

terminated by FIA, after further technical review of the Flood Hazard Boundary Map for Cobb County, Ga., in light of additional, recently acquired flood information, that certain property (described below) is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: October 20, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll-free line, 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained from the National Flood Insurers Association (NFIA) through the agent or broker who sold the policy.

The text reads as follows:

§ 1920.7 Notice of letter of map amendment.

Map No. H 130052 Panel 15, published on August 12, 1975, in 40 FR 33822, indicates that Lot 9, Block A, Woodview Manor, Cobb County, Ga., as recorded in Plat Book 29, Page 56, in the office of the Clerk of Cobb County, Ga., is within the Special Flood Hazard Area.

Map No. H 130052 Panel 15 is hereby corrected to reflect the existing structure on the above property is not within the Special Flood Hazard Area identified on October 3, 1975.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued September 8, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 77-30386 Filed 10-19-77; 8:45 am]

[4210-01]

[Docket No. FI-880]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the Town of Corte Madera, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: On February 13, 1976, the Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (FIA) published maps identifying Special Flood Hazard Areas. This list included the town of Corte Madera, Calif. It has been determined by FIA, after further technical review of the Flood Hazard Boundary Map for the town of Corte Madera, Calif., in light of additional, recently acquired flood information, that certain property (described below) is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: October 20, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll-free line, 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION:

If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained from the National Flood Insurers Association (NFIA) through the agent or broker who sold the policy.

The text reads as follows:

§ 1920.7 Notice of letter of map amendment.

Map No. H 065023A Panel 01, published on February 13, 1976, in 41 FR 6727, indicates that Lot 7, Block 4, Madera Gardens Subdivision No. Seven, Corte Madera, Calif., as recorded in Book 1083, Page 497, in the office of the Recorder of Marin County, Calif., is within the Special Flood Hazard Area.

Map No. H 065023A Panel 01 is hereby corrected to reflect the above property is not within the Special Flood Hazard Area identified on January 16, 1976.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued September 8, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

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Registered
Property

THURSDAY, OCTOBER 20, 1977

PART IV



ENVIRONMENTAL PROTECTION AGENCY

■

IMPLEMENTATION OF THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976

Interim Regulations

[6560-01]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCYSUBCHAPTER B—GRANTS AND OTHER
FEDERAL ASSISTANCE

[FRL 790-1]

INTERIM REGULATIONS TO IMPLEMENT
THE RESOURCE CONSERVATION AND
RECOVERY ACT OF 1976AGENCY: Environmental Protection
Agency.

ACTION: Interim regulations.

SUMMARY: These Regulations are amendments to Parts 30, 35, 40, and 45 of the current Environmental Protection Agency (EPA) regulations governing grants and other Federal assistance promulgated in accordance with the provisions and requirements of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976. Part 30, General Grant Regulations and Procedures, is modified to include references to the Act where appropriate. Part 35, State and Local Assistance, is modified to substitute regulations governing Solid and Hazardous Waste Management Program Support Grants under sections 3011, 4007, 4008 and 4009 of the Act for the former regulations governing Solid Waste Planning Grants under section 207 of the Solid Waste Disposal Act before amendment. Part 40, Research and Demonstration Grants, is modified to provide for programs under sections 8001, 8004, 8005 and 8006 of the Act. In addition to changes required by the Act, numerous technical amendments have also been made to Part 40. Finally, Part 45, Training Grants and Manpower Forecasting, is modified to include references to the programs under sections 7007 and 8001 of the Act.

DATE: Comments received on or before December 1, 1977, will be considered in the development of final regulations.

EFFECTIVE DATE: October 20, 1977.

ADDRESS: Comments on these Regulations should be in triplicate and may be addressed to the Deputy Assistant Administrator for Solid Waste (WH-462), Attn: Docket Number 40 CFR B, Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Val Grey, Office of Solid Waste (WH-462), EPA, Washington, D.C., telephone 202-755-9173.

SUPPLEMENTARY INFORMATION: On October 21, 1976, the President signed the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, which amended the Solid Waste Disposal Act, Pub. L. 89-272. The Act provided for a number of new financial assistance programs and modified others requiring amendments and addition to appropriate

parts of the current EPA grant regulations.

Drafts of proposed amendments were circulated for comment to all States, and selected public and environmental interest groups in accordance with the Office of Management and Budget (OMB) Circular Number A-85 review requirements. The comment period closed July 5, 1977. A public meeting was held at EPA in Washington, D.C. on June 30, 1977, and additional comments were received. All comments received by July 5 were reviewed and carefully considered in the redrafting of these regulations.

EPA's response to several recurring comments and discussions of several program decisions are presented below.

DELETED REGULATIONS

Although the provisions of §§ 35.300 through 35.340 of this Chapter (Solid Waste Planning Grants) are deleted from the Code of Federal Regulations, they will remain applicable in their uncodified form to all grants previously awarded under those regulations. Regional offices must assure that work elements under grants to States awarded prior to fiscal year 1978 which remain uncompleted will be coordinated with work elements of the fiscal year 1978 program.

SUBSTATE IMPACT ON STATE PLANS

Several commenters expressed concern that substate entities would not receive sufficient consideration in the early stages of State work program development and distribution of funds, nor in implementation of the State work program. In response, EPA has included a provision designed to assure adequate opportunity for substate involvement (§ 35.720). Substate entities can also affect the State work program through the public participation process which will be developed in Part 249 of this chapter.

IMPLEMENTATION FUNDS TO SUBSTATE
ENTITIES

Several commenters felt that Federal funds will not reach those substate entities ready to implement needed programs in cases where State agencies do not meet requirements for grant award. In such cases, direct awards to substate entities may be made provided the projects are certified by the State to be consistent with the State plan and funds for such awards are available. Generally, however, it is EPA's intent to award grants to States for "pass-through" to substate entities.

FEDERAL REQUIREMENTS FOR STATE
PROGRAMS

Another concern raised by several States is that these regulations reflect excessive Federal control over State programs. EPA has attempted to provide maximum flexibility for development of State programs, and has included opportunities for negotiation between the State and Regional Administrator, allowing any unique social, political, economic, legal and environmental circumstances

and priorities of the State to be considered and incorporated into the State work program.

REQUIRED OUTPUTS

Several commenters disliked the requirement that the inventory of open dumps be conducted by the States. It is EPA's position, however, that it will be in the interest of the States to conduct the inventory since it is they who must close or develop a schedule for upgrading or closing all open dumps. EPA considers this program element a high priority in developing a State solid waste management program and will provide up to 100 percent of the inventory cost.

Several comments also addressed the requirement for a State hazardous waste management program element. EPA does not consider this a burden since, during fiscal year 1978, a State need only demonstrate a movement toward development of the ability to assume the hazardous waste management program in subsequent fiscal years. Further, these regulations allow exception to the requirement in unusual circumstances.

FISCAL YEAR 1978 ALLOCATIONS

Commenters questioned the proposed allocation formula in earlier drafts of the regulations for funds appropriated under section 3011. That formula has been deleted since it will not be used in fiscal year 1978. The Administrator has determined that all funds appropriated in fiscal year 1978 will be allocated by the formula developed for solid waste management programs (section 4008(a)(1)) for achieving the outputs required under and used for solid waste management program elements including movement toward ability to assume the hazardous waste management program. Supplemental regulations will be issued for fiscal year 1979, which will provide an allocation formula for section 3011 funding.

ELIGIBLE STATE AGENCIES

Also questioned was the eligibility of State agencies, other than executive agencies, for Federal funding. The Act does not limit Federal funding solely to State executive agencies. Therefore, wherever the law authorizes the EPA to make grants "to States," e.g., in section 3011 and 4008, it is interpreted to mean all State bodies, including State legislatures. These regulations and Part 255 of this chapter will provide for one State agency (presumably an executive agency) designated by the Governor to carry out the solid waste management program or to coordinate the distribution of program funds and work responsibilities among other State entities, which may include legislative bodies.

AUTHORIZATIONS NOT INCLUDED

In addition to the programs for which regulations have been developed the Act also authorizes financial assistance to eligible applicants for the purchase of tire shredders under section 2004 and to special communities under section 4008

(e). Regulations have not been developed to cover these programs, because it is not expected that sufficient funds will be appropriated by Congress in the next year. Supplemental regulations will be developed when warranted. It is also unlikely that sufficient funds will be appropriated for rural communities assistance under section 4009 although regulations have been developed.

EFFECTIVE DATE

Delay in the effective date of these regulations would be contrary to the public interest, since fiscal year 1978 grants must be processed immediately to allow timely initiation of State programs. Therefore, these regulations are effective October 20, 1977.

Dated: October 13, 1977.

DOUGLAS M. COSTLE,
Administrator.

40 CFR Part 30 is amended as follows:
1. By revising § 30.101(c) to read as follows:

§ 30.101 Authority.

(c) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.);

2. By revising § 30.305-2(a)(3), (a)(4), and (a)(14) and adding new paragraphs (a)(15) and (a)(16) to read as follows:

§ 30.305-2 Notification of intent (A-95, Part I).

- (a) * * *
- (3) 66.451 Solid and Hazardous Waste Management Program Support Grants;
- (4) 66.452 Solid Waste Management Demonstration Grants;
- * * *
- (14) 66.602 Environmental Protection Consolidated Grants—Special Purpose;
- (15) 66.453 Solid Waste Management Training Grants;
- (16) 66.504 Solid Waste Disposal Research Grants.

3. By revising § 30.305-5(a) to read as follows:

§ 30.305-5 Programs requiring State plans and jointly funded projects (A-95 Part III).

(a) *Applicability.* This section applies only to Air Pollution Control Program Grants, Water Pollution Control State and Interstate Program Grants, and Solid and Hazardous Waste Management Program Support Grants to the extent they involve State plans.

4. By redesignating the existing paragraph under § 30.515 as (a) and adding a new paragraph (b) to read as follows:

§ 30.515 Required patent provision.

- (a) * * *
- (b) Inventions made under the Resource Conservation and Recovery Act of

1976 are subject to section 9 of the Federal Non-nuclear Energy Research and Development Act of 1974. This is implemented by Appendix B.

5. By revising the authority statement which follows the table of sections to read as follows:

Authority: Authorities cited in § 30.101.

40 CFR Part 35 is amended as follows:

6. By deleting the table of sections for §§ 35.300 through 35.340 including the centered heading "Solid Waste Planning Grants" (which precedes § 35.300).

§§ 35.300 through 35.340 [Deleted]

7. By deleting §§ 35.300 through 35.340 including the centered heading "Solid Waste Planning Grants" (which precedes § 35.300).

8. By revising §§ 35.400 through 35.425 to read as follows:

Subpart B—Program Grants

Sec.	Purpose.
35.400	Air pollution control agency grant awards.
35.400-1	Water pollution control program grant awards.
35.400-2	Public water system supervision program grant awards.
35.400-3	Solid and hazardous waste management program support grant awards.
35.403	Authority.
35.404	Annual guidance.
35.405	Criteria for evaluation of program objectives.
35.410	Evaluation of agency performance.
35.415	Financial status report.
35.420	Payment.
35.425	Federal and grantee program support.

AUTHORITY: Secs. 105 and 301(b), Clean Air Act, as amended (42 U.S.C. 1857(c) and 1857(g)); secs. 106 and 501, Federal Water Pollution Control Amendments of 1972 (33 U.S.C. 1256 and 1361); secs. 1443(a) and 1450, Safe Drinking Act (42 U.S.C. 300j-2); and secs. 3011, 4007, 4008 and 4009, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6931, 6947, 6948 and 6949).

§ 35.400 Purpose.

This subpart establishes and codifies policy and procedures for air pollution, water pollution, public water system supervision and solid and hazardous waste management program support grants, and supplements the EPA general grant regulations and procedures (Part 30 of this chapter). These grants are intended to aid programs for air pollution control, water pollution control, public water system supervision, and solid and hazardous waste management at the State, interstate, or local level.

§ 35.400-1 Air pollution control agency grant awards.

Grants may be awarded to air pollution control agencies for the planning, development, establishment, improvement, and maintenance of programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in accordance with the applicable implementation plan.

§ 35.400-2 Water pollution control program grant awards.

Grants may be awarded to State and interstate water pollution control agencies to assist them in developing or administering programs for the prevention, reduction, and elimination of water pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

§ 35.400-3 Public water system supervision program grant awards.

Grants may be awarded to State agencies to assist them in developing or administering public water system supervision programs.

§ 35.400-4 Solid and hazardous waste management program support grant awards.

Grants may be awarded to agencies having responsibility for solid and hazardous waste management to assist them in developing and implementing solid and hazardous waste management work programs.

§ 35.403 Authority.

This subpart is issued under sections 105 and 301(b) of the Clean Air Act, as amended (42 U.S.C. 1857(c) and 1857(g)); sections 106 and 501 of the Federal Water Pollution Control Amendments of 1972 (33 U.S.C. 1256 and 1361); sections 1443(a) and 1450 of the Safe Drinking Act (42 U.S.C. 300j-2); and sections 3011, 4007, 4008 and 4009 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6931, 6947, 6948 and 6949).

§ 35.404 Annual guidance.

The Environmental Protection Agency will develop and disseminate annual guidance to be used by the grantee to structure air pollution, water pollution, public water system supervision, and solid and hazardous waste management programs for the coming Federal fiscal year. The guidance will contain a statement of the national strategy including national objectives and national priorities for the year, together with planning figures for Federal program grant assistance based on the EPA budget approved by the President. The annual guidance will be disseminated each year as soon as practicable during the month of February.

§ 35.405 Criteria for evaluation of program objectives.

(a) Programs set out in the application and submitted in accordance with these regulations shall be evaluated in writing by the Regional Administrator to determine:

- (1) Consistency and compatibility of objectives and expected results with EPA national and regional priorities in implementing purposes and policies of the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act or the Resource Conservation and Recovery Act.

(2) Feasibility of achieving objectives and expected results in relation to existing problems, past performance, program authority, organization, resources and procedures.

(b) Approval of the program developed under § 35.526 (air) or § 35.565 (water pollution) or § 35.626 (public water system supervision) or § 35.718 (solid and hazardous waste management) shall be based on the extent to which the applicant's program satisfies the above criteria.

§ 35.410 Evaluation of agency performance.

(a) A performance evaluation shall be conducted at least annually by the Regional Administrator and the grantee to provide a basis for measuring progress toward achievement of the approved objectives and outputs described in the work program. The evaluation shall be consistent with the requirements of § 35.538 for air pollution control agencies, § 35.570 for water pollution control agencies, § 35.626(d) for public water system supervision agencies and § 35.744 for solid and hazardous waste management agencies.

(b) The Regional Administrator shall prepare a written report of the annual evaluation. The grantee shall be allowed 15 working days from the date of receipt to concur with or comment on the findings.

§ 35.415 Financial status report.

Within 90 days after the end of each budget period, the grantee must submit to the Regional Administrator an annual report of all expenditures (Federal and non-Federal) which accrued during the budget period. Beginning in the second quarter of any succeeding budget period, grant payments may be withheld under § 30.615-3 of this chapter until this report is received.

§ 35.420 Payment.

Grant payments will be made in accordance with § 30.615 of this chapter. Notwithstanding the provisions of § 30.345 of this chapter, the first grant payment subsequent to grant award may include reimbursement of all allowable costs incurred from the beginning of the approved budget period, provided that monthly costs incurred from the beginning of the budget period to the date of grant award do not exceed the level of costs incurred in the last month of the prior budget period.

§ 35.425 Federal and grantee programs support.

(a) For purposes of establishing the amount of resources which will be committed by the agency to particular budget categories or program elements under §§ 35.527 (air), 35.561(a) (water), and 35.626-1 (public water system supervision), Federal and grantee financial contribution shall be considered as combined sums, and shall not be separately identified for each budget category or program element. For purposes of this subpart,

and pursuant to § 30.700(a) of this chapter, all project expenditures by the grantee shall be deemed to include the Federal share.

(b) A grantee may not unilaterally reduce the non-Federal share of project costs. In the event of a significant proposed or actual reduction in the non-Federal contribution, the Regional Administrator must consider a reduction in the Federal share or an increase to the Federal percentage.

9. By adding new §§ 35.700 through 35.744 to read as follows:

SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM SUPPORT GRANTS

Sec.	Purpose.
35.700	Definitions.
35.701	The Act.
35.701-1	Substate entity.
35.701-2	Nonrecurrent expenditures.
35.702	Summary of program.
35.704	Eligibility for funding.
35.706	Allotments.
35.706-1	Solid waste management planning and implementation.
35.706-2	Hazardous waste management program development and implementation.
35.706-3	Rural communities assistance.
35.706-4	State and substate implementation grants.
35.706-5	Special communities.
35.708	Regional allowances.
35.710	Grant amount.
35.712	Reduction of grant amount.
35.714	Federal share.
35.716	Budget period.
35.718	State program development and submission.
35.718-1	Plan submission requirements.
35.718-2	Annual work program submission requirements.
35.720	Involvement of legislative and other agencies.
35.722	Program elements.
35.724	Clearinghouse review.
35.726	Public participation.
35.728	Program review and approval.
35.730	Required outputs.
35.730-1	Inventory requirements.
35.730-2	Hazardous waste program element requirements.
35.732	Implementation and substate grants.
35.734	Rural communities assistance.
35.736	Special communities.
35.738	Limitations on award.
35.738-1	Area and agency identification.
35.738-2	Maintenance of effort.
35.738-3	Federal grant as supplementary.
35.740	Adherence to budget estimates.
35.742	Program changes.
35.744	Program evaluation and reporting.

§ 35.700 Purpose.

These regulations establish policies and procedures for grants under sections 3011, 4007, 4008, and 4009 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6931, 6947, 6948, and 6949). These regulations supplement the EPA general grant regulations and other requirements set forth in Parts 30 and 35 of this chapter.

§ 35.701 Definitions.

The Act contains a list of definitions in section 1004 which are not repeated here. In addition, the following terms have the meaning set forth below:

§ 35.701-1 The Act.

The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976.

§ 35.701-2 Substate entity.

Any public regional, local, county, municipal, or intermunicipal agency, or regional or local public (including interstate) solid or hazardous waste management authority, or other public agency below the State level.

§ 35.701-3 Nonrecurrent expenditures.

Expenditures which include any of the following: (a) the amount by which the annual cost of the purchase of individual items of equipment, each costing over \$2,500, exceeds the average of such purchases for the three preceding fiscal years (nonrecurrent equipment purchases may be depreciated over the anticipated useful life of the equipment); (b) costs of projects supported under grants authorized by sections of the Act other than sections 4007, 4008, and 4009; or (c) those expenditures which are identified as being acceptable as nonrecurrent expenditures under generally accepted accounting principles, with the prior approval of the Regional Administrator.

§ 35.702 Summary of program.

(a) To understand the State solid and hazardous waste management program, the provisions below should be read with the regulations which govern the identification of regions and agencies for solid waste planning and management (Part 255 of this chapter), the regulations which set forth the requirements of the solid waste management planning process (Part 256 of this chapter), and the regulations which govern hazardous waste management (Part 250 of this chapter).

(b) EPA grants awarded under these regulations primarily provide funding support to an annual work program which is to be carried out in each State. The emphasis is on a flexible process which can meet the unique social, political, economic, legal, and environmental circumstances in each State. The events leading to a State grant are summarized as follows: As early as possible each year, EPA will determine a tentative funding level for each State. Using this level as a target, each State will develop a "draft" work program and submit it to the appropriate EPA Regional Administrator by June 1. Regional Office personnel will work with the State to negotiate any necessary adjustments in the work program. When funds are appropriated, they will be allotted among the States. By August 1, the State must submit its "final" work program (as part of its grant application) to the Regional Administrator, who will award the State grant, assuming the program meets applicable requirements. Mid-year program evaluations by the Regional Administrator are required; end-of-year evaluations may also be conducted. For fiscal year 1978, only the final work program

is required and must be submitted by November 21, 1977.

(c) While it is important that sound planning be accomplished, EPA intends for States to avoid delays in undertaking needed implementation activities. Thus, a State's work program can describe implementation activities to be undertaken in one program area while planning is being completed in another. In order to qualify for fiscal year 1978 funding, the State submission must consist of two parts: (1) the State plan previously developed under section 207 of the Solid Waste Disposal Act before amendment by the Resource Conservation and Recovery Act of 1976, including a strategy for achieving the purposes of the Act, or an equivalent plan developed independently by the State; and (2) the first year's proposed work program under these regulations.

(d) Each State is expected to use its early grants for, among other things, the development of a plan which EPA envisions will grow from the State's initial submission for fiscal year 1978. The plan developed under the grant must meet the objectives of the Act. In fiscal year 1979, as much of the plan as is developed will be submitted as part of the grant application. When the plan is fully developed, the State's planning responsibilities will be primarily to update or revise the plan as required.

(e) The substance of the State's yearly work program is addressed generally in § 35.722. It lists the program elements each State must address in its work program. Specific elements may be modified, if approved by the Regional Administrator. The State's program must also describe specific outputs for each element. Outputs under two program elements are specifically required, namely, the inventory of open dumps and movement toward development of a hazardous waste program. Each year, EPA will provide guidance concerning desired output requirements.

(f) States are required to complete the agency and area identification processes mandated by section 4006 of the Act before they can be eligible for a grant in fiscal year 1979. For fiscal year 1978, each State must commit to timely completion of these processes, and submit a schedule for such completion.

(g) It is EPA's intention that program grants stimulate and reward State and substate initiatives for dealing with solid and hazardous waste problems. Thus, EPA encourages each State to meet its particular problems, with no more Federal controls than necessary to assure the program is successful nationally.

(h) These provisions also allow EPA to award implementation grants to State agencies and, in limited circumstances, directly to substate agencies for activities which the State certifies are consistent with the plan and work program.

§ 35.704 Eligibility for funding.

(a) Grants will be awarded to a State under section 4008(a)(1) of the Act

only if the State has submitted a work program under § 35.718 as part of its grant application, and the work program meets the requirements of this chapter and is approved by the Regional Administrator.

(b) The Governor shall designate a single State agency to carry out the work program or coordinate distribution of funds and work responsibilities among State and substate entities for fiscal year 1978.

(c) Funds for activities under the program elements in § 35.722(a) (solid waste plan development and implementation) shall be allocated within the State only to the agency or agencies (State or substate) identified under section 4006 of the Act and Part 255 of this chapter. For fiscal year 1978, in States where the agency identification process under Part 255 is not complete, such funds shall be allocated to the agency or agencies which the Governor (with the Regional Administrator's concurrence) determines are most appropriate to undertake the work elements in view of the requirements of Part 255. This determination by the Governor is not required where the Regional Administrator determines that an agency has explicit authority under State law to carry out these responsibilities.

(d) No funds for activities under the program elements in § 35.722(b) (hazardous waste program development and implementation) will be awarded to any State unless the Regional Administrator determines that the State's hazardous waste program development and implementation efforts are consistent with the requirements of EPA guidelines published under section 3006(a) of the Act, except that for fiscal year 1978, hazardous waste program development will be funded as an element of solid waste work program development (see §§ 35.722(a)(3) and 35.730-2).

(e) Funds for rural communities assistance will be allocated by the State only to entities eligible under § 35.734.

(f) Grants to States and substate agencies for certain implementation activities under section 4008(a)(2) of the Act will be awarded only for activities which are certified by the State to be consistent with the plan developed under Part 256 of this chapter and the State's work program under § 35.718. Further eligibility criteria are set forth in § 35.732.

§ 35.706 Allotments.

EPA's annual guidance will set forth the Administrator's determination of the division of appropriated funds among the Act's various authorized programs, and the basis for his determination. Allotments are not an absolute entitlement of funds for any State; rather, they represent the amount of a grant the State can receive if the State's work program supports that level of funding and is approved by the Regional Administrator. For fiscal year 1978, population figures in the formulae below will be drawn from the 1970 census. In subsequent fiscal years, EPA may use up-

dated data if available from the U.S. Department of Commerce. Allotments will be rounded to the nearest hundred dollars.

§ 35.706-1 Solid waste management planning and implementation.

Sums which the Administrator determines will be available in each fiscal year for grants under section 4008(a)(1) of the Act will be allotted among all States in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive an allotment of less than one-half of one percent of the sums so allotted in any fiscal year.

§ 35.706-2 Hazardous waste management program development and implementation.

[Reserved]

§ 35.706-3 Rural communities assistance.

Sums which the Administrator determines will be available in each fiscal year for grants under section 4009 of the Act will be allotted among all States based on the average of three factors: (a) the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States; (b) the ratio which the population of counties in each State having less than twenty persons per square mile bears to the total population of such counties in all the States; and (c) the ratio which the population of such low-density counties in each State having 33 percent or more of all families with incomes not in excess of 125 percent of the poverty level bears to the total population of such counties in all the States.

§ 35.706-4 State and substate implementation grants.

Sums which the Administrator determines will be available for grants to States and substate entities under section 4008(a)(2) of the Act will be awarded directly to such entities without an advance allotment process.

§ 35.706-5 Special communities.

[Reserved.]

§ 35.708 Regional allowances.

The Administrator will issue to each Regional Administrator, as a part of the EPA annual program guidance, tentative regional allowances for the next fiscal year. The tentative regional allowance will be the sum of anticipated State allotments under § 35.706 for that region, based on the appropriation requested by the President. To facilitate program planning, the Regional Administrator will promptly notify each State of its tentative allotment. As soon as practicable after funds are appropriated, the Administrator will issue to each Regional Administrator a final regional allowance.

§ 35.710 Grant amount.

(a) Each State will receive grants from its final allotment for each fiscal year in an amount which does not exceed the reasonable cost of carrying out its ap-

proved work program, as determined by the Regional Administrator. In determining the amount of a State's grant, the Regional Administrator will consider: (1) the financial commitments, functions and obligations assigned to the various planning and implementing agencies by the State's proposed program; (2) the priorities among and feasibility of proposed State program outputs in relation to resources available; (3) the anticipated cost of the State's program in relation to its expected accomplishments and likelihood of success; and (4) evaluations of past performance of planning and implementing agencies.

(b) Should the Regional Administrator's evaluation of the State work program submission reveal that the output commitment is not consistent with the level of funding requested, the requirements of this chapter, or the EPA annual guidance, he may negotiate with the State to change the output commitment or reduce the grant amount. If a State proposes a different set of outputs than suggested in § 35.722 or the EPA annual guidance due to its unique solid or hazardous waste management problems, the Regional Administrator may approve the State's proposed program if he determines that the outputs are consistent with the law, that the outputs can and should be produced, and that the proposed funding is appropriate; provided, however, that the elements described in § 35.730 are required of all States.

(c) Unobligated funds remaining after grant negotiations with States within a region may be used for supplementary grant awards to other States within that region. Funds not obligated by the Regional Administrator within six months following the date of the final advice of allowance for that region will revert to the Administrator for reallocation to regions which can demonstrate a need for funds in excess of their final regional allowance.

§ 35.712 Reduction of grant amount.

(a) In the event a State fails to submit its final annual work program on or before the dates specified in § 35.718-2, the grant amount may be reduced by up to one percent of the State's total allotment for each day's delay.

(b) If the Regional Administrator's program evaluation reveals that the grantee will not achieve or has not achieved the outputs specified in the approved program, an effort should be made to resolve the situation through mutual agreement by amending the approved program. If agreement is not reached, the Regional Administrator may reduce the grant amount in proportion to the estimated program cost to produce such outputs, under § 30.920 of this chapter. This provision does not limit the Regional Administrator's right to take other appropriate actions authorized by §§ 30.915 and 30.920.

(c) Funds recovered under § 35.712 (a) and (b) will be available for grant awards to other States under § 35.710 (c).

§ 35.714 Federal share.

The Federal share shall not exceed 75 percent of total allowable work program costs, except that the Regional Administrator may award up to 100 percent of allowable costs of conducting the inventory of open dumps under the work element in §§ 35.722(a)(2) and 35.730-1.

§ 35.716 Budget period.

The budget period of the grants shall be for the Federal fiscal year.

§ 35.718 State program development and submission.

§ 35.718-1 Plan submission requirements.

(a) No grant funds will be awarded to a State for fiscal year 1978 for activities under the program elements in § 35.722 (a) (solid waste plan development and implementation) unless the State has submitted to the Regional Administrator the plan developed by the State under section 207 of the Solid Waste Disposal Act prior to its amendment by the Resource Conservation and Recovery Act of 1976 (if the plan is incomplete, the State shall submit the portions of the plan which are complete) or, if the State has no such plan, the equivalent thereof developed by the State; with a strategy for achieving the solid waste plan development and implementation requirements of the Act, developed in accordance with supplementary EPA guidance.

(b) In fiscal year 1979 and subsequent years, no grant will be awarded to a State for activities under the program elements in § 35.722(a) unless the State is in compliance with the plan development and submission guidelines set forth in Part 256 of this chapter.

§ 35.718-2 Annual work program submission requirements.

(a) Each State shall submit to the Regional Administrator by June 1 of each year a draft work program, based on the State plan, and meeting the requirements of this chapter, except that for fiscal year 1978, only the final work program is required. The draft program shall contain the following:

(1) a summary of the current year's work program.

(2) a description by program element (see § 35.722) of the State's proposed work program for the coming year, including:

(i) a description within each program element of the work to be performed and outputs to be achieved (with identification of estimated related costs and person-years to be expended) and the relationship to the State plan;

(ii) an identification of all funds, both Federal and non-Federal, which the State anticipates receiving during the fiscal year for the work program; and

(iii) the proposed distribution of funds and output achievement responsibilities among State, and substate entities.

(3) After fiscal year 1978, a description of the steps the State has taken to comply with the requirements of § 35.720 concerning involvement of substate agen-

cies, and the comments or a summary thereof from such agencies on the draft work program.

(b) Each State shall submit to the Regional Administrator by August 1 of each year a final work program as part of its grant application, consisting of the program described in § 35.718-2(a) modified as appropriate to reflect the results of public participation under § 35.726 and negotiations with the Regional Administrator. For fiscal year 1978, the work program shall be submitted by November 21, 1977.

§ 35.720 Involvement of legislative and other agencies.

To the extent practicable, the State shall involve the legislature and other appropriate agencies in work program development and implementation. The Regional Administrator may disapprove part or all of a State's proposed work program if he determines that the program does not adequately involve a local or regional agency with demonstrated capability to undertake an element of the program.

§ 35.722 Program elements.

Guidance concerning output requirements will be included in EPA's annual guidance under § 35.404. Under § 35.710 (b), the Regional Administrator may approve a State's proposal to alter or add to the list of program elements below. The State's program must be developed so that the program elements are free from unnecessarily redundant or inconsistent outputs. The State's work program shall identify specific outputs to be achieved during the year within the following major program elements (common outputs may be developed for overlapping program areas):

(a) Solid waste planning and implementation activities.

(1) Plan development (including update and revision).

(2) Inventory of open dumps (a required element; see § 35.730(1)).

(3) Preliminary work towards development of a hazardous waste program (a required element for fiscal year 1978; see § 35.730-2).

(4) Enforcement, regulatory and permit activities.

(5) Site surveillance, monitoring of pollutants, and inspections.

(6) Agency and area identification (State and substate) under section 4006 of the Act.

(7) Administration.

(8) Public participation.

(9) Technical assistance.

(10) Training.

(b) Hazardous waste program development and implementation activities under section 3011 of the Act.

(1) Surveys of hazardous waste generation, treatment, disposal, transportation and storage.

(2) Enforcement, regulatory and permit activities.

(3) Transportation control (including registration or licensing), and management of the manifest system.

(4) Monitoring of pollutants.

(5) Storage, treatment and disposal control activities.

(6) Administration.

(7) Public participation.

(8) Planning (as part of yearly program for activities not otherwise covered by § 35.722(a)).

(9) Technical assistance.

(10) Training.

(c) *Rural communities assistance activities.*

(1) Review of project proposals and distribution of assistance to communities.

(2) Coordination and project oversight.

(d) *Special communities assistance activities.* [Reserved]

§ 35.724 Clearinghouse review.

All applicants for grants under this Part must comply with the requirements of Office of Management and Budget (OMB) Circular Number A-95, as required by § 30.305 of this subchapter.

§ 35.726 Public participation.

The State work program, and any other program or project for which assistance is sought under these regulations, shall be the subject of public participation consistent with Part 249 of this chapter. In the case of the State work program, the State must also afford an opportunity for substate review under § 35.720.

§ 35.728 Program review and approval.

(a) The Regional Administrator shall review the State's draft work program submission and provide comments to the State within thirty calendar days of its receipt.

(b) The Regional Administrator shall approve, conditionally approve, or disapprove a State's final work program submission within thirty calendar days of its receipt, notwithstanding the provisions of § 30.345 of this chapter. The work program will be approved only if it is in compliance with all requirements of the Act and this chapter.

(c) The Regional Administrator may award a grant based in conditional approval of a State work program which requires minor changes to qualify for approval. In such an event, the Regional Administrator will provide the State with an explicit statement of deficiencies found in the work program submission and include, as part of the grant agreement, written conditions which must be met to secure final approval and the date by which such conditions shall be met. Non-compliance with such conditions may result in a reduction in the grant amount as reflected in the grant agreement, or the grant agreement may provide that no funds beyond a stated amount will be released to the State pending compliance with the conditions.

§ 35.730 Required outputs.

§ 35.730-1 Inventory requirements.

The inventory of open dumps is a required program element for which up to 100 percent Federal funding is available under § 35.714. Specific inventory output requirements for each fiscal year will be

set forth in EPA's annual guidance. Since existing data and inventory needs differ from State to State, the Regional Administrator may negotiate with the State concerning specific inventory requirements and allow deviations from the priorities set forth in the annual guidance.

§ 35.730-2 Hazardous waste program element requirements.

For fiscal year 1978, the preliminary work designed to move the State toward development of a hazardous waste program which would qualify for authorization under section 3006 of the Act, in accordance with regulations published by EPA under section 3006 of the Act and the annual EPA guidance, is a required program element. For a State in which there is a very low level of hazardous waste generation, transportation, storage, treatment or disposal activity, or where a program is impracticable without legislation and the State's legislature does not meet during fiscal year 1978, or in similarly exceptional circumstances, this required output may be modified or waived by the Regional Administrator with the concurrence of the Deputy Assistant Administrator for the Office of Solid Waste.

§ 35.732 Implementation and substate grants.

(a) Section 4008(a)(2) of the Act authorizes grants to States, counties, municipalities, intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance generally does not include assistance for construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Assistance shall be awarded only for activities which are certified by the State as consistent with the plan developed under Part 255 of this chapter and the State's work program developed under this part.

(b) Generally, financial assistance to substate entities under sections 4008(a)(1) and (2) of the Act will be provided through the State, by means of a written interagency agreement transferring grant funds from the State to the substate agency. The agreement shall be developed, administered and approved in the same manner as that specified for rural communities assistance projects (see § 35.734(d)), and a similar process of competitive selection shall be established (see § 35.734(c)) for use when demand exceeds available funding.

(c) EPA will award grants directly to substate agencies only in those instances where the award of assistance directly to a substate entity is the most feasible means for accomplishing the goals of the Act (for example, for grants for resource recovery system implementation projects or grants to an Indian tribe over which the State has limited authority) or in the event the State has not submitted a fully approvable work program. The terms of the grant agreement will be negotiated between the Regional Administrator or

Administrator, as appropriate and the prospective grantee under this section, and shall be consistent with the objectives of the Act and these regulations.

§ 35.734 Rural communities assistance.

(a) Financial assistance through States to municipalities or counties under this section shall be available when all the following circumstances exist:

(1) the applicant is a municipality or county which cannot feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;

(2) existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 4005 of the Act;

(3) the assistance is for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process (including plans submitted under Part 255 of this chapter and § 35.718-1); and

(4) the municipality has a population of five thousand or less, or, if a county, a population of ten thousand or less or less than twenty persons per square mile and not located within a metropolitan area.

(b) Financial assistance under this section shall be available for solid waste management facilities including equipment necessary to meet the requirements of section 4005 of the Act or restrictions on open burning or other requirements arising under the Clean Air Act or the Federal Water Pollution Control Act. No assistance shall be available for the acquisition of land or interest in land.

(c) If funding levels under § 35.706-3 are insufficient to meet the needs of all applicants within a State, the State shall use a list of numerically weighted project review criteria (which shall be disclosed in advance to competing applicants) for evaluation of project applications. Such criteria must be approved by the Regional Administrator, who may provide technical assistance for preparation of such criteria at the request of the State. These criteria should include, at a minimum, priority for projects which

(1) propose critically needed equipment purchases to meet the purposes of § 35.734(b);

(2) have the greatest fiscal need in terms of objective measurements such as community tax base and tax effort; and

(3) evidence greatest likelihood of environmental benefit and energy conservation in the area of solid and hazardous waste management.

(d) Financial assistance shall be provided by the State through a written interagency agreement between the State and the community. The agreement must be submitted to the Regional Administrator. If the sum involved exceeds \$100,000, it must be approved by the Regional Administrator before funds may be released by the State to the community. The agreement shall incorporate by reference the provisions of this chapter, making such provisions applicable to the community. The agreement shall specify

appropriate outputs and associated funding in the same manner as a grant agreement between the State and EPA.

(e) As part of its yearly work program summary submitted under § 35.718-2(a) (1), the State shall briefly describe the status of its rural assistance program, including the number of applicants, grantees, output achievements and costs thereof.

§ 35.736 Special communities.

[Reserved.]

§ 35.738 Limitations on award.

§ 35.738-1 Area and agency identification.

Under section 4006 of the Act and Part 255 of this chapter, the Governor of each State is required to identify by November 12, 1977, the boundaries of regional solid waste management areas, and by May 11, 1978, the State must identify appropriate agencies and their responsibilities for solid waste planning and management in the identified areas. No grant shall be awarded to a State for fiscal year 1979 and subsequent years unless these identification processes have been satisfactorily completed. For fiscal year 1978, no grant will be awarded to a State which does not include in the work program a schedule for Regional and agency identification by the above dates. In the event the State does not achieve either of the deadlines without good cause, the Regional Administrator may terminate part or all of the grant for fiscal year 1978.

§ 35.738-2 Maintenance of effort.

No State will be eligible to receive any grant for activities under the work elements in § 35.722(a) (solid waste plan development and implementation) during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for such activities will be less than its expenditures were for such activities during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or Legislature of such State.

§ 35.738-3 Federal grant as supplementary.

No State will be eligible to receive any grant under this Subpart unless the Regional Administrator is satisfied that such grant will supplement and, to the extent practicable, increase the level of State, substate or other non-Federal funds that would in the absence of such grant be made available for the maintenance of solid and hazardous waste management programs.

§ 35.740 Adherence to budget estimates.

Grant expenditures shall be consistent with the resource estimates contained in the approved State work program. In the event that rebudgeting of funds among program elements becomes necessary, the provisions of § 30.610 of this chapter shall be applied.

§ 35.742 Program changes.

The grantee shall conduct its activities in a manner consistent with the approved State work program. In the event that changes to the approved State program become necessary, the provisions of § 30.610 shall be applied.

§ 35.744 Program evaluation and reporting.

Program evaluation is primarily a State responsibility and should be conducted periodically throughout the program year. It is EPA policy to limit evaluation to that which is necessary for responsible management of the national effort to control pollution resulting from inadequate solid and hazardous waste management. Therefore, joint Federal and State evaluations will be conducted at the Regional Office level. Each Regional Administrator shall review and evaluate State programs at least once a year as follows:

(a) *Mid-year evaluation.* By May 1 of each year, the Regional Administrator shall conduct a joint onsite evaluation meeting with appropriate State and other officials to review and evaluate the program accomplishments of the current budget period and the work projected for the coming year.

(b) *End-of-year review.* The Regional Administrator may conduct an evaluation meeting with appropriate State and other officials to review the accomplishments of the program year.

(c) *Reports.* The Regional Administrator shall prepare a written report of each evaluation and forward a copy to the grantee.

40 CFR Part 40 is amended as follows:

10. By revising the table of sections to read as follows:

PART 40—RESEARCH AND DEMONSTRATION GRANTS

Sec.	
40.100	Purpose of regulation.
40.105	Applicability and scope.
40.110	Authority.
40.115	Definitions.
40.115-1	Construction.
40.115-2	Intermunicipal agency.
40.115-3	Interstate agency.
40.115-4	Municipality.
40.115-5	Person.
40.115-6	State.
40.120	Publication of EPA research objectives.
40.125	Grant limitations.
40.125-1	Limitations on duration.
40.125-2	Limitations on assistance.
40.130	Eligibility.
40.135	Application.
40.135-1	Preapplication coordination.
40.135-2	Application requirements.
40.140	Criteria for award.
40.140-1	All applications.
40.140-2	[Reserved]
40.140-3	Federal Water Pollution Control Act.
40.145	Supplemental grant conditions.
40.145-1	Resource Conservation and Recovery Act.
40.145-2	Federal Water Pollution Control Act.
40.145-3	Projects involving construction.
40.150	Evaluation of applications.
40.155	Confidential data.

Sec.

40.160	Reports.
40.160-1	Progress reports.
40.160-2	Financial status report.
40.160-3	Reporting of inventions.
40.160-4	Equipment report.
40.160-5	Final report.
40.165	Continuation grants.

AUTHORITY: Authorities cited in § 40.110.

11. By revising § 40.110(d) to read as follows:

§ 40.110 Authority.

(d) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

(1) Section 8001 (42 U.S.C. 6981) authorizes grants for research and demonstration projects relating to solid waste.

(2) Section 8004 (42 U.S.C. 6984) authorizes grants for the demonstration of new or improved technologies for resource recovery.

(3) Section 8005 (42 U.S.C. 6985) authorizes grants to conduct special studies and demonstration projects on recovery of useful energy and materials.

(4) Section 8006 (42 U.S.C. 6986) authorizes grants for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

12. By revising § 40.115 to read as follows:

§ 40.115 Definitions.

The statutes identified in § 40.110 contain definitions which are not all repeated here. The following terms shall have the meaning set forth below:

13. By revising § 40.115-2(b) to read as follows:

§ 40.115-2 Intermunicipal agency.

(b) Under the Resource Conservation and Recovery Act, an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

14. By revising 40.115-3(c) to read as follows:

§ 40.115-3 Interstate agency.

(c) Under the Resource Conservation and Recovery Act, an agency of two or more municipalities in different States or an agency established by two or more States, with authority to provide for the disposal of solid waste and serving two or more municipalities located in different States.

15. By revising § 40.115-4(b) to read as follows:

§ 40.115-4 Municipality.

(b) Under the Resource Conservation and Recovery Act, a city, town, borough,

county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian Tribe or authorized tribal organization or Alaska Native village or organization, and any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

16. By designating the existing § 40.115-5 as paragraph (a) and adding a new paragraph (b) as follows:

§ 40.115-5 Person.

(a) * * *

(b) Under the Resource Conservation and Recovery Act, an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

17. By revising § 40.115-6 to read as follows:

§ 40.115-6 State.

(a) Under the Federal Water Pollution Control Act, a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(b) Under the Resource Conservation and Recovery Act, a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) In all other cases, a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

§ 40.115-7 [Deleted]

§ 40.115-8 [Deleted]

§ 40.115-9 [Deleted]

§ 40.115-10 [Deleted]

18. By deleting §§ 40.115-7, 40.115-8, 40.115-9 and 40.115-10.

19. By revising § 40.120 to read as follows:

§ 40.120 Publication of EPA research objectives.

The Office of Research and Development of EPA publishes a statement of research objectives and priorities annually in a document entitled "Office of Research and Development—Program Guide." This document may be obtained from either the Office of Research and Development, RD-674, or the Grants Administration Division, PM-216, U.S. Environmental Protection Agency, Washington, D.C. 20460.

§ 40.120-1 [Deleted]

§ 40.120-2 [Deleted]

§ 40.120-3 [Deleted]

20. By deleting §§ 40.120-1, 40.120-2, and 40.120-3.

21. By revising § 40.125-1 to read as follows:

§ 40.125-1 Limitations on duration.

(a) No research or demonstration grant shall be approved for a budget period in excess of 2 years except demonstration grants involving construction.

(b) No research or demonstration grant shall be approved for a project period in excess of 5 years.

(c) The grant award official may extend the budget and project periods for up to an additional 12 months without additional grant funds, when such extensions are in the best interest of the Government.

22. By revising § 40.125-2(c) to read as follows:

§ 40.125-2 Limitations on assistance.

(c) Resource Conservation and Recovery Act.

(1) Sections 8001, 8004, and 8005. The maximum practicable cost sharing is required.

(2) Section 8006. The Federal share for any grant for the demonstration of resource recovery systems shall not exceed 75 percent and is subject to the conditions contained in section 8006(b) of the Act. The Federal share for any grant for the construction of new or improved solid waste disposal facilities shall not exceed 50 percent in the case of a project serving an area which includes only one municipality and 75 percent in any other case, and is subject to the limitations contained in section 8006(c) of the Act. Not more than 15 percent of the total funds authorized to be appropriated for any fiscal year to carry out this section shall be awarded for projects in any one State.

23. By revising § 40.130(b) to read as follows:

§ 40.130 Eligibility.

(b) Resource Conservation and Recovery Act.

(1) Section 8001, public authorities, agencies, and institutions; private agencies and institutions; and individuals.

(2) Sections 8004 and 8005, public agencies and authorities or private persons.

(3) Section 8006, State, municipal, interstate or intermunicipal agencies.

(4) No grant may be made under this Act to any private profit-making organization.

24. By revising § 40.135-1(a) (1) and adding a new paragraph § 40.135-1(c) to read as follows:

§ 40.135-1 Preapplication coordination.

(a) All applicants. (1) Applicants for research and demonstration grants are encouraged to contact EPA for further information and assistance prior to submitting a formal application. The EPA regional office or laboratory nearest the applicant will be able to provide such assistance or to refer the applicant to an appropriate EPA representative.

(c) Applications for grants for demonstration projects funded by the Office of Solid Waste will be solicited through the Department of Commerce Business Daily, and selections will be made on a competitive basis.

§ 40.135-2 [Amended]

25. By revising the number of application copies required in the first sentence from "14" to "8".

§ 40.140-2 [Reserved]

26. By deleting and reserving § 40.140-2.

27. By revising § 40.145-1 to read as follows:

§ 40.145-1 Resource Conservation and Recovery Act.

Programs for which a Federal grant is awarded by the Environmental Protection Agency to a State, municipal, interstate or intermunicipal agency, or to any public authority, agency or institution, under the Resource Conservation and Recovery Act, shall be the subject of public participation consistent with Part 249 of this chapter.

28. By revising 40.160-2 to read as follows:

§ 40.160-2 Financial status report.

A financial status report must be prepared and submitted within 90 days after completion of the budget and project periods in accordance with § 30.635-3.

40 CFR Part 45 is amended as follows:

29. By revising § 45.102(d) to read as follows:

§ 45.102 Authority.

(d) Sections 7007 and 8001 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6977 and 6981).

30. By revising 45.115(c) to read as follows:

§ 45.115 Eligibility.

(c) Resource Conservation and Recovery Act.

(1) Section 7007(a). State or interstate agencies, municipalities, educational institutions, and other organizations.

(2) Section 8001(a) Federal, State, and interstate or local authorities, agencies, and institutions, private agencies and institutions, and individuals.

RULES AND REGULATIONS

(3) No grant may be made under this Act to any private profit-making organization.

31. By adding a new paragraph as (f) to § 45.135 to read as follows:

§ 45.135 Supplemental grant conditions.

(f) Training grants awarded under the Resource Conservation and Recovery Act will be subject to the following condition: Any training program or project for which a Federal grant is awarded to a State, interstate, municipal or local authority, agency or institution shall be the subject of public participation consistent with Part 249 of this chapter.

§ 45.145 [Amended]

32. By revising the reference to "§ 30.701" to read "§ 30.705."

[FR Doc. 77-30614 Filed 10-19-77; 8:45 am]

Revised
1977

THURSDAY, OCTOBER 20, 1977

PART V



DEPARTMENT OF THE INTERIOR

Office of Surface Mining
Reclamation and Enforcement



SURFACE MINING CONTROL AND RECLAMATION

Restrictions of Financial Interests of
State and Federal Employees

[4310-05]

Title 30—Mineral Resources

CHAPTER VII—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

PART 705—RESTRICTION ON FINANCIAL INTERESTS OF STATE EMPLOYEES

PART 706—RESTRICTION ON FINANCIAL INTERESTS OF FEDERAL EMPLOYEES

Monitoring and Enforcing Restrictions of Financial Interests of State and Federal Employees Performing Functions or Duties Under Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Final rules.

SUMMARY: The regulations in Part 705 establish provisions for monitoring and enforcing financial interest restrictions applicable to employees of the State Regulatory Authority performing any function or duty under the Surface Mining Control and Reclamation Act of 1977 in order for the State to be eligible for reimbursements or grants under the Act. The proposed regulations in Part 706 establish provisions for monitoring and enforcing financial interest restrictions which apply to Federal employees performing any function or duty under the Act in order to be in compliance with the Act. These regulations provide the methods by which prohibited financial interest situations involving employees performing under the Act can be identified and remedied.

EFFECTIVE DATE: November 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4237.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On August 23, 1977, Interior issued proposed regulations under Parts 2170 and 2171 to implement Sections 201(f) and 517(g) of the Act (42 FR 42540-42546). As final rules, these Parts are 705 and 706, respectively.

Sections 201(f) and 517(g) of the Act make it a crime for employees performing any function or duty under the Act to knowingly have a direct or indirect financial interest in any coal mining operation. The Act further directs the Secretary to publish regulations which establish methods for monitoring and enforcing the prohibition, including provisions for the filing and review of financial interest statements.

The Secretary promulgates these regulations recognizing the clear Congressional intent that affected employees maintain the highest standards of honesty, integrity and impartiality to avoid even the appearance of conflict of interest.

The direct or indirect financial interests of an employee's spouse, minor child, or other relatives who are full-time members of the employee's home are considered to be the financial interests of the employee. Disclosure of these interests will bring to the reviewer's attention any direct or indirect financial interests in coal mining operations which the employee may be deriving from interests of other family members and relatives. Disclosure will also preclude employees from transferring prohibited financial interests to close family members or relatives in order to avoid the provisions in the Act.

In keeping with the legislative intent and at the suggestion of several States, these regulations place as much responsibility as possible upon the individual States. States are responsible for resolving prohibited financial interest situations, and for initiating action to impose the penalties of the Act within their existing laws, regulations and personnel programs in order to meet the requirements of the Act. Care has been taken to specifically separate the responsibilities of the Federal Government from those of the individual States and to guard against the imposition of excessive Federal requirements upon the States.

The same high standards applicable to covered employees of the State agencies apply to covered employees of the Federal Government under the separate regulations in Part 706. With regard to covered employees of other Federal agencies, it is proposed that each agency have as much latitude as possible in resolving prohibited financial situations and in enforcing the requirements within these regulations. Other Federal agencies' implementation must be consistent with the regulations developed for employees of the Department of the Interior.

II. COMMENTS

The Director, Office of Surface Mining Reclamation and Enforcement, received 15 written comments and 12 oral comments on the proposed rules published in the FEDERAL REGISTER on August 23, 1977. Most of the comments received were addressed to Part 705 implementing Section 517(g) for State employees. Where changes have been made in response to these comments, the same changes have been adopted in Part 706 applicable to Federal employees.

Subsequent paragraphs discuss the major comments received.

1. *Authority to enforce the regulations.* Two commenters took exception to the provisions of § 705.1 that the States must adopt the minimum provisions in proposed Part 705 in order to be eligible for reimbursements under Section 502, grants under Section 705, or primary regulatory authority under Section 503 of the Act. One commenter stated that there is no legislative authority for the Secretary to require adoption of the financial interest provisions as a prerequisite to the implementation of Section 503 or 705. The second commenter stated that there is no statutory authority for

withholding reimbursements to the States under Section 502 of the Act on the basis that the States do not have regulations relating to direct and indirect financial interests which meet the minimum Federal requirements.

These views were not accepted. Section 517(g) of the Act directs the Secretary to "establish methods by which the provisions of this subsection will be monitored and enforced". No stipulation is placed on what the methods can or cannot entail. Further statutory support for the methods proposed is found in Section 201(c) (2) which states: "The Secretary, acting through the Office, shall publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act". It has been determined that (i) adoption by the States of the minimum financial interest provisions in Part 705 of these regulations is necessary to carry out the purposes and provisions of Section 517 (g) of the Act, and (ii) the most effective enforcement method available to ensure that the States adopt these financial interest provisions is to tie such adoption to the desirable program provisions of Section 502 reimbursement funds, Section 705 grant funds, and Section 503 State program approval.

Similarly, three commenters objected to the provisions of § 705.6(b) that an employee who fails to file the required financial interest statement would be in violation of a condition of employment and therefore be subject to removal from his or her position. All three commenters stated that the proposed requirement goes beyond the statutory authority of the Act by attempting to expand on the penalties provided in the Act. In addition, one commenter misinterpreted the proposed provisions in § 705.6(b) by suggesting that the provisions mean that the Federal Government would have authority to order removal of a State employee found to have a prohibited interest.

These views were rejected on the basis that (i) Sections 201(f) and 517(g) prohibit certain Federal employees and any State Regulatory Authority employees who perform any functions or duties under the Act from having a direct or indirect financial interest in any underground or surface coal mining operation, and (ii) without a complete financial statement it could not independently be determined if an employee is in compliance with Section 517(g). Therefore, filing of the statement does in fact become a condition of employment both for certain Federal employees and State Regulatory Authority employees who perform functions or duties under the Act.

2. *Effective date of monitoring and enforcement procedures.* Three commenters questioned the requirement of § 705.13(a) (1) to obtain statements of employment and financial interest from State employees within 120 days of the enactment of these regulations. A Federal agency sought a deferral to March 31, to make the filing date compatible with other conflict of interest filing requirements in that agency. One State

agency believed the 120 day timeframe was unrealistic and another contended the first filing should be as late as February 1979, the deadline for State program submission.

Under the Administrative Procedure Act, these regulations go into effect 30 days after publication. Therefore, it is necessary to provide prompt assistance to affected employees in identifying and resolving any prohibited financial interest situations. The 120 day timeframe for filing was selected as a practical limit based on consultations with numerous State officials during the original drafting of these regulations. This initial filing requirement is being retained in §§ 705.13(a)(1) and 706.13(a)(1). To provide more administrative flexibility for subsequent annual filings, the specified February 1 date has been modified to provide for the Director's approval of some other date insofar as such other date still permits the Director to meet reporting requirements to the Congress.

One commenter suggested that while more than 90 days would not ordinarily be required, the time required for remedial action to resolve a prohibited interest for a State employee be increased from 90 days to 180 days in order to provide additional time for remedial action when this would minimize financial loss to the employee. The commenter also suggested that the Head of the State Regulatory Authority be provided an additional 30 days after the 180 day period expired to report noncompliance cases to the Director.

These changes have not been adopted. In most instances, 90 days should be a reasonable and sufficient time period in which to resolve prohibited financial interests, within the intent of Section 517(g), particularly in consideration of the criminal penalty that may apply in such instances. In addition, § 705.19(b)(3)(i) of the regulations provides that the Director may, after receiving a noncompliance report from the Head of a State Regulatory Authority, grant additional time to the Head of the State Regulatory Authority for the resolution of prohibited interests. The Department, however, prefers to treat such extensions of time as exceptions beyond 90 days rather than the rule. Also, while it is recognized that noncompliance situations may not be reported precisely on the 90th day, prompt reporting is expected. This should be less than 30 days except in rare instances.

3. Proposals to delete or change procedural requirements. One commenter suggested deletion of many procedural provisions of these regulations, either because they required undue effort or because there was no authority under the Act for such procedures. Among the more significant changes of this nature sought by the commenter was deletion of requirements that: (i) The Head of the State Regulatory Authority and the Director determine that employees had correctly identified prohibited interests from those listed on their statement of employment and financial interests § 705.4(a)(2) and (b)(2); (ii) the Head of the

State Regulatory Authority and the Director determine that prohibited interests have been resolved (§ 705.4(a)(4) and (b)(4)); (iii) appeals procedures be established outside of those which already exist for dealing with criminal penalties (§ 705.21), and (iv) employees provide details regarding prohibited interests (§ 705.17(c)(3)). After careful reconsideration of these and other procedures recommended for deletion, it has been concluded that these are in fact necessary and consistent with the Section 517(g) requirement that methods be established by which provisions of this section of the Act will be monitored and enforced, including appropriate provisions for filing and review of statements.

One commenter stated that requirements of § 705.11(b), (c), and (d) for the Head of the State Regulatory Authority to prepare and submit lists of positions not performing functions or duties under the Act is a tremendous burden and meaningless. A positive list should be required. Based on this comment, new wording was selected to lessen the reporting burden. Heads of multifaceted State Regulatory Authorities now may list the title of entire boards, offices, bureaus, or divisions within the State Regulatory Authority which do not perform functions or duties under the Act. This means that the list of personnel not performing functions or duties under the Act will be limited to only those positions on boards or in offices, bureaus or divisions which are responsible for implementing any provisions of the Act. Subpart 705.11 has been changed accordingly.

The justification for maintaining a negative listing (that is a list of positions not performing under the Act) is that such a listing will assist the Secretary with his responsibility for monitoring and enforcing the provisions of Section 517(g). Specifically, the monitoring responsibility will include audits to determine if the States are complying with the provisions in Section 517(g) of the Act. One important aspect of these provisions will be the justification criteria being used to identify employees not performing any functions or duties under the Act. It is this justification and not a justification for covered employees which is most likely to be requested by members of Congress or others who wish to review the application of Section 517(g) provisions. Consequently, the suggestion for using a positive listing is not adopted.

One commenter suggested deletion of the prohibition against employment in coal mining operations because the word "employment" does not appear in Section 517(g) of the Act. Similarly, the commenter requested deletion of references to "security", "real property" and "creditor" on the basis that there is no authority in Section 517(g) to cover these types of financial interests. These changes have not been adopted. The accepted definitions of "interest" include the right to a benefit, clearly a situation which pertains to employment, ownership and creditor relationships.

Further, the existence of employee/employer, ownership and creditor relationships that conflict with official duties is the type of situation that Section 517(g) intended to prevent.

4. Definitions. a. Covered employees.—Five commenters said that the terms "employee" and "function or duty under the Act" were not adequately defined in § 705.5. They suggested various groups should be excluded from the definition, i.e. State consultants, secretaries, receptionists, clerical personnel, lab personnel, and advisory board or commission members.

Based on the Department's responsibility to develop definitive regulations which implement the Act, and in order to enhance consistency between and among the States and to avoid confusion, the Department has clarified the term employee in § 705.5 to include advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority under the authority of State law or regulations. An exception has been made for members of advisory boards or commissions which are established to represent multi-interests in accordance with requirements of State law or regulations. This exception is necessary to avoid dismembering boards or commissions composed in such a manner as to represent divergent interests.

To provide further guidance as to which members of the State Regulatory Authority are covered employees for the purpose of these regulations, we have added a definition of the term "performing any function or duty under this Act". This term means those functions or duties of an employee which, by their decisions or actions or by their failure to act, affect the programs under the Act. This definition should not be interpreted as excluding all support and clerical personnel. Those who may act with considerable independence or are otherwise in a position to affect the agencies' programs are covered employees under this definition. This approach was adopted in lieu of specifying job titles of employees who are covered or not covered since the actual duties that go with such job titles will vary widely. It will be necessary for State officials to apply the definition of "performing any function or duty under this Act" for groups of employees having common job duties and for other situations on a case-by-case basis in order to identify noncovered employees.

b. Prohibited interests.—Eight commenters stated that the terms "conflict" and "direct or indirect financial interests" were not precise or explicit, and that clarification of these terms was one of the most important issues. Two commenters suggested deletion of the terms "conflict" and "conflict of interest" because these terms do not appear in Section 517(g) of the Act. These and other commenters suggested various situations which should not be considered as prohibited financial interests, as follows:

(1) Determination of the existence of a direct or indirect financial interest should be linked to a situation where an employee's judgment and decisionmaking role is affected. The most frequently mentioned issue was to permit interests by covered employees in coal mining operations which did not come under their inspection, decisionmaking or jurisdiction. For example, four commenters suggested that a covered employee be allowed to retain financial interests in coal mining operations in States other than the one in which he or she is employed. Similarly, one commenter suggested that the employee should be required to certify only to financial interests which create a conflict, rather than to certify to interests held in coal mining operations.

(2) A de minimis provision should be adopted. Specifically, one commenter suggested that interests of less than 10 percent of the outstanding stock of a business entity should be considered insignificant and therefore not reportable.

(3) Retirement benefits, whether or not guaranteed, should not be considered a financial benefit.

In response to these comments, several changes have been made in these final rules in §§ 705.5 and 706.3. The terms "conflict" and "conflict of interest" have been deleted as both confusing and lacking a statutory base. It is, however, recognized that the statutory history reflects an intent to prohibit conflict of interests and this has been taken into consideration in redefining indirect interests as discussed subsequently.

In lieu of "conflict of interest", the term "prohibited financial interest" has been adopted in light of the statutory restrictions on certain interests. The suggestions for excluding certain financial interest and employment situations from direct interest could not be considered because Section 517(g) of the Act specifically prohibits any covered employee from having a direct interest in a coal mining operation. This statutory requirement also extends to indirect interests, but there is more flexibility to distinguish between conflict and nonconflict situations in defining the term "indirect financial interest".

In these final rules, direct financial interest is defined in terms of what constitutes any financial interest in coal mine operations held by a covered employee. No exceptions are recognized in light of the specific prohibitions of the Act.

In these final rules, indirect financial interest is defined as beneficial ownership (i.e. investments not held in the employee's name but from which he or she reaps the benefits). The definition includes financial interests of the employee's spouse, minor children and other relatives residing in his or her home, except where such financial interests are unrelated to the functions or duties of the employee. It is clear that the potential for conflict increases the closer the relationship of such financial interest to the employee's job duties. Over time, it is expected that through the decisionmak-

ing, appeals and oversight processes, more explicit guidance will be developed by the Director.

One commenter suggested that, to assure impartiality, no covered employees should have been employed or held an elected or appointed office in an organization which has taken a public position on coal surface mining within three years of his employment by a State Regulatory Authority. This suggestion has not been adopted. No statutory authority exists in Section 517(g) of the Act for this, nor does the legislative history suggest that this would be a reasonable inference of the intent of the Act.

c. *Coal mining operations.* Two commenters questioned whether companies that manufacture equipment for production or safety in mining operations or produce pollution control equipment are engaged in coal mining operations for the purpose of these rules. The answer is no. The definition of coal mining operation in §§ 705.5 and 706.3 of these rules addresses those companies which are in the business of developing, producing, preparing or loading various types of coal or of reclaiming the areas upon which such activities occur.

The same two commenters questioned whether diversified companies, engaged in coal operations and many other activities, are considered to be engaged in coal mining operations for the purposes of these rules. The answer is yes. There is no reasonable basis for interpreting Sections 201(f) and 517(g) of the Act as allowing consideration of the relative significance of coal mining operations to the total business of a company.

5. *Employee reporting requirements.* One commenter objected to the reporting requirements of § 705.17 imposed on employees. It was contended that reporting of other than financial interests in coal mining operations was not warranted by the statute and represents an invasion of privacy. However, the concepts that affected employees would only report financial interests in coal mining operations or simply certify that they had no such interests were discarded as legally insufficient to ensure employee compliance with Section 517(g). Instead, covered employees are being required to submit a detailed statement of employment and financial interests to appropriate officials for review. Based on the criteria in these regulations, the reviewing official will determine whether a prohibited financial interest exists and what the proper remedial action should be.

To assist in the Head of the State Regulatory Authority and employees, the proposed rules set forth examples of prohibited financial interests. Three commenters suggested adding examples of financial interests which they believed would not be prohibited. Three other commenters suggested that the examples not be identified as prohibited interests, but rather as exceptions to be reported for a determination of whether or not they represented prohibited interests. One of these commenters also observed that the problem with citing such examples is that they limit the opportunity

for the Head of the State Regulatory Authority to make judgments based on the full circumstances of a situation.

While there is little true flexibility in judging direct financial interests, judgment will be required for indirect financial interests because these rules provide an exception where the financial interests of the spouse, minor children and resident relatives are unrelated to the employee's functions or duties. Therefore, we have concluded that the inclusion of examples of prohibited interests in these final rules would create an unwarranted inflexibility. In order to provide assistance in addressing these judgmental areas, and to increase uniformity to the extent feasible, it is contemplated that the Director will issue supplementary guidance, including identification of certain common situations which have been identified as either prohibited or nonprohibited interests.

6. *Requirements for review of employees' statements.* Two commenters suggested deletion of the requirement that the Head of the State Regulatory Authority certify that no prohibited interests exist (§§ 705.4(a)(4) and 706.5(a)(3)). One commenter suggested there was no authority under the Act for this requirement. However, such authority is contained in the provisions of Section 517(g) which states that the Secretary establish methods by which provisions of this subsection of the Act will be monitored and enforced. The other commenter noted that such a certification requirement obligated the Head of the State Regulatory Authority to take responsibility for employee statements which might contain false information. The wording has been changed to make the certifying official responsible only for the information made available for his or her review.

7. *Gifts and gratuities.* One commenter stated that a common problem affecting State surface mining inspectors has been the traditional practice of coal operators offering gifts or gratuities at holiday time. Gifts from a coal mine operator to a State or Federal employee performing functions or duties under the Act may, if accepted, create an indirect financial interest. Based on the comment received, on the clear legislative requirement under Section 201(c)(2) that the Secretary publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of the Act, and on the fact that Federal employees and most State employees already have policies prohibiting acceptance of gifts, §§ 705.18 and 706.18 were adopted.

Sections 705.18 and 706.18 give consideration to existing State and Federal prohibitions about the acceptance of gifts. The regulations in § 705.18 do not prohibit all gifts, are addressed to minimum requirements, and call for administrative remedies to be in accordance with State regulations or policies. The regulations in Section 706.18 for Federal employees are identical and call for administrative remedies to be in accordance with existing Federal regulations.

The Department believes the regulations added in §§ 705.18 and 706.18 are necessary to satisfy the requirements of Section 201(c) (2) of the Act and to help ensure that State and Federal regulatory officials do not obtain an indirect financial interest in a coal mining operation by receiving a gift from a coal mine operator.

8. *Relations with other Federal agencies.* One comment, received from another Federal agency dealt exclusively with certain provisions of Part 706 which affect the relationships between other Federal agencies and Interior. It was suggested that the provisions of § 706.4 (c) be amended to clearly delegate to the audit capability of other Federal agencies the responsibility for auditing compliance with the Act and regulations within their agency. This was our intent and the wording of the regulation has been modified as suggested.

9. *Adopting additional regulatory provisions.* Two commenters suggested that we add subject matter not addressed in the proposed regulations. Both commenters asked the Department to include provisions delineating what private citizens or citizen groups must do to report conflict of interest situations which they are aware of within State Regulatory Authorities. In addition, one of the two commenters suggested that the proposed regulations should address the related financial interest question of whether a State agency should be allowed to rent office space or a building from a coal company.

These suggested additions have not been adopted. The Department feels that citizens and citizen groups should be encouraged to report violations, but does not consider it appropriate to regulate the channels or procedures for such reporting. Concerning such issues as State agency rentals of building space, the Department believes this is beyond the statutory provisions of Section 517(g) and therefore cannot be addressed in these regulations. The primary authors of this document are Allan L. Reynolds, Gene Fredriksen, and Gabe Paone of the Departmental Counselors staff, in coordination with the Office of Surface Mining Reclamation and Enforcement Task Force and the Solicitor's Office.

NOTE.—The Department of the Interior has determined that this document does not contain major provisions requiring the preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: October 14, 1977.

LEO M. KAULITZ,
Solicitor.

In consideration of the foregoing and pursuant to the authority of sections 201(c), 201(f) and 517(g) of the Surface Mining Control and Reclamation Act of 1977, Title 30 is amended by adding Chapter VII, Office of Surface Mining Reclamation and Enforcement and by adding Parts 705 and 706 to read as follows:

Sec.	Purpose.
705.1	Objectives.
705.2	Authority.
705.3	Responsibility.
705.4	Definitions.
705.5	Penalties.
705.6	Who shall file.
705.11	When to file.
705.13	Where to file.
705.15	What to report.
705.17	Gifts and gratuities.
705.18	Resolving prohibited interests.
705.19	Appeals procedures.
705.21	

AUTHORITY: Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, Sections 201(c) and 517(g).

§ 705.1 Purpose.

This part sets forth the minimum policies and procedures that States must establish and use to implement Section 517(g) of the Act in order to be eligible for reimbursement of costs of enforcing and administering the initial regulatory program under Section 502, or for grants for developing, administering and enforcing a State regulatory program under Section 705 of the Act, or to assume primary regulatory authority under Section 503 of the Act (Pub. L. 95-87). Compliance with the policies and procedures in this part will satisfy the requirements of Section 517(g) of the Act. Section 517 (g) prohibits certain employees of the State Regulatory Authority from having any direct or indirect financial interest in any underground or surface coal mining operation. The regulations in this part are applicable to employees of the State Regulatory Authority as defined in § 705.5.

§ 705.2 Objectives.

The objectives of this part are: (a) To ensure that the States adopt a standard program for implementing the provisions in Section 517(g) of the Act.

(b) To establish methods which will ensure, as required by Section 517(g) of the Act, that each employee of the State Regulatory Authority who performs any function or duty under the Act does not have a direct or indirect financial interest in any underground or surface coal mining operation.

(c) To establish the methods by which the monitoring, enforcing and reporting responsibilities of the Secretary of the Interior as stated in Section 517(g) will be accomplished.

§ 705.3 Authority.

(a) The Secretary of the Interior is authorized by Pub. L. 95-87 to:

(1) Establish the methods by which he or she and State officials will monitor and enforce the provisions contained in Section 517(g) of the Act;

(2) Establish appropriate provisions for employees of the State Regulatory Authority who perform any function or duty under the Act to file a statement and supplements thereto in order to identify any financial interest which may be affected by Section 517(g), and

(3) Report annually to the Congress the actions taken and not taken during the preceding calendar year under Section 517(g) of the Act.

(b) The Governor of the State, the Head of the State Regulatory Authority, or such other State official designated by State law, is authorized to expand the provisions in this part in order to meet the particular needs within the State.

(c) The Office of Audit and Investigation, U.S. Department of the Interior, is authorized to conduct on behalf of the Secretary periodic audits related to the provisions contained in Section 517(g) of the Act and related to the provisions in this part. These audits will be conducted on a cyclical basis or upon request of the Secretary or the Director.

§ 705.4 Responsibility.

(a) The Head of each State Regulatory Authority shall: (1) Provide advice, assistance, and guidance to all State employees required to file statements pursuant to § 705.11;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the Director who is responsible for initiating action to impose the penalties of the Act;

(4) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Submit to the Director such statistics and information as he or she may request to enable preparation of the required annual report to Congress;

(6) Submit to the Director the initial listing and the subsequent annual listings of positions as required by § 705.11 (b), (c) and (d);

(7) Furnish a blank statement 45 days in advance of the filing date established by § 705.13(a) to each State employee required to file a statement; and

(8) Inform annually each State employee required to file a statement with the Head of the State Regulatory Authority, or such other official designated by State law or regulation, of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) The Director, Office of Surface Mining Reclamation and Enforcement, shall:

(1) Provide advice, assistance, and counseling to the Heads of all State Regulatory Authorities concerning implementation of these regulations;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each Head of the State Regulatory Authority. The Director will review the statement to determine if the Head of the State Regulatory Authority has correctly identified those listed employment and financial

interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Recommend to the State Attorney General, or such other State official designated by State law or the Governor of the State, the remedial action to be ordered or initiated, recommend to the Secretary that action be taken to impose the penalties of the Act, or recommend to the Secretary that other appropriate action be taken with respect to reimbursements, grants, or State programs;

(4) Certify on each statement filed by the Head of the State Regulatory Authority that the State has completed the review of the statement, that prohibited financial interests have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Monitor the program by using reports requested from Heads of State Regulatory Authorities and by using periodic audits performed by the Office of Audit and Investigation, U.S. Department of the Interior;

(6) Prepare for the Secretary of the Interior a consolidated report to the Congress as part of the annual report submitted under Section 706 of the Act, on the actions taken and not taken during the preceding calendar year under Section 517(g);

(7) Designate if so desired other qualified Office of Surface Mining Reclamation and Enforcement employees as assistant counselors to assist with the operational duties associated with filing and reviewing the statements from the Heads of each State Regulatory Authority;

(8) Furnish a blank statement by December 15 of each year, to the Head of each State Regulatory Authority; and

(9) Inform annually, the Head of each State Regulatory Authority of the requirement to file his or her statement with the Director and supply the name, address, and telephone number of the person whom they may contact for advice and counseling.

(c) State Regulatory Authority employees performing any duties or functions under the Act shall:

(1) Have no direct or indirect financial interest in coal mining operations;

(2) File a fully completed statement of employment and financial interest 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date; and

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

§ 705.5 Definitions.

Act. Means the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87.

Coal Mining Operation. Means the business of developing, producing, preparing or loading bituminous coal, sub-bituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

Employee. Means (i) any person employed by the State Regulatory Authority who performs any function or duty under the Act, and (ii) advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

Performing any function or duty under this Act. Means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

Direct Financial Interest. Means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

Indirect Financial Interest. Means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

Prohibited Financial Interest. Means any direct or indirect financial interest in any coal mining operation.

Office. Means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Director. Means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement within the U.S. Department of the Interior.

Secretary. Means the Secretary of the Interior.

State Regulatory Authority. Means that office in each State which has primary responsibility at the State level for administering this Act. Until an office is established under the provisions of Section 503 or Section 504 of the Act, this term shall refer to those existing State offices having primary jurisdiction for regulating, enforcing, and inspecting any surface coal mining and reclamation operations within the State during the interim period between the effective date of the Act and the establishment of the State Regulatory Authority under Section 503 or Section 504.

§ 705.6 Penalties.

(a) Criminal penalties are imposed by Section 517(g) of the Surface Mining

Control and Reclamation Act of 1977, Pub. L. 95-87. Section 517(g) prohibits each employee of the State Regulatory Authority who performs any function or duty under the Act from having a direct or indirect financial interest in any underground or surface coal mining operation. The Act provides that whoever knowingly violates the provisions of Section 517(g) shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both.

(b) Regulatory penalties are imposed by this part. The provisions in Section 517(g) of the Act make compliance with the financial interest requirements a condition of employment for employees of the State Regulatory Authority who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 517(g) and will be subject to removal from his or her position.

§ 705.11 Who shall file.

(a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Head of the State Regulatory Authority not to involve performance of any function or duty under the Act or who is no longer employed by the State Regulatory Authority at the time a filing is due, is not required to file a statement.

(b) The Head of each State Regulatory Authority shall prepare a list of those positions within the State Regulatory Authority that do not involve performance of any functions or duties under the Act. State Regulatory Authorities may be organized to include more activities than are covered by the Act. For example, if a State has identified its Department of Natural Resources as the State Regulatory Authority there may be only one or two offices within that Department which have employees who perform any functions or duties under the Act. In those cases, the Head of the State Regulatory Authority shall list the title of boards, offices, bureaus or divisions within the State Regulatory Authority which do not perform any functions or duties under the Act and list the positions not performing functions or duties under the Act for only those boards, offices, bureaus or divisions that do have some employees performing functions or duties under the Act. Only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements of Section 517(g) of the Act.

(c) The Head of each State Regulatory Authority shall prepare and submit to the Director, an initial listing of positions that do not involve performance of any functions or duties under the Act within 60 days of the effective date of these regulations.

(d) The Head of each State Regulatory Authority shall annually review and up-

date this listing. For monitoring and reporting reasons, the listing must be submitted to the Director and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Head of each State Regulatory Authority may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the law or the regulations of this part. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

(e) The Secretary or the Director may modify the listing at any time one or both of them determines that the listing submitted by the Head of a State Regulatory Authority indicates that coverage is not sufficient to carry out the purpose of the law or the regulations of this part.

§ 705.13 When to file.

(a) Employees performing functions or duties under the Act shall file:

(1) Within 120 days of the effective date of these regulations; and

(2) Annually on February 1 of each year, or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 1, 1978 would file a statement on that date. Because December 1 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1980.

§ 705.15 Where to file.

(a) The head of the State Regulatory Authority shall file his or her statement with the Director. All other employees, as provided in § 705.11, shall file their statement with the head of the State Regulatory Authority or such other official as may be designated by State law or regulation.

§ 705.17 What to report.

(a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report shall be on OSM Form 705-1 as provided by the Office. The statement consists of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding

year, (2) a certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) *Employment.* Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the State Regulatory Authority.

(2) *Securities.* Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real Property.* Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) *Creditors.* Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (ii) be aware of the information contained in the annual financial statement

or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the Head of the State Regulatory Authority to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(i) List the financial interests;

(ii) Show the number of shares, estimated value or annual income of the financial interests; and

(iii) Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in § 705.6(a).

§ 705.18 Gifts and gratuities.

(a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company which:

(1) Conducts or is seeking to conduct, operations or activities that are regulated by the State Regulatory Authority; or

(2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) The prohibitions in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing or adopted State regulations or policies.

§ 705.19 Resolving prohibited interests.

(a) Actions to be taken by the Head of the State Regulatory Authority:

(1) Remedial action to effect resolution. If an employee has a prohibited financial interest, the Head of the State Regulatory Authority shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action may include:

(i) Reassignment of the employee to a position which performs no function or duty under the Act, or

(ii) Divestiture of the prohibited financial interest, or

(iii) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

(3) Reports of noncompliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the Head of the State Regulatory Authority shall report the facts of the situation to the Director who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The report to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director's determination, including a statement of actions being taken at the time the report is made.

(b) Actions to be taken by the Director:

(1) Remedial action to effect resolution. Violations of the regulations in this part of the Head of a State Regulatory Authority, will be cause for remedial action by the Governor of the State or other appropriate State official based on recommendations from the Director on behalf of the Secretary. The Governor or other appropriate State official shall promptly advise the Head of the State Regulatory Authority that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action should be consistent with the procedures prescribed for other State employees by § 705.19 (a) (2).

(3) Reports of noncompliance.

(i) If 90 days after the Head of a State Regulatory Authority is notified to take remedial action the Governor or other appropriate State official notifies the Director that the Head of the State Regulatory Authority is not in compliance with the Act and these regulations, the Director shall report the facts of the situation to the Secretary who shall determine whether the action to impose the penalties prescribed by the Act, or to impose the eligibility restrictions prescribed by § 705.1 should be initiated.

(ii) Within 30 days of receipt of a noncompliance report from the Head of a Regulatory Authority under § 705.19 (a) (3), the Director shall notify the Head of the State Regulatory Authority and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

§ 705.21 Appeals procedures.

Employees have the right to appeal an order for remedial action under § 705.19, and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Employees other than the Head of the State Regulatory Authority, may file their appeal, in writing, through established procedures within their particular State.

(b) The Head of the State Regulatory Authority may file his or her appeal, in writing, with the Director who will refer it to the Conflict of Interest Appeals Board within the U.S. Department of the Interior.

Sec.

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706.21	Appeals procedures.

AUTHORITY: Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, sec. 201 (c) and (f).

§ 706.1 Purpose.

This part sets forth the minimum policies and procedures to be followed by Federal employees to satisfy the requirements of Section 201(f) of the Act. The requirements of this part are in addition to Executive Order 11222 of May 8, 1965, and other applicable regulations related to conflict of interest. Section 201(f) prohibits certain Federal employees from having any direct or indirect financial interest in underground or surface coal mining operations. The regulations of this part are applicable to Federal employees as defined in § 706.3.

§ 706.2 Objectives.

The objectives of this part are:

(a) To ensure that affected Federal agencies adopt a standard program for implementing the provisions in Section 201(f) of the Act.

(b) To establish methods which will ensure, as required by section 201(f) of the Act, that each Federal employee who performs any function or duty under the Act does not have a direct or indirect financial interest in an underground or surface coal mining operation.

(c) To establish the methods by which the monitoring, enforcing and reporting responsibilities of the Director and the Secretary of the Interior under Section 201(f) will be accomplished.

§ 706.3 Definitions.

Act. Means the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87.

Coal mining operation. Means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur.

Employee. Means any person employed by the Office of Surface Mining Reclamation and Enforcement within the U.S. Department of the Interior and any other person employed by the Federal

Government who performs functions or duties under the Act without regard to the duration or nature of his or her appointment.

Performing any function or duty under this act. Means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

Direct financial interest. Means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

Indirect financial interest. Means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

Prohibited Financial Interest. Means any direct or indirect financial interest in any coal mining operation.

Office. Means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Director. Means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Secretary. Means the Secretary of the Interior.

Other Federal Agency. Means any executive Federal agency or office or part thereof not a part of the U.S. Department of the Interior, and includes but is not limited to, the following agencies: The Department of Agriculture, the Department of Justice, the Corps of Engineers, the Environmental Protection Agency, the Council on Environmental Quality and the Energy Research and Development Administration.

§ 706.4 Authority.

(a) The Director is authorized by Public Law 95-87 to:

(1) Establish the methods by which the provisions in Section 201(f) of the Act will be monitored and enforced;

(2) Establish appropriate provisions for all employees who perform any function or duty under the Act to file a statement and supplements thereto concerning their financial interests which may be affected by Section 201(f); and

(3) Report annually to the Congress on the actions taken and not taken during the preceding calendar year under Section 201(f) of the Act.

(b) Other Federal agencies with employees who perform functions or duties under the Act may adopt financial interest regulations pursuant to the Act which

are consistent with the requirements in this part. If any such agency does not adopt regulations pursuant to this part, that agency shall enter into a memorandum of understanding with the Director, to have the employees of that agency who perform functions or duties under the Act file their statements with the Director. The Director will review statements filed with him or her, applying the regulations of the Department of the Interior. Where the Director determines that remedial action is necessary, he or she will refer the case to the employing agency with a recommendation as to the action to be taken.

(c) The Office of Audit and Investigation within the U.S. Department of the Interior, will conduct periodic audits of Interior's compliance with the provisions contained in Section 201(f) of the Act and the provisions of this part. The Office of Audit and Investigation will arrange for such periodic audits of other Federal agencies to be performed by the audit unit of each such agency. The audits will be conducted on a cyclical basis or upon request of the Secretary of the Interior or the Director. Copies of all audit reports and related responses on corrective actions will be provided to the Director.

§ 706.5 Responsibility.

(a) The Director, the Head of each other Federal agency, and the Head of each other bureau or office within the U.S. Department of the Interior, have the following common responsibilities concerning employees within their organizations performing any functions or duties under the Act, and shall:

(1) Provide advice, assistance and counseling to employees concerning financial interest matters related to the Act;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Certify on each statement that review has been made, that prohibited financial interests if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(4) Resolve prohibited financial interest situations by promptly notifying and ordering the employee to take remedial action within 90 days, or by initiating action to impose the penalties of the Act;

(5) Furnish a blank statement by December 15 of each year to each employee required to file a statement within his or her employing organization; and

(6) Inform annually each employee required to file a statement within his or her employing organization of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) In addition to the common responsibilities in § 706.5(a) the Director shall:

(1) Monitor the program by using reports requested from the Heads of other Federal agencies, from the Heads of other bureaus and offices within the U.S. Department of the Interior, and by using periodic audits performed by the Office of Audit and Investigation, U.S. Department of the Interior and by other Federal agencies;

(2) Prepare for the Secretary a consolidated report to the Congress as part of the annual report submitted under Section 706 of the Act, on the actions taken and not taken during the preceding calendar year under Section 201(f);

(3) Refer recommendations to officials of other Federal agencies concerning those cases requiring remedial action for employees of the other Federal agency who filed with the Director because that other Federal agency did not choose to adopt its own financial interest regulations pursuant to the Act.

(4) Report to the Solicitor, U.S. Department of the Interior, through the Office of Audit and Investigation, U.S. Department of the Interior, cases of knowing violations of the provisions in Section 201(f). The Solicitor will transfer such reports to the U.S. Department of Justice.

(5) Designate, if so desired, other qualified Office employees as assistant counselors to assist with the operational duties associated with filing and reviewing financial statements;

(6) Furnish an adequate supply of blank statements to the Heads of those other Federal agencies which decide to have their employees file with the Director; and

(7) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in accordance with 43 CFR 20.735-17 as adopted.

(c) In addition to the common responsibilities in § 706.5(a), the Head of each other Federal agency with employees performing any functions or duties under the Act shall:

(1) Decide whether to adopt independent procedures for the filing and review of financial statements or to enter into a memorandum of understanding with the Director that the U.S. Department of the Interior will provide and review the financial statements and recommend any necessary remedial action to the Head of the employing agency;

(2) Submit to the Director such statistics and information the Director may request to enable preparation of the required annual report to the Congress, and to ensure uniform application of the provision in Section 201(f) of the Act; and

(3) Report to the Director and the U.S. Department of Justice cases of knowing violations of the provisions in section 201(f).

(d) In addition to the common responsibilities in § 706.5(a), the Heads of other bureaus or offices within the U.S. Department of the Interior with employees performing any functions or duties under the Act shall:

(1) Submit to the Director such statistics and information the Director may request to enable preparation of the required annual report to Congress, and to ensure uniform application of provisions in Section 201(f) of the Act;

(2) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in accordance with 43 CFR 20.735-17 as adopted, and

(3) Report to the Director cases of knowing violations of the provisions in Section 201(f).

(e) Employees shall: (1) Have no direct or indirect financial interests in coal mining operations;

(2) File a fully completed statement of employment and financial interests 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date, and

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

§ 706.6 Penalties.

(a) Criminal penalties are imposed by Section 201(f) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, which prohibits each employee of the Office or any other Federal employee who performs any function or duty under the Act from having a direct or indirect financial interest in underground or surface coal mining operations. The Act provides that whoever knowingly violates the provisions of Section 201(f) shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment for not more than one year, or both.

(b) Regulatory penalties are imposed by this part. The provisions in Section 201(f) of the Act make compliance with the financial interest requirements a condition of employment for all Office employees and for other Federal employees who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required financial statement will be considered in violation of the intended employment provisions of Section 201(f) and will be subject to removal from his or her position.

§ 706.11 Who shall file.

(a) Every employee in the Office is required to file a statement of employment and financial interests.

(b) Any other Federal employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. The Head of each other Federal agency and the Heads of other bureaus and offices within the U.S. Department of the Interior shall prepare and submit a report within 60 days of the effective date of these regulations, either listing the Federal positions identified as performing functions or duties under the Act, or listing the organizational unit and showing the total number of employees within

the unit who must file a statement. Revision to the listing or certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Secretary, the Director, or the Heads of the other affected Federal organizations may revise the list by the addition or deletion of positions at any time such revisions are required to carry out the purpose of the law or regulations of this part. Additions to or deletions from the list of positions are effective upon notification to the incumbents.

§ 706.13 When to file.

(a) Employees performing functions or duties under the Act will be required to file:

(1) Within 120 days of the effective date of these regulations, and

(2) Annually on February 1 of each year or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 1, 1978 would file a statement on that date. Because December 1 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1980.

§ 706.15 Where to file.

(a) Each Office employee shall file his or her statement of employment and financial interests with the Director.

(b) Each Department of the Interior employee, who is not an Office employee but does perform any function or duty under the Act, shall file a statement of employment and financial interests with his or her appropriate Ethics Counselor as identified in 43 CFR 20.735-22(c).

(c) Each employee of another Federal agency who performs a function or duty under the Act shall file a statement of employment and financial interests with the official designated by the Head of the other Federal agency.

§ 706.17 What to report.

(a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report shall be on a form provided by the Office or on a similar form adopted by an other Federal agency. The statement shall consist of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year, (2) a certification that none of the listed financial interests represent

a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) *Employment.* Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a statement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Federal Government under the Act.

(2) *Securities.* Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real property.* Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) *Creditors.* Debts owed to business entities and non-profit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (ii) be aware of the information contained in the annual financial statements or other corporate or business re-

ports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the Director, the Head of an other Federal agency, or the Head of other bureaus or offices within the U.S. Department of the Interior to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(i) List the financial interests;

(ii) Show the number of shares, estimated value or annual income of the financial interests; and

(iii) Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in § 706.6(a).

§ 706.18 Gifts and gratuities.

(a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a coal company which:

(1) Conducts or is seeking to conduct operations or activities that are regulated by the Federal Government; or

(2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) The prohibitions in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance, and

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing Federal regulations or policies.

§ 706.19 Resolving prohibited interests.

Actions to be taken by the Director, the heads of other Federal agencies, and the heads of other affected bureaus and offices within the U.S. Department of the Interior include:

(a) Remedial action to effect resolution. If an employee has a prohibited

financial interest, the head of the organizational entity (Department, bureau, office, etc.) where the employee works shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(b) Remedial action may include: (1) Reassignment of the employee to a position which performs no function or duty under the Act, or

(2) Divestiture of the prohibited financial interest, or

(3) Other appropriate action which either eliminates the prohibited financial interest or eliminates the situation which creates the conflict.

(c) Reports of noncompliance. If 90 days after an employee is notified to take remedial action that employee is

not in compliance with the requirements of the Act and these regulations, the official, other than the Director, who ordered the remedial action shall promptly report the facts of the situation to the Director. The reports to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director, including a statement of actions being taken at the time the report is made. Within 30 days of receipt of a noncompliance report, the Director shall notify the head of the employing organization and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initia-

tion of action to impose the penalties prescribed by the Act.

§ 706.21 Appeals procedures.

Employees have the right to appeal an order for remedial action under § 706.19 and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Office employees and other Department of the Interior employees may file their appeal, in writing, in accordance with the provisions in 43 CFR 20.735-25(b).

(b) Employees of other Federal agencies may file their appeal, in writing, in accordance with the established procedures of their employing agency.

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