

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 147**

[FRL-5629-4]

Montana Board of Oil and Gas Conservation; Underground Injection Control (UIC) Program; Primacy Program Approval**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Approval of Montana Underground Injection Control Program.

SUMMARY: The state of Montana, through the Montana Board of Oil and Gas Conservation (MBOGC) has submitted an application to EPA under Section 1425 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h-1, for approval of an Underground Injection Control (UIC) program governing Class II (i.e., oil and gas) injection wells. After careful review of the application, the EPA has determined that the MBOGC's UIC program for Class II injection wells meets the requirements of the SDWA and, therefore, approves it.

EFFECTIVE DATE: This approval shall become effective on November 19, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 19, 1996.

ADDRESSES: The public docket and support documents for this rulemaking are available for review during normal business hours at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466.

FOR FURTHER INFORMATION CONTACT: Paul S. Osborne, Ground Water Program (8P2-W-GW); Environmental Protection Agency, Region VIII, 999 18th Street, Room 4P-114, Denver, CO 80202-2466, Phone: 303-312-6125.

SUPPLEMENTARY INFORMATION: Part C of the SDWA contains provisions for state administration of UIC programs. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection activities which endanger underground sources of drinking water (USDW). To obtain federal approval, the State must submit to the Administrator an application showing that the State: (1) has adopted, after reasonable notice and public hearings, a UIC program that meets the requirements of regulations in effect under section 1421 of the SDWA; and (2) will keep such records and make such reports with respect to its UIC

program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall, by rule, approve, disapprove, or approve in part, the State UIC program.

The SDWA was amended on December 5, 1980, to include section 1425. Section 1425 established an alternative method by which a State may obtain primary enforcement responsibility for a UIC program to regulate the following types of injection practices: injection of fluids produced during oil or gas production, injection of fluids for the storage of hydrocarbons, and injection of fluids for enhanced recovery of oil and natural gas. Specifically, instead of meeting the federal regulations in 40 Code of Federal Regulations (CFR) parts 124, 144, 145, 148, and the related technical criteria and standards in 40 CFR part 146, a State may demonstrate that its program meets the more general statutory requirements of section 1421(b)(1)(A) through (D) and represents an effective program to prevent endangerment of USDWs.

On September 14, 1995, the MBOGC submitted a complete application under Section 1425 of SDWA, for primary enforcement authority for Class II wells on all State, private, and federal leases in Montana, excluding those on land within Indian Country. EPA published notice in the FR on December 15, 1995, to request public comments, and to schedule a public hearing. A similar public notice was also published in a daily Montana newspaper on December 15, 1995. A public hearing was held on January 18, 1996, in Billings, Montana. No significant negative comments were received. The comments, which were generally supportive of the MBOGC's application, and a responsiveness summary are contained in the public record for today's decision.

After careful review of the application and comments received from the public, the EPA has determined that the MBOGC UIC program for Class II injection wells meets the requirements of section 1425 of the SDWA and is hereby approved. Inasmuch as the State of Montana has not requested jurisdiction to administer the Class II UIC program on Indian lands, EPA's delegation of primary enforcement authority for Class II injection wells does not extend to "Indian Country", as defined in 18 U.S.C. part 1151, including the following reservations within the State:

1. Blackfeet
2. Crow
3. Flathead

4. Fort Belknap
5. Fort Peck
6. Northern Cheyenne
7. Rocky Boys

In withholding program approval for Indian Country, EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. EPA will continue to administer the Class II UIC program on Indian leases and in Indian Country unless and until future approval for such administration is granted to either the State of Montana or an Indian tribe.

This program replaces the existing EPA-administered program for all Class II injection wells in non-Indian Country in the State of Montana. EPA promulgated a UIC program for all wells in Montana (including those in Indian Country) on June 24, 1984, in order to comply with the requirements of the SDWA to promulgate a Federally-administered program. Now that EPA has determined that the State-administered program will meet all applicable Federal requirements, the EPA is withdrawing the EPA-administered program for Class II injection wells in non-Indian Country and establishing the State-administered program as the applicable UIC program for Class II injection wells in non-Indian Country in the State of Montana. EPA continues to administer the UIC program for Class I, III, IV, and V wells and Class II wells for Indian lands in the State of Montana. EPA will also have an oversight role in the administration of the Class II program in Montana outside of Indian Country. EPA's approval will be codified in Part 147 of 40 CFR, State Underground Injection Control Programs in § 147.1350 currently reserved for the state-administered program. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference into the federal regulations. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA. See 40 CFR 147.1(3).

The Office of Management and Budget (OMB) has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. EPA has determined that an Information Collection Request under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is unnecessary because today's decision imposes no new federal reporting or record-keeping requirements.

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule following notice and comment on rulemaking under 5 U.S.C. § 553, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b) of the RFA, the Administrator certifies that approval of the Montana UIC program will not have a significant economic impact on a substantial number of small entities. EPA's approval action does not impose any new economic impacts on affected small entities in the State of Montana and therefore no final regulatory flexibility analysis has been prepared. This is true for several reasons. First, the immediate impact of the rule is on the State of Montana itself. Second, there is no subsidiary economic impact on small entities that flows from EPA's action in approving the Montana program. The economic impact on small entities in Montana arises as the direct result of Montana's earlier action in adopting its own UIC program. The obligation of small entities to comply with the Montana requirements antedates EPA's action and the nature of that obligation has not been changed by today's approval action.

While one effect of today's action is to make Montana's requirements enforceable in federal court under the Safe Drinking Water Act, the requirements remain the same. Because facilities were already obliged to comply with the state requirements, making the requirements federally enforceable does not represent a new or *additional* economic burden on affected entities within the meaning of the RFA.

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

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency has determined that since this rule merely authorizes Montana to implement what had previously been a

Federal program, there are no environmental justice issues raised.

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), EPA has determined that this regulatory action does not contain any "federal mandates," as described in the Act, for the States, local or tribal governments or the private sector. The rule merely authorizes the State of Montana to implement the Class II Underground Injection Control Program in the State. Montana has requested this authority from EPA.

In light of the lack of significant public comment received on the proposal, there is good cause for making this approval effective immediately. 5 U.S.C. (553(d)).

List of Subjects in 40 CFR Part 147

Environmental protection, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Underground injection.

Dated: November 12, 1996.
Carol M. Browner,
Administrator.

For the reasons set out in the preamble, part 147 of title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C 300h; and 42 U.S.C. 6901 *et seq.*

2. Subpart BB is amended by revising § 147.1350 to read as follows:

§ 147.1350 State-administered programs—Class II wells.

The UIC program for Class II injection wells in the State of Montana, except for those in Indian Country, is the program administered by the Montana Board of Oil and Gas Conservation (MBOGC) approved by the EPA pursuant to Section 1425 of the SDWA. Notice of this approval was published in the Federal Register on November 19, 1996; the effective date of this program is November 19, 1996. This program consists of the following elements as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the State of Montana. This

incorporation by reference was approved by the Director of the FR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, Montana, 59102. Copies may be inspected at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202-2466, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

(1) Montana Statutory Requirements Applicable to the Underground Injection Control Program, August, 1996.

(2) Montana Regulatory Requirements Applicable to the Underground Injection Control Program, August, 1996.

(b) *Memorandum of Agreement (MOA).* (1) The MOA between EPA Region VIII and the MBOGC signed by the Acting EPA Regional Administrator on June 9, 1996.

(2) Letter dated May 24, 1996, from the Administrator of the MBOGC and the attached addendum (Addendum No. 1-96) to the MOA between MBOGC and EPA Region VIII, signed by the Acting EPA Regional Administrator on August 14, 1996.

(c) *Statement of legal authority.* (1) Letter from the Montana Attorney General to the Regional Administrator dated August 1, 1995.

(2) MBOGC independent counsel's certification of Montana's UIC program for Class II wells dated July 24, 1995.

(3) Letter dated March 8, 1996, from MBOGC independent counsel to USEPA, Region VIII; "Re: EPA comments of November 29, 1995, on Montana Class II primacy application."

(4) Letter dated March 8, 1996, from the Administrator of the MBOGC and the attached proposed replacement language for the MOA; "Re: Responses to EPA comments on Montana Class II Primacy Application."

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplemented thereto:

(1) Application and accompanying materials for approval of Montana's UIC program for Class II wells submitted by the Governor of Montana, August 3, 1995.

(2) (reserved)

3. Section 147.1351 is amended by revising first the sentence of paragraph (a) to read as follows:

§ 147.1351 EPA-administered program.

(a) *Contents.* The UIC program in the State of Montana for Class I, III, IV, and

V wells, and for all Classes of wells in Indian Country is administered by EPA.

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4. Subpart BB is amended by adding Appendix A to read as follows:

Appendix A to Subpart BB of Part 147—State Requirements Incorporated by Reference in Subpart BB of Part 147 of the Code of Federal Regulations

The following is an informational listing of state requirements incorporated by reference in Subpart BB of part 147 of the Code of Federal Regulations:

Subpart BB—Montana

(a) The statutory provisions include:

(1) Montana Code annotated, 1995, Title 2, Chapter 15:

Section 2–15–121. Allocation for administrative purposes only.

Section 2–15–124. Quasi-judicial boards.

Section 2–15–3303. Board of oil and gas conservation-composition—allocation—quasi-judicial.

(2) Montana Code annotated, 1995, Title 82, Chapter 10:

Section 82–10–101. Action for accounting for royalty.

Section 82–10–102. Remedy not exclusive.

Section 82–10–103. Obligation to pay royalties as essence of contract-interest.

Section 82–10–104. Payment of royalties-form of record required.

Section 82–10–105 through 82–10–109 reserved.

Section 82–10–110. Division order-definition-effect.

Section 82–10–201. Authorization for lease and terms-land not subject to leasing.

Section 82–10–202. Acreage pooling.

Section 82–10–203. Interference with normal use of land prohibited.

Section 82–10–204. Lease of acquired oil and gas interests.

Section 82–10–301. Definitions.

Section 82–10–302. Policy.

Section 82–10–303. Use of eminent domain to acquire underground reservoirs.

Section 82–10–304. Certificate of board required prior to use of eminent domain.

Section 82–10–305. Proceedings.

Section 82–10–401. Notice required before abandonment of well-owner's option.

Section 82–10–402. Inventory of abandoned wells and seismic operations-reclamation procedures.

Section 82–10–501. Purpose-legislative findings.

Section 82–10–502. Definitions.

Section 82–10–503. Notice of drilling operations.

Section 82–10–504. Surface damage and disruption payments-penalty for late payment.

Section 82–10–505. Liability for damages to property.

Section 82–10–506. Notification of injury.

Section 82–10–507. Agreement—offer of settlement.

Section 82–10–508. Rejection—legal action.

Section 82–10–509 and 82–10–510. Reserved.

Section 82–10–511. Remedies cumulative.

(3) Montana Code annotated, 1995, Title 82, Chapter 11:

Section 82–11–101. Definitions.

Section 82–11–102. Oil or gas wells not public utilities.

Section 82–11–103. Lands subject to law.

Section 82–11–104. Construction-no conflict with board of land commissioners' authority.

Section 82–11–105 through 82–11–110 reserved.

Section 82–11–111. Powers and duties of board.

Section 82–11–112.

Intergovernmental cooperation.

Section 82–11–113. Role of board in implementation of national gas policy.

Section 82–11–114. Appointment of examiners.

Section 82–11–115. Procedure to make determinations.

Section 82–11–116. Public access.

Section 82–11–117. Confidentiality of records.

Section 82–11–118. Fees for processing applications.

Section 82–11–119 through 82–11–120 reserved.

Section 82–11–121. Oil and gas waste prohibited.

Section 82–11–122. Notice of intention to drill or conduct seismic operations-notice to surface owner.

Section 82–11–123. Requirements for oil and gas operations.

Section 82–11–124. Requirement relating to waste prevention.

Section 82–11–125. Availability of cores or chips, cuttings, and bottom-hole temperatures to board.

Section 82–11–126. Availability of facilities to bureau of mines.

Section 82–11–127. Prohibited activity.

Section 82–11–128 through 82–11–130 reserved.

Section 82–11–131. Privilege and license tax.

Section 82–11–132. Statements to treasurer and payment of tax.

Section 82–11–133. Penalty for late payment.

Section 82–11–134. Permit fees.

Section 82–11–135. Money earmarked for board expenses.

Section 82–11–136. Expenditure of funds from bonds for plugging wells.

Section 82–11–137. Class II injection well operating fee.

Section 82–11–138 through 82–11–140 reserved.

Section 82–11–141. Administrative procedure.

Section 82–11–142. Subpoena power-civil actions.

Section 82–11–143. Rehearing.

Section 82–11–144. Court review.

Section 82–11–145. Injunction or restraining order.

Section 82–11–146. Appeal.

Section 82–11–147. Violations.

Section 82–11–148. Criminal penalties.

Section 82–11–149. Civil penalties.

Section 82–11–150. Legal assistance.

Section 82–11–151. Emergencies-notice and hearing.

Section 82–11–152 through 82–11–160 reserved.

Section 82–11–161. Oil and gas production damage mitigation account-statutory appropriation.

Section 82–11–162. Release of producing oil or gas well from drilling bond-fee.

Section 82–11–163. Landowner's bond on noncommercial well.

Section 82–11–164. Lien created.

Section 82–11–165 through 82–11–170 reserved.

Section 82–11–171. Terminated.

Section 82–11–201. Establishment of well spacing units.

Section 82–11–202. Pooling of interest within spacing unit.

Section 82–11–203. Pooling agreements not in violation of antitrust laws.

Section 82–11–204. Hearing on operation of pool as unit.

Section 82–11–205. Board order for unit operation-criteria.

Section 82–11–206. Terms and conditions of plan for unit operations.

Section 82–11–207. Approval of plan for unit operations by persons paying costs.

Section 82–11–208. Board orders-amendment.

Section 82–11–209. Units established by previous order.

Section 82–11–210. Unit operations-less than whole of pool.

Section 82–11–211. Operations considered as done by all owners in unit.

Section 82–11–212. Property rights and operator's lien.

Section 82–11–213. Contract not terminated by board order.

Section 82–11–214. Title to oil and gas rights not affected by board order.

Section 82-11-215. Unit operation not restraint of trade.

Section 82-11-216. No creation of relationship between parties in unit.

Section 82-11-301. Authorization to join interstate compact for conservation of oil and gas.

Section 82-11-302. Interstate oil and gas compact.

Section 82-11-303. Extension of expiration date.

Section 82-11-304. Governor as member of Interstate Oil Compact Commission.

Section 82-11-305. Limitation on power of representative.

Section 82-11-306. Expenses of representative.

(b) The regulatory provisions include: Administrative Rules of Montana Board of Oil and Gas Conservation, Chapter 22, revised March 1996:

Rule 36.22.101. Organizational Rule.

Rule 36.22.201. Procedural Rules.

Rule 36.22.202. Environmental Policy Act Procedural Rules.

Rule 36.22.301. Effective Scope of Rules.

Rule 36.22.302. Definitions.

Rule 36.22.303. Classification of Wildcat or Exploratory Wells.

Rule 36.22.304. Inspection of Record, Properties, and Wells.

Rule 36.22.305. Naming of Pools.

Rule 36.22.306. Organization of Reports.

Rule 36.22.307. Adoption of Forms.

Rule 36.22.308. Seal of Board.

Rule 36.22.309. Referral of Administrative Decisions.

Rule 36.22.401. Office and Duties of Petroleum Engineer.

Rule 36.22.402. Office and Duties of Administrator.

Rule 36.22.403. Office and Duties of Geologist.

Rule 36.22.501. Shot Location Limitations.

Rule 36.22.502. Plugging and Abandonment.

Rule 36.22.503. Notification.

Rule 36.22.504. Identification.

Rule 36.22.601. Notice of Intention and Permit to Drill.

Rule 36.22.602. Notice of Intention to Drill and Application for Permit to Drill.

Rule 36.22.603. Permit Fees.

Rule 36.22.604. Permit Issuance - Expiration - Extension.

Rule 36.22.605. Transfer of Permits.

Rule 36.22.606. Notice and Eligibility Statement for Drilling or Recompletion in Unit Operations.

Rule 36.22.607. Drilling Permits Pending Special Field Rules.

Rule 36.22.701. Spacing Units - General.

Rule 36.22.702. Spacing of Wells.

Rule 36.22.703. Horizontal Wells.

Rule 36.22.1001. Rotary Drilling Procedure.

Rule 36.22.1002. Cable Drilling Procedure.

Rule 36.22.1003. Vertical Drilling Required Deviation.

Rule 36.22.1004. Dual Completion of Wells.

Rule 36.22.1005. Drilling Waste Disposal and Surface Restoration.

Rules 36.22.1006 through 36.22.1010. Reserved.

Rule 36.22.1011. Well Completion and Recompletion Reports.

Rule 36.22.1012. Samples of Cores and Cuttings.

Rule 36.22.1013. Filing of Completion Reports, Well Logs, Analyses, Reports, and Surveys.

Rule 36.22.1014. Blowout Prevention and Well Control Equipment.

Rule 36.22.1101. Fire Hazard Prevention.

Rule 36.22.1102. Fire Walls Required.

Rule 36.22.1103. Notification and Report of Emergencies and Undesirable Incidents.

Rule 36.22.1104. Control and Cleanup.

Rule 36.22.1105. Solid Waste.

Rule 36.22.1201. Surface Equipment.

Rule 36.22.1202. Identification.

Rule 36.22.1203. Chokes Required.

Rule 36.22.1204. Separators Required.

Rule 36.22.1205. Vacuum Pumps

Prohibited.

Rule 36.22.1206. Tubing Required.

Rule 36.22.1207. Earthen Pits and Open Vessels.

Rule 36.22.1208. Producing from

Different Pools Through the Same Casing.

Rules 36.22.1209 through 36.22.1212. Reserved.

Rule 36.22.1213. Reservoir or Pool Surveys.

Rule 36.22.1214. Subsurface Pressure Tests.

Rule 36.22.1215. Stabilized

Production Test.

Rule 36.22.1216. Gas Oil Ratio Tests.

Rule 36.22.1217. Water Production Report.

Rule 36.22.1218. Gas to be Metered.

Rule 36.22.1219. Gas Waste

Prohibited.

Rule 36.22.1220. Associated Gas Flaring Limitation—Application to

exceed—Board Review and Action.

Rule 36.22.1221. Burning of Waste Gas Required.

Rule 36.22.1222. Hydrogen Sulfide Gas.

Rule 36.22.1223. Fencing, Screening, and Netting of Pits.

Rules 36.22.1224 and 36.22.1425.

Reserved.

Rule 36.22.1226. Disposal of Water.

Rule 36.22.1227. Earthen Pits and Ponds.

Rule 36.22.1228. Disposal by Injection.

Rule 36.22.1229. Water Injection and Gas Repressuring.

Rule 36.22.1230. Application Contents and Requirements.

Rule 36.22.1231. Notice of Application Objections.

Rule 36.22.1232. Board Authorization.

Rule 36.22.1233. Notice of Commencement or Discontinuance—Plugging of Abandoned Wells.

Rule 36.22.1234. Record Required.

Rules 36.22.1235 through 36.22.1239. Reserved.

Rule 36.22.1240. Report of Well Status Change.

Rule 36.22.1241. Service Company Reports.

Rule 36.22.1242. Reports by Producers.

Rule 36.22.1243. Reports from Transporters, Refiners, and Gasoline or Extraction Plants.

Rule 36.22.1244. Producer's Certificate of Compliance.

Rule 36.22.1245. Illegal Production.

Rule 36.22.1301. Notice and Approval of Intention to Abandon Report.

Rule 36.22.1302. Notice of Abandonment.

Rule 36.22.1303. Well Plugging Requirement.

Rule 36.22.1304. Plugging Methods and Procedure.

Rule 36.22.1305. Exception for Fresh Water Wells.

Rule 36.22.1306. Approval for Pulling Casing and Reentering Wells.

Rule 36.22.1307. Restoration of Surface.

Rule 36.22.1308. Plugging and Restoration Bond.

Rule 36.22.1309. Subsequent Report of Abandonment.

Rule 36.22.1401. Definitions.

Rule 36.22.1402. Underground Injection.

Rule 36.22.1403. Application Contents and Requirements Rules.

Rule 36.22.1404 and 36.22.1405. Reserved.

Rule 36.22.1406. Corrective Action.

Rule 36.22.1407. Signing the Application.

Rule 36.22.1408. Financial Responsibility.

Rule 36.22.1409. Hearings.

Rule 36.22.1410. Notice of Application.

Rule 36.22.1411. Board Authorization.

Rules 36.22.1412 and 36.22.1413. Reserved.

Rule 36.22.1414. Notice of Commencement or Discontinuance—Plugging of Abandoned Wells.

Rule 36.22.1415. Records Required.

Rule 36.22.1416. Mechanical Integrity.

Rule 36.22.1417. Notification of Tests—Reporting Results.

Rule 36.22.1418. Exempt Aquifers.

Rule 36.22.1419. Tubingless Completions.

Rules 36.22.1420 and 36.22.1421. Reserved.

Rule 36.22.1422. Permit Conditions.

Rule 36.22.1423. Injection Fee—Well Classification.

Rule 36.22.1601. Who May Apply for Determination.

Rule 36.22.1602. Application Requirements and Contents.

Rule 36.22.1603. Documents and Technical Data Supporting Application.

Rule 36.22.1604. Docket Number.

Rule 36.22.1605. List of Applications—Public Access.

Rule 36.22.1606. Objections to Applications.

Rule 36.22.1607. Deadlines for Action Determinations.

Rule 36.22.1608. Deficient Applications.

Rule 36.22.1609. Board Action on Applications.

Rule 36.22.1610. Special Findings and Determinations New Onshore Production Wells Under Section 103.

Rule 36.22.1611. Special Findings and Determinations Stripper Well Production.

[FR Doc. 96-29451 Filed 11-18-96; 8:45 am]

BILLING CODE 6560-50-P