not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five–year intervals. 17 U.S.C. 118(c).

The most recent proceeding to consider the terms and rates for the section 118 license occurred in 2002. 67 FR 15414 (April 1, 2002). Final regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works for the license period beginning January 1, 2003, and ending December 31, 2007, were published in the Federal Register on December 17, 2002. 67 FR 77170 (December 17, 2002).

Pursuant to these regulations, on December 1 of each year the Librarian shall publish a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1, of that year. 37 CFR 253.10(a). The regulations also require that the Librarian publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertoires by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. 37 CFR 253.10(b). Accordingly, the Copyright Office of the Library of Congress is hereby announcing the change in the Consumer Price Index and performing the annual cost of living adjustment to the rates set out in §253.5(c).

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 2003, to the most recent Index published before December 1, 2004, is 3.2% (2003's figure was 185.0; the figure for 2004 is 190.9, based on 1982–1984=100 as a reference base). Rounding off to the nearest dollar, the royalty rates for the use of musical compositions in the repertories of ASCAP, BMI, and SESAC are $262, $262, and $85, respectively.

List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

Final Regulation

■ For the reasons set forth in the preamble, part 253 of title 37 of the Code of Federal Regulations is amended as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

■ 2. Section 253.5 is amended by revising paragraphs (c)(1) through (c)(3) as follows:

§253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP, $262 annually.

(2) For all such compositions in the repertory of BMI, $262 annually.

(3) For all such compositions in the repertory of SESAC, $85 annually.

* * * * *

Date: November 22, 2004

Marybeth Peters,

Register of Copyrights.

[FR Doc. 04–26265 Filed 11–30–04; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R10–OAR–2004–OR–0001; FRL–7839–5]

Approval and Promulgation of Air Quality Implementation Plans; Oregon; Removal of Perchloroethylene Dry Cleaning Systems Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Oregon State Implementation Plan and repeal rules which are no longer required by the Clean Air Act. The revision consists of the repeal of Oregon's control technology guidelines for perchloroethylene (perc) dry cleaning systems and related definitions and provisions. Perc is a solvent commonly used in dry cleaning, maskant operations, and degreasing operations. In 1996, EPA excluded perc from the Federal definition of volatile organic compounds for the purpose of preparing state implementation plans to attain the national ambient air quality standards for ozone under title I of the Clean Air Act. Emissions from perc dry cleaners continue to be regulated as hazardous air pollutants under the National Emissions Standards for Hazardous Air Pollutants.

DATES: This direct final rule will be effective January 31, 2005, without further notice, unless EPA receives adverse comments by January 3, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. R10–OAR–2004–OR–0001, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- Mail: Colleen Huck, Office of Air, Waste and Toxics, AWT–107 EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.
- Hand Delivery: Colleen Huck, Office of Air, Waste and Toxics, AWT–107, 9th Floor, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. R10–OAR–2004–OR–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov or e-mail. The EPA EDOCKET and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you

include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at EPA, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington, from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Colleen Huck at telephone number: (206) 553–1770, e-mail address: *Huck.Colleen@epa.gov;* or Donna Deneen at telephone number: (206) 553–6706, e-mail address: *Deneen.Donna@epa.gov*, fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

I. Background

In 1996, EPA excluded perc from the Federal definition of volatile organic compounds (VOC) for the purpose of preparing state implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act. *See* 61 FR 4588 (February 7, 1996). The basis for EPA's decision was that perc has negligible photochemical reactivity and that removing perc from the definition of VOC would result in a more accurate assessment of ozone formation potential and assist States in avoiding exceedances of the ozone health standard. 61 FR at 4588. EPA noted that perc would continue to be regulated as a hazardous air pollutant under section 112 of the Clean Air Act and the National Emission Standard for Hazardous Air Pollutants (NESHAPs), such as the NESHAP for Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, 40 CFR part 63, subpart M. 61 FR at 4588.

EPA specifically stated that, as a result of the change in definition of VOC, EPA's perc dry cleaning control technology guideline no longer has the legal status of a control technology guideline for ozone control and States are no longer required to have rules based on EPA's perc dry cleaning control technology guideline. 61 FR at 4590. EPA also stated that it would no longer enforce measures controlling perc as part of a federally-approved ozone SIP. 61 FR at 4590. EPA emphasized, however, that if a state had taken reduction credit for measures controlling perc as part of an ozone control plan, the state would need to submit new reduction measures as necessary to account for the loss of those reduction credits. 61 FR at 4590.

In response to the exclusion of perc from the definition of VOC in the Federal Clean Air Act, the State of Oregon, Division of Environmental Quality (ODEQ) revised its rules to make Oregon's definition of VOC consistent with the Federal definition. EPA previously approved this change to the definition of VOC as revision to the Oregon SIP. *See* 63 FR 24935 (May 6, 1998). On December 7, 2001, in response to the change in the Federal and state definition of VOC, ODEQ repealed its control technology guideline for perc dry cleaning systems contained in Oregon Administrative Rules (OAR) 340–232–0240, Perchloroethylene Dry Cleaning. ODEQ also repealed the related definitions and provisions in OAR chapter 340, Division 232. ODEQ submitted this repeal of its control technology guideline for perc dry cleaning systems to EPA as a formal SIP submission on December 2, 2002. As part of its submittal, ODEQ showed that it had not taken any credit for emission reductions associated with perc in any of its attainment or maintenance plans. ODEQ also noted that it had adopted by reference the Federal NESHAP for Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, 40 CFR part 63, subpart M (perc dry cleaning NESHAP), and had in fact expanded the universe of sources subject to the perc dry cleaning NESHAP as a matter of State law. See OAR 340–244–0220(3) (Federal Regulations Adopted by Reference). This makes the regulation of perc dry cleaners in Oregon more stringent than Federal law requires.

II. This Action

EPA is approving revisions to OAR chapter 340, Division 232, which removes requirements for perc dry cleaning systems, as well as related definitions and provisions, from the Oregon SIP. As discussed above, as a result of EPA's change to the definition of VOC, there is no Federal requirement to regulate perc as part of a State's ozone control strategy. ODEQ's rule for perc in OAR 340–232–0240 was based on EPA's control technology guideline for perc dry cleaners and is therefore no longer required. ODEQ has demonstrated that it has not taken any reduction credits for measures controlling perc as part of any of its ozone attainment or maintenance plans. ODEQ therefore does not need to submit any replacement reduction measures in connection with the removal of the perc dry cleaning rules from its SIP.

As discussed above, although emissions from perc dry cleaners will no longer be regulated in Oregon for ozone control, such emissions will continue to be regulated in Oregon as hazardous air pollutants under the Federal perc dry cleaning NESHAP, which ODEQ has adopted as a matter of State law for an expanded universe of sources. *See* OAR 340–244–0220(3). Maintaining the SIP rules for perc is not needed for ozone control and would be largely duplicative of these NESHAP requirements. For these reasons, EPA is approving the repeal of the perc dry cleaning rule and the related definitions and provisions in OAR chapter 340, Division 232 from the Oregon SIP.

III. Oregon Notice Provision

ORS 468.126, which remains unchanged since EPA last approved Oregon's SIP, prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's Title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

IV. Scope of EPA Approval

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative Rules within ''Indian Country'' as defined in 18 U.S.C. 1151. ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way

running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Therefore, this SIP approval does not extend to ''Indian Country'' in Oregon. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits).

V. Direct Final Action

EPA is publishing this action without a prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. In the proposed rules section of this **Federal Register** publication, however, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This direct final rule is effective on January 31, 2005 without further notice, unless EPA receives adverse comment by January 3, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 to 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 29, 2004.

Richard Albright,

Acting Regional Administrator, Region 10.

■ 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 *et seq.*

Subpart MM—Oregon

■ 2. Section 52.1970 is amended in paragraph (c)(139) by removing the number ''232–0240'' and by adding paragraph (c)(143) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(143) On December 2, 2002, the Oregon Department of Environmental Quality submitted a SIP revision to repeal the Perchloroethylene Dry Cleaning rule and revise related parts of the Introduction and Definitions sections of Division 232.

(i) Incorporation by reference.

(A) The following sections of the Oregon Administrative Rules 340: 232–0010 and 232–0030, as effective October 14, 1999.

[FR Doc. 04–26476 Filed 11–30–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 041124330–4330–01; I.D. 111904C]

RIN 0648–AS91

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary authorization for a period of 30 days, to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in the state waters of Alabama and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90°03′00″ West longitude (approximately the west end of Grand Isle). This action is necessary because environmental conditions as a result of Hurricane Ivan are hampering the fishermen's ability to use TEDs effectively.

DATES: Effective from November 26, 2004 through December 27, 2004.

ADDRESSES: Requests for copies of the Environmental Assessment on this action should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–570–5794, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken and killed as a result of numerous activities, including fishery trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

The regulations governing sea turtle take prohibitions and exemptions provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206(d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow-time limits are authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31, as measured from the time that the trawl doors enter the water until they are removed from the water. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On September 27, 28, and 29, 2004, the NOAA Fisheries' Southeast Regional Administrator received requests from the Marine Fisheries Division of the Alabama Department of Conservation and Natural Resources (ADCNR), the Mississippi Department of Marine Resources (MDMR), and the Louisiana Department of Wildlife and Fisheries (LDWF), respectively, to allow the use of tow times as an alternative to TEDs in state waters due to the presence of excessive storm-related debris on the fishing grounds as a result of Hurricane Ivan. Subsequent to these requests, NOAA Fisheries issued a 30-day variance of the TED requirements from October 12 through November 11, 2004.

On November 15, 2004, the NOAA Fisheries' Southeast Regional Administrator received requests from the Marine Fisheries Division of the ADCNR and LDWF for an additional 30-day period allowing the use of tow times as an alternative to TEDs in state waters due to the presence of excessive storm-related debris that is still present on the fishing grounds as a result of Hurricane Ivan. After an investigation, the ADCNR and LDWF have determined that this debris continues to affect the fishermen's ability to use TEDs effectively. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Alabama and Louisiana have stated that their marine enforcement agencies will increase patrols to enforce the tow time restrictions.

NOAA Fisheries gear technicians interviewed fishermen and surveyed parts of the affected areas in Alabama,