nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs, injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended by changing the address for Ivy-Gene Co. in paragraph (c) (1) and (2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Ivy-Gene Co., Inc., 1731 Connecticut Ave. NW., Washington, DC 20009	021641
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
021641	Ivy-Gene Co., Inc., 1731 Connecticut Ave., NW., Washington, DC 20009.
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. In Part 522, § 522.842 is amended by revising paragraphs (b) and (d) (2) and (3), and by adding new paragraph (e) to read as follows:

§ 522.842 Estradiol benzoate and testosterone propionate in combination.

* * * * *

(b) *Sponsor.* See Nos. 000033 and 021641 in § 510.600(c) of this chapter.

(d) * * *

(2) *Indications for use.* Growth promotion and improved feed efficiency.

(3) *Limitations.* For heifers weighing 400 pounds or more; for subcutaneous ear implantation, one dose per animal; not for use in dairy or beef replacement heifers.

(e) *NAS/NRC status.* These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety data.

Effective date: July 24, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: July 18, 1984.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 84-19430 Filed 7-23-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Gentamicin Sulfate Soluble Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering Corp. providing for safe and effective use of gentamicin sulfate soluble powder in swine drinking water for control and treatment of colibacillosis and swine dysentery.

EFFECTIVE DATE: July 24, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033, filed NADA 133-836 providing for use of gentamicin sulfate soluble powder in drinking water: (1) In weanling swine for control and treatment of colibacillosis caused by strains of *E. coli* sensitive to gentamicin; (2) in swine for control and treatment of swine dysentery associated with *Treponema hyodysenteriae.* The NADA is approved and the regulations are amended to reflect this approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this proposed action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)), may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.1044c, to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.1044c Gentamicin sulfate soluble powder.

(a) *Specifications.* Each gram of gentamicin sulfate soluble powder contains gentamicin sulfate equivalent to 16.7 or 66.7 milligrams of gentamicin.

(b) *Sponsor.* See No. 000085 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.300 of this chapter.

(d) *Conditions of use*—(1) *Amount.* Colibacillosis: gentamicin sulfate equivalent to 25 milligrams of gentamicin per gallon of drinking water for 3 consecutive days, to provide 0.5 milligram per pound of body weight per day; swine dysentery: gentamicin sulfate equivalent to 50 milligrams of gentamicin per gallon of drinking water for 3 consecutive days, to provide 1 milligram per pound of body weight per day.

(2) *Indications for use.* In weanling swine for control and treatment of colibacillosis caused by strains of *E. coli* sensitive to gentamicin, and in swine for control and treatment of swine

dysentery associated with *Treponema hyodysenteriae.*

(3) *Limitations.* For use in swine drinking water only. Do not store or offer medicated drinking water in rusty containers since the drug is quickly destroyed in such containers. Medicated drinking water should be prepared daily and be the sole source of drinking water for 3 consecutive days. Treatment may be repeated if dysentery recurs. Do not slaughter treated swine for food for at least 10 days following treatment.

Effective date: July 24, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: July 16, 1984.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 84-19432 Filed 7-23-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD 6010.8-R, Amdt. No. 25]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Coverage for Intraocular Lenses

AGENCY: Office of the Secretary, DOD.

ACTION: Amendment of final rule.

SUMMARY: This final rule amends the comprehensive CHAMPUS Regulation, DOD 6010.8-R (32 CFR 199), pertaining to CHAMPUS coverage for additional intraocular lenses by making them an exception to the general policy not to cover experimental or investigational medical supplies or services. This will allow for CHAMPUS coverage of lenses that are subject to an investigational device exemption as well as those lenses that are approved for marketing by FDA.

EFFECTIVE DATE: The provision of this technical change is effective retroactive to June 1, 1977.

FOR FURTHER INFORMATION CONTACT: Marion M. Blackburn, Policy Branch, OCHAMPUS, telephone (303) 361-4078.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DOD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

In FR Doc. 84-5836 appearing in the Federal Register on March 5, 1984 (49 FR 8048), the Office of the Secretary of Defense published a proposed amendment to rule regarding a revision to the language of the CHAMPUS Regulation to allow coverage for all intraocular lenses. Public comments were to have been submitted by April 4, 1984.

Other than comments supporting the proposed rulemaking, there were two comments submitted with recommended changes to the amendment. One commenter felt that use of IOLs in persons under age 18 years should be limited to those instances where the patient or parent understood the potential risks involved for their age group or the procedure was performed as part of a special controlled study designed to test the long term effects of IOL implants. It is our understanding that there are studies being conducted with respect to this age group and that most of the physicians who implant IOLs have been approved to do so. For these reasons we are confident that they will be implanted with prudence in this younger population. The second commenter recommended that we specifically state that intraocular lenses would be authorized if they are either approved for marketing by the FDA or are subject to an investigational device exemption. The language has been revised to state that CHAMPUS will cover IOLs subject to an investigation device exemption by the FDA.

The regulation specifies that claims submitted for benefits must be filed no later that December 31 of the calendar year immediately following the one in which the covered service was rendered. Since the effective date of this amendment is June 1, 1977 it will mean that many of the IOL claims denied or not submitted since that date cannot meet the timely filing requirement. In order to provide all beneficiaries an opportunity to submit their denied or unsubmitted IOL claims for reprocessing, the deadline for filing these claims will be December 31, 1985.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Chapter I, Part 199, is amended to read as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

Section 199.9 is amended by revising paragraph (e)(6)(i)(*a*) and adding a "Note" following paragraph (e)(6)(i)(*a*) to read as follows:

§ 199.10 Basic program benefits.

(e) * * *

(6) * * *

(i) * * *

(*a*) Eyeglasses or lenses which perform the function of the human lens, lost as the result of intraocular surgery or ocular injury.

Note.—Notwithstanding the general requirement for U.S. Food and Drug Administration approval of any surgical implant set forth in § 199.10(d)(3)(vii) of the Part, intraocular lenses are authorized under CHAMPUS if they are either approved for marketing by FDA or are subject to an investigational device exemption.

* * * * *

(10 U.S.C. 1079, 10.86; 5 U.S.C. 301)

M.S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

July 19, 1984.

[FR Doc. 84-19505 Filed 7-23-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 228 and 251

Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: Presently, rules governing use and disposal of mineral materials from National Forest System lands are set forth in two separate parts. One set (36 CFR 251.4) governs disposals from lands reserved from the public domain; the other set (36 CFR 251.4a) governs disposals from acquired lands. These final regulations revise and consolidate those existing regulations and resolve former regulatory inconsistencies and procedural confusion. The intended effect is to provide applicants and land managers with a consistent set of clear procedures to follow for the disposal of mineral materials.

EFFECTIVE DATE: August 23, 1984.

ADDRESSES: Inquiries or suggestions should be sent to R. Max Peterson, Chief (2800), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Harry Stumpf, Minerals and Geology Management Staff, (703) 235-8011.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture has the statutory authority to dispose of petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and other similar materials on lands administered by the Forest Service. That authority derives, in part, from the Act of July 23, 1955 (30 U.S.C. 601, 603, 611–615), which amended the Materials Act of 1947 to permit disposals from National Forest lands reserved from the public domain. The authority to dispose of mineral materials from lands acquired under the authority of the Weeks Act of 1911 (36 Stat. 961) stems from the Act of March 4, 1917 (16 U.S.C. 520). That authority was revested in the Secretary of Agriculture by the Act of June 11, 1960 (74 Stat. 205) for Weeks Act lands and for those lands given Weeks Act status by the Act of September 2, 1958 (16 U.S.C. 521a)).

Analysis of Public Comment

A proposed rule was published in the **Federal Register** on August 4, 1983 (48 FR 35580) with a comment period of 60 days. Twelve comments were received. One comment was submitted by an association representing the mining industry, one by a wildlife group, one by a private citizen, one from the Bureau of Land Management, and eight comments were submitted by various offices of the Forest Service. The general reaction to the proposed rule has been positive, with some suggestions and comments for improving or clarifying specific points. These suggestions are discussed below as they relate to specific sections. Several comments were of a general nature and did not apply to particular sections of the regulation. One suggested that the title be changed to "Salable Minerals," which would not be entirely accurate since, under some conditions, mineral materials may be disposed of without charge. The current title is consistent with Bureau of Land Management usage (43 CFR 3600), and the term "mineral materials" is defined in § 228.42.

Two respondents expressed concern about the inadequacy of current contract and permit forms to apply to the different types of disposals. New contract and permit forms are in preparation.

One respondent suggested adding a section for appeals. The procedures at 36 CFR 211.18 are sufficient to cover administrative reviews regarding mineral materials; to add a section on appeals at 36 CFR Part 228, Subpart C, would be unnecessary duplication.

One respondent expressed the view that these regulations will have a significant impact on the environment. We disagree; these regulations will cause no appreciable change in the availability of mineral materials from current levels, nor will there be any significant changes in the requirements for operators.

Section 228.41 Scope.

This section has been transposed with "Definitions" for improved organization of the text.

There were two requests that Bankhead-Jones lands be specifically mentioned in these regulations. These are lands acquired to correct maladjustments in land use (7 U.S.C. 1010). After much discussion, these suggestions have been adopted, and a new provision at § 228.41(b)(4) has been added to specify the legal limitation on disposals from acquired Bankhead-Jones lands which lie outside the exterior boundaries of National Forests to public agencies for public purposes.

Six respondents suggested that § 228.41(b)(2) be clarified to ensure that disposals of mineral materials are allowed in areas withdrawn from other forms of mineral entry, if not precluded by statute or order, and if removal would not be detrimental to the resource values intended to be protected by the withdrawal. We agree and have revised the paragraph according to those suggestions.

Three respondents expressed concerns about potential conflicts between mining claimants and the Forest Service over disposals of mineral materials by the Forest Service from unpatented mining claims. As long as there is no unreasonable interference with a claimant's prospecting, mining, or processing operations, we believe the Multiple Use Mining Act of 1955 (30 U.S.C. 612) authorizes the Forest Service to manage and dispose of mineral materials from claims described in § 228.41(b)(3).

Section 228.42 Definitions.

There were several requests for the clarification of the terms "contract" and "permit." These terms have been added to the list of definitions. In addition, the term "purchaser" has been substituted for "contract holder" to reduce awkward phrasing, since all sales (purchases) of mineral materials will be conducted by contract.

One respondent suggested that tunnel sites be included in the definition of unpatented claims. A tunnel site is not a true mining claim; it is an exclusive right to prospect and, subsequently, constitutes a possessory right to any blind lode, vein, or ledge containing a valuable mineral deposit discovered by driving the tunnel. In order to perfect these rights after discovery, a tunnel site locator must stake mining claims over the deposit.

Several respondents suggested expanding the definition of "preference right negotiated sale" to include public domain lands as well as acquired lands. The Materials Act of 1947 (30 U.S.C. 601 et seq.) specifically requires competitive bidding for mineral materials on public domain lands unless competition is impracticable, in which case negotiated sales are allowed. Neither the Act nor its legislative history indicates that any preference right type of disposal was ever contemplated for public domain lands. On the other hand, the Act of March 4, 1917 (16 U.S.C. 520) has historically been interpreted as allowing prospecting permits, which may lead to preference right negotiated sales, on Weeks Act lands.

One respondent suggested that peat be incorporated in the definitions of mineral materials and covered by these regulations. Peat is considered to be a vegetative resource, and other regulations govern its disposal. Therefore, this suggestion has not been adopted.

One respondent suggested excluding petrified wood from the definition of mineral materials. Inclusion of petrified wood is consistent with Bureau of Land Management regulations, and petrified (mineralized) wood is clearly subject to the Act of July 23, 1955 (30 U.S.C. 611), as amended.

Section 228.43 Policy.

Several respondents requested clarification of the responsibility for the environmental analysis for proposed disposals and of the role of land management plans in such disposals. Section 228.43(a) has been clarified to point out that the authorized officer is responsible for the environmental analysis, and to ensure that management of mineral materials conforms to land and resource management plans.

We have deleted § 228.43(b) of the proposed rule, which simply listed the types of disposals. We see no need to repeat the types of disposals covered in § 228.57.

Several respondents expressed a desire for a minimum fee to ensure that administrative costs would be recovered. This section has been amended to expand the discretionary authority of field managers to establish such fees.

One respondent suggested rewording § 228.43(c), which deals with conservation, to reflect the statutory wording more accurately. We agree and have made the change to give the authorized officer greater latitude.

The respondents wished clarification of the statement in § 228.43(d) that disposals of mineral materials represent conveyances of real property. Mineral materials in place and unsevered from the land are real property; once excavated, they become personal property. Although title to the material excavated vests in the purchaser or permittee, title to the remaining land and property remains in the United States. The first sentence of this section has been deleted for clarity, and a clause has been added to make it clear that the Forest Service retains the authority to manage the removal of the property on lands under its jurisdiction.

Section 228.44 Disposal on existing Federal leased areas.

One respondent suggested that it be made clear that disposals can be made from lands under Department of the Interior permits, as well as leases, under the 1920, 1947, and 1970 leasing acts. The section has been amended to reflect this point.

Section 228.45 Qualifications of applicants.

One respondent suggested that all applicants be required to furnish eligibility information. As written, the authorized officer determines the need for this information. It seems excessively burdensome to require this information in every case when it may not always be needed, as with low volume disposals; therefore, this section remains unchanged.

Section 228.47 General terms and conditions of contracts and permits.

Several respondents suggested deleting the term "highgrading" since it was not defined and appeared merely to restate the first part of the sentence. This change has been adopted.

A number of respondents indicated that requiring all purchasers and permittees to obtain road-use permits was needlessly burdensome and that this decision would be better left to the authorized officer, depending upon the extent of anticipated road use. This change has been adopted.

One respondent requested that § 228.47(f) be clarified so that reclamation would apply to all surface disturbance, including access, and not be limited to the actual excavation. This section has been revised accordingly.

One respondent suggested that the term "reclamation" be defined for the purposes of these regulations. The term is in common usage and does not need to be redefined here. References to restoration and rehabilitation have been changed to reclamation elsewhere in this regulation to avoid the confusing implications of those terms.

Section 228.48 Appraisal and measurement.

Four respondents suggested that the appraisal requirements for free-use permits be eliminated. We agree that there is no real need for a formal appraisal of mineral materials disposed of by means of a permit. This merely adds to the nonrecoverable cost of doing business. In order to minimize costs, yet provide information for Forest Service planning and budgeting purposes, the requirement has been changed from an appraisal to an estimate.

One respondent expressed concern for the need for consistency between the units used in the appraisal and the units used in measurement to ensure that fair market value is received. For example, to prevent an appraisal being based on a value per unit volume of loose pit run material and subsequent measurement and reporting being based on compacted processed material in place at the project (a much greater weight per unit volume), the final rule has been revised to require unit consistency. This change also reduces the chances for billing errors and the likelihood of confusion.

Section 228.49 Reappraisal.

Two respondents suggested that fairness dictates that the reappraised value should become the new unit value whether the unit price is higher or lower than the original value. This change has been adopted; this section has also been revised to incorporate recalculations for extensions of permits.

Section 228.50 Production records.

Three respondents expressed concern with the frequency of receiving production records from purchasers and permittees. We have revised this to read "at least annually" to give the authorized officer the flexibility to require more frequent reports, if necessary. We have also required consistency between units of measurement and appraisal as in § 228.48(a).

Section 228.51 Bonding.

In response to several comments, this section has been revised to clarify that a single bond for payment, performance, and reclamation is intended. One of those respondents suggested that bond requirements be recalculated when an extension of time is granted; this change has been made. Reclamation bonds for free use have been made optional at the discretion of the authorized officer, as one respondent suggested.

One respondent expressed the view that Time Certificates of Deposit should be accepted in lieu of a surety bond. These are not negotiable and, therefore, are not acceptable to the Forest Service (see Forest Service Manual 6506). However, a provision has been added so as not to preclude any types of bond that may be officially approved by the Forest Service in the future.

Section 228.52 Assignments.

In response to one comment, the provisions for assignments to third parties to remove mineral materials now apply to permits as well as contracts, as long as the potential permit assignee meets the conditions for free use in § 228.62(d).

One respondent remarked that it is unfair to hold an assignor liable for the performance of a contract or permit, once an assignment is made. We agree, and to the extent that there is a full and complete assignment of rights and obligations, we have revised this section out of fairness and for consistency with the Bureau of Land Management's regulation. This is also consistent with assignments of rights regarding other types of commodities, such as oil and gas.

Section 228.53 Term.

This section has been retitled for clarity. In response to several comments, the exceptions to the 1-year contract or permit term allowed elsewhere in this rule have been mentioned in this section.

Four respondents suggested that the term for contracts and permits be extended at the discretion of the authorized officer, or that the maximum term be 2 years rather than 1 year, where the field season is short. The 1-year term will help to ensure diligent development; to further encourage diligence, the number of extensions allowed has been reduced to two from an unspecified number. For accountability and ease of administration, we think it best to have a termination date. There are sufficient exceptions in § 228.53 (a) for alleviating problems beyond a purchaser's or permittee's control.

One respondent suggested that for low volume, short-term disposals, written requests for extensions be allowed up to 2 weeks before expiration. We agree in part; this section has been amended to allow requests for extensions of permits between 15 and 90 days before the permit expiration date, since no formal reappraisal is necessary.

Section 228.54 Single entry sales or permits.

One comment addressed earlier in this discussion led us to change the terms "rehabilitate" and "rehabilitation" to "reclaim" and "reclamation" for consistency with Forest Service usage.

Section 228.55 Cancellation or suspension.

Prospecting permits have been added to this section for expanded coverage.

One respondent suggested that a provision be added to allow the authorized officer to attach the bond in cases of noncompliance; we have adopted this suggestion to give the authorized officer more enforcement authority.

One respondent expressed the view that 30 days of continued noncompliance was too long. This period is only for noncompliance of a less serious nature; in more serious instances the authorized officer may suspend or cancel the contract, permit, or prospecting permit immediately. This suggestion has not been adopted.

Section 228.56 Operating plans.

Propecting permits have been added to this section for clarity.

Two respondents suggested that the information required in an operating plan be incorporated in the contract or permit. As is the case for locatable minerals, there is no required format for an operating plan as long as the information is provided, and this section as written does not preclude incorporating this information or any other provisions into the contract or permit, in effect eliminating the need for a separate plan. Section 228.47 also provides sufficient latitude to address these concerns. We feel it is best not to be too specific about these requirements in order to allow maximum flexibility for dealing with a variety of situations.

One respondent questioned the need for retention of structures and facilities, indicating that these should be removed in all cases. Some structures and facilities may be useful for effective resource management after operations have ceased, such as roads for fire management; this comment has not been adopted.

Section 228.57 Types of disposal.

Several respondents suggested some slight revisions of this section to make the following points clearer. Preference right negotiated sales may be conducted only on acquired lands as defined in § 228.42; that is, on Weeks Act lands or lands with Weeks Act status (see the discussion under §§ 228.41 and 228.42). All other types of disposal apply to all of the lands to which this subpart applies, including acquired National Forest lands.

There were two questions about the instances to which negotiated sales apply; these are clearly spelled out in 30 U.S.C. 602 and simply repeated in § 228.57(b) (1) and (2). One of these comments suggested that certain small sales be excluded from competition because of their size. This suggestion has not been adopted, because, in some cases, small sales may be for mineral materials of sufficiently high quality to justify competition.

One respondent suggested that the types of free-use disposals be expanded. A clause has been added to direct the reader to § 228.62(d), which details the conditions for free use.

Section 228.58 Competitive sales.

One respondent suggested that the subsection regarding advertising be clarified. Changes have been made to be more consistent with the wording in the Bureau of Land Management regulations at 43 CFR 3610.3–2.

Section 228.58(b)(2) has been expanded to incorporate a reference to special constraints due to environmental conditions that may need to be made known.

One respondent questioned why the volume of 25,000 cubic yards was set as the lower limit for requiring advertising. This is not the case; sales below this volume are required to be advertised, as well; only the means of advertising sales of lower volumes are left up to the authorized officer.

Several respondents asked that the bidding process be clarified in the case of ties. A purchaser determined by lot must pay the amount of the tied sealed bid; we believe this change may reduce the possibility of collusion among bidders.

One respondent suggested that the last sentence of § 228.58(c)(1) be revised so that the results of bidding would be mailed to all bidders within 10 days. This suggestion simplifies implementation and has been adopted.

Two respondents suggested that bid deposits are easier to compute as a percentage of appraised value since it may be difficult to estimate the value of 1 month's production until an operating plan is filed, after the sale has been conducted. We agree and have changed the requirement accordingly.

One respondent suggested that purchasers or permittees with a history of poor compliance be denied further contracts or permits. Denial of further contracts or permits on this basis is possible only through suspension or debarment proceedings. At the present, Forest Service suspension and debarment procedures do not apply to disposals of mineral materials. Bond requirements should be designed to cover all risks.

Section 228.59 Negotiated or noncompetitive sales.

Two respondents expressed concern about the phrase "in any one calendar year;" we have changed this to read "in any period of 12 consecutive months" to be consistent with Bureau of Land Management requirements and to avoid the possibility of selling the maximum in December of one year and again in January of the following year.

One respondent questioned whether or not a leaseholder may obtain mineral materials free of charge for use on roads necessary to develop the lease. A leaseholder may obtain mineral materials only through competitive or negotiated sales, as appropriate.

One respondent expressed the view that the volume limit of 200,000 cubic yards may be too restrictive for large projects. We believe that the public interest is best served by encouraging competition for these resources. Consequently, the provisions that limit volumes for individual noncompetitive sales remain in the final rule. This particular limit is identical to that required by the Bureau of Land Management (43 CFR 3610.2).

One respondent suggested that volume limitations be applied to one National Forest rather than to one State. We feel that uniformity between Forest Service and Bureau of Land Management regulations is desirable when possible, and this suggestion has not been adopted.

Section 228.60 Prospecting permits.

Several respondents wished clarification of the conditions under which prospecting permits may be issued. Prospecting permits may be issued only for acquired lands as defined in § 228.42 (Weeks Act lands and lands with Weeks Act status), and then only where existing information about developable mineral material deposits is insufficient.

Three respondents suggested that the wording be changed to clarify that a successful prospecting permittee has only a preference right to apply for a negotiated sale. This is indeed our intent, and the last sentence of § 228.60(a) has been changed accordingly; a prospecting permit does not automatically lead to a sale. The Forest Service may decide against the sale if the environmental impacts outweigh the benefits of the sale.

In this section and in the definition, the word "suitable" has been substituted for "valuable" in referring to the mineral material deposit. The only requirement that needs to be met in this regard is that the deposit must be suitable for development for the needs of the project; the Forest Service is only concerned with compliance with the terms and conditions of the permit and subsequent contract, including payment, not with profitability.

Several of the comments suggested that § 228.60(c) be revised to clarify the relationship between a prospecting permit and an operating plan and to include a bonding provision. The bonding provision has been added, but we think it necessary that an applicant submit an operating plan and receive approval before a prospecting permit is issued.

In response to two comments, we have made it clearer that the Forest Service has the ultimate responsibility for NEPA compliance. Section 228.60(d) has been revised by deleting the phrase "on a single National Forest." After consideration, we felt this was redundant.

In response to two comments, we have modified § 228.60(e) to allow only one extension of a prospecting permit; we also changed this section to clarify that an application for extension must be received within 30 days of expiration to give the applicant a period of time in which to apply as opposed to a specific date as had originally been implied.

One respondent suggested that the authorized officer be given more latitude in deciding when to reject applications for extension. This change has been adopted; it is consistent with Forest Service policy of placing maximum feasible authority and responsibility at the field level, and it allows resource management decisions to be made by those most familiar with local conditions and needs.

Section 228.61 Preference right negotiated sales.

Several of the comments regarding prospecting permits applied to this section as well. The marketability statement has been deleted and replaced with suitability for the intended use, as discussed above (although one comment commended us for originally including this economic criterion). Additionally, statements have been added to make clear that the Forest Service is ultimately responsible for ensuring that an environmental analysis is conducted before a contract is awarded and to extend the general provisions of this regulation to which preference right sales are subject (through § 228.56).

One respondent questioned the contract time allowable. As written, a preference right negotiated contract "must not exceed 5 years;" this allows some room for negotiation by establishing only the maximum time while recognizing the time and money spent by prospecting permittee in finding and developing a mineral material deposit. Consequently, the only change in the final rule is to make approval for renewal a discretionary decision for the authorized officer.

Section 228.62 Free use.

One respondent suggested that the two sentences dealing with notification and reclamation were more applicable to § 228.62(d); we agreed and transposed them.

Several respondents requested clarification of the provisions for removal by an agent; in particular, they suggested that the authorized officer be given the discretionary authority to issue free-use permits to designated agents of public agencies, since many public works projects are done through contractors. The final rule was changed to allow a permit to be issued to designated agents of public agencies listed in § 228.62(d)(1), provided there is a binding agreement in which the public agency retains the responsibility of ensuring compliance with the conditions of the permit. This change simplifies permitting for those public agencies which do project work through contractors while still retaining sufficient control to prevent abuse.

In response to one comment, we have added a clause to allow the authorized officer to make the determination of whether an applicant already owns or has available an adequate supply of mineral materials.

One respondent complained that the qualifications for free use are very broad. Those qualifications are defined by law and are only repeated in the regulations.

Two respondents objected to the limit of 5,000 cubic yards on the basis that that volume was excessive for an individual. The limit is the same as specified by the Bureau of Land Management and is only a maximum amount; the authorized officer is not prevented from establishing lower limits. No change was made in the final rule.

Several respondents question the Forest Service's authority to dispose of petrified wood. The Office of the General Counsel of the Department of Agriculture has indicated that the Forest Service does have this authority; in response to that advice, the sentence prohibiting sales has been deleted. The change also makes this section consistent with Bureau of Land Management regulations, which allow commercial disposals.

Section 228.63 Removal under terms of a timber sale or other Forest Service contract.

One respondent expressed the concern that there should be some means for disposing of excess processed material of high unit value. In response to that, a specific statement has been added to clarify that excess excavated material, as property of the United States, may be disposed of by competitive or negotiated sales or by free-use permits.

Section 228.64 Community sites and common-use areas.

One respondent suggested that "site" be substituted for "pit;" this proposal has been adopted for consistency throughout the final rule.

All of the comments regarding this section were directed at the statement that the Forest Service must bear the reclamation costs for community sites and common-use areas. After much deliberation, we have eliminated the reference to costs. Because additional funds may be needed to meet major costs for reclaiming multiple-user sources, the Forest Service is examining procedures by which users may perform interim or final reclamation or pay a proportionate share of the reclamation costs.

Section 228.65 Payment for sales.

In response to one comment, we have simplified § 228.65(b)(1) by deleting the unnecessary reference to a maximum advance payment. Since an applicant may prepay the entire amount, setting a maximum advance payment serves no practical purpose.

Two respondents suggested that deferred payments be secured by a bond. Section 228.51(a)(2), which requires such a bond, has been cross-referenced for clarity.

Two other changes have been made in response to earlier comments. A statement has been added to require that the units of measurement correspond to the units used in the appraisal (§ 228.65(c)(1)), and the reference to bonds has been simplified according to discussion above.

Section 228.66 Refunds.

One respondent requested that some means of recovery of additional administrative costs incurred by the United States be included. This suggestion has been adopted; if the authorized officer has not assessed a fee as described in § 228.43(b), or if the original assessed fee was too low, administrative costs may be deducted from any refund due a purchaser.

Regulatory Impact

The Department of Agriculture has determine that this final rule is not a major rule as defined in Executive Order 12291. The Department has further determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) The primary purpose of this rule is to streamline procedures for the management and disposal of mineral materials on National Forest System lands. This rule will affect all individuals or entities participating in the disposal of mineral materials in a similar manner. The information collection requirements in this rule have been reviewed and approved by the Office of Management and Budget through September 30, 1986, and assigned Clearance Number 0596-0081.

Environmental Impact Statement

The Forest Service has determined that this final rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, no detailed statement is required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

The principal author of this final rule is Harry Stumpf, Minerals and Geology Management Staff, Washington Office, assisted by Michael Burnside, Northern Regional Office, Missoula, Montana.

List of Subjects in 36 CFR Part 228

Administrative practice and procedure, Environmental protection, Mineral resources; Mines, National forests, Surety bonds.

For the reasons set forth above, Chapter II of Title 36 of the Code of Federal Regulations is amended as follows:

PART 251—[AMENDED]

1. The Table of Contents of Part 251 is amended by removing the headings for §251.4, Disposal of materials, and § 251.4a, Use and disposal of materials in acquired and related lands.

§§ 251.4 and 251.4a [Removed]

2. Part 251 is amended by removing §§ 251.4 and 251.4a.

3. Part 228 is amended by adding a new Subpart C to read as follows:

PART 228—MINERALS

* * * * *

Subpart C—Disposal of Mineral Materials

* * * * *

Subpart C—Disposal of Mineral Materials

§ 228.40 Authority.

Authority for the disposal of mineral materials is provided by the Materials Act of July 31, 1947 (30 U.S.C. 601 et seq.), as amended by the Acts of August 31, 1950 (30 U.S.C. 603-604), July 23, 1955 (30 U.S.C. 601, 603), and September 25, 1962 (30 U.S.C. 602), and by the following: the Act of June 4, 1897 (16 U.S.C. 477); the Act of March 4, 1917 (16 U.S.C. 520); the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); the Act of September 1, 1949 (section 3) (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508b); the Act of June 28, 1952 (section 3) (66 Stat. 285); the Act of September 2, 1958 (16 U.S.C. 521a); the Act of June 11, 1960 (74 Stat. 205); the Federal Highway Act of August 27, 1958 (23 U.S.C. 101 et seq.); and the Alaska National Interest Lands Conservation Act of December 2, 1980 (section 502) (16 U.S.C. 539a).

§ 228.41 Scope.

(a) *Lands to which this subpart applies.* This subpart applies to all National Forest System lands reserved from the public domain of the United States, including public domain lands being administered under the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); to all National Forest System lands acquired pursuant to the Weeks Act of March 1, 1911 (36 Stat. 961); to all National Forest System lands with Weeks Act status as provided in the Act of September 2, 1958 (16 U.S.C. 521a); and to public lands within the Copper River addition to the Chugach National Forest (16 U.S.C. 539a). For ease of reference and convenience to the reader, these lands are referred to, throughout this subpart, as "National Forest lands."

(b) *Restrictions.* Disposal of mineral materials from the following National Forest lands is subject to certain restrictions as described below:

(1) *Segregation or withdrawals in aid of other agencies.* Disposal of mineral materials from lands segregated or withdrawn in aid of a function of another Federal agency, State, territory, county, municipality, water district, or other governmental subdivision or agency may be made only with the written consent of the governmental entity.

(2) *Segregated or withdrawn National Forest lands.* Mineral materials may not be removed from segregated or withdrawn lands where removal is specifically prohibited by statute or by public land order. Where not specifically prohibited, removal of mineral materials may be allowed if the authorized officer determines that the removal is not detrimental to the values for which the segregation or withdrawal was made, except as provided in paragraph (b)(1) of this section. Where operations have been established prior to the effective date of this Subpart and where not prohibited by statute, they may be permitted to continue. Nothing in this subparagraph is intended to prohibit the exercise of valid existing rights.

(3) *Unpatented mining claims.* Provided that claimants are given prior notice and it has been determined that removal will neither endanger nor materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto on the claims, disposal of mineral materials may be allowed from:

(i) Unpatented mining claims located after July 23, 1955; and/or

(ii) Unpatented mining claims located before July 23, 1955, and on which the United States has established the right to manage the vegetative and other surface resources in accordance with the Multiple Use Mining Act of July 23, 1955 (30 U.S.C. 601, 603, 611-615).

(4) *Acquired Bankhead-Jones lands.* Mineral materials on lands which were acquired under the authority of the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010–1012), and which lie outside the exterior boundaries of National Forests, or on acquired lands which are being administered under the Act and which also lie outside the exterior boundaries of National Forests, may be disposed of under these regulations only to public authorities and agencies, and only on condition that the mineral materials are used for public purposes (7 U.S.C. 1011(c)).

§ 228.42 Definitions.

For the purposes of this subject, the following terms are defined:

Acquired National Forest lands. National Forest System lands acquired under the Weeks Act of March 1, 1911 (36 Stat. 961), and National Forest System lands with Weeks Act status as provided in the Act of September 2, 1958 (16 U.S.C. 521a).

Authorized officer. Any Forest Service officer to whom authority for disposal of mineral materials has been delegated.

Common-use area. Generally, a broad geographic area from which nonexclusive disposals of mineral materials available on the surface may be made to low volume and/or noncommercial users.

Community site. A site noted on appropriate Forest records and posted on the ground from which nonexclusive disposals of mineral materials may be made to low volume and/or noncommercial users.

Contract. A signed legal agreement between the Forest Service and a purchaser of mineral materials, which specifies (among other things) the conditions of a competitive, negotiated, or preference right sale of mineral materials to the purchaser.

Mineral materials. A collective term used throughout this Subpart to describe petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Common varieties do not include deposits of those materials which are valuable because of some property giving them distinct and special value, nor do they include "so-called 'block pumice' " which occurs in nature in pieces having one dimension of 2 inches or more.

Permit. A signed legal document between the Forest Service and one who is authorized to remove mineral materials free of charge, which specifies (among other things) the conditions of removal by the permittee.

Preference right negotiated sale. A negotiated sale which may be awarded in response to the finding and demonstration of a suitable deposit of mineral material on acquired National Forest lands as the result of exploratory activity conducted under the authority of a prospecting permit.

Prospecting permit. A written instrument issued by the Forest Service which authorizes prospecting for a mineral material deposit on acquired National Forest lands within specific areas, under stipulated conditions, and for a specified period of time.

Single entry source. A source of mineral materials which is expected to be depleted under a single contract or permit or which is reserved for Forest Service use.

Unpatented mining claim. A lode or placer mining claim or a millsite located under the General Mining Law of 1872, as amended (30 U.S.C. 21–54), for which a patent under 30 U.S.C. 29 and regulations of the Department of the Interior has not been issued.

Withdrawn National Forest lands. National Forest System lands segregated or otherwise withheld from settlement, sale, location, or entry under some or all of all of the general land laws (43 U.S.C. 1714).

§ 228.43 Policy governing disposal.

(a) *General.* Forest Service policy is to make mineral materials on National Forest lands available to the public and to local, State, and Federal government agencies where reasonable protection of, or mitigation of effects on, other resources in assured, and where removal is not prohibited.

(1) A contract or permit limits processing of the mineral material onsite to the first salable product.

(2) Additional onsite processing may be authorized by a separate permit (36 CFR 251.50).

(3) The authorized officer must ensure that an environmental analysis is conducted for all planned disposals of mineral materials.

(4) Decisions to authorize the disposal of mineral materials must conform to approved land and resource management plans (36 CFR 219.22).

(b) *Price.* Mineral materials may not be sold for less than the appraised value. The authorized officer may assess a fee to cover costs of issuing and administering a contract or permit.

(c) *Conservation.* Adequate measures must be taken to protect, and minimize damage to the environment. Mineral materials may be disposed of only if the authorized officer determines that the disposal is not detrimental to the public interest.

(d) *Ownership.* Title to the mineral materials vests in the purchaser or permittee immediately before excavation, subject to the provisions of §§ 228.47 through 228.56 and other provisions of the contract or permit. Title to excavated material not removed within the time provided revests in the United States.

§ 228.44 Disposal on existing Federal leased areas.

Mineral material contracts or permits may be issued within existing areas leased or under permit under the 1920 Mineral Leasing Act, as amended (30 U.S.C. 181–187); Section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); the 1947 Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 et seq.); and the 1970 Geothermal Steam Act (30 U.S.C. 1001–1025), provided that it has been determined that removal will neither endanger nor unreasonably interfere with lease operations, and provided further that the lease terms do not prohibit disposal.

§ 228.45 Qualifications of applicants.

The authorized officer may require applicants for prospecting permits, negotiated contracts, or free-use permits or bidders for the sale of mineral materials to furnish information necessary to determine their ability to perform the obligations of the contract or permit.

§ 228.46 Application of other laws and regulations.

All mining operations for removal of mineral materials from National Forest lands must meet or exceed applicable Federal standards for the protection of public safety, health, and the environment, and must also meet or exceed State and local standards for the protection of public safety, health, and the environment, to the extent that such standards are not in conflict with Federal purposes and functions.

General Provisions

§ 228.47 General terms and conditions of contracts and permits.

(a) *Disposal of designated mineral materials.* Only those specified mineral materials found within the area designated in the contract or permit may be extracted and removed.

(b) *Unauthorized removal (trespass) of mineral materials.* The removal of mineral materials from National Forest lands, except when authorized in accordance with applicable law and regulations of the Department of Agriculture, is prohibited (36 CFR 261.9).

(c) *Conservation.* Mineral material contracts and permits must contain provisions to ensure the efficient removal and conservation of the mineral material.

(d) *Improvements.* Contracts and permits must contain provisions for removal or Government retention of improvements.

(e) *Use of existing National Forest Development Roads.* The authorized officer may require purchasers and permittees to obtain appropriate road-use permits, make deposits for or perform their commensurate share of road maintenance, and comply with road-use rules contained in 36 CFR Part 212, depending upon their planned extent of road use.

(f) *Reclamation.* Requirements for reclamation of areas disturbed by mineral material operations must be included in contracts and permits, except for disposals from community sites and common-use areas.

§ 228.48 Appraisal and measurement.

(a) *Appraisal.* All mineral materials for sale must be appraised to determine fair market value. Appraisals must be based on knowledge of the extent of the deposit, quality of material, and economic value. A sale must not be made at less than the appraised value which may be expressed as either price per cubic yard or weight equivalent. In all cases the units of measurement must correspond to the units used in the appraisal. The authorized officer must estimate and record the amount and value of minerals to be disposed of by free-use permit.

(b) *Measurement.* The amount of mineral material actually removed may be measured by volume, weight, truck tally, by combination of these methods, or by such other form of measurement as the authorized officer determines to be appropriate and in the public interest.

§ 228.49 Reappraisal.

If an extension of time is granted as provided in § 228.53(b), the authorized officer must reappraise or reestimate the mineral materials covered by the contract or permit and which remain unexcavated at the time of extension. The recalculated unit value becomes the new unit value for the remaining unexcavated material; excavated and stockpiled material is not subject to reappraisal.

§ 228.50 Production records.

At least annually, the purchaser or permittee must furnish a record of the volume extracted, in cubic yards or weight equivalent, to the authorized officer. The units of measurement must correspond to the units used in the appraisal or estimate.

§ 228.51 Bonding.

(a) *Bond requirements.* Before operations may begin under any contract or permit, a bond must be furnished to the authorized officer to ensure performance of payment (as necessary), reclamation, and other conditions of the contract or permit, except as noted in paragraphs (a) (1) and (3) of this section, where the authorized officer may waive such bonding. If an extension of time is granted as provided in § 228.53(b), the bond requirements must be recalculated and changed accordingly.

(1) For *advance payment contracts* for 10,000 cubic yards or more in volume (or weight equivalent), a bond of not less than 10 percent of the total contract price or the value of the estimated annual production (whichever is less), plus the reclamation cost for the area covered by annual mining, is required. When the total volume is less than 10,000 cubic yards, bond requirements, if any, are at the discretion of the authorized officer.

(2) For any *defered payment contract,* a bond equalling the value of the estimated annual production plus the reclamation cost for the area covered by annual mining is required.

(3) For *free use,* the authorized officer may require a reclamation bond which must be sufficient to cover the cost of reclamation of the anticipated annual work.

(b) *Types of bonding.* A bond must be one of the following:

(1) A bond of a corporate surety shown on the latest approved list issued by the U.S. Treasury Department and executed on an approved standard form;

(2) A cash bond;

(3) Negotiable securities of the United States;

(4) An irrevocable letter of credit acceptable to the Forest Service;

(5) A performance bond required by other Forest Service contracts or permits, provided the bond covers the performance and reclamation requirements related to the removal of mineral material from a designated pit or area for use in the performance of the contract or permit; or

(6) Any other types of bond specified in the Forest Service Manual.

§ 228.52 Assignments.

(a) *Limitations.* A purchaser or permittee may not assign the contract or permit, or any interest therein, without the written approval of the authorized officer.

(b) *Requirements of assignee.* The authorized officer will not approve any proposed assignment involving contract or permit performance unless the assignee:

(1) Submits information necessary to assure the authorized officer of the assignee's ability to meet the same requirements as the original purchaser or permittee (assignor); and

(2) Furnishes a bond or obtains a commitment from the previous surety to be bound by the assignment when approved.

(c) *Rights and obligations.* Once the authorized officer approves an assignment, the assignee is entitled to all the rights and is subject to all of the obligations under the contract or permit, and the original purchaser or permittee may be released from any further responsiblity under the contract or permit.

§ 228.53 Term.

(a) *Time allowed.* Except as provided in § 228.61(f), § 228.62(b), and elsewhere in this paragraph, a contract or permit may not exceed 1 year from the effective date of the contract or permit unless a written extension is obtained. For those mineral materials sold under a duration of production contract or under a contract for the sale of all mineral material within a specified area, or under a construction contract where removal cannot reasonably take place before completion of other work under the same contract, the authorized officer will establish a reasonable time period for removal.

(b) *Extension of time.* If it is shown that a delay in removal was due to causes beyond the control of the purchaser or permittee, the authorized officer may grant an extension, not to exceed 1 year, upon written request. Written requests for extensions of contracts must be received between 30 and 90 days before the expiration date of the contract. Written requests for extensions of permits must be received between 15 and 90 days before the permit expiration date. The authorized officer may grant a total of two extensions for contracts and permits.

§ 228.54 Single entry sales or permits.

The purchaser or permittee is required to reclaim a single entry source in accordance with an approved operating plan which describes operating procedures and reclamation measures, unless the requirement is waived by the authorized officer.

§ 228.55 Cancellation or suspension.

The authorized officer may cancel or suspend a contract, permit, or prospecting permit if the purchaser or permitte fails to comply with its terms and conditions. If the noncompliance is unnecessarily or unreasonably causing injury, loss, or damage to surface resources, the authorized officer may cancel or suspend the contract, permit, or prospecting permit immediately. In cases where noncompliance is of a less serious nature, the authorized officer may cancel or suspend a contract, permit, or prospecting permit it such noncompliance continues for 30 days after service of written notice by the authorized officer. If the noncompliance is not corrected, the authorized officer may attach the bond to ensure compliance with the provisions of the contract, permit, or prospecting permit.

§ 228.56 Operating plans.

Any surface-disturbing operation under a contract, permit, or prospecting permit is subject to prior approval by the authorized officer of an operating plan and to reasonable conditions as may be required to ensure proper protection of the environment and improvements, including timely reclamation of disturbed lands. Significant changes to operations require prior approval of an amended operating plan. The operating plan must include, as a minimum, a map and explanation of the nature of the access, anticipated activity, surface disturbance, and intended reclamation including removal or retention of structures and facilities. Operating plans must be submitted by the purchaser, permittee, or prospecting permittee, except as noted in § 228.64(b).

Types and Methods of Disposal

§ 228.57 Types of disposal.

Except as provided in § 228.41(b), disposal of mineral materials may be made by:

(a) *Competitive sale* to the highest qualified bidder after formal advertising and other appropriate public notice;

(b) *Sale by negotiated contract.* (1) For removal of materials to be used in connection with a public works improvement program on behalf of a Federal, State, or local government agency if the public exigency will not permit delays incident to advertising, or

(2) For the removal of mineral materials for which it is impracticable to obtain competition;

(c) *Preference right negotiated sale* to the holder of a Forest Service-issued prospecting permit under which a suitable mineral material deposit has been demonstrated on acquired National Forest lands;

(d) *Free use* when a permit is issued to any nonprofit association, corporation, individual, or others listed in § 228.62(d), for other than commercial purposes, resale, or barter, or to any Federal, State, county, local unit, subdivision, municipality, or county road district for use in public projects; or

(e) *Forest Service force account or by contract* where the material is to be used to carry out various Forest Service programs involving construction and maintenance of physical improvements.

§ 228.58 Competitive sales.

(1) *Invitation for bid.* Sales must be conducted as described below after inviting competitive bids through publication and posting. The authorized officer may not offer a competitive sale unless there is a right-of-way or other access to the sale area which is available to anyone qualified to bid.

(b) *Advertising.*—(1) *Sales over 25,000 cubic yards.* Mineral material sales offered by competitive bidding and which exceed 25,000 cubic yards must be advertised on the same day once a week for two consecutive weeks in a newspaper of general circulation in the area where the material is located, and in a trade or industrial newspaper when considered appropriate. Notice of the sale must be posted in a conspicuous place in the office where bids are to be submitted. In addition, the authorized officer may send the advertisement directly to known interested persons. Bids may be received but not evaluated before the end of the advertising period, which may be extended at the discretion of the authorized officer.

(2) *Content of advertising.* The advertisement of sale must specify the location by legal description of the tract or tracts or by any other means identify the location of the mineral material deposit being offered, the kind of material, estimated quantities, the unit of measurement, appraised price (which sets the minimum acceptable bid), time and place for receiving and opening of bids, minimum deposit required, major special constraints due to environmental considerations, available access, maintenance required over haul routes, traffic controls, required use permits, required qualifications of bidders, the method of bidding, bonding requirement, notice of the right to reject any or all bids, the office where a copy of the contract and additional information may be obtained, and additional information the authorized officer deems necessary.

(3) *Advertising smaller sales.* Advertisement of mineral materials amounting to 25,000 cubic yards in volume (or weight equivalent) or less must be published and/or posted. The methods of advertisement are at the discretion of the authorized officer.

(c) *Conduct of sales.* (1) Bidding at competitive sales may be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder will be determined by oral auction among those tied bidders; when no oral bid is higher that the sealed bids, the selected bidder will be determined by lot, the purchase price being the amount of the tied bid. For all oral auctions, including those used to break sealed-bid ties, the high bidder must confirm the bid in writing immediately upon being declared the high bidder. The authorized officer must mail notification of the bidding results to all bidders within 10 days.

(2) The authorized officer may require bidders to furnish evidence of qualification at the time of award or, if such evidence has already been furnished and is still valid, make appropriate reference to the record containing it.

(3) When it is in the interest of the United States to do so, the authorized officer may reject any or all bids.

(d) *Bid deposits and award of contract.* Sealed bids must be accompanied by a deposit. For mineral materials offered at oral auction, bidders must make the deposit before opening of the bidding.

(1) Bid deposits must be equal to 10 percent of the appraised value but not less than $100.00.

(2) Bid deposits must be in the form of cash, money order, bank drafts, cashier's or certified checks made payable to the Forest Service, or bonds acceptable to the Forest Service (§ 228.51(b)).

(3) Upon conclusion of the bidding, the authorized officer will return the deposits of all unsuccessful bidders. The successful bidder's deposit will be applied toward the purchase price. If the contract is not awarded to the high bidder due to an inability to perform the obligations of the contract, the deposit, less expenses and damages incurred by the United States, may be returned. The return of a deposit does not prejudice any other rights or remedies of the United States. The contract may be offered and awarded to the next successive qualified high bidder, or, at the discretion of the authorized officer, the sale may be either readvertised or negotiated if it is determined that a competitive sale is impracticable.

(4) Within 30 days after receipt of the contract, the successful bidder must sign and return the contract, together with any required bond, unless the authorized officer has granted an extension for an additional 30 days. The bidder must apply for the extension in writing within the first 30-day period. If the successful bidder fails to return the contract within the first 30-day period or within an approved extension, the bid deposit, less the costs of readvertising and damages, may be returned without prejudice to any other rights or remedies of the United States.

(5) All sales must be processed on Forest Service-approved contract forms. The authorized officer may add provisions to the contract to cover conditions peculiar to the sale area. Such additional provisions must be made available for inspection by prospective bidders during the advertising period.

§ 228.59 Negotiated or noncompetitive sales.

(a) *Volume limitations.* When it is determined by the authorized officer to be in the public interest and when it is impracticable to obtain competition, mineral materials not exceeding 100,000 cubic yards in volume (or weight equivalent) may be sold in any one sale at not less than the appraised value, without advertising or calling for bids, except as provided in paragraphs (b) and (c) of this section. The authorized officer may not approve noncompetitive sales that exceed the total of 200,000 cubic yards (or weight equivalent) made in any one State for the benefit of any applicant in any period of 12 consecutive months.

(b) *Government programs.* In connection with a public works improvement project on behalf of a Federal, State, or local governmental agency, the authorized officer may sell to an applicant, at not less than the appraised value, without advertising or calling for bids, a volume of mineral materials not to exceed 200,000 cubic yards (or weight equivalent) when the public exigency will not permit delays incident to advertising (30 U.S.C. 602).

(c) *Appropriation for highway purposes.* For interstate and/or Federal aid highways, the Secretary of Transportation may appropriate any volume in accordance with 23 U.S.C. 107 and 317.

(d) *Use in development of Federal mineral leases.* When it is determined to be impracticable to obtain competition and the mineral materials are to be used in connection with the development of mineral leases issued by the United States (§ 228.44), the authorized officer may sell to a leaseholder a volume of mineral material not to exceed 200,000 cubic yards (or weight equivalent) in one State in any period of 12 consecutive months. No charge will be made for materials which must be moved in the process of extracting the mineral under lease, as long as the materials remain stockpiled within the boundaries of the leased area.

§ 228.60 Prospecting permits.

(a) *Right conferred.* On acquired National Forest lands, prospecting permits may be issued which grant the permittee the exclusive right to explore for and to demonstrate the existence of a suitable mineral material deposit when existing information is insufficient. After the demonstration of a suitable deposit and confirmation of this by the authorized officer, the permittee will have a preference right to apply for a negotiated sale.

(b) *Limitations.* Mineral material may be removed from lands under a prospecting permit only to the extent necessary for testing and analysis or for the demonstration of the existence of a suitable deposit.

(c) *Environmental analysis.* Prospecting permits will be issued only after submission by applicant and approval by the authorized officer of a detailed operating plan. The authorized officer may require a bond in accordance with § 228.51. The authorized officer must ensure compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

(d) *Acreage and permit limitations.* A prospecting permit may not cover more than 640 acres. No individual or group may have an interest at any one time in more than three prospecting permits on Forest Service lands administered by one Forest Supervisor.

(e) *Duration and extension of permits.* Prospecting permits may be issued for a period not to exceed 24 months, but they may be extended once for up to an additional 24 months if necessary to complete prospecting. Any application for extension must be submitted no later than 30 days before the expiration of the permit. The application for extension must provide evidence of diligence and state the reasons why additional time is considered necessary to complete prospecting work.

(f) *Refusal to extend permits.* The authorized officer may reject applications for extension of prospecting permits for the following reasons:

(1) *Failure to perform.* Failure of the permittee to perform prospecting or exploration work without adequate justification may result in the denial of an extension; or

(2) *Failure to apply.* If an application for extension is not submitted within the specified period, the permit may expire without notice to the permittee.

(3) *Public interest.* If the authorized officer determines that an extension may not be in the public interest, the application may be rejected.

§ 228.61 Preference right negotiated sales.

(a) *Qualification for sale.* When applying for a preference right negotiated sale, the permittee must demonstrate to the satisfaction of the authorized officer that a suitable deposit of mineral material has been discovered within the area covered by the prospecting permit. Information concerning trade secrets and financial matters submitted by the permittee and identified as confidential will not be available for public examination except as otherwise agreed upon by the permittee.

(b) *Application for sale.* The application must be submitted to the District Ranger's office on or before the expiration date of the prospecting permit or its extension. The authorized officer may grant 30 additional days for submitting the application if requested in writing by the permittee before expiration of the prospecting permit or its extension.

(c) *Terms and conditions of contract.* The terms and conditions will be evaluated on an individual case basis. Only those mineral materials specified in the contract may be removed by the purchaser. Before a preference right negotiated contract is awarded, the authorized officer must ensure that an environmental analysis is conducted. All contracts are subject to the conditions under §§ 228.47 through 228.56.

(d) *Acreage limitations.* The authorized officer will determine the amount of acreage in the preference right negotiated sale based on a presentation of the permittee's needs. The maximum acreage allowable to any individual or group must not exceed 320 acres on National Forest lands administered by one Forest Supervisor. The allowable acreage may be in one or more units which are not necessarily contiguous.

(e) *Volume limitations.* Preference right negotiated sales are exempt from volume limitations.

(f) *Contract time allowable.* A contract or a renewal must not exceed 5 years; however, the purchaser may have renewal options at the end of each contract or renewal period. The authorized officer may renew a contract if it is determined that the renewal is not detrimental to the public interest and that the purchaser has demonstrated diligence in conducting operations. The authorized officer may cancel the contract, or the purchaser may forfeit the contract, if no substantial commercial production occurs during any continuous 2-year period after the award of the contract or if the contract terms and conditions are breached. However, if a delay is caused by conditions beyond the purchaser's control, the authorized officer may grant an extension equal to the lost time.

(g) *Contract renewal reappraisal.* At the time of contract renewal, the authorized officer will reappraise the mineral material deposit in accordance with § 228.49.

§ 228.62 Free use.

(a) *Application.* An application for a free-use permit must be made with the appropriate District Ranger's office.

(b) *Term.* Permits may be issued for periods not to exceed 1 year and will terminate on the expiration date unless extended by the authorized officer as in § 228.53(b). However, the authorized officer may issue permits to any local, State, Federal, or Territorial agency, unit or subdivision, including municipalities and county road districts, for periods up to 10 years.

(c) *Removal by agent.* A free-use permittee may extract the mineral materials through a designated agent provided that the conditions of the permit are not violated. No part of the material may be used as payment for the services of an agent in obtaining or processing the material. A permit may be issued in the name of a designated agent for those entities listed in § 228.62(d)(1), at the discretion of the authorized officer, provided there is binding agreement in which the entity retains responsibility for ensuring compliance with the conditions of the permit.

(d) *Conditions.* Free-use permits may be issued for mineral materials to settlers, miners, residents, and prospectors for uses other than commercial purposes, resale, or barter (16 U.S.C. 477). Free-use permits may be issued to local, State, Federal, or Territorial agencies, units, or subdivisions, including municipalities, or any association or corporation not organized for profit, for other than commercial or industrial purposes or resale (30 U.S.C. 601). Free-use permits may not be issued when, in the judgment of the authorized officer, the applicant owns or controls an adequate supply of mineral material in the area of demand. The free-use permit, issued on a Forest Service-approved form, must include the basis for the free-use as well as the provisions governing the selection, removal, and use of the mineral materials. No mineral material may be removed until the permit is issued. The permittee must notify the authorized officer upon completion of mineral material removal. The permittee must complete the reclamation prescibed in the operating plan (§ 228.56).

(1) A free-use permit may be issued to any local, State, Federal, or Territorial agency, unit, or subdivision, including municipalities and county road districts, without limitation on the number of permits or on the value of the mineral materials to be extracted or removed.

(2) A free-use permit issued to a nonprofit association, corporation, or individual may not provide for the removal of mineral materials having a volume exceeding 5,000 cubic yards (or weight equivalent) during any period of 12 consecutive months.

(e) *Petrified wood.* A free-use permit may be issued to amateur collectors and scientists to take limited quantities of petrified wood for personal use. The material taken may not be bartered or sold. Free-use areas may be designated within which a permit may not be required. Removal of material from such areas must be in accord with rules issued by the authorized officer and posted on the area. Such rules must also be posted in the District Ranger's and Forest Supervisor's offices and be available upon request. The rules may vary by area depending on the quantity, quality, and accessibility of the material and the demand for it.

§ 228.63 Removal under terms of a timber sale or other Forest Service contract.

In carrying out programs such as timber sales that involve construction and maintenance of various physical improvements, the Forest Service may specify that mineral materials be mined, manufactured, and/or processed for incorporation into the improvement. Where the mineral material is located on National Forest lands and is designated in the contract calling for its use, no permit is required as long as an operating plan as described in § 228.56 is required by the contract provisions. Title to any excavated material in excess of that needed to fulfill contract requirements revests in the United States without reimbursement to the contract holder or to agents or representatives of the contract holder. Such excess material may be disposed of under §§ 228.58, 228.59, or 228.62.

§ 228.64 Community sites and common-use areas.

(a) *Designation.* Nonexclusive disposals may be made from the same deposit or areas designated by the authorized officer; the designation of such an area and any reclamation requirements must be based on an environmental analysis.

(b) *Pit plans.* The Forest Service must prepare operating plans (§ 228.56) for the efficient removal of the material and for appropriate reclamation of community sites and common-use areas.

(c) *Reclamation.* The Forest Service is responsible for reclamation of community sites and common-use areas.

§ 228.65 Payment for sales.

(a) *Conditions.* Mineral materials may not be removed from the sale area until all conditions of payment in the contract have been met.

(b) *Advance payment.* (1) For negotiated and competitive sales the full amount may be paid before removal is begun under the contract or by installment at the discretion of the authorized officer. Installment payments must be based on the estimated removal rate specified in the operating plan and must be, as a minimum, the value of 1 month's removal. The first installment must be paid before removal operations are begun; remaining installments must be paid in advance of removal of the remaining materials as billed by the authorized officer. The total amount of the purchase price must be paid at least 60 days before the expiration date of the contract.

(2) All advance payment contracts must provide for reappraisal of the mineral material at the time of contract renewal or extension.

(3) Minimum annual production must be sufficient to return a payment to the United States equal to the first installment. In lieu of minimum production, there must be an annual payment in the amount of the first installment which will not be credited to future years' production. Payments for or in lieu of minimum annual production must be received by the authorized officer on or before the anniversary of the effective date of the contract.

(4) If the purchaser fails to make payments when due, the contract will be considered breached; the authorized officer will terminate the contract, and all previous payments will be forfeited without prejudice to any other rights and remedies of the United States. Forfeiture will not result when the purchaser is unable to meet the minimum annual production (volume or

value) for reasons beyond the purchaser's control.

(5) In order to determine payment amount, the purchaser must make a report of operations. The report must include the amount of mineral material removed, which must be verified by the authorized officer.

(c) *Deferred payments.* The authorized officer may approve deferred payments for sales.

(1) The purchaser may make payments monthly or quarterly which must be based on the in-place value (volume or weight equivalent) of material removed during the contract period. The units of measurement must correspond to the units used in the appraisal. The purchaser must make all payments before contract renewal.

(2) The purchaser must deliver a bond which conforms to the provisions of § 228.51(a)(2) to the authorized officer before operations are begun under the contract.

§ 228.66 Refunds.

Upon termination of any contract, payments in excess of $10 may be refunded, less the costs incurred by the United States, under any of the following conditions:

(a) *Payment in excess of value.* If the total payment exceeds the value of the mineral material removed, unless it is the minimum annual payment in lieu of production;

(b) *Insufficiency of material.* If insufficient mineral material existed in the sale area to provide the quantity of material estimated to have been available;

(c) *Termination.* (1) If the contract is terminated by the authorized officer for reasons which are beyond the purchaser's control; or

(2) If the contract is terminated by mutual agreement. This refund provision is not a warranty that a specific quantity of material exists in the sale area.

§ 228.67 Information collection requirements.

(a) The following sections of this rule contain information collection requirements as defined in the Paperwork Reduction Act of 1980 (5 CFR 1320): § 228.45, Qualifications of applicants; § 228.51, Bonding; § 228.52(b)(1), Requirements of assignee; § 228.53(b), Extension of time; § 228.56, Operating plans; § 228.57(c), Conduct of sales; § 228.60, Prospecting permits; § 228.61, Preference right negotiated sales; and § 228.62, Free use.

(b) These requirements have been approved by the Office of Management and Budget and assigned Clearance Number 0596–0081.

Dated: June 29, 1984.

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84–19443 Filed 7–23–84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAR-FRL-2636-5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final rulemaking on the Illinois State Implementation Plan (SIP) for lead in the Granite City area. This SIP is designed to provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead. USEPA proposed approval of the Illinois Granite City area Lead Plan in the December 29, 1983 (48 FR 57324) **Federal Register**, with the understanding that the lack of an enforceable mechanism to implement the proposed control strategy would be corrected by the time of final rulemaking. During the public comment period, one comment was received by USEPA from the State of Illinois. On March 19, 1984, the State of Illinois submitted all of the required consent decrees which provide the enforcement authority necessary to implement the control strategy. USEPA has reviewed this additional information and determined that it satisfies the one remaining deficiency in the Lead Plan. Therefore, USEPA approves the entire Illinois Lead Plan for the Granite City area in today's **Federal Register.**

EFFECTIVE DATE: This final rulemaking becomes effective on August 23, 1984.

ADDRESSES: Copies of this revision to the Illinois SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6036 before visiting the Region V Office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1978, USEPA promulgated the National Ambient Air Quality Standards (NAAQS) for lead (43 FR 56258). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (Mg/m^3) maximum arithmetic mean, as averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (Act), requires each State to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

In the March 22, 1982, **Federal Register** (47 FR 12164), USEPA approved the Illinois lead SIP in all areas of the State, with the exception of the Granite City, Madison, and Venice geographic areas in Madison County. USEPA approved the Illinois Lead SIP, with the understanding that the State would at a later date develop a control plan for the Granite City area which would assure attainment and maintenance of the NAAQS.

On September 30, 1983, the State of Illinois submitted a Lead Plan to USEPA designed to assure attainment and maintenance of the NAAQS in the Granite City area. The Illinois Plan includes a discussion of air quality data measured since 1978, an emission inventory of three source categories capable of emitting lead, atmospheric modeling analyses, and necessary control strategies. In developing the point source emission inventory, the State identified three stationary sources that have the potential to emit lead. These sources are: Taracorp Inc., St. Louis Lead Recyclers, and Granite City Steel. The emissions inventory shows that only Taracorp is large enough to qualify as a "point source", a stationary source emitting lead in excess of 5 tons/year.

USEPA proposed approval of the Illinois Granite City area Lead Plan in the December 29, 1983 (48 FR 57324) **Federal Register**, with the understanding that the State of Illinois would develop an enforceable mechanism to implement the proposed control strategy by the time of final rulemaking.