caused, the availability of resources to administer restitution and any other matters that justice may require.

(b) *Restitution order.* If the Administrative Law Judge determines that restitution is an appropriate remedy in a proceeding, he or she shall issue an order specifying the following:

(1) All violations that form the basis for restitution;

(2) The particular persons, or class or classes of persons, who suffered damages proximately caused by each such violation;

(3) The method of calculating the amount of damages to be paid as restitution; and

(4) If then determinable, the amount of restitution the respondent shall be required to pay.

§ 10.111 Recommendation of proceeding for implementing restitution.

Except as provided by § 10.114, after such time as any order requiring restitution becomes effective (*i.e.*, becomes final and is not stayed), the Division of Enforcement shall petition the Commission for an order directing the Division to recommend to the Commission or, in the Commission's discretion, the Administrative Law Judge a procedure for implementing restitution. Each party that has been ordered to pay restitution shall be afforded an opportunity to review the Division of Enforcement's recommendations and be heard.

§ 10.112 Administration of restitution.

Based on the recommendations submitted pursuant to § 10.111, the Commission or the Administrative Law Judge, as applicable, shall establish in writing a procedure for identifying and notifying individual persons who may be entitled to restitution, receiving and evaluating claims, obtaining funds to be paid as restitution from the party and distributing such funds to qualified claimants. As necessary or appropriate, the Commission or the Administrative Law Judge may appoint any person, including an employee of the Commission, to administer, or assist in administering, such restitution procedure. Unless otherwise ordered by the Commission, all costs incurred in administering an order of restitution shall be paid from the restitution funds obtained from the party who was so sanctioned; provided, however, that if the administrator is a Commission employee, no fee shall be charged for his or her services or for services performed by any other Commission employee working under his or her direction.

§ 10.113 Right to challenge distribution of funds to customers.

Any order of an Administrative Law Judge directing or authorizing the distribution of funds paid as restitution to individual customers shall be considered a final order for appeal purposes to be subject to Commission review pursuant to § 10.102.

§ 10.114 Acceleration of establishment of restitution procedure.

The procedures provided for by §§ 10.111 through 10.113 may be initiated prior to the issuance of the initial decision of the Administrative Law Judge and may be combined with the hearing in the proceeding, either upon motion by the Division of Enforcement or if the Administrative Law Judge, acting on his own initiative or upon motion by a respondent, concludes that the presentation, consideration and resolution of the issues relating to the restitution procedure will not materially delay the conclusion of the hearing or the issuance of the initial decision.

18. A new appendix A is added to part 10, to read as follows.

Appendix A to Part 10—Commission Policy Relating to the Acceptance of Settlements in Administrative and Civil Proceedings

It is the policy of the Commission not to accept any offer of settlement submitted by any respondent or defendant in any administrative or civil proceedings, if the settling respondent or defendant wishes to continue to deny the allegations of the complaint. In accepting a settlement and entering an order finding violations of the Act and/or regulations promulgated under the Act, the Commission makes uncontested findings of fact and conclusions of law. The Commission does not believe it would be appropriate for it to be making such uncontested findings of violations if the party against whom the findings and conclusions are to be entered is continuing to deny the alleged misconduct.

The refusal of a settling respondent or defendant to admit the allegations in a Commission-Instituted complaint shall be treated as a denial, unless the party states that he or she neither admits nor denies the allegations. In that event, the proposed offer of settlement, consent or consent order must include a provision stating that, by neither admitting nor denying the allegations, the settling respondent or dependent agrees that neither he or she nor any of his or her agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the complaint or creating, or tending to create, the impression that the complaints is without a factual basis; provided, however, that nothing in this provision shall affect the settling respondent's or defendant's testimonial obligation, or right to take legal positions, in other proceedings to which the Commission is not a party.

Issued in Washington, DC, on October 8, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–27983 Filed 10–15–98; 10:43 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1275

[Docket No. NHTSA–98–4537]

RIN 2127–AH47

Repeat Intoxicated Driver Laws

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule implements a new program established by the Transportation Equity Act for the 21st Century (TEA–21) Restoration Act, which provides for the transfer of Federal-aid highway construction funds to 23 U.S.C. 402 State and Community Highway Safety Program grant funds for any State that fails to enact and enforce a conforming ''repeat intoxicated driver'' law.

This regulation is being published as an interim final rule, which will go into effect prior to providing notice and the opportunity for comment. Following the close of the comment period, NHTSA will publish a separate document responding to comments and, if appropriate, will revise provisions of the regulation.

DATES: This interim final rule becomes effective on November 18, 1998. Comments on this interim rule are due no later than December 18, 1998.

ADDRESSES: Written comments should refer to the docket number of this notice and be submitted (preferably in two copies) to: Docket Management, Room PL–401 Section, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours are Monday–Friday, 10 a.m. to 5 p.m., excluding Federal holidays.)

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Jennifer Higley, Office of State and Community Services, NSC–01, National Highway Traffic Safety

Administration, 400 Seventh Street S.W., Washington, DC 20590, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Mr. Bing Wong, Office of Highway Safety, HHS–20, telephone (202) 366–2169; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA–21), H.R. 2400, P.L. 105–178, was signed into law on June 9, 1998. On July 22, 1998, a technical corrections bill, entitled the TEA–21 Restoration Act, P.L. 105–206, was enacted to restore provisions that were agreed to by the conferees to H.R. 2400, but were not included in the TEA–21 conference report. Section 1406 of the Act amended chapter 1 of title 23, United States Code (U.S.C.), by adding Section 164, which established a transfer program under which a percentage of a State's Federal-aid highway construction funds will be transferred to the State's apportionment under Section 402 of Title 23 of the United States Code, if the State fails to enact and enforce a conforming ''repeat intoxicated driver'' law.

In accordance with Section 164, these funds are to be used for alcohol-impaired driving countermeasures or the enforcement of driving while intoxicated (DWI) laws, or States may elect to use all or a portion of the funds for hazard elimination activities, under 23 U.S.C. Section 152.

As provided in Section 164, to avoid the transfer of funds, State ''repeat intoxicated driver'' laws must provide for certain specified minimum penalties for persons who have been convicted of driving while intoxicated or under the influence upon their second and subsequent convictions.

This new program was established to address the issue of impaired driving, which is a serious national problem.

Background

The Problem of Impaired Driving

Injuries caused by motor vehicle traffic crashes are a major health care problem in America and are the leading cause of death for people aged 6 to 27. Each year, the injuries caused by traffic crashes in the United States claim approximately 42,000 lives and cost Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash related costs.

In 1997, alcohol was involved in approximately 39 percent of fatal traffic crashes and 7 percent of all crashes. Every 32 minutes, someone in this country dies in an alcohol-related crash. In 1994, alcohol-involved crashes resulted in $45 billion in economic costs, accounting for 30 percent of all crash costs. Impaired driving is the most frequently committed violent crime in America.

Repeat Intoxicated Driver Laws

State laws that are directed to individuals who have been convicted more than once of driving while intoxicated or driving under the influence are critical tools in the fight against impaired driving. In order to encourage States to enact and enforce effective impaired driving laws, Congress has created a number of different programs. Under the Section 410 program (under 23 U.S.C. 410), and its predecessor, the Section 408 program (under 23 U.S.C. 408), for example, States could qualify for incentive grant funds if they adopted and implemented certain specified laws and programs designed to deter impaired driving. Some of these laws and programs were directed specifically toward repeat impaired driving offenders.

For example, prior to the enactment of TEA–21, to qualify for an incentive grant under the Section 410 program, a State was required to meet five out of seven basic grant criteria that were specified in the Act and the implementing regulation. The criteria included, among others, an expedited driver license suspension system, which required a mandatory minimum one-year license suspension for repeat offenders, and a mandatory minimum sentence of imprisonment or community service for individuals convicted of driving while intoxicated more than once in any five-year period.

States that were eligible for a basic Section 410 grant could qualify also for additional grant funds by meeting supplemental grant criteria, such as the suspension of registration and return of license plate program. States could demonstrate compliance with this program by showing that they provided for the impoundment, immobilization or confiscation of an offender's motor vehicles.

TEA–21 changed the Section 410 program and, specifically, the Section 410 criteria that were directed toward repeat offenders. The conferees to that legislation had intended to create a new repeat intoxicated driver transfer program to encourage States to enact repeat intoxicated driver laws, but this new program was inadvertently omitted from the TEA–21 conference report. The program was included instead in the TEA–21 Restoration Act, which was signed into law on July 22, 1998.

Section 164 Repeat Intoxicated Driver Law Program

Section 164 provides that the Secretary must transfer a portion of a State's Federal-aid highway construction funds apportioned under Sections 104(b) (1), (3), and (4) of title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under Section 402 of that title, if the State does not meet certain statutory requirements. All 50 States, the District of Columbia and Puerto Rico are considered to be States, for the purpose of this program.

To avoid the transfer, a State must enact and enforce a repeat intoxicated driver law that establishes, at a minimum, certain specified penalties for second and subsequent convictions for driving while intoxicated or under the influence. These penalties include: a one-year driver's license suspension; the impoundment or immobilization of, or the installation of an ignition interlock system on, the repeat intoxicated driver's motor vehicles; assessment of the repeat intoxicated driver's degree of alcohol abuse, and treatment as appropriate; and the sentencing of the repeat intoxicated driver to a minimum number of days of imprisonment or community service.

Consistent with other programs that are administered by the agencies, a State's law must have been both passed and come into effect to permit a State to rely on the law to avoid the transfer of funds. In addition, the State must be actively enforcing the law.

Any State that does not enact and enforce a conforming repeat intoxicated driver law will be subject to a transfer of funds. In accordance with Section 164, if a State does not meet the statutory requirements on October 1, 2000, or October 1, 2001, an amount equal to 1½ percent of the funds apportioned to the State on those dates under each of Sections 104(b)(1), (3), and (4) of title 23 of the United States Code will be transferred to the State's apportionment under Section 402 of that title. If a State does not meet the statutory requirements on October 1, 2002, an amount equal to three percent of the funds apportioned to the State on that date under Sections 104(b)(1), (3) and (4) will be transferred. An amount equal to three percent will continue to be transferred on October 1 of each subsequent fiscal year, if the State does

not meet the requirements on those dates.

Section 164, and this implementing regulation, provides also that the amount of the apportionment to be transferred may be derived from one or more of the apportionments under Sections 104(b)(1), (3) and (4).

In other words, the total amount to be transferred from a non-conforming State will be calculated based on a percentage of the funds apportioned to the State under each of Sections 104(b)(1), (3) and (4). However, the actual transfers need not be evenly distributed among these three sources. The transferred funds may come from any one or a combination of the apportionments under Sections 104(b)(1), (3) or (4), as long as the appropriate total amount is transferred from one or more of these three sections.

The funds transferred to Section 402 under this program are to be used for alcohol-impaired driving countermeasures or directed to State and local law enforcement agencies for the enforcement of laws prohibiting driving while intoxicated, driving under the influence or other related laws or regulations. The Act provides that States may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

Compliance Criteria

To avoid the transfer of funds under this program, Section 164 provides that a State must enact and enforce:

> a ''repeat intoxicated driver law'' * * * that provides * * * that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence [must be subject to certain specified minimum penalties].

The statute defines the term ''repeat intoxicated driver law'' to mean a State law that provides certain specified minimum penalties for an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence. The agencies' interim final rule adopts this definition. The interim rule also defines the term ''repeat intoxicated driver.'' Consistent with other programs conducted by the agencies and with State laws and practices regarding the maintenance of records of previous convictions, the implementing regulation provides that an individual is a ''repeat intoxicated driver'' if the driver was convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period.

The agencies have conducted a preliminary review of State laws to determine whether any States use a period of time that is shorter than five years, for the purpose of considering an individual to be a repeat offender. We are aware of two States that consider individuals to be repeat offenders only if they have been convicted of an alcohol offense within the last three years. We are aware also of one State that provides the same sanctions for all offenders convicted of driving while intoxicated or driving under the influence of alcohol, including both first and subsequent offenders.

To comply with the requirements of this Part, a State need not have a law that considers all drivers convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period to be ''repeat intoxicated drivers,'' and the State law need not establish separate sanctions for first and repeat offenders. However, to comply, the State must have a law that imposes each of the sanctions described in Section 164 and this implementing regulation on all ''repeat intoxicated drivers,'' as that term is defined in this rule. In addition, the State must maintain its records on convictions for driving while intoxicated or driving under the influence of alcohol for a period of at least five years.

The terms ''driving while intoxicated'' and ''driving under the influence'' are both defined by the statute to mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the legal limit of the State. The statute also defines the term ''alcohol concentration.'' The regulation adopts these statutory definitions.

To comply with Section 164 and the agencies' implementing regulation, and thereby avoid the transfer of Federal-aid highway construction funds, a State must impose all four penalties prescribed in Section 164 on all repeat intoxicated drivers. Each of these penalties is described below:

1. *A minimum one-year license suspension for repeat intoxicated drivers.*

To avoid the transfer of funds, the State law must impose a mandatory minimum one-year driver's license suspension or revocation on all repeat intoxicated drivers. Research has shown that driver licensing sanctions have a significant impact on the problem of impaired driving. Studies relating to licensing sanctions imposed under State administrative licensing revocation systems, for example, have found that these sanctions result in reductions in alcohol-related fatalities of between 6–10 percent.

The term ''license suspension'' is defined in both the statute and the implementing regulation to mean a hard suspension of all driving privileges. Accordingly, during the one-year term, the offender cannot be eligible for any driving privileges, such as a restricted or a hardship license.

Based on the agencies' review of current State laws, it appears that there are a number of States that do not impose a mandatory suspension of all driving privileges for a period of not less than one year. Some States permit hardship or restricted licenses during the one-year term. Others provide for the return of an offender's driver's license if an ignition interlock system is placed on the offender's vehicle. In addition, some States provide for a driver's license suspension, but do not establish a mandatory one-year term. These State laws do not conform to the regulation.

2. *Impoundment or immobilization of, or the installation of an ignition interlock system on, motor vehicles.*

To avoid the transfer of funds, the State law must require the impoundment or immobilization of, or the installation of an ignition interlock on, all motor vehicles owned by the repeat intoxicated offenders.

The term ''impoundment or immobilization'' has been defined in the regulation to mean the removal of a motor vehicle or the rendering of a motor vehicle inoperable, and the agencies have determined that this definition will also include the forfeiture or confiscation of a motor vehicle or the revocation or suspension of a motor vehicle license plate or registration. The agencies have defined the term ''ignition interlock system'' in the regulation to mean a State-certified system designed to prevent drivers from starting their motor vehicles when their breath alcohol concentration is at or above a preset level.

The State law does not need to provide for all three types of penalties to comply with this criterion, but it must require that at least one of the three penalties will be imposed on all repeat intoxicated drivers, for the State to avoid the transfer of funds.

Section 164 does not specify when a State must impose the impoundment or immobilization of, or the installation of an ignition interlock system on, motor vehicles. To determine when these penalties must be imposed, the agencies considered the purpose of these three penalties.

The agencies recognize that the purpose of an impoundment or immobilization sanction is very

different from that of the installation of an ignition interlock system.

When an individual convicted of driving while intoxicated is subject to a driver license suspension, it is expected that the individual will not drive for the length of the suspension term. However, some studies have found that as many as 70 percent of all repeat offenders continue to drive even after their driver's licenses have been suspended or revoked. In 1997, nearly 6000 drivers involved in fatal crashes did not have a valid driver's license. This number represents approximately 10.8 percent of the total number (54,935) of drivers involved in fatal crashes, with known license status.

Accordingly, laws that provide for the impoundment or immobilization of motor vehicles are designed to ensure that driver's license suspension sanctions are not to be ignored. They seek to prevent offenders from driving vehicles while their driver's licenses are under suspension.

Laws that provide for the installation of an ignition interlock system on a motor vehicle, on the other hand, are not designed to prevent the individual from driving. Such laws generally provide that these systems will be installed on a motor vehicle once the individual's driver's license has been restored and the individual's immobilized or impounded vehicles have been returned. Instead, these laws recognize that many individuals convicted of driving while intoxicated have difficulty controlling their drinking. Accordingly, they are designed to prevent individuals, once they are free again to drive, from drinking and driving. Research indicates that about one-third or all drivers arrested or convicted of driving while intoxicated or driving under the influence are repeat offenders. These laws are designed to prevent recidivism.

Based on the nature of these penalties, the agencies have decided that a uniform time frame for all three penalties would not be appropriate. Instead, the regulation provides that, to comply with this criterion, the State law must require that the impoundment or immobilization be imposed during the one-year suspension term, and that the ignition interlock system be installed at the conclusion of the one-year term. The regulation does not specify the length of time during which these penalties must remain in effect, since the statute was silent in that regard. Leaving this condition undefined in the regulation will permit each State to establish a term that is most appropriate under its own statutory scheme. The agencies note, however, that many States impose impoundment and immobilization sanctions for the duration of license suspension terms. The agencies believe this approach is a sensible one, and States are encouraged to adopt it.

Consistent with past practices under the Section 410 program, the agencies will permit States to provide limited exceptions to the impoundment or immobilization requirement on an individual basis, to avoid undue hardship to an individual, including a family member of the repeat intoxicated driver, or a co-owner of the motor vehicle, but not including the repeat intoxicated driver. To ensure that the availability of these exceptions do not undermine the impoundment or immobilization requirement, however, exceptions must be made in accordance with Statewide published guidelines developed by the State, and in exceptional circumstances specific to the offender.

An exception to the installation of the ignition interlock system, however, will not be acceptable. The agencies believe that an exception to the requirement that an ignition interlock system be installed is not necessary, since the requirement does not prevent a motor vehicle from being available for others dependent on that vehicle. It only prevents an individual from operating the vehicle under the influence of alcohol.

These sanctions must be mandatory and they must apply to all repeat intoxicated drivers for the State law to conform to this criterion. The agencies are aware of some States that only impose these sanctions on individuals determined to be habitual traffic law offenders. These laws do not conform to the requirements of the regulation. Also, in order to qualify under this criterion, each motor vehicle owned by the repeat intoxicated driver must be subject to one of the three penalties. A ''motor vehicle'' is defined by Section 164 to mean a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail line or a commercial vehicle. A motor vehicle is subject to this element if the repeat intoxicated driver's name appears on the motor vehicle registration or title.

Based on the agencies' review of State laws, it appears that many laws provide for an impoundment, immobilization or ignition interlock sanction. However, a number of State laws do not impose these sanctions on *all* vehicles owned by the repeat intoxicated driver. If this condition is not present in a State law, the law will not conform to the agencies' regulation.

3. *An assessment of their degree of alcohol abuse, and treatment, as appropriate.*

To avoid the transfer of funds, the State law must require that all repeat intoxicated drivers undergo an assessment of their degree of alcohol abuse and the State law must authorize the imposition of treatment as appropriate.

Repeat arrests for either driving while intoxicated or driving under the influence of alcohol is one indication of a drinking problem, and problem drinkers (if they drive at all) are at risk of drinking and driving. Assessments of repeat intoxicated drivers for problems and referrals to appropriate treatments may help to identify and address the underlying problems that lead to drinking and driving.

Under an assessment, individuals are assessed with regard to their alcohol and other drug use (e.g., the frequency and quantity of use, the consequences of alcohol and other drug use, and any evidence of loss of control over use). Generally, an assessment will contain a second component, as well, under which individuals are assessed with regard to their risk of driving while intoxicated or of driving under the influence of alcohol (their recidivism risk) based on factors in addition to their drinking behavior.

In practice, an assessment typically consists of the administration of a standardized psychometric test and a personal interview by a trained evaluator. The information obtained through these means are then supplemented with information from the courts (regarding the individual's criminal and driving history), and family members (regarding the individual's alcohol and other drug use).

Based on the information obtained from the assessment, an informed determination can be made regarding the appropriate treatment, if any, for the repeat intoxicated driver. This determination should be made by a person qualified to evaluate alcohol abuse levels.

There is a wide array of programs and activities that are considered to be ''treatment.'' Examples include: Attendance at outpatient counseling sessions; long-term inpatient (i.e, residential) programs conducted in hospitals and clinics; the use of medications; participation in self-help programs such as Alcoholics Anonymous; or any other program, including educational programs, psychological treatment or rehabilitation, that has been proven to be effective.

To qualify under this criterion, the State law must make it mandatory for the repeat intoxicated driver to undergo an assessment, but the law need not impose any particular treatment (or any treatment at all). It need only authorize the imposition of treatment when it is determined to be warranted.

A review of current State laws reveals that a number of States provide for a mandatory assessment of repeat intoxicated drivers and have the authority to assign such drivers to treatment as appropriate. Other States, however, do not provide for both of these elements.

Some State laws provide for a mandatory education or treatment program for repeat intoxicated drivers, but do not specify that these drivers must be assessed. To comply with Section 164 and the agencies' implementing regulation, such States must demonstrate, such as by submitting sections of the State's statutes, regulations or binding policy directives, that under its laws an assessment is a required component of the mandatory education or treatment program.

Other States provide for an assessment and appropriate treatment for offenders, but only as a condition to permit the offender to avoid certain other sanctions. To comply with Section 164 and the agencies' implementing regulation, such States must demonstrate that an assessment is required and treatments are available for all repeat intoxicated drivers. In addition, the other minimum penalties specified under the Section 164 program must continue to be imposed.

4. *Mandatory minimum sentence.*

To avoid the transfer of funds, the State law must impose a mandatory minimum sentence on all repeat intoxicated drivers. For a second offense, the law must provide for a mandatory minimum sentence of not less than five days of imprisonment or 30 days of community service. For a third or subsequent offense, the law must provide for a mandatory minimum sentence of not less than ten days of imprisonment or 60 days of community service.

Consistent with NHTSA's administration of the Section 410 program, the agencies have defined ''imprisonment'' to mean confinement in a jail, minimum security facility, community corrections facility, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

House arrests have not been considered to fall within the definition of ''imprisonment'' to date under the Section 410 program, because it was thought that they did not have a sufficient deterrent effect. However, recent NHTSA research seems to indicate that house arrests are effective if they are coupled with electronic monitoring. A recent study, for example, found markedly lower recidivism rates among offenders who had been placed under house arrest with such monitoring. Accordingly, the agencies have included house arrests under the definition of ''imprisonment'' under the Section 164 program, provided that electronic monitoring is used.

The agencies note that, under NHTSA's Section 410 program, States were eligible to receive incentive grants if they met certain specified requirements, including a mandatory 48 consecutive hours of imprisonment for repeat offenders. As a result of this requirement, some current State laws impose a mandatory sentence of 48 consecutive hours of imprisonment on second or subsequent offenses of driving while intoxicated or driving under the influence of alcohol. This Repeat Intoxicated Driver Program, however, requires longer terms of imprisonment than were required under Section 410. To comply with this new program, States must provide for the longer sentences required under this new program and the State laws must establish these sentences as mandatory minimum terms.

Demonstrating Compliance

Section 164 provides that nonconforming States will be subject to the transfer of funds beginning in fiscal year 2001. To avoid the transfer, this interim final rule provides that each State must submit a certification demonstrating compliance with all four elements.

The certifications submitted by the States under this Part will provide the agencies with the basis for finding States in compliance with the Repeat Intoxicated Driver requirements. Accordingly, until a State has been determined to be in compliance with these requirements, a State must submit a certification by an appropriate State official that the State has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and § 1275 of this Part.

Certifications must include citations to the State's conforming repeat intoxicated driver law. These citations must include all applicable provisions of the State's law.

Once a State has been determined to be in compliance with the requirements, the State would not be required to submit certifications in subsequent fiscal years, unless the State's law had changed or the State had ceased to enforce the repeat intoxicated driver law. It is the responsibility of each State to inform the agencies of any such change in a subsequent fiscal year, by submitting an amendment or supplement to its certification.

States are required to submit their certifications on or before September 30, 2000, to avoid the transfer of FY 2001 funds on October 1, 2000.

States that are found in noncompliance with these requirements in any fiscal year, once they have enacted complying legislation and are enforcing the law, must submit a certification to that effect before the following fiscal year to avoid the transfer of funds in that following fiscal year. Such certifications demonstrating compliance must be submitted on or before the first day (October 1) of the following fiscal year.

The agencies strongly encourage States to submit their certifications in advance. The early submission of these documents will enable the agencies to inform States as quickly as possible whether or not their laws satisfy the requirements of Section 164 and the implementing regulation, and will provide States with noncomplying laws an opportunity to take the necessary steps to meet these requirements before the date for the transfer of funds.

The agencies also strongly encourage States that are considering the enactment of legislation to conform to these requirements to request preliminary reviews of such legislation from the agencies while the legislation is still pending. The agencies would determine in these preliminary reviews whether the legislation, if enacted, will conform to the new regulation, thereby avoiding a situation in which a State unintentionally enacts a non-conforming repeat intoxicated driver law and the State remains subject to the transfer of funds. Requests should be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

Enforcement

Section 164 provides that, to qualify for grant funding, a State must not only enact a conforming law, but must also enforce the law. To ensure the effective implementation of a repeat intoxicated driver law, the agencies encourage the States to enforce their laws rigorously. In particular, the agencies recommend that States incorporate into their enforcement efforts activities designed to inform law enforcement officers,

prosecutors, members of the judiciary and the public about all aspects of their repeat intoxicated driver laws.

To demonstrate that they are enforcing their laws under the regulation, however, States are required only to submit a certification that they are enforcing their laws.

Notification of Compliance

For each fiscal year, beginning with FY 2001, NHTSA and the FHWA will notify States of their compliance or noncompliance with Section 164, based on a review of certifications received. If, by June 30 of any year, beginning with the year 2000, a State has not submitted a certification or if the State has submitted a certification and it does not conform to Section 164 and the implementing regulation, the agencies will make an initial determination that the State does not comply with Section 164 and with this regulation, and the transfer of funds will be noted in the FHWA's advance notice of apportionment for the following fiscal year, which generally is issued in July.

Each State determined to be in noncompliance will have an opportunity to rebut the initial determination. The State will be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be transferred as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

As stated earlier, NHTSA and the FHWA expect that States will want to know as soon as possible whether their laws satisfy the requirements of Section 164, or they may want assistance in drafting conforming legislation.

States are strongly encouraged to submit certifications in advance, and to request preliminary reviews and assistance from the agencies. Requests should be submitted through NHTSA's Regional Administrators, who will refer these requests to appropriate NHTSA and FHWA offices for review.

Interim Final Rule

This document is being published as an interim final rule. Accordingly, the new regulations in Part 1275 are fully in effect 30 days after the date of the document's publication. No further regulatory action by the agencies is necessary to make these regulations effective.

These regulations have been published as an interim final rule because insufficient time was available to provide for prior notice and opportunity for comment. Some State legislatures do not meet every year. Other State legislatures do meet every year, but limit their business every other year to certain limited matters, such as budget and spending issues. The agencies are aware of six State legislatures that are not scheduled to meet at all in the Year 2000, and additional State legislatures may have limited agendas in that year. These States will have just one opportunity (during the 1999 session of their State legislatures) to enact conforming legislation, and they are preparing agendas and proposed legislation now for their 1999 legislative sessions. These States have an urgent need to know what the criteria will be as soon as possible so they can develop and enact conforming legislation and avoid the transfer of funds on October 1, 2000.

In the agencies' view, the States will not be impeded by the use of an interim final rule. The procedures that States must follow to avoid the transfer of funds under this new program are similar to procedures that States have followed in other programs administered by NHTSA and/or the FHWA. These procedures were established by rulemaking and were subject to prior notice and the opportunity for comment.

Moreover, the criteria that States must meet to demonstrate that they have a conforming repeat intoxicated driver law are derived from the Federal statute and are similar to some of the criteria that were included under the Section 408 and 410 programs. The regulations that implemented NHTSA's Section 408 and 410 programs were subject to prior notice and the opportunity for comment.

For these reasons, the agencies believe that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest.

The agencies request written comments on these new regulations. All comments submitted in response to this document will be considered by the agencies. Following the close of the comment period, the agencies will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make revisions to the provisions of Part 1275.

Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that two copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by December 18, 1998. To expedite the submission of comments, simultaneous with the issuance of this notice, NHTSA and the FHWA will mail copies to all Governors' Representatives for Highway Safety and State Departments of Transportation.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in the Docket 98–XXXX in Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Regulatory Analyses and Notices

Executive Order 12778 (Civil Justice Reform)

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have determined that this action is not a significant action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. States can choose to enact and enforce a repeat intoxicated driver law, in conformance with Public Law 105–206, and thereby avoid the transfer of

Federal-aid highway funds. Alternatively, if States choose not to enact and enforce a conforming law, their funds will be transferred, but not withheld. Accordingly, the amount of funds provided to each State will not change.

In addition, the costs associated with this rule are minimal and are expected to be offset by resulting highway safety benefits. The enactment and enforcement of repeat intoxicated driver laws should help to reduce impaired driving, which is a serious and costly problem in the United States. Accordingly, further economic assessment is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. This rulemaking implements a new program enacted by Congress in the TEA–21 Restoration Act. As the result of this new Federal program and the implementing regulation, States will be subject to a transfer of funds if they do not enact and enforce repeat intoxicated driver laws that provide for certain specified mandatory penalties. This interim final rule will affect only State governments, which are not considered to be small entities as that term is defined by the Regulatory Flexibility Act. Thus, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act, and have determined that it will not have a significant effect on the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by the State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This interim final rule does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the $100 million threshold. In addition, the program is optional to the States. States may choose to enact and enforce a conforming repeat intoxicated driver law and avoid the transfer of funds altogether. Alternatively, if States choose not to enact and enforce a conforming law, funds will be transferred, but no funds will be withheld from any State.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, a Federalism Assessment has not been prepared.

List of Subjects in 23 CFR Part 1275

Alcohol and alcoholic beverages, Grant programs— transportation, Highway safety.

In accordance with the foregoing, a new Part 1275 is added to Subchapter D, of title 23 of the Code of Federal Regulations to read as follows:

PART 1275—REPEAT INTOXICATED DRIVER LAWS

Sec.
1275.1 Scope.
1275.2 Purpose.
1275.3 Definitions.
1275.4 Compliance criteria.
1275.5 Certification requirements.
1275.6 Transfer of funds.
1275.7 Use of transferred funds.
1275.8 Procedures affecting States in noncompliance.

Authority: 23 U.S.C. 164; delegation of authority at 49 CFR §§ 1.48 and 1.50.

§ 1275.1 Scope.

This part prescribes the requirements necessary to implement Section 164 of Title 23, United States Code, which encourages States to enact and enforce repeat intoxicated driver laws.

§ 1275.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the transfer of Federal-aid highway funds for noncompliance with 23 U.S.C. 164.

§ 1275.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *Driver's motor vehicle* means a motor vehicle with a title or registration on which the repeat intoxicated driver's name appears.

(c) *Driving while intoxicated* means driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(d) *Driving under the influence* has the same meaning as ''driving while intoxicated.''

(e) *Enact and enforce* means the State's law is in effect and the State has begun to implement the law.

(f) *Ignition interlock system* means a State-certified system designed to prevent drivers from starting their car when their breath alcohol concentration is at or above a preset level.

(g) *Impoundment or immobilization* means the removal of a motor vehicle from a repeat intoxicated driver's possession or the rendering of a repeat intoxicated driver's motor vehicle inoperable. For the purpose of this regulation, ''impoundment or immobilization'' also includes the forfeiture or confiscation of a repeat intoxicated driver's motor vehicle or the revocation or suspension of a repeat intoxicated driver's motor vehicle license plate or registration.

(h) *Imprisonment* means confinement in a jail, minimum security facility, community corrections facility, house arrest with electronic monitoring, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

(i) *License suspension* means a hard suspension of all driving privileges.

(j) *Motor vehicle* means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(k) *Repeat intoxicated driver* means a person who has been convicted previously of driving while intoxicated or driving under the influence within the past five years.

(l) *Repeat intoxicated driver law* means a State law that imposes the minimum penalties specified in § 1275.4 of this part for all repeat intoxicated drivers.

(m) *State* means any of the 50 States, the District of Columbia or the Commonwealth of Puerto Rico.

§ 1275.4 Compliance criteria.

(a) To avoid the transfer of funds as specified in § 1275.6 of this part, a State must enact and enforce a law that

establishes, as a minimum penalty, that all repeat intoxicated drivers shall:

(1) Receive a driver's license suspension of not less than one year;

(2) Be subject to either—

(i) The impoundment of each of the driver's motor vehicles during the one-year license suspension;

(ii) The immobilization of each of the driver's motor vehicles during the one-year license suspension; or

(iii) The installation of a State-approved ignition interlock system on each of the driver's motor vehicles at the conclusion of the one-year license suspension;

(3) Receive an assessment of their degree of alcohol abuse, and treatment as appropriate; and

(4) Receive a mandatory sentence of—

(i) Not less than five days of imprisonment or 30 days of community service for a second offense; and

(ii) Not less than ten days of imprisonment or 60 days of community service for a third or subsequent offense.

(b) *Exceptions.* (1) A State may provide limited exceptions to the impoundment or immobilization requirements contained in paragraphs (a)(2)(i) and (a)(2)(ii) of this section on an individual basis, to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender.

(2) Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which vehicles may be released by the State or under Statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in the unrestricted use of the vehicle by the repeat intoxicated driver.

§ 1275.5 Certification requirements.

(a) Until a State has been determined to be in compliance, or after a State has been determined to be in non-compliance, with the requirements of 23 U.S.C. 164, to avoid the transfer of funds in any fiscal year, beginning with FY 2001, the State shall certify to the Secretary of Transportation, on or before September 30 of the previous fiscal year, that it meets the requirements of 23 U.S.C. 164 and this part.

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and § 1275.4 of this part. The certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a repeat intoxicated driver law that conforms to the requirements of 23 U.S.C. 164 and 23 CFR 1275.4, (citations to State law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 164, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's repeat intoxicated driver legislation changes or the State ceases to enforce its law.

§ 1275.6 Transfer of funds.

(a) On October 1, 2000, and October 1, 2001, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(b) On October 1, 2002, and each October 1 thereafter, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

§ 1275.7 Use of transferred funds.

(a) Any funds transferred under § 1275.6 may:

(1) Be used for approved projects for alcohol-impaired driving countermeasures; or

(2) Be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(b) States may elect to use all or a portion of the transferred funds for hazard elimination activities eligible under 23 U.S.C. 152.

(c) The Federal share of the cost of any project carried out with the funds transferred under § 1275.6 of this part shall be 100 percent.

(d) The amount to be transferred under § 1275.6 of this Part may be derived from one or more of the following:

(1) The apportionment of the State under § 104(b)(1);

(2) The apportionment of the State under § 104(b)(3); or

(3) The apportionment of the State under § 104(b)(4).

(e)(1) If any funds are transferred under § 1275.6 of this part to the apportionment of a State under Section 402 for a fiscal year, an amount, determined under paragraph (e)(2) of this section, of obligation authority will be distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under Section 402.

(2) The amount of obligation authority referred to in paragraph (e)(1) of this section shall be determined by multiplying:

(i) The amount of funds transferred under § 1275.6 of this Part to the apportionment of the State under Section 402 for the fiscal year; by

(ii) The ratio that:

(A) The amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

(B) The total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(f) Notwithstanding any other provision of law, no limitation on the total obligations for highway safety programs under Section 402 shall apply to funds transferred under § 1275.6 to the apportionment of a State under such section.

§ 1275.8 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 164 and this part, based on NHTSA's and FHWA's preliminary review of its certification, will be advised of the funds expected to be transferred under § 1275.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 164 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the appropriate National Highway Traffic Safety Administration Regional office.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 164 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being transferred under § 1275.6 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: October 14, 1998.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

Anthony Kane,

Executive Director, Federal Highway Administration.

[FR Doc. 98–27969 Filed 10–14–98; 3:13 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SD–001–0002a; FRL–6175–4]

Clean Air Act Approval and Promulgation of State Implementation Plan for South Dakota; Revisions to the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving certain State implementation plan (SIP) revisions submitted by the designee of the Governor of South Dakota on May 2, 1997. The May 2, 1997 submittal included revisions to the Administrative Rules of South Dakota (ARSD) pertaining to the State's regulatory definitions, minor source operating permit regulations, open burning rules, stack testing rules, and new source performance standards (NSPS). This document pertains to the entire State SIP submittal with the exception of the revisions to the NSPS regulations and the new State provision regarding pretesting of new fuels or raw materials: EPA will act on those two regulations separately. EPA has found the remaining rule revisions to be consistent with the Clean Air Act (Act) and corresponding Federal regulations. Therefore, pursuant to section 110 of the Act, EPA is approving the SIP revisions discussed above.

DATES: This direct final rule is effective on December 18, 1998 without further notice, unless EPA receives adverse comment by November 18, 1998. 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 will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, 8P–AR, at the EPA Region VIII Office listed. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, Mailcode 8P–AR, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 1997, the designee of the Governor of South Dakota submitted, among other things, revisions to the SIP. Specifically, the State submitted revisions to the following chapters in the ARSD: 74:36:01 Definitions, 74:36:04 Operating Permits for Minor Sources, 74:36:06 Regulated Air Pollutant Emissions, 74:36:07 New Source Performance Standards, 74:36:11 Stack Performance Testing, and 74:36:15 Open Burning. This document evaluates the State's submittal for conformance with the Act and corresponding Federal regulations. However, EPA is not, at this time, acting on the revisions to the NSPS regulations in ARSD 74:36:07 or the new provision regarding pretesting of new fuels or raw materials in ARSD 74:36:11:04. EPA will be acting on these two regulations in a separate action.

The State's May 2, 1997 submittal also included the State's section 111(d) plan for existing municipal solid waste (MSW) landfills and minor revisions to its title V operating permit program, which will also be acted on separately.

II. This Action

A. Analysis of State Submissions

1. Procedural Background

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

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

The State of South Dakota held a public hearing on November 20, 1996 on the revisions to the ARSD, at which time the rule revisions were adopted by the State. The revised rules became effective on December 29, 1996. These rule revisions were formally submitted to EPA for approval on May 2, 1997. EPA did not issue a completeness or an incompleteness finding for this revision to the SIP. Thus, pursuant to section 110(k)(1)(B), the submittal was deemed complete by operation of law on November 12, 1997.

2. Evaluation of State's Submittal

The following summarizes the State's SIP revisions made to the ARSD and EPA's review of those revisions for approvability:

a. ARSD 74:36:01 Definitions. In ARSD 74:36:01:01(79), the State updated its definition of ''VOCs'' to reflect changes made to the Federal definition of VOCs in 40 CFR 51.100(s) on October 8, 1996 (61 FR 52850). However, EPA has revised its definition of VOCs twice since October 8, 1996. Specifically, on August 25, 1997, EPA added sixteen compounds to the list of negligibly reactive VOCs in 40 CFR 51.100(s)(1) (see 62 FR 44900). In addition, on April 9, 1998, EPA added an additional compound to the list of