Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, EPA, Region VIII, (303) 312–6493 or Laurie Ostrand, EPA, Region VIII, (303) 312–6437.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the ''Rules and Regulations'' section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 16, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 01–15144 Filed 6–15–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 063–0024; FRL–6998–4]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a simultaneous limited approval and limited disapproval of revisions to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP) concerning particulate matter (PM–10) emissions from visible emissions, from open burning, and from industrial processes, and concerning carbon monoxide (CO) emissions from industrial processes.

We are also proposing full approval of revisions to the PCAQCD portion of the Arizona State SIP concerning PM–10 emissions from visible emissions and from open burning.

We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 18, 2001.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012

Pinal County Air Quality Control District, Building F, 31 North Pinal Street (P. O. Box 987), Florence, AZ 85232

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415)744–1135.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules proposed for limited approval and limited disapproval with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
PCAQCD	2–8–300	Performance Standards [Visible Emissions]	06/29/93	11/27/95
PCAQCD	3–8–700	General Provisions [Open Burning]	02/22/95	11/27/95
PCAQCD	5–24–1032	Federally Enforceable Minimum Standard of Performance—Process Particulate Emissions.	02/22/95	11/27/95
PCAQCD	5–24–1040	Carbon Monoxide Emissions—Industrial Processes	02/22/95	11/27/95

On February 2, 1996, we determined that the rule submittals in Table 1 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

Table 2 lists the rules proposed for full approval with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 2.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
PCAQCD	2–8–280	General [Visible Emissions]	06/29/93	11/27/95
PCAQCD	2–8–290	Definitions [Visible Emissions]	06/29/93	11/27/95
PCAQCD	2–8–310	Exemptions [Visible Emissions]	06/29/93	11/27/95
PCAQCD	2–8–320	Monitoring and Records [Visible Emissions]	06/29/93	11/27/95
PCAQCD	3–8–710	Permit Provisions and Administration [Open Burning]	02/22/95	11/27/95

On February 2, 1996, we determined that the submittals for Rules 2–8–280, 2–8–290, 2–8–310, 2–8–320, and 3–8–710 met the completeness criteria.

B. Are There Other Versions of These Rules?

We approved a version of Rules 2–8–280, 2–8–290, 2–8–300, 2–8–310, and 2–8–320 into the Pinal-Gila Counties Air Quality Control District [1] (PGCAQCD) portion of the SIP, as Rule 7–3–1.1, Visible Emissions: General, on April 12, 1982 (47 FR 15579).

We approved a version of Rules 3–8–700 and 3–8–710 into the PGCAQCD portion of the SIP, as Rule 7–3–1.3, Open Burning, on November 15, 1978 (43 FR 53031).

We approved a version of Rule 5–24–1032 into the PGCAQCD portion of the SIP, as Rule 7–3–1.8, Process Industries, on November 15, 1978 (43 FR 53031).

We approved a version of Rule 5–24–1040 into the PGCAQCD portion of the SIP, as Rule 7–3–4.1, Emission Standards—Carbon Monoxide from Stationary Sources, on November 15, 1978 (43 FR 53031).

C. What Are the Changes in the Submitted Rules?

Rule 2–8–280 adds the limitation that visible emissions to the atmosphere are from any air contaminant.

Rule 2–8–290 adds relevant definitions.

Rule 2–8–300 has an equally stringent opacity standard for emissions of 40% opacity.

Rule 2–8–310 adds the exemption for emissions where opacity results from uncombined water.

Rule 2–8–320 adds an EPA-approved test method for determining opacity.

Rule 3–8–700 has the following burning operation added to the exemptions for obtaining a permit:

- (C.1) Fires used only for orchard heaters for frost protection.

Rule 3–8–700 has the added burning operations allowed by permit from the Control Officer as follows:

- (E.1.a) Fires for residential disposal of leaves, clippings, and tree trimmings.
- (E.1.b) Fires for residential disposal of household trash in approved burners in remote areas with no refuse collection available.
- (E.2) Fires for commercial disposal of leaves, clippings, and tree trimmings.
- (E.4) Fires for building demolition, only after on-site inspection by the District.

Rule 3–8–700 has added a prohibition against burning various listed hazardous materials or materials that evolve smoke or particulate matter when burned. The rule has added the requirement that fires may be extinguished at the discretion of the Control Officer in the case of:

- Inadequate smoke dispersion.
- Periods of excessive visibility impairment which could adversely affect public safety.
- Periods when smoke blows into a populated area to create a public nuisance.

Rule 3–8–710 adds to the SIP rule the provisions to be cited in the permit, the requirement of the District to keep copies, and the term of the permit.

Rule 5–24–1032 is reformatted but equally as stringent as the SIP rule.

Rule 5–24–1040 is renumbered.

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

We evaluated these rules for enforceability and consistency with the CAA as amended in 1990, with 40 CFR 51, and with EPA's PM–10 policy. Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) requires that serious PM–10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT). In the northern part of PCAQCD is the Apache Junction portion of the Phoenix metropolitan area, which is a serious PM–10 nonattainment area. In the northeastern part of PCAQCD is Hayden-Miami, which is a moderate PM–10 nonattainment area. PCAQCD regulates certain sources of PM–10 within the nonattainment areas.

EPA's preliminary guidance for both moderate and serious PM–10 nonattainment areas provides that RACM/RACT and BACM/BACT are required to be implemented for all source categories unless the State demonstrates that a particular source category does not contribute significantly to PM–10 levels in excess of the NAAQS. See *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992) and *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998 (August 16, 1994). The activities regulated by Rules 2–8–280, 2–8–290, 2–8–300, 2–8–310, and 2–8–320 contribute a small but not insignificant amount of the total PM–10 emissions in PCAQCD according to the August 1999 *Apache Junction Portion of the Metropolitan Phoenix PM–10 Serious State Implementation Plan.*[2] Therefore, Rules 2–8–280, 2–8–290, 2–8–300, 2–8–310, and 2–8–320 must meet the requirements of BACM/BACT.

The activities regulated by Rules 3–8–700 and 3–8–710 contribute an insignificant amount of the total PM–10 emissions in the Apache Junction area and in the Hayden-Miami area. The activities regulated by Rule 5–24–1032 contribute an insignificant amount of the total PM–10 emissions in the Apache Junction area. The PM–10 sources in the Hayden-Miami area are primarily copper smelters, which are regulated by Arizona Department of Environmental Quality rules. EPA believes that the remaining sources regulated by this rule are insignificant sources of PM–10. Moreover, PCAQCD did not submit any of these rules as RACM/RACT or BACM/BACT rules on which PM–10 attainment relies. Therefore, PCAQCD Rules 3–8–700, 3–8–710 and 5–24–1032 are not required to meet RACM/RACT or BACM/BACT control levels. We are evaluating these rules only to ensure that they do not relax the SIP in violation of CAA sections 110(l) and 193, and that they meet enforceability and other general SIP requirements of section 110.

PCAQCD is a CO attainment area. Therefore, we are evaluating Rule 5–24–1040 only to ensure that it does not relax the SIP in violation of CAA sections 110(l) and 193, and that it meets enforceability and other general SIP requirements of section 110. The TSDs have more information on how we evaluated the rules.

Guidance and policy documents that we used to define specific enforceability and SIP relaxation requirements include the following:

- *PM–10 Guideline Document,* (EPA–452/R093–008).
- *Apache Junction Portion of the Metropolitan Phoenix PM–10 Serious*

[1] The Pinal-Gila Counties Air Quality Control District originally had jurisdiction in Pinal County and Gila County. On April 1, 1988, Gila County gave jurisdiction for air quality control to ADEQ. On April 4, 1988, Gila County dissolved the PGCAQCD on behalf of Gila County. On August 15, 1988, Pinal County renamed the PGCAQCD the Pinal County Air Quality Control District, but continued to enforce the PGCAQCD rules. On November 23, 1992, Pinal County formally dissolved the PGCAQCD on behalf of Pinal County. In 1993 and later, PCAQCD adopted PCAQCD replacement rules, many of which subsequently became SIP-approved PCAQCD rules.

[2] If the PM–10 Plan should be modified in the future, the CAA could require additional control measures to meet RACM/RACT or BACM/BACT requirements.

State Implementation Plan (August 1999).

• *General Preamble Appendix C3—Prescribed Burning Control Measures,* 57 FR 18072 (April 28, 1992).

• *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998 (August 16, 1994).

B. Do the Rules Meet the Evaluation Criteria?

These rules improve the SIP by replacing defunct PGCAQCD rules. These rules are largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSDs.

C. What Are the Rule Deficiencies?

Rule 2–8–300 contains the following deficiency:

• The 40% opacity standard does not meet the requirements of BACM/BACT. Analogous generic 20% opacity standards meet the requirements of RACM/RACT in other parts of the country, and we believe BACM/BACT in PCAQCD should be at least as stringent.

Rule 3–8–700 contains the following deficiencies:

• The rule enforceability is limited, because of the discretion of a public officer to grant permission to burn for certain types of burning that are exempt from obtaining a permit. These types of burning could be scheduled on a day when conditions are favorable for open burning and smoke dispersion. The discretion should be removed by using criteria based on quantitative data, such as reasonably available meteorological data, to determine days on which conditions are favorable for open burning and smoke dispersion.

• The rule enforceability is limited, because of the discretion of the Control Officer to determine qualitative conditions of ''inadequate'' smoke dispersion, ''excessive'' visibility impairment, and ''creating'' a public nuisance for extinguishing certain types of burning with a permit. The qualitative criteria could be replaced by using criteria based on quantitative data, such as reasonably available meteorological data, to determine days on which conditions are favorable for open burning and smoke dispersion.

• The new exemption from permitting for orchard heaters could become a SIP relaxation if any were put in use. The exemption should be removed, because there are no orchard heaters in PCAQCD.

Rule 5–24–1032 contains the following deficiencies:

• The rule enforceability is limited, because it does not contain periodic monitoring requirements. If the rule were revised to reference Rule 3–1–150, Monitoring, it would continue to be deficient, because Rule 3–1–150 allows for monitoring at the discretion of the Control Officer.

• The rule enforceability is limited, because it does not state the test method for PM. If the rule were revised to reference Rule 3–1–160, Test Methods and Procedures, it would continue to be deficient, because Rule 3–1–160 allows for approval of an alternate test method at the discretion of the Control Officer.

• The rule enforceability is limited, because of the discretion of the Control Officer to determine whether the manner of control of fugitive emissions is satisfactory.

• The rule enforceability is limited, because it does not require recordkeeping for at least two years.

Rule 5–24–1040 contains the following deficiencies:

• The rule enforceability is limited, because it does not contain a numerical standard for the emission of CO. A 400 ppmv CO standard in exhaust gases has been in effect in other parts of the country for many years.

• The rule enforceability is limited, because it does not contain periodic monitoring requirements. If the rule were revised to reference Rule 3–1–150, Monitoring, it would continue to be deficient, because Rule 3–1–150 allows for monitoring at the discretion of the Control Officer.

• The rule enforceability is limited, because it does not state the test method for CO. If the rule were revised to reference Rule 3–1–160, Test Methods and Procedures, it would continue to be deficient, because Rule 3–1–160 allows for approval of an alternate test method at the discretion of the Control Officer.

• The rule enforceability is limited, because it does not require recordkeeping for two years.

D. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that do not affect our current action but are recommended for the next time the local agency modifies the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the CAA, we are proposing a limited approval of the submitted Rule 2–8–300 to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. We are simultaneously proposing a limited disapproval of this rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the CAA unless EPA approves subsequent SIP revisions that corrects the rule deficiency within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994). A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the PCAQCD, and our final limited disapproval would not prevent the local agency from enforcing it.

As authorized in sections 110(k)(3) and 301(a) of the CAA, we are proposing a limited approval of the submitted Rules 3–8–700, 5–24–1032, and 5–24–1040 to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. We are simultaneously proposing a limited disapproval of these rules under section 110(k)(3). If this disapproval is finalized, sanctions will not be imposed under section 179 of the CAA. Note that the submitted rules have been adopted by the PCAQCD, and our final limited approval would not prevent the local agency from enforcing them.

As authorized in section 110(k)(3) of the CAA, EPA is proposing a full approval of the submitted Rules 2–8–280, 2–8–290, 2–8–310, 2–8–320 and 3–8–710 to improve the SIP.

We will accept comments from the public on the proposed proposed limited approval/limited disapprovals and the proposed full approvals for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

PM–10 and CO harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 and CO emissions. Table 3 lists some of the national milestones leading to the submittal of local agency PM–10 and CO rules.

TABLE 3.—PM–10 AND CO NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of CO and total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
November 15, 1990	CO and PM–10 areas meeting the qualifications of section 107(d)(4)(A) and (B) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 186(a) and 189(a). States are required by section 110(a) to submit rules regulating CO and PM–10 emissions in order to achieve the attainment dates specified in section 186(a)(1) and 188(c).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will 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 E.O. 13132, because it merely acts on 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. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

D. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does

not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 18, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–15293 Filed 6–15–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No.010607150–1150–01; I.D. 091200F]

RIN 0648–AN64

Sea Turtle Conservation; Restrictions Applicable to Fishing and Scientific Research Activities

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the sea turtle handling and resuscitation regulation. Recent scientific and technical information indicate that the current procedures need to be updated. This measure is necessary to improve the handling of sea turtles that are incidentally captured during scientific research or fishing activities.

DATES: Written comments must be received on or before July 18, 2001.

ADDRESSES: Comments on this proposed rule should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or comments may be submitted via facsimile 301–713–0376 or via electronic Internet at seaturt.resuscitate@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Therese A. Conant, or Barbara A. Schroeder, (301)713–1401.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp and summer flounder fishing in areas of the Atlantic Ocean and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement to have a NMFS-approved turtle excluder device (TED) installed in each net rigged for fishing. Other exceptions to the taking prohibition include incidental take that is authorized for ESA scientific research permits, incidental take permits, and section 7 incidental take statements. All take excepted from the prohibitions requires safe handling and resuscitation of incidentally caught sea turtles as specified at 50 CFR 223.206(d)(1).

Justification and Changes Proposed

Sea turtles are air breathers and may drown under conditions of forced submergence. To minimize the impact of forced submergence, NMFS developed protocols to handle comatose turtles (FR 43 32801, July 28, 1978) and subsequently updated the protocols (57 FR 57354, December 4, 1992). New scientific and technical information has been collected since the last update. For example, the practice of stepping on the plastron to revive the turtle may actually do more harm than good. Plastral pumping may cause the airway to block, thus prohibiting air from entering the lungs. Pumping the plastron while a turtle is on its back also causes the viscera to compress the lungs which are located dorsally, thereby hindering lung ventilation. Recent physiological studies on the effects of trawl capture on small sea turtles show that high stress levels are developed during short-duration forced submergences and that the turtles may require from 3.5 up to 24 hours to recover from the stress effects. Thus, in addition to comatose turtles being held up to 24 hours, the release of actively moving turtles should also be delayed when possible. Resuscitation techniques have been refined over the years as biologists have developed effective ways to test for reflexes in order to determine the status of the turtle.

The proposed changes to the existing protocol are as follows: Eliminate stepping on the plastron as a method for resuscitation; provide a more defined criteria to determine dead versus comatose turtles; increase the minimum elevation of the hindquarters; and add carapace movement and a reflex test to the resuscitation methods. In addition,