

an entry "K.A.R. 28-19-210" in numerical order under the heading "General Provisions" to read as follows:

§ 52.870 Identification of plan.

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EPA—APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
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General Provisions				
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K.A.R. 28-19-210	Calculation of Actual Emissions.	11/22/93	01/11/00, 65 FR 1548.	
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[FR Doc. 00-15837 Filed 6-26-00; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS-400056B; FRL-6591-5]

RIN 2070-AC00

Phosphoric Acid; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting phosphoric acid from the list of chemicals subject to reporting requirements under section 313 of the Emergency Planning and

Community-Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA) in response to the United States District Court for the District of Columbia ruling that phosphoric acid does not meet EPCRA section 313(d)(2)(C) listing criterion. On April 15, 1999, the United States District Court reversed EPA's denial of a petition that The Fertilizer Institute (TFI) submitted to the Agency to delete phosphoric acid from the EPCRA section 313 list of toxic chemicals. By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on phosphoric acid that occurred during the 1999 reporting year, and for activities in the future.

EFFECTIVE DATE: This rule is effective June 27, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions

Coordinator, (202) 260-3882, e-mail: bushman.daniel@epa.gov, for specific information on this document, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: (703) 412-9877 or Toll free TDD: 1-800-553-7672. Information concerning this notice is also available on EPA's Web site at <http://www.epa.gov/tri>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture, process, or otherwise use phosphoric acid. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 <i>et seq.</i>), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis)
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the

applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA internet Home Page at <http://www.epa.gov/>. On the Home Page select

“Laws and Regulations” and then look up the entry for this document under the “**Federal Register**—Environmental Documents.” You can also go directly to the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. Information concerning this notice is also available on EPA’s Web site at <http://www.epa.gov/tri>.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-400056A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260-7099.

II. Introduction

A. What is the Statutory Authority for this Action?

EPA is finalizing this action under EPCRA section 313(d)(3) and (e)(1)(A), 42 U.S.C. 11023.

B. What is the General Background for this Action?

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA, 42 U.S.C. 13106. EPCRA section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Phosphoric acid was included on the initial list of chemicals and chemical categories.

EPCRA section 313(d) authorizes EPA to add chemicals to or delete chemicals

from the list and sets forth criteria for these actions. Under EPCRA section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list.

EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPA must demonstrate that none of the criteria are met. The EPCRA section 313(d)(2) criteria are:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

- (i) cancer or teratogenic effects, or
- (ii) serious or irreversible—
 - (I) reproductive dysfunctions,
 - (II) neurological disorders,
 - (III) heritable genetic mutations, or
 - (IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of

- (i) its toxicity,
- (ii) its toxicity and persistence in the environment, or
- (iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA refers to the section 313(d)(2)(A) criterion as the “acute human health effects criterion,” the section 313(d)(2)(B) criterion as the “chronic human health effects criterion,” and the section 313(d)(2)(C) criterion as the “environmental effects criterion.”

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for submitting petitions. EPA has issued a statement clarifying its interpretations of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61432, November 30, 1994) (FRL-4922-2).

III. Description of Petition and Related Proceedings

A. What Petition was Filed and How did EPA Respond?

On November 9, 1990, TFI filed a petition with EPA to delist phosphoric acid from the EPCRA section 313 list of toxic chemicals. Congress had included phosphoric acid on the list when it enacted EPCRA section 313 in 1986. In the petition, TFI argued that EPA should delete phosphoric acid because it did not meet any of the three listing criteria in EPCRA section 313(d)(2): The acute human health effects criterion, the chronic human health effects criterion, or the environmental effects criterion.

On January 23, 1998, EPA denied TFI’s petition, finding that phosphoric acid met the environmental effects listing criterion at EPCRA section 313(d)(2)(C), which provides that EPA may add or decline to delete a chemical if it “is known to cause or reasonably can be anticipated to cause, because of its toxicity . . . a significant adverse effect on the environment of sufficient seriousness . . . to warrant reporting” (63 FR 3566) (FRL-5762-2) (Ref. 1). EPA based the denial, among other things, upon phosphoric acid’s potential to cause eutrophication when released into certain water bodies.

B. What Other Proceedings Relate to this Petition?

On April 29, 1998, TFI challenged EPA’s denial of its petition in the United States District Court for the District of Columbia. *The Fertilizer Institute v. Browner*, No. 98-1067 (D.D.C.). In its challenge, TFI argued that phosphoric acid did not meet the environmental effects listing criterion because it was not toxic. TFI did not dispute that releases of phosphoric acid can cause eutrophication. It argued, however, that the eutrophication did not result “because of” phosphoric acid’s toxicity, but “because of” its nutrient value. TFI also argued that phosphoric acid was not toxic because its effects were indirect and that EPA’s interpretation of EPCRA section 313(d)(2)(C) read the term “toxicity” out of the statute.

EPA disagreed and argued, among other things, that: (1) Many chemicals that are nutrients are also toxic; (2) the number of steps between exposure and effect does not determine whether something is toxic; and (3) it was not reading “toxicity” out of the statute because there were situations in which a chemical could cause a significant adverse effect upon the environment for reasons other than any inherent toxicity.

The Court ruled in TFI's favor, granting TFI's motion for summary judgment on the toxicity issue and reversing EPA's denial of TFI's petition to delete phosphoric acid from the EPCRA section 313 toxic chemical list (Ref. 2). Notwithstanding its ruling, the Court agreed that phosphoric acid "can reasonably be anticipated to cause . . . a significant adverse effect on the environment" and that a listing decision under EPCRA section 313 could be based upon toxic effects that manifest indirectly. The Court, however, found that the "significant adverse effect" that phosphoric acid causes is not "because of its toxicity," but because of its nutrient value. The government did not appeal the Court's decision.

As a result of the Court's ruling, EPA proposed to delist phosphoric acid from the reporting requirements under EPCRA section 313 and section 6607 of the PPA on December 7, 1999 (64 FR 68311)(FRL-6397-3).

IV. What was EPA's Technical Review of the Effects of Phosphoric Acid?

A. What are the Acute Effects of Phosphoric Acid?

Based on available information, EPA cannot find that phosphoric acid meets the acute effects criterion at EPCRA section 313(d)(2)(A). Like many other acids, phosphoric acid may cause irritation and corrosive effects. The Poison Index states that "Phosphoric acid causes irritation of eyes, skin, and respiratory tract. When ingested it can produce nausea, vomiting, abdominal pain, bloody diarrhea, acidosis, shock and irritation or burns of the oropharyngeal mucosa esophagus and stomach" (Ref. 3). As with other corrosive or caustic materials, the extent of damage generally is determined by the acidity of the solution and the duration of contact. Phosphoric acid is weaker than the other strong mineral acids. Likewise, phosphoric acid is not expected to exist beyond facility site boundaries at a pH that will cause acute effects (Ref. 3). Thus, EPA has determined that it does not meet the EPCRA section 313(d)(2)(A) acute effects criterion.

B. What are the Chronic Effects of Phosphoric Acid?

Based on available information, EPA cannot find that phosphoric acid can reasonably be anticipated to cause a chronic human health effect. EPA has not found phosphoric acid to cause heritable genetic effects or developmental or reproductive toxicity in humans (Ref. 4). EPA has not found any information in the available

literature with which to evaluate the potential for phosphoric acid to cause carcinogenic or neurotoxic effects (Ref. 3). Several studies suggest that phosphoric acid may cause nephrocalcinosis in rats when administered in relatively high doses (Ref. 3). However, the doses that may cause such effects are somewhat uncertain since, even on diets without added phosphate, rats may have some isolated areas of renal calcification and the composition of the diet (e.g., the amount of calcium, acid-base balance, and vitamin D) can influence the appearance of the effects. EPA, therefore, does not believe that, at this time, there is sufficient information to conclude that phosphoric acid meets the EPCRA section 313(d)(2)(B) criterion.

C. What are the Environmental Effects of Phosphoric Acid?

As discussed in EPA's original denial of TFI's petition (63 FR 3566), phosphoric acid, as a source of phosphates, causes eutrophication (Ref. 5). Eutrophication is the nutrient enrichment of waters resulting in stimulation of an array of undesirable symptomatic changes in the aquatic ecosystem. Therefore, phosphoric acid can reasonably be anticipated to cause significant adverse effects on the environment.

Phosphoric acid, as well as other phosphates, has the potential to cause increased algal growth leading to eutrophication in the aquatic environment (Ref. 5). Eutrophication may result when excessive phosphates enter into an aquatic ecosystem in the presence of sunlight and nitrogen. The phosphate ion is a plant nutrient and it can be a major limiting factor for plant growth in freshwater environments. When levels of phosphate are limited, plant growth is controlled. In excess, however, phosphate from phosphoric acid can cause extreme algal blooms. Toxic effects result from oxygen depletion as the algae die and decay. Toxic effects have also been related to the release of decay products or direct excretion of toxic substances from sources such as blue-green algae. In addition, phosphates in aquatic environments may encourage the growth of introduced plants to the detriment of native plants and thereby change plant distribution (Refs. 5 and 6).

V. What is EPA's Response to Comments and Rationale for Delisting?

A. What Comments Did EPA Receive in Response to the Proposed Rulemaking?

EPA requested comments on its proposal to delete phosphoric acid from the EPCRA section 313 list of toxic chemicals. Specifically, EPA requested comment on whether phosphoric acid produces any toxic effects that meet the EPCRA section 313(d)(2)(A), (B), or (C) listing criteria. Such effects could include acute and chronic human health effects or environmental effects. Additional hazard information on phosphoric acid can be found in EPA's original petition denial (63 FR 3566).

EPA received 29 comments in response to the December 7, 1999 proposal to delete phosphoric acid from the EPCRA section 313 list of toxic chemicals (64 FR 68311). All of the comments that EPA received were in support of the delisting proposal. As a result and because no commenter raised issues that call into question the basis for the Agency's proposal, EPA does not consider the comments significant and is not otherwise responding to them.

B. What is EPA's Rationale for Delisting?

EPA has authority to delete a chemical from the EPCRA section 313 list of chemicals only if it fails to meet any of the EPCRA section 313(d)(2) criteria: the acute human health effects criterion (313(d)(2)(A)), the chronic human health effects criterion (313(d)(2)(B)), or the environmental effects criterion (313(d)(2)(C)). EPA's original denial of the petition to delist phosphoric acid was based on the finding that phosphoric acid met the EPCRA section 313(d)(2)(C) criterion for listing. The Court in *Fertilizer Institute* although recognizing that phosphoric acid can cause adverse effects on the environment, found that the effects do not occur because of phosphoric acid's toxicity. Therefore, according to the Court, phosphoric acid does not satisfy the EPCRA section 313(d)(2)(C) criterion. EPA scientists agree that phosphoric acid releases acid and do cause significant adverse effects on the environment. However, in keeping with the Court's decision, EPA proposed to remove phosphoric acid from the EPCRA section 313 list of toxic chemicals. The comments received on the proposal did not provide any information that demonstrates, consistent with the Court's decision, that phosphoric acid "(causes) or can reasonably be anticipated to cause, because of (1) its toxicity. . . , a significant adverse effect on the environment." Therefore, EPA is going

forward with the delisting of phosphoric acid.

VI. What is the Effective Date of this Final Rule?

This action becomes effective June 27, 2000. Thus, the last year in which facilities had to file a Toxics Release Inventory (TRI) report for phosphoric acid was 1999, covering releases and other activities that occurred in 1998.

EPCRA section 313(d)(4) provides that “[a]ny revision” to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with this chemical, that a chemical should not be included on the section 313 list of toxic chemicals, no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 (June 28, 1994).

VII. What are the References Cited in this Final Rule?

1. Phosphoric Acid; Toxic Chemical Release Reporting; Community Right-to-Know; Denial of Petition, 63 FR 3566, January 23, 1998.

2. *The Fertilizer Institute v. Browner*, No. 98-1067, Slip op. (D.D.C. April 15, 1999).

3. USEPA, OPPT. Memorandum from Janette Houk, Ph.D., Hazard Integrator, Chemical Review and Evaluation Branch, Health and Environmental Review Division. Re: Petition to Delist Phosphoric Acid. (February 14, 1990).

4. USEPA, OPPT. Memorandum from Michael C. Cimino, Ph.D., Biologist, Toxic Effects Section, Toxic Effects Branch, Health and Environmental Review Division. Re: Mutagenicity Review of Delist Petition for Phosphoric Acid. (February 9, 1990).

5. USEPA, OPPT. Memorandum from Ossi Meyn, Environmental Effects Branch, Health and Environmental Review Division. Re: Petition to Delist

Phosphoric Acid—Ecological Hazard. (February 27, 1990).

6. USEPA. South Florida Ecosystem Assessment. Monitoring for Adaptive Management: Implications for Ecosystem Restoration. (Interim Report). December 1996. EPA 904-R-96-008.

VIII. What are the Regulatory Assessment Requirements for this Action?

A. Executive Order 12866

This action, which deletes a chemical from the list of chemicals subject to reporting under EPCRA section 313 and PPA section 6607, eliminates an existing requirement to report and does not contain any new or modified requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), because OMB has determined that the complete elimination of an existing requirement is not a “significant regulatory action” subject to review by OMB under E.O. 12866.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant impact on a substantial number of small entities. This determination is based on the fact that the complete elimination of the existing requirement will also eliminate the corresponding burden and costs associated with that requirement. This action will not, therefore, result in any adverse economic impacts on the facilities subject to reporting under EPCRA section 313, regardless of the size of the facility.

C. Paperwork Reduction Act

The deletion of this chemical from the EPCRA section 313 toxic chemical list will reduce the overall reporting and recordkeeping burden estimate provided for the TRI program, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* EPA will determine the total TRI burden associated with the chemical being deleted, and will complete the required Information Collection Worksheet to adjust the total TRI burden estimate approved by OMB.

The reporting and recordkeeping burdens associated with TRI are approved by OMB under OMB No. 2070-0093 (Form R, EPA ICR No. 1363) and under OMB No. 2070-0145 (Form

A, EPA ICR No. 1704). The current public reporting burden for TRI is estimated to average 52.1 hours for a Form R submitter and 34.6 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears above. In addition, the OMB control number for EPA’s regulations, after initial display in the final rule, are displayed on the collection instruments and are also listed in 40 CFR part 9.

D. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Since this action involves the elimination of an existing requirement, it does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, it is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

E. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. The Agency has determined that deleting this chemical from the EPCRA section 313 toxic chemical list, which would eliminate the availability of the TRI information on this chemical that is made available to communities through the TRI Community Right-to-Know

program, will not result in environmental justice related issues.

F. Executive Order 13045

Pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the Agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children. Since this action is not economically significant under Executive Order 12866, this action is not subject to Executive Order 13045.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, and sampling procedures) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards, nor did EPA consider the use of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation."

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit 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 United States 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).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 15, 2000.

Margaret N. Schneider,

*Principal Deputy Assistant Administrator,
Office of Environmental Information.*

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by removing the entry for phosphoric acid under paragraph (a) and the entire CAS number entry for 7664-38-2 under paragraph (b).

[FR Doc. 00-16182 Filed 6-26-00; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket No. MARAD-2000-7147]

RIN 2133-AB41

Appeal Procedures for Determinations Concerning Compliance With Service Obligations, Deferrals, and Waivers

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is publishing this final rule regarding revisions to the procedures for reviewing: determinations that a student or graduate of the U.S. Merchant Marine Academy (USMMA) or a State maritime academy that receives student incentive

payments has breached the service obligation; denials of requests for deferment of the service obligation; and denials of requests for waivers of the service obligation contract. The previous regulations called for review by a panel composed of a representative of MARAD and representatives from the Department of the Navy, the National Oceanic and Atmospheric Administration (NOAA), and the United States Coast Guard. These revisions provide for an appeal to the Maritime Administrator, the head of the agency, rather than review by the panel. The intended effect of this regulation is to streamline the process of reaching a final agency decision and allow for timely action on requests for review.

DATES: The effective date of this final rule is July 27, 2000.

FOR FURTHER INFORMATION CONTACT: Jay Gordon of the Office of Chief Counsel at (202) 366-5191. You may send mail to Jay Gordon, Maritime Administration, Office of Chief Counsel, Room 7228, MAR-226, 400 7th St., SW., Washington, DC, 20590-0001, or you may send e-mail to jay.gordon@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Since 1980, each individual U.S. citizen who enters the USMMA and each student at a State maritime academy who receives Federal student incentive payments is required pursuant to statute (46 U.S.C. app. 1295b(e) and 1295c(g)) to sign an agreement committing: (A) To complete the course of instruction at the relevant academy, unless the individual is separated by such institution; (B) to fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the USMMA or, if a student incentive payment recipient, to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation and to fulfill the requirements for such a license not later than 3 months after the date of graduation from a State maritime academy; (C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the relevant academy; (D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve