will result in no reduction in the emission benefits of the program. The proposed changes to the fuels and fuel additives registration

[5] The fuels and fuel additives registration regulations are located in 40 CFR part 79. Testing requirements for fuels and fuel additives are in subpart F. The final rule establishing these regulations was published in the June 27, 1994 **Federal Register** at 59 FR 33042. Amendments were published at 61 FR 36506 (July 11, 1996), 61 FR 58744 (November 18, 1996), 62 FR 12564 (March 17, 1997) and 62 FR 12572 (March 17, 1997).

[6] Sections 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B) did not previously contain reference to hydrocarbons, but are proposed to be modified to include specific requirements for both hydrocarbons and particulate. Sections 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), which are proposed to be deleted, specifically address hydrocarbons only, and would no longer be necessary.

[7] Standard techniques for vascular perfusion in the following references are cited: Zeman, W., and Innes, J.R.M., *Craigie's Neuroanatomy of the Rat* (New York: Academic, 1963); Hayat, M.A., ''Vol. 1. Biological applications,'' *Principles and Techniques of Electron Microscopy* (New York: Van Nostrand, Reinhold, 1970); and Spencer, P.S., and Schaumbur, H.H., (eds.). *Experimental and Clinical Neurotoxicology* (Baltimore: Williams and Wilkins, 1980).

regulations are not expected to have any negative environmental impact on the public health and environmental benefits associated with the fuels and fuel additives testing program. In fact, today's proposed changes with regard to health testing requirements add certainty and correct errors and, as a result, may enhance the benefits of the program.

Today's proposed regulation would have a positive impact on the great majority of entities regulated by the RFG regulation, because it permits continued flexibility with respect to the use of alternative test methods. This flexibility will continue through September 1, 2000 or until such time as EPA issues final regulations for performance-based analytical test methods. The proposed changes to the health effects testing requirements are minor and are not expected to result in any additional compliance costs for regulated parties.

VI. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this proposed 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 small governmental jurisdictions. Today's proposed regulation would have a positive economic impact on the great majority of entities regulated by the RFG regulation, including small businesses. Specifically, it would grant the regulated industry flexibility in the use of alternative test methods until September 1, 2000 (or until such time as EPA completes final rulemaking) and would correct certain errors in existing registration requirements for fuels and fuel additives. It is not expected to result in any additional compliance costs for regulated parties, including small entities. A regulatory flexibility analysis has therefore not been prepared.

VII. Executive Order 12866

Under Executive Order 12866[8], the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[9]

EPA has determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VIII. Paperwork Reduction Act

Today's proposed rule does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the applicable information collection requirements (ICRs) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the following OMB control numbers: 2060–0297 (''Registration of Fuels and Fuel Additives; Health-Effects Research Requirements for Manufacturers—40 CFR part 79, subpart F''), 2060–0150 (''Registration of Fuels and Fuel Additives: Requirements for Manufacturers''), and 2060–0277 (''Standards for Reformulated Gasoline''). Copies of these ICRs may be obtained from Sandy Farmer, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. Include the ICR title and/or OMB number in any correspondence. Nothing in today's proposed rule will result in any additional reporting, recordkeeping, testing, or other informational burdens.

IX. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, for any rule subject to section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a Federal mandate as defined in UMRA. The proposed rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Effects on Tribal, State, and Local Government Entities

This proposed rule would not establish any regulatory requirements which would significantly or uniquely affect tribal governments within the meaning of E.O. 13084, ''Consultation and Coordination with Indian Tribal Governments.''

XI. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule would not create a mandate on state, local or tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

[8] 58 FR 51736 (October 4, 1993).

[9] *Id.* at section 3(f)(1)–(4).

XII. Applicability of E.O. 13045: Children's Health Protection

This proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

Today's proposed rule extends the time period during which certain alternative analytical test methods may be used. This would preserve the status quo under the existing RFG program until such time as a performance-based test method rule is issued. The proposed extension will result in no reduction in the RFG program's environmental or health benefits and presents no health or safety risks that will adversely affect children.

Today's proposed changes and corrections to the health effects testing regulations for fuels and fuel additives will add certainty and facilitate compliance by regulated parties. As a result, any impact on children's health resulting from the proposed changes and corrections would reasonably be expected to be positive.

XIII. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA), Section 12(d) of Public Law 104–113, is designed to encourage the adoption of standards developed by ''voluntary consensus bodies'' and to reduce reliance on government-unique standards where existing voluntary standards would suffice.

Today's proposed rule would provide an extension of deadline for use of certain analytical test methods for the RFG program until such time as a notice-and-comment rulemaking to establish performance-based analytical test methods is completed. Today's action does not establish new technical standards or analytical test methods. The Agency plans to address the NTTAA in detail in an upcoming rulemaking to establish performance-based analytical test methods.

For a more detailed discussion, please refer to **SUPPLEMENTARY INFORMATION**, section II, ''RFG Standards and Test Methods Utilized at § 80.46,'' above.

List of Subjects

40 CFR Part 79

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling.

Dated: November 3, 1998.

Carol M. Browner,

Administrator.

For the reasons described in the preamble, parts 79 and 80 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 79—[AMENDED]

1. The authority citation for part 79 continues to read as follows:

Authority: 42 U.S.C. 7414, 7524, 7545, and 7601.

2. Section 79.57 is proposed to be amended by removing and reserving paragraphs (e)(2)(iii)(C) and (e)(2)(v)(B) and by revising paragraphs (e)(2)(iv)(B) and (e)(2)(vi)(B), to read as follows:

§ 79.57 Emissions Generation.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(C) [Reserved]

(iv) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, CO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

(v) * * *

(B) [Reserved]

(vi) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, NO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

3. Section 79.62 is proposed to be amended by revising paragraph (d)(1)(ii)(B), to read as follows:

§ 79.62 Subchronic toxicity study with specific health effects assessment.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) Thirty-five rodents, 25 females and ten males, shall be added for each test concentration or control group when combining a 90-day toxicity study with a fertility assessment.

* * * * *

4. Section 79.66 is proposed to be amended by adding a sentence to the end of paragraph (e)(5)(iii)(B), to read as follows:

§ 79.66 Neuropathology assessment.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) *Perfusion technique.* * * * In addition, the lungs shall be instilled with fixative via the trachea during the fixation process in order to preserve the lungs and achieve whole-body fixation.

* * * * *

PART 80—[AMENDED]

5. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

6. Section 80.46 is proposed to be amended by revising paragraphs (f)(3) and (g)(9) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) *Alternative test method.* (i) Prior to September 1, 2000, any refiner or importer may determine aromatics content using ASTM standard method D–1319–93, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Flourescent Indicator Adsorption,''for

purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) * * *

(9)(i) Prior to September 1, 2000, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C1 to C4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D–4815–93, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography,'' for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method set forth in paragraphs (g)(1) through (g)(8) of this section.

* * * * *

[FR Doc. 98–30402 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF02

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, and request for comments.

SUMMARY: The Fish and Wildlife Service (Service) is proposing regulations that would authorize for the next 5 years the incidental, unintentional take of small numbers of polar bears (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) during year-round oil and gas industry operations (exploration, development, and production) in the Beaufort Sea and adjacent northern coast of Alaska.

Under the provisions of the Marine Mammal Protection Act (Act), the Service will allow the taking of these marine mammals only if the Director of the Service finds, based on the best scientific evidence available, that the total of such taking for the 5 year period will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives. If these findings are made, the Service will establish specific regulations for the activity that set forth: permissible methods of taking; means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and requirements for monitoring and reporting.

Through the preparation of a draft Environmental Assessment, and the knowledge learned from four years of monitoring interactions between marine mammals and oil and gas industry activities, the Service has proposed a finding that the total expected takings of polar bear and walrus during oil and gas industry exploration, development and production activities would have a negligible impact on these species, and there would be no unmitigable adverse impacts on the availability of these species for subsistence uses by Alaska Natives.

DATES: Comments on the proposed rule must be received by December 11, 1998.

ADDRESSES: Written comments should be submitted by mail to Supervisor, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503. Comments may also be hand delivered to the same address. Comments and materials received in response to this proposal will be available for public inspection at this address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Bridges, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786–3800, FAX (907) 786–3816, or Internet John__Bridges@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Act gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service the authority to allow, on request by U.S. citizens [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographical region the incidental, but not intentional, taking of small numbers of marine mammals. The Service may grant permission for periods of up to 5 years.

If the Service finds, based on the best scientific evidence available, that the taking of marine mammals will have a negligible impact on the species or stock and will not have an ''unmitigable adverse impact'' on the availability of the species or stock for subsistence uses, the taking of marine mammals may be allowed. Also, the Service will publish regulations that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. The Service issues Letters of Authorization (LOA), upon request and receipt of appropriate data, to individual entities to conduct activities pursuant to the regulations.

The term *take* as defined by the Act means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment as defined by the Act, as amended in September 1994, ''* * * means any act of pursuit, torment, or annoyance which—

(i) Has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) Has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.''

As a result of 1986 amendments to the Act, the Service on September 29, 1989, published a final rule (54 FR 40338) amending 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) that included, among other things, a revised definition of ''negligible impact'' and a new definition for ''unmitigable adverse impact.'' Negligible impact is now defined as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' [50 CFR 18.27(c)]. ''Unmitigable adverse impact means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.'' Id.

Oil and gas exploration, development, and production activities conducted in marine mammal habitat risk violating the moratorium on the taking of marine mammals and, therefore, violating the terms of the Act. It is probable that in