Authority: Secs. 301, 304(h), 307 and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

* * * * *

2. Section 136.4 is amended by revising paragraph (d) introductory text to read as follows:

§ 136.4 Application for alternate test procedures.

* * * * *

(d) An application for approval of an alternate test procedure for nationwide use may be made by letter in triplicate to the Director, Analytical Methods Staff, Office of Science and Technology (4303), Office of Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Any application for an alternate test procedure under this paragraph (d) shall:

* * * * *

3. Section 136.5 is amended by revising paragraphs (b) through (d), (e)(1), and (e)(2) to read as follows:

§ 136.5 Approval of alternate test procedures.

(a) * * *

(b) Within thirty days of receipt of an application, the Director will forward such application proposed by the responsible person or firm making the discharge, together with his recommendations, to the Regional Administrator. Where the Director recommends rejection of the application for scientific and technical reasons which he provides, the Regional Administrator shall deny the application, and shall forward a copy of the rejected application and his decision to the Director of the State Permit Program and to the Director of the Analytical Methods Staff, Washington, DC.

(c) Before approving any application for an alternate test procedure proposed by the responsible person or firm making the discharge, the Regional Administrator shall forward a copy of the application to the Director of the Analytical Methods Staff, Washington, DC.

(d) Within ninety days of receipt by the Regional Administrator of an application for an alternate test procedure, proposed by the responsible person or firm making the discharge, the Regional Administrator shall notify the applicant and the appropriate State agency of approval or rejection, or shall specify the additional information which is required to determine whether to approve the proposed test procedure. Prior to the expiration of such ninety day period, a recommendation providing the scientific and other technical basis for acceptance or rejection will be forwarded to the Regional Administrator by the Director of the Analytical Methods Staff, Washington, DC. A copy of all approval and rejection notifications will be forwarded to the Director, Analytical Methods Staff, Washington, DC, for the purposes of national coordination.

(e) Approval for nationwide use. (1) Within sixty days of receipt by the Director of the Analytical Methods Staff, Washington, DC, of an application for an alternate test procedure for nationwide use, the Director of the Analytical Methods Staff shall notify the applicant in writing whether the application is complete. If the application is incomplete, the applicant shall be informed of the information necessary to make the application complete.

(2) Within ninety days of the receipt of a complete package, the Analytical Methods Staff shall perform any analysis necessary to determine whether the alternate method satisfies the applicable requirements of this part, and the Director of the Analytical Methods Staff shall recommend to the Administrator that he/she approve or reject the application and shall also notify the applicant of such recommendation.

* * * * *

[FR Doc. 97–14720 Filed 6–4–97; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1639

Welfare Reform

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements a provision in the Legal Services Corporation's (''Corporation'' or ''LSC'') FY 1996 appropriations act which restricts recipients from initiating legal representation or challenging or participating in litigation, lobbying or rulemaking involving an effort to reform a Federal or State welfare system. The rule also clarifies when recipients may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances recipients may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal or State welfare system.

EFFECTIVE DATE: This final rule is effective on July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 336–8817.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee (''Committee'') of the LSC Board of Directors (''Board'') requested the LSC staff to prepare an interim rule to implement section 504(a)(16) of the Corporation's FY 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), which restricts recipients of LSC funds from initiating legal representation or participating in any other way in efforts to reform a Federal or State welfare system. The Committee held hearings on July 10 and 19, 1996, and the Board adopted an interim rule on July 20 which was published in the **Federal Register** on August 29, 1996, with a request for comments.

Subsequent to the adoption of the interim rule by the Board, Congress enacted and the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2105 (1996) (''Personal Responsibility Act''). After receiving four timely comments on the interim rule, the Committee held public hearings on the rule on December 13, 1996, but, because of the enactment of the Personal Responsibility Act, did not adopt a final rule. The Committee met again on March 7, 1997, and adopted proposed revisions to the definitions in the interim rule to include most provisions of the Personal Responsibility Act and requested that the proposed revisions be published for public comment. See 62 FR 14382 (March 26, 1997). The Corporation received seventeen timely comments on the proposed rule, including a comment from the Center for Law and Social Policy (''CLASP''), submitted on behalf of the Project Advisory Group and the National Legal Aid and Defender Association; two from bar associations (American Bar Association and the Colorado Bar Association), four from State or County agencies, and 10 from legal services grantees. The Committee held public hearings on the rule on May 9 and the Board adopted this final rule on May 10, 1997.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Pub. L. 104–208, 110 Stat. 3009. It incorporated by reference the section 504 restriction on welfare reform included in the FY 1996 appropriations. Accordingly, the

preamble and text of this rule continue to refer to the applicable section number of the FY 1996 appropriations act.

This final rule revises the proposed rule's definitions of ''Federal or State welfare system'' and ''reform'' by merging the two definitions into a new definition of ''an effort to reform a Federal or State welfare system.'' This rule retains the proposed rule's exception for the Child Support Enforcement provisions in the Personal Responsibility Act and retains the proposed rule's inclusion of regulations in the definition of ''existing law.''

A section-by-section discussion of this final rule is provided below.

Section 1639.1 Purpose

The purpose of this rule is to ensure that LSC recipients do not initiate litigation or participate in litigation, lobbying or rulemaking involving an effort to reform a Federal or State welfare system. In addition, the rule clarifies when recipients can engage in legal representation of a client seeking specific relief from a welfare agency and incorporates section 504(e) of 110 Stat. 1321, which permits recipients to use non-LSC funds to comment on public rulemaking or respond to requests from legislative or administrative officials.

Section 1639.2 Definitions

The proposed rule would have revised the definition of ''Federal or State welfare system'' to include all provisions of the Personal Responsibility Act, except for the Child Support Enforcement provisions in Title III. The earlier interim rule had included only Federal and State Aid to Families with Dependent Children (''AFDC'') programs under Title IV–A of the Social Security Act, 42 U.S.C. 601 *et seq.*, and State General Assistance, or similar State means-tested programs for basic subsistence, which operate with State funding or under State mandate.

Most of the comments opposed the expanded reach of the proposed definition. The comments stated that the legislative history of the Corporation's welfare reform restriction mentioned only the AFDC and General Assistance programs. The comments also asserted that certain distinctions among the programs included in the Personal Responsibility Act take most of the programs therein outside of what is commonly understood to be welfare. For example, the comments stated that the Social Security Income (''SSI'') provisions of Title II are not welfare, because the program is operated by the Social Security Administration, which is not a welfare agency. They also said that the Food Stamp Program, amended by Title VIII, is not ''welfare,'' because it is ''a safety net program'' administered by the United States Department of Agriculture and is intended to ensure that low-income households, including the working poor, have adequate nutrition. The comments also contended that including most of the provisions in the Personal Responsibility Act could adversely affect the ability of programs to represent clients in the area of public benefits, because they would first need to determine which parts of each welfare program have undergone welfare reform and which parts have not been revised.

Most of the comments agreed with the proposed exclusion of the Child Support Enforcement provisions from the definition, agreeing with the Corporation that the Child Support Enforcement program is a law enforcement program, not a welfare program. The comments pointed out that the Child Support Enforcement program establishes and enforces legal obligations between parents, and the funds collected and distributed are private, not public, funds. Moreover, receipt of services is not limited to persons on public assistance, but is available to anyone who applies.

However, with one exception, the comments from State or local agencies expressed an opposite view. The comments approved of the proposed rule's broader definition, but also urged the Corporation to include the Child Support Enforcement provisions, arguing that these are a critical component of welfare reform, because they are intricately linked with the welfare system and are monitored by the United States Department of Health and Human Services (''HHS'').

The Board decided to include all of the provisions of the Personal Responsibility Act, except for the Child Support Enforcement provisions in Title III, based on its determination that Congress intended the Personal Responsibility Act, in large measure, to constitute an effort to reform the Federal and State welfare systems. It is true that the legislative history of the Corporation's welfare reform restriction used examples based on prior AFDC and General Assistance litigation. However, the Board did not consider the examples in the legislative history of the LSC welfare reform restriction as dispositive. During the same time it was considering the welfare reform restriction, Congress was working on, and soon thereafter enacted, the Personal Responsibility Act, which was characterized by Congress as a sweeping reform of a variety of Federal and State welfare systems. In summarizing the agreement that became law, the conference report of the Personal Responsibility Act provided that:

> **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 puts in place the most fundamental reform of welfare since the program's inception**. * * * It takes the historic step of eliminating a Federal entitlement program—Aid to Families with Dependent Children—and replacing it with a block grant that restores the states' fundamental role in assisting needy families. It makes substantial reforms in the Food Stamp Program, cracking down on fraud and abuse and applying tough work standards. It reforms the Supplemental Security Income (SSI) disability program to strengthen eligibility requirements. * * * It makes sweeping reforms relating to noncitizens, strengthening the principle that immigrants come to America to work, not to collect welfare benefits.
>
> Conf. Rep. No. 725, 104th Cong., 2d Sess. (1996) (emphasis added).

Except for the arguments made regarding the Child Support Enforcement provisions, the Board was unconvinced by most of the distinctions set forth in the comments as to why particular titles of or programs amended by the Personal Responsibility Act should be exempt from the ''welfare reform'' restriction. Neither the text of the Personal Responsibility Act nor its legislative history limited ''welfare reform'' to only Title I. The Board retained the proposed rule's exclusion of the Child Support Enforcement provisions in Title III because, unlike most of the other programs amended by the Personal Responsibility Act, Child Support Enforcement (Title IV–D of the Social Security Act) establishes and enforces legal support obligations between parents. The support payments collected and distributed are private funds, not public funds, and Title IV–D services are available to any parent who applies for them, rather than being limited to families on public assistance or even those in poverty. Indeed, the majority of cases handled and nearly 75 percent of all funds collected involve families not on public assistance. Although the Title IV–A program contains provisions linking eligibility and benefits for AFDC and Food Stamps with cooperation by parents with the Title IV–D agency, this connection alone does not transform the Title IV–D program into a welfare program.

Because the Board determined that the Personal Responsibility Act constitutes an effort to reform Federal and State welfare systems, the Board decided to merge the definitions of ''Federal or State welfare system'' and ''reform'' into a new definition of ''an effort to reform a Federal or State

welfare system.'' This more adequately tracks the language in the statutory restriction and applies it to current welfare reform legislation. The definition still includes State efforts to replace or modify key components of their General Assistance programs, because the legislative history of the welfare reform restriction identified such programs as being within the restriction. The definition also includes language which anticipates future reforms. The definition uses the term ''key components'' of a Federal or State welfare system when referring to future efforts to reform a welfare system, because the statute references a ''welfare system,'' as distinguished from any particular provision of a welfare program. A change to a ''key component'' is intended to mean a fundamental restructuring of a welfare program, such as the transformation of an entitlement program into a block grant program. Finally, several conforming revisions have also been made to other provisions of the rule to be consistent with the revised definition.

This rule's final definition of ''existing law'' has been revised from the interim rule to clarify three points. ''Existing law'' is used in the statutory **limitation** on the **exception** to the welfare reform restriction. The exception permits recipients to represent individual eligible clients to seek specific relief from a welfare agency ''if such relief does not involve an effort to amend or otherwise challenge **existing law** in effect on the date of the initiation of the representation'' (emphasis added).

The first clarification made by the definition, which was included in the proposed rule, is that ''existing law'' is limited to laws enacted to reform a Federal or State welfare system. A broader meaning would eviscerate the exception, because the type of law in the limitation on the exception would be broader than the type of law in the restriction itself. The comments generally approved of this change.

The second clarification made in the final definition, which was also included in the proposed rule, is that ''existing law'' includes properly promulgated regulations. Most of the comments disapproved of this revision. One comment stated that because ''existing law'' is defined to mean law enacted to reform a Federal or State welfare system, it should not include regulations, which do not reform existing welfare law; rather they implement Federal and State legislative efforts that reform welfare law. The comments also gave examples of the detrimental effect of including regulations in the definition. For example, the comments alleged that including regulations in the definition would prevent representation in some cases allowed under the exception clause, because the rules of professional responsibility preclude an attorney from representing a client if the attorney's other obligations are likely to materially restrict avenues of relief that would otherwise be available to the client. In essence, the comments argued that including regulations in the definition would greatly undermine the exception clause, because, when representing clients before agencies, legal aid attorneys must often either challenge the agency's interpretation of the law or at least lay the foundation for such a challenge, should an effort to win benefits for the client under the agency's regulations fail.

The Board decided to retain regulations in the definition of ''existing law'' largely because the statutory restriction uses the term ''existing law'' without qualification. It is beyond cavil that properly adopted regulations constitute law. Regulations not only implement the express language of statutes, they also fill in the statutory gaps and create substantive law. For this reason, Federal and State administrative procedure acts require public notice and comment before such rules are adopted. The Board also disagreed that the inclusion of regulations in the definition eviscerates the exception. The exception allows representation to seek relief that is available under the existing law, whether statutory or regulatory, but does not allow representation that would challenge or amend existing law. The comments appear to be opposed not so much to the inclusion of regulations as to the limitation clause itself, which prohibits representation that would challenge or amend existing law. A point made by many comments was that, in order to represent clients properly in public benefits cases, an attorney must be able to challenge existing law. Although the Corporation is sympathetic to the concerns raised, it is not convinced that this definition will lead to the alleged consequences. Regardless, the statutory restriction prohibits any efforts to reform a Federal or State welfare system or to provide representation that would challenge or seek to amend existing ''welfare reform'' law and the Corporation believes including regulations within the definition is necessary to implement that restriction.

To clarify that the definition applies to regulations that indeed ''make law,'' a third revision clarifies that the definition includes only regulations ''that have been formally promulgated pursuant to public notice and comment procedures.'' This change responds in part to the comment from Atlanta Legal Aid, which stated that the legal basis of Georgia regulations is unclear, in part because they are not formally promulgated. One comment stated that the uncertainty of the status of regulations and whether they implement welfare reform legislation or un-reformed welfare law would cause an enforcement problem. Auditors would not know if certain representation was improper unless they are fully versed in a particular jurisdiction's welfare law and in the legal status of any applicable regulations. The proposed rule used the qualifying clause ''having the force and effect of law,'' but because comments found such language ambiguous, the Board replaced it with language clarifying that ''existing law'' includes only regulations that are promulgated pursuant to public notice and comment procedures. This change should preclude any confusion auditors might have experienced over the proposed rule's language.

In summary, the definition of ''existing law'' in this final rule does not include regulations that have not been formally promulgated under notice and comment procedures or that have not been issued to implement reform of a Federal or State welfare system.

Section 1639.3 Prohibition

This section generally prohibits litigation, lobbying and rulemaking activities involving an effort to reform a Federal or State welfare system. The prohibition includes litigation challenging laws or regulations enacted as part of a reform of a Federal or State welfare system; participating in rulemaking involving proposals that are being considered as part of a reform of a Federal or State welfare system; and lobbying before legislative or administrative bodies involving pending or proposed legislation that is part of a reform of a Federal or State welfare system.

Section 1639.4 Permissible Representation of Eligible Clients

This section implements the statutory exception in section 504(a)(16) which permits a recipient to represent ''an individual eligible client who is seeking specific relief from a welfare agency, if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation.'' Pursuant to this provision, an action to enforce existing

law would not be proscribed. Thus, for example, when representing an eligible client seeking individual relief from the actions of an agency taken under a welfare reform law or regulation, a recipient may challenge an agency policy on the basis that it violates an agency regulation or State or Federal law or challenge the application of an agency's regulation, or the law on which it is based, to the individual seeking relief.

Section 1639.5 Exceptions for Public Rulemaking and Responding to Requests With Non-LSC Funds

The 1996 appropriations act includes a provision, section 504(e) of 110 Stat. 1321, which provides that nothing in section 504

> shall be construed to prohibit a recipient from using funds derived from a source other than the Legal Services Corporation to comment on public rulemaking or to respond to a written request for information or testimony from a Federal, State or local agency, legislative body or committee, or a member of such an agency, body or committee, so long as the response is made only to the parties that make the request and the recipient does not arrange for the request to be made.

This exception applies to the prohibition on welfare reform lobbying and rulemaking in section 504(a)(16). Therefore, recipients may use non-LSC funds to make oral or written comments in a public rulemaking proceeding involving an effort to reform a Federal or State welfare system. Recipients may also use non-LSC funds to respond to a written request from a government agency or official thereof, elected official, legislative body, committee or member thereof, made to the employee or to a recipient to testify or provide information regarding an effort to reform a State or Federal welfare system, provided that the response by the recipient is made only to the party making the request and the recipient does not arrange for the request to be made.

Section 1639.6 Recipient Policies and Procedures

In order to ensure that the recipient's staff is fully aware of the restriction on welfare reform activity and to ensure that staff receive appropriate guidance, this section requires that recipients adopt written policies and procedures to guide its staff in complying with this part.

Transition Guidance

Recipients must take immediate steps to withdraw from pending cases that were permitted by the interim regulation but which are now prohibited by the final regulation. Such steps should be documented by written notice to the client and written pleadings to the courts or administrative agencies involved. However, where a court or agency will not permit withdrawal in spite of a recipient's best efforts, the Corporation will determine on a case-by-case basis whether continued representation violates the regulation. During the period in which the recipient is seeking alternative counsel or other proper ways to conclude its involvement in such representation, it may file such motions as are necessary to preserve its client's rights in the matter on which representation is being provided.

List of Subjects in 45 CFR Part 1639

Grant programs, Legal services, Welfare reform.

For reasons set forth in the preamble, 45 CFR part 1639 is revised to read as follows:

PART 1639—WELFARE REFORM

Sec.

Authority: 42 U.S.C. 2996g(e); Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321.

§ 1639.1 Purpose.

The purpose of this rule is to ensure that LSC recipients do not initiate litigation involving, or challenge or participate in, efforts to reform a Federal or State welfare system. The rule also clarifies when recipients may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances recipients may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal or State welfare system.

§ 1639.2 Definitions.

(a) *An effort to reform a Federal or State welfare system* includes all of the provisions, except for the Child Support Enforcement provisions of Title III, of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), 110 Stat. 2105 (1996), and subsequent legislation enacted by Congress or the States to implement, replace or modify key components of the provisions of the Personal Responsibility Act or by States to replace or modify key components of their General Assistance or similar means-tested programs conducted by States or by counties with State funding or under State mandates.

(b) *Existing law* as used in this part means Federal, State or local statutory laws or ordinances which are enacted as an effort to reform a Federal or State welfare system and regulations issued pursuant thereto that have been formally promulgated pursuant to public notice and comment procedures.

§ 1639.3 Prohibition.

Except as provided in §§ 1639.4 and 1639.5, recipients may not initiate legal representation, or participate in any other way in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. Prohibited activities include participation in:

(a) Litigation challenging laws or regulations enacted as part of an effort to reform a Federal or State welfare system.

(b) Rulemaking involving proposals that are being considered to implement an effort to reform a Federal or State welfare system.

(c) Lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system.

§ 1639.4 Permissible representation of eligible clients.

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency, if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation.

§ 1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.

Consistent with the provisions of 45 CFR 1612.6 (a) through (e), recipients may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system.

§ 1639.6 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Dated: May 30, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–14608 Filed 6–4–97; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, and 172

[Docket No. HM–224A]

RIN 2137–AD02

Hazardous Materials: Shipping Description and Packaging of Oxygen Generators

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations to add a specific shipping description to the Hazardous Materials Table for chemical oxygen generators and to require approval of a chemical oxygen generator, and its packaging, when the chemical oxygen generator is to be transported with its means of initiation attached. Oxygen generators currently are transported under several different shipping descriptions which identify chemical constituents but do not identify that the packaged articles are oxygen generators. These changes will facilitate the identification of oxygen generators in transportation, making it easier to comply with and enforce existing prohibitions against the carriage of chemical oxygen generators on passenger aircraft and in inaccessible locations on cargo aircraft, and enhance packaging requirements.

DATES: Effective: The effective date of these amendments is July 7, 1997. The provisions of § 172.101(l)(1)(ii), which otherwise would allow up to one year after a change in the Hazardous Materials Table to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, Office of Hazardous Materials Standards, 202–366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Following the May 11, 1996 crash of ValuJet flight 592 into the Florida Everglades, where chemical oxygen generators carried as cargo may have caused or contributed to the severity of the accident, RSPA published an interim final rule in the **Federal Register** (61 FR 26418) on May 24, 1996, followed by a final rule on December 30, 1996 (61 FR 68952) prohibiting the transportation of chemical oxygen generators as cargo on passenger-carrying aircraft. This prohibition is responsive to a May 31, 1996 recommendation of the National Transportation Safety Board (NTSB) that RSPA:

> In cooperation with the Federal Aviation Administration, permanently prohibit the transportation of chemical oxygen generators as cargo on board any passenger or cargo aircraft when the generators have passed their expiration dates, and the chemical core has not been depleted. (Class I, Urgent Action) (A–96–29).

On December 30, 1996, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 68955)that proposed, in relevant part, several additional changes with respect to chemical oxygen generators: (1) adding a shipping description for ''Oxygen generator, chemical, 5.1, UN 3353, PG-I and PG-II,'' consistent with the recent adoption of this shipping description by the International Civil Aviation Organization (ICAO); (2) indicating in §§ 172.101 (the Hazardous Materials Table), §§ 171.11 and 175.85 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) that chemical oxygen generators may not be transported aboard passenger-carrying aircraft or in inaccessible cargo compartments in cargo aircraft; (3) indicating in §§ 171.11, 171.12, and 171.12a that there are no exceptions from HMR requirements for classification, approval and description of oxygen generators; and (4) specifying packaging requirements for shipment of chemical oxygen generators.

This final rule adopts these proposals from the December 30, 1996 NPRM concerning oxygen generators with minor changes. In §§ 171.11, 171.12 and 171.12a, proposed new paragraphs (d)(14), (b)(17) and (b)(16) have been adopted as new paragraphs (d)(15), (b)(18) and (b)(17), respectively. Additionally, paragraph (d)(15) does not reference the exception in § 175.10 because it is redundant as a result of the entry for ''Oxygen generator, chemical'' and the corresponding special provision.

RSPA's December 30, 1996 NPRM also proposed to prohibit the transportation of oxidizers, including compressed oxygen, on passenger-carrying aircraft (which would also limit oxidizers that are allowed on cargo aircraft only to cargo locations that are accessible to crew members during flight; § 175.85(b)). Docket No. HM–224A, 61 FR 68955. This proposed amendment to the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, is consistent with the NTSB recommendation that RSPA:

> In cooperation with the Federal Aviation Administration, prohibit the transportation of oxidizers and oxidizing materials (e.g., nitric acid) in cargo compartments that do not have fire or smoke detection systems. (Class I, Urgent Action) (A–96–30).

In the December 30, 1996 NPRM, RSPA expressed its intent to issue a supplemental NPRM to more fully address proposals pertaining to a prohibition against oxidizers on passenger aircraft and in inaccessible locations on cargo aircraft. RSPA expects to publish the supplemental NPRM in the near future.

RSPA received several requests to extend the comment period on the December 30, 1996 NPRM for either 60 or 90 days. The requests for an extension of time to comment did not relate to the proposals in the December 30, 1996 NPRM concerning the shipping description and packaging of chemical oxygen generators.

II. Oxygen Generators

The international shipment of hazardous materials by air is governed by the International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). The HMR allow the use of the ICAO Technical Instructions as an alternative to corresponding hazard communication and packaging requirements of the HMR (see 49 CFR 171.11). As explained in the NPRM, ICAO recently adopted a shipping description, ''Oxygen generator, chemical, 5.1, UN 3353, II,'' for chemical oxygen generators. RSPA proposed this description in the NPRM to make it easier to identify chemical oxygen generators and for consistency with the ICAO provisions.

RSPA also explained in the December 30, 1996 NPRM its proposals to require special packaging for a chemical oxygen generator that is shipped with its means of initiation attached. RSPA proposed