collection, and fully collectible with respect to all principal and interest.

* * * * *

Kenneth J. Auberger,

Secretary, Farm Credit Administration Board.

[FR Doc. 86-27893 Filed 12-11-86; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 376

[Docket No. 60850-6150]

Visitation Requirements for Computers; ECCN 1565A

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: On January 14, 1986, Export Administration issued a final rule (51 FR 1493-1495) that, among other regulatory changes, revised the requirements for periodic visits and reports on computer systems described by Advisory Note 12 of entry 1565A on the Commodity Control List, a listing of those commodities subject to Department of Commerce export controls.

This rule adds a provision to the Export Administration Regulations stating that the newer, more liberal visitation requirements effective on January 14, 1986 may apply to digital computers and equipment shipped before that date *if* the equipment meets the technical guidelines set forth in § 376.10(a)(3) of the Regulations.

EFFECTIVE DATE: This rule is effective December 12, 1986.

FOR FURTHER INFORMATION CONTACT: Raj Dheer, Computer Systems Tech Center, Export Administration, Telephone: (202) 377-0708.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection has been approved by the Office of Management and Budget under control number 0625-0038.

List of Subjects in 15 CFR Part 376

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 376 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

PART 376—[AMENDED]

1. The Authority citation for Part 376 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Section 376.10 is amended by designating the existing Note as Note 1 and adding a Note 2 in paragraph (a)(3), reading as follows:

§ 376.10 [Amended]

Note.—Validated license applications approved before January 14, 1986 were subject to visitation requirements more stringent than those set forth in § 376.10(a)(3). However, such applications are now eligible for the newer visitation requirements *if* the equipment meets the technical guidelines set forth in paragraph (a)(3) of this section.

Dated: December 8, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-27889 Filed 12-11-86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Virginia State Plan; Limited Resumption of Concurrent Federal Enforcement

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Limited resumption of concurrent Federal enforcement.

SUMMARY: This document provides notice that concurrent Federal enforcement authority under section 18(e) of the Occupational Safety and Health Act of 1970 (hereinafter called "the Act") (29 U.S.C. 667(e)) will be exercised with respect to general schedule inspections resulting in denials of entry under the Virginia State Plan, effective October 1, 1986. The resumption of concurrent enforcement is intended as a temporary measure to allow Virginia to complete its efforts undertaken to legislatively address current difficulties in the area of right of entry.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8148.

Background

Part 1954 of Title 29, Code of Federal Regulations, sets out procedures under section 18 of the Act for the evaluation and monitoring of State plans which have been approved under section 18(c) of the Act and 29 CFR Part 1902. In States which have received initial plan approval under section 18(c), the Act provides that OSHA "may, but shall not be required to" exercise federal enforcement authority concurrently with the State. 29 U.S.C. 667(e); *See Environmental Improvement Division* v. *Marshall*, 661 F.2d 860 (10th Cir. 1981). OSHA regulations at 29 CFR 1954.3 provide guidelines and procedures for

the exercise of discretionary Federal enforcement authority with regard to Federal standards in issues covered under an approved State plan. In accordance with § 1954.3(b) of those regulations, Federal enforcement will not be exercised as to occupational safety and health issues covered under a State plan when a State is found to be "operational". A State is considered to be operational under § 1954.3(b) when it has provided for the following requirements: enacted enabling legislation; approved State standards; a sufficient number of qualified enforcement personnel; and provisions for the review of enforcement actions. In determining whether and to what extent a State plan meets the operational guidelines, the results of evaluations conducted under 29 CFR Part 1954 are taken into consideration. Once this determination has been made under § 1954.3(f) of this chapter, a notice of the determination of the operational status of a State plan as described in an agreement setting forth Federal-State responsibility is to be published in the **Federal Register.**

On September 28, 1976, notice of approval of the Virginia 18(b) plan was published in the **Federal Register** (41 FR 42655). On June 11, 1982, notice was published in the **Federal Register** (47 FR 25323) of the determination that Virginia had met the conditions for operational status and of the signing of an agreement effective October 1, 1981, between Robert F. Beard, Jr., Commissioner of the Virginia Department of Labor and Industry, and David H. Rhone, Regional Administrator.

Right of Entry Under the Virginia State Plan

Section 18(c) of the Act requires, as a condition of federal plan approval, that a State provide "adequate legal authority" for enforcement of safety and health standards. Adequate legal authority must include "a right of entry and inspection of all workplaces . . . which is at least as effective as that provided in section 8 [of the Federal Act], and includes a prohibition on advance notice of inspections." 29 U.S.C. 667(c) (3), (4).

The Virginia Occupational Safety and Health Act includes right of entry provisions similar to the Federal right of entry set forth in section 8 of the Act. *Compare* Va. Code § 40.1–6(8) (a), (b) *with* 29 U.S.C. 657(a) (1), (2). The basic Fourth Amendment requirements made applicable to Federal OSHA inspections by the Supreme Court in *Barlow's, Inc.* v. *Marshall,* 436 U.S. 307 (1981) are, of course, applicable as well to occupational safety and health inspections conducted by Virginia under its plan. The *Barlow's* decision held that, absent employer consent, a warrant is required to conduct OSHA workplace inspections. Such warrants may be issued upon a showing of administrative probable cause if a magistrate finds, based upon the warrant application, that the inspection was scheduled in accordance with "reasonable legislative or administrative standards." *Id.,* 387 U.S. at 538.

Although statutory authorities for State and federal inspections are similar and the general Fourth Amendment limitations on federal OSHA and the State are identical, recent Virginia court decisions involving the procedures which employers may use in challenging warrants after they have been issued, have resulted in significant procedural changes which have affected the State's ability to enforce general schedule inspection warrants.

The specific issue is whether, after the issuance by a judge or magistrate of a warrant authorizing a general schedule safety or health inspection of a particular workplace, the employer may, in a suit to invalidate the warrant, obtain a court-ordered discovery of agency information, documents and testimony which were not part of the application submitted to the magistrate who issued the warrant. In cases involving challenges to federal OSHA inspection warrants the courts have held such discovery improper under the "four corners" rule established by the U.S. Supreme Court in *Franks* v. *Delaware,* 438 U.S. 154 (1978). The rule provides that when the issuance of a search warrant by a lower court or magistrate is challenged, the reviewing court is restricted to considering the information actually presented to the issuing judge. Except in the rare instance where the challenging party can show deliberate falsehood or reckless disregard for the truth by the warrant applicant, the reviewing court may consider only the matter contained within the "four corners" of the warrant application. U.S. Courts of Appeals for three federal circuits have recognized the applicability of the four corners rule to cases involving OSHA general schedule inspection warrants. *Donovan* v. *Mosher Steel Co.* 791 F.2d 1535 (11th Cir. 1986) (pet. for cert. filed, 55 V.S.L.W. 3279); *Donovan* v. *Hackney, Inc.,* 769 F.2d 650 (10th Cir., 1985); *Brock* v. *Gretna Machine and Ironworks, Inc.,* 769 F.2d 1110 (5th Cir. 1895).

In *Mosher Steel-Virginia* v. *Teig,* 327 S.E. 2d 87 (Va., 1985) the Virginia Supreme Court, in a declaratory judgment suit by an employer seeking to invalidate a general schedule inspection warrant issued by a Virginia magistrate, held that the four corners rule would not be applied in cases involving *Barlow's* type OSHA inspection warrants. The court held *Franks* v. *Delaware* inapplicable to challenges to Virginia warrants obtained under the "reasonable legislative or administrative standards" test for probable cause derived from *Barlow's.* (327 S.E. 2d at 92–3.) The Virginia Supreme Court's opinion suggested, but did not expressly hold that Virginia employers challenging general schedule warrants would be entitled to discovery, including the release of confidential scheduling information and "establishment lists" of workplaces likely to be inspected in the future. In a recent declaratory judgment suit filed by the same employer in connection with a subsequent general schedule inspection warrant, the Circuit Court for the City of Roanoke, relying upon the 1985 *Teig* decision, has ordered State officials responsible for enforcing the plan to submit to discovery requested by the employer, which includes the submission of data underlying the Virginia inspection plan, deposition of officials responsible for developing and implementing the inspection scheduling plan, and the release to the employer of various confidential scheduling material including establishment lists. *Mosher Steel-Virginia* v. *Amato,* Chancery No. 86–04354 (filed June 20, 1986).

As previously discussed, in order to retain full operational status as well as continued Federal plan approval, a State must provide effective enforcement of safety and health standards, including a right of entry at least as effective as that exercised by OSHA under section 8 of the Act. States must have legal authority to obtain and execute inspection warrants on terms and conditions comparable to those afforded OSHA under Federal law. As various Federal courts have noted, there is "no reason to impose cumbersome discovery procedures on the enforcement of an OSHA inspection warrant" which by law must be "executed without delay and without prior notice." *Donovan* v. *Hackney, supra,* 769 F.2d at 653, citing *Barlow's, Inc., supra,* 436 U.S. at 316. To permit such proceedings "invite(s) misuse of the warrant process." *Donovan* v. *Mosher Steel, Inc. supra,* 791 F.2d 1535. Moreover, the release to employers of establishment lists or other employer-identifying data would in most instances violate the Act's prohibition of advance notice of OSHA inspections. 29 U.S.C. 666(f). Title 40.1 of the Labor

Laws of Virginia contains a similar prohibition.

Exercise of Concurrent Federal OSHA Authority in Virginia

The Assistant Secretary has determined that, as a result of recent judicial rulings in Virginia, the Virginia State plan is unable at present to meet all of the criteria for full operational status. Under such circumstances 29 CFR 1954.3(c)(3) provides for reinstatement of the appropriate level of concurrent Federal enforcement activity to ensure occupational safety and health protection to employees. Paragraph 4(i) of OSHA's operational status agreement with Virginia and 29 CFR 1952.372 ("Level of Federal Enforcement in Virginia") provides that in situations where the State is "temporarily unable to exercise its enforcement authority fully or effectively", limited resumption of Federal enforcement authority may occur. Section 4(j) of the agreement further provides for publication of a notice in the **Federal Register** of resumed federal enforcement authority, with a description of the reasons for any limitations upon such authority. (Federal enforcement authority may be exercised prior to the appearance of this notice in the **Federal Register.**)

The current deficiency in the Virginia plan is limited in scope to situations in which the State is required to seek and enforce general schedule inspection warrants. Because OSHA monitoring indicates that the state is satisfactorily administering its occupational safety and health program in all other respects; because the State has indicated that it will no longer pursue general schedule warrants in order to avoid being subjected to discovery demands; and since it is seeking remedial action, OSHA has accordingly limited its resumption of concurrent authority. By letter dated October 1, 1986 from Linda R. Anku, Regional Administrator, to Carol Amato, Commission of the Virginia Department of Labor and Industry, OSHA notified the State that concurrent Federal enforcement authority would be exercised in instances in which the State is denied entry for a general schedule inspection. With respect to further denials of entry, OSHA will confer with the State on a case-by-case basis and may defer to the State where it appears that entry can be achieved by a showing of specific probable cause. The letter noted that such State action may facilitate immediate entry but is not a satisfactory substitute for general schedule warrant authority.

The limited resumption of concurrent federal enforcement is intended to supplement the State's enforcement activities to ensure maximum worker protection. The resumption of concurrent enforcement is intended as a temporary measure to allow the State to complete the efforts it has undertaken to legislatively address current difficulties in the area of right of entry. The present **Federal Register** notice describes temporary Federal action which is within the existing terms of OSHA's operational status agreement with Virginia as codified at 29 CFR 1952.372. Accordingly, this notice neither modifies that agreement nor requires any revision to 29 CFR Part 1952.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1954, Secretary of Labor's Order No. 9–83 (43 35736))

Signed at Washington, DC, this 9th day of December, 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86–27917 Filed 12–11–86; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Approval of State Program Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by the State of Maryland as modifications to its permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of revisions to the Code of Maryland Regulations (COMAR) at 08.13.09.07 concerning coal exploration activities and revisions to Title 7 of the Annotated Code of Maryland with regard to the State obtaining written consent of landowners for access across certain private property not otherwise accessible from a public road to inspect open-pit mining or prospecting operations. These revisions are intended to satisfy the requirements of 30 CFR 920.16(a–d) as set forth in the November 18, 1985 **Federal Register** notice (50 FR 47379–47386). The amendments also contain statutory revisions concerning notification by the operator of any changes in officers, directors, principal owners or resident agents of any coal mining operation, and authorization of any financial institution or Federal credit union in the State to issue a certificate of deposit in lieu of a corporate surety as security for a performance bond.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director has determined that the amendments meet the requirements of SMCRA and the Federal regulations. The Federal rules at 30 CFR Part 920 codifying decisions concerning the Maryland program are being amended to implement this action.

This final rule is being made effective December 12, 1986, in order to expedite the State program amendment process and encourage States to conform their program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: December 12, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On March 3, 1980, OSMRE received a proposed regulatory program from the State of Maryland. This proposed program was conditionally approved by the Secretary of the Interior on December 1, 1980 (45 FY 79430–79451). On February 18, 1982, following the submission of program amendments to satisfy the conditions of approval, the Maryland program was fully approved by the Secretary (47 FR 7214–7217).

On January 13, August 7, October 10, November 9, 1984 and June 5, 1985, the State of Maryland submitted proposed statutory and regulatory modifications to its approved permanent regulatory program. With certain exceptions, the Director of OSMRE approved the proposed amendments on November 18, 1985 (50 FR 47379–47386).

II. Submission of Program Amendments

On December 23, 1985, and January 14, 1986, the State of Maryland submitted statutory and regulatory revisions to its permanent regulatory program (Administrative Record Nos. MD 331 and 332). The proposed amendments are intended to satisfy all of the requirements of 30 CFR 920.16 (a), (b), (c) and (d). The amendments correct

the following deficiencies in Maryland's regulatory program:

(a) Maryland's program at COMAR 08.13.09.07 does not provide that coal exploration activities on lands designated unsuitable be approved by the regulatory authority as required by 30 CFR 772.12;

(b) Maryland's program at COMAR 08.13.09.07G(5)(a) does not prohibit the disturbance of habitats of unusually high value and critical habitats of endangered or threatened species during coal exploration activities as required by 30 CFR 815.15(a);

(c) The State program at COMAR 08.13.09.07G(5)(k) does not require the use of sediment control structures during coal exploration activities as provided by 30 CFR 815.15(i); and

(d) The Maryland program at section 7-507(c)(1) of Title 7 of the Annotated Code of Maryland does not provide for right of entry in accordance with section 517 of SMCRA and 30 CFR 840.12.

In addition to the proposed statutory provisions regarding right of entry, the December 23, 1985, submission also contained statutory revisions concerning notification by the operator of any change in control or ownership of the operation, replacement of water supplies, and restoration of offsite damage due to mining (Administrative Record No. MD 331).

On January 24, 1986, Maryland submitted proposed legislation which would authorize any financial institution in the State to issue a certificate of deposit in lieu of a corporate surety for a revegetation bond (Administrative Record No. MD 330).

On February 21, 1986, OSMRE acknowledged receipt of the amendments and requested that Maryland reconsider the submissions. Because some of the proposed legislation was expected to be amended prior to adoption and one bill was not likely to be approved by the Maryland General Assembly, OSMRE requested that only the right of entry legislation be considered with the proposed coal exploration regulations (Administrative Record No. MD 333).

On March 18, 1986, Maryland concurred with OSMRE's request of Feburary 21, 1986, and withdrew all proposed legislation except that concerning right of entry (Administrative Record No. MD 334).

On May 15, 1986, Maryland submitted to OSMRE revised House Bill 540 as adopted by the General Assembly and signed by the Governor on May 13, 1986. House Bill 540, which was initially submitted to OSMRE on December 23, 1985, was amended by the General Assembly and contains provisions regarding right of entry and notification by the operator of changes in officers, directors, principal owners or resident agents of the operator. Senate Bill 256, which was initially submitted to OSMRE on January 24, 1986, provides for the issuance of a certificate of deposit in lieu of a corporate surety. It also passed the General Assembly with amendments and was signed by the Governor on May 13, 1986. Proposed legislation that was submitted earlier concerning restoration of offsite damage due to mining and replacement of water supplies failed to pass the General Assembly (Administrative Record No. MD 336).

On August 8, 1986, OSMRE published a notice in the **Federal Register** which announced receipt of the proposed modifications and requested public comments on their adequacy (51 FR 28800-28801). The public hearing that was scheduled for August 28, 1986, was not held because no one expressed an interest in participating in the hearing. The public comment period closed on September 8, 1986 (Administrative Record No. MD 337).

III. Director's Findings

In accordance with 30 CFR 732.17 and SMCRA, the Director finds that the proposed modifications, as submitted by Maryland on January 14, 1986, and May 15, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

1. As discussed in Finding 1 of the November 18, 1985 **Federal Register** notice, the Director found that section 7-507(c)(1) of Title 7 of the Annotated Code of Maryland was less stringent than section 517 (a) and (b)(3) of SMCRA and less effective than 30 CFR 840.12 in that the Maryland law required the Department and its agents to obtain the prior consent of the property owner or a court order for entry upon private property to inspect any open-pit mining or prospecting operation which was not accessible from a public road. The Director determined that such right of entry requirements had the potential for impairing the enforcement of Maryland's surface mining law and were contrary to the provisions and intent of SMCRA.

On December 23, 1985, Maryland submitted proposed legislation which contained revisions to the State's right of entry requirements for prospecting and open-pit mining operations (Administrative Record No. MD 331).

On May 15, 1986, Maryland submitted House Bill 540 which contained statutory revisions similar to those initially submitted to OMSRE on December 23, 1985. House Bill 540 was amended and adopted by the General Assembly and later signed by the Governor on May 13, 1986. House Bill 540 contains revisions to sections 7-505(g), 7-507(c)(1) and 7-514(C) of Maryland's Annotated Code regarding right of entry. Revised section 7-507(c)(1) provides that the Department and its authorized agents, without advance notice and upon presentation of appropriate credentials, shall have the right of entry to, on or through any open-pit mining or prospecting operation or any premises in which any record required to be maintained under this subtitle are located to determine conditions of safety and to assure compliance with the provisions of this subtitle, any rules and regulations promulgated under it and any permit conditions, and shall have access to and the right to copy any records, reports, or other information, and to inspect any monitoring equipment or method required by the Department under this subtitle. Maryland amended section 7-514(C) to require that for the purpose of performing duties under this section, the Department, its agents, employees, and contractors may enter on private property for access to and reclamation of any land affected by open-pit mining or prospecting. Entry onto private property for purposes other than reclamation of land in situations with a forfeited bond may not be undertaken without prior consent of the property owner. If, after real and bona fide effort, the consent of the property owner cannot be secured, the Department may apply to a court where the property or any part of it is located for an order directing the entry be permitted. "Bona Fide Effort" shall include either 30 days advance notice in writing by certified mail, return receipt requested, to the last known address of the property owner or posting notice on the property not less than 30 days in advance, or other requirements as the court may deem appropriate. The Department shall reimburse the landowner or lessee who is farming the property for agricultural products destroyed or damaged by the Department's agents, employees, or contractors. The Department shall be responsible for any other damages that may be incurred as a result of entry onto private property. The State also amended the provisions of section 7-505(g) to clarify that landowner consent is only required for an applicant to enter on land to be affected by open-pit coal mining and reclamation operations.

Because the State has amended sections 7-505(g), 7-507(c)(1) and 7-514(C) to provide the Department and its agents right of entry on or through any open-pit mining or prospecting operation in the State for inspection and

reclamation purposes and section 7-514(C) only requires a landowner's prior consent for entry onto private property for purposes other than the reclamation of bond forfeited lands, the Director finds that the State's right of entry requirements at sections 7-505(g), 7-507(c)(1) and 7-514(C). of Title 7 of the Annotated Code of Maryland. are no less stringent than section 517 (a) and (b)(3) of SMCRA and no less effective than 30 CFR 840.12. Accordingly, the adoption of the proposed amendments by the State will satisfy the requirements of 30 CFR 920.16(d).

2. On May 15, 1986, the State of Maryland submitted House Bill 540 which also contained provisions regarding notification of changes in officers directors, principal owners or resident agents of coal mining operations. Section 7-504(D) of Maryland's Annotated Code was amended to require all licensed operators to notify the Department within thirty days of any changes in officers, directors, principal owners, or resident agents. The amendment provides procedures for notifying the State of such changes and provides for suspension or revocation of any operator's license for failure to comply with the requirement.

The Director finds that the revised provisions of section 7-504(D) of Title 7 of the Annotated Code of Maryland which require a licensed coal operator to notify the Department of any change in officers, directors, principal owners or resident agents of the operator are no less stringent than those of sections 507 and 510 of SMCRA.

3. On May 15, 1986, Maryland also submitted Senate Bill 256. Senate Bill 256 passed the General Assembly with amendments and was signed by the Governor on May 13, 1986. Senate Bill 256 amended section 7-506(c) of Title 7 of the Annotated Code of Maryland. The revised provisions authorize certain open-pit or strip mine operators to obtain from any financial institution or Federal credit union in the State a certificate of deposit in lieu of a corporate surety as security for a performance bond. The certificate of deposit issued in an amount equivalent to the required bond must be accompanied by a written agreement of the financial institution or Federal credit union to pay on demand to the State the certificate of deposit in the event of bond forfeiture.

In accordance with section 509(b) of SMCRA, 30 CFR 800.21(a)(4) provides that the regulatory authority cannot accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Association. Also, 30 CFR 800.21(a)(3) provides that the regulatory authority must require that certificates of deposit be made payable to or assigned to the regulatory authority. If assigned, the regulatory authority must require the banks issuing the certificates to waive all rights of setoff or liens against those certificates. Currently, COMAR 08.13.09.15F(2)(d) provides that the Bureau of Mines may only accept an individual certificate of deposit for a denomination not in excess of $40,000 or up to the maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C., and COMAR 08.13.09.15F(2)(e) provides that the Bureau of Mines must require the bank issuing the certificates of deposit to waive all rights of setoff or liens which it has or might have against the certificates, and agree in writing that the certificates are payable in full to the Bureau upon demand.

Since Maryland limits the amount of an individual certificate of deposit pledged as a performance bond to $40,000 or to the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and requires the issuing institution to waive all rights of setoff or liens against such certificates, the Director finds that section 7-506(c) of Title 7 of the Annotated Code of Maryland is no less stringent than section 509(b) of SMCRA.

4. As discussed in Finding 6 of the November 18, 1985 **Federal Register** notice, the Director found that COMAR 08.13.09.07 did not require coal exploration activities on lands designated unsuitable for mining be approved by the regulatory authority as provided by 30 CFR 772.12.

On January 14, 1986, Maryland submitted a proposed amendment to its prospecting regulations at COMAR 08.13.09.07A, B and C (Administrative Record No. MD 332). The proposed revisions require that any person planning coal exploration activities on lands designated unsuitable for mining must obtain written approval from the regulatory authority prior to prospecting. Such approval is needed regardless of whether or not the proposed prospecting activities may substantially disturb the land surface or whether only 200 tons of coal are to be removed.

Since COMAR 08.13.09.07A, B and C contain specific approval standards for allowing coal exploration activities to be conducted on lands designated unsuitable for mining, the Director finds that the revised provisions of COMAR 08.13.09.07A, B and C are no less effective than those of 30 CFR 772.12. Accordingly, the adoption of the proposed amendment by the State will satisfy the requirements of 30 CFR 920.16(a).

5. As discussed in Finding 7 of the November 18, 1985 **Federal Register** notice, the Director found that COMAR 08.13.09.07G(5) and 08.13.07.26 did not prohibit the disturbance of habitats of unusually high value and critical habitats of endangered or threatened species during coal exploration activities as required by 30 CFR 815.15(a).

On January 14, 1986, Maryland submitted a proposed revision to its regulations at COMAR 08.13.09.07G(5)(a). The revision provides that habitats of unique or unusually high value for fish, wildlife and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 shall not be disturbed during prospecting activities.

Since COMAR 08.13.09.07G(5)(a) prohibits the disturbance of fish and wildlife habitats of unique or unusually high value and critical habitats of threatened or endangered species during coal exploration activities, the Director finds that COMAR 08.13.09.07G(5)(a) is no less effective than 30 CFR 815.15(a). Accordingly, the adoption of the proposed amendment by the State of Maryland will satisfy the requirements of 30 CFR 920.16(b).

6. As discussed in Finding 8 of the November 18, 1985 **Federal Register** notice, the Director found that COMAR 08.13.09.07G(5)(k) did not require the use of sediment control structures during coal exploration activities as provided by 30 CFR 815.15(i). OSMRE advised the State that surface drainage from coal exploration activities must be passed through a siltation structure unless the disturbed area is small and the operator demonstrates that sediment control measures are not necessary for drainage from the disturbed area to meet effluent limitations and applicable water quality-standards.

On January 14, 1986, the State submitted a revision to its coal exploration regulations at COMAR 08.13.09.07G(5)(k). The proposed revision provides that prospecting shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance and shall include sediment control measures such as those required in the regulatory program.

The Director finds that COMAR 08.13.09.07G(5)(k) is no less effective than 30 CFR 815.15(i), and the adoption of the amendment by the State will satisfy the requirements of 30 CFR 920.16(c).

7. On January 14, 1986, the State of Maryland submitted a revision to its regulations at COMAR 08.13.09.07G(2). Maryland's approved prospecting regulations limited each prospecting pit to not more than one acre in size. Under the revised regulations, the size of each prospect opening will be limited to not more than one acre, including topsoil and spoil storage area.

The Director finds that COMAR 08.13.09.07G(2) is no less effective than 30 CFR 815.15.

IV. Public Comments

Public comments on Maryland's proposed program revisions were solicited by OSMRE on August 8, 1986 (51 FR 28800–28801). No public comments were received on the revisions.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies on the proposed amendments. Of those Federal agencies invited to comment, acknowledgments were received from the Department of Agriculture, Soil Conservation Service; the Department of Labor, Mine Safety and Health Administration; the Department of the Army, Corps of Engineers; the Environmental Protection Agency; and the Department of the Interior, Bureau of Land Management. Except for the Corps of Engineers, none of the agencies identified any deficiencies in the proposed program amendments.

The Corps of Engineers provided some comments on the State's proposed revisions to its coal exploration regulations. The Corps of Engineers indicated that the adoption of the proposed modifications to the State's coal exploration regulations could possibly preclude the use of nationwide permits in Maryland as provided by 33 CFR 330.5(a)(21) and would likely require individual permits. That agency concluded that while the adoption of the modifications may reduce regulation at the State level, it could increase Federal regulation for those activities involving discharges into waters of the United States (Administrative Record No. MD 358). After reviewing the requirements of 33 CFR 330.5(a)(21) the Director believes that the Corps of Engineers has misinterpreted the proposed amendment. If Maryland does not adopt the proposed modifications to its coal exploration regulations, the Director believes that the Corps of Engineers may have to issue individual permits for coal exploration activities involving discharges into wetlands or other waters of the United States. However, since the State intends to adopt proposed modifications which will resolve its existing program deficiencies, the Corps of Engineers should be, able to use its nationwide permit in Maryland for coal exploration activities.

V. Director's Decision

Based on the above findings, the Director is approving the statutory and regulatory modifications submitted by the State of Maryland on May 15, 1986, and January 14, 1986, respectively. Since the proposed amendments meet the requirements of SMCRA and 30 CFR Chapter VII, the Director is removing all of the required amendments codified at 30 CFR 920.16 and reserving the section. The Federal rules at 30 CFR Part 920 are being amended to implement this decision.

VI. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 8, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

4. Environmental Protection Agency (EPA) Concurrence

On September 16, 1980, EPA transmitted its initial written concurrence on the Maryland permanent regulatory program as it relates to air and water quality standards under the authority of the Clean Air Act, as amended, (42 U.S.C. 1857 et seq.) and the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.). Since the revised program modifications submitted by Maryland on January 14, 1986, and May 15, 1986, do not involve changes to State air and water quality standards that EPA has already reviewed and approved, it was not necessary to obtain EPA concurrence on those revisions.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 5, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 920—MARYLAND

30 CFR Part 920 is amended as follows:

1. The authority citation for Part 920 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 920.15(d) is revised to read as follows:

§ 920.15 Approval of amendments to state regulatory program.

* * * * *

(d) The following statutory and regulatory amendments submitted to OSMRE on January 14, 1986, and May 15, 1986, are approved effective [Insert Publication Date]: Maryland's proposed modifications at COMAR 08.13.09.07A, B and C as submitted on January 14, 1986, for approving coal exploration activities on lands designated unsuitable for mining; the proposed revision to COMAR 08.13.09.07G(5)(a) as submitted on January 14, 1986, which prohibits the disturbance of fish and wildlife habitats of unique or unusually high value and critical habitats of threatened or endangered species during coal exploration activites; the proposed revision to COMAR 08.13.09.07G(5)(k) as submitted on January 14, 1986, which requires the use of sediment control structures during coal exploration activities; the proposed modification to COMAR 08.13.09.07G(2) as submitted on January 14, 1986, which limits the size of each prospect opening to one acre, including topsoil and spoil storage area; the statutory revisions to sections 7–505(g), 7–507(c)(1) and 7–514(C) of Title 7

of the Annotated Code of Maryland as submitted on May 15, 1986, providing for right of entry to, on or through open-pit mining or prospecting operations; the revision to section 7-504(D) of Title 7 of the Annotated Code of Maryland as submitted on May 15, 1986, which requires a licensed coal operator to notify the State of a change in officers, directors, principal owners or resident agents of the operator; and the statutory revision to section 7-506(c) of Title 7 of the Annotated Code of Maryland as submitted on May 15, 1986, which authorizes any financial institution or Federal credit union in the State to issue a certificate of deposit in lieu of a corporate surety as security for a performance bond. This approval is contingent upon the promulgation of the proposed regulations by the State in the identical form submitted for the Director's review and approval.

3. 30 CFR 920.16 is revised to read as follows:

§ 920.16 Required program amendments.

Pursuant to 30 CFR 732.17, Maryland is required to submit for OSMRE's approval the following proposed program amendments by the dates specified.

[FR Doc. 86-27923 Filed 12-11-86; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. HM-184D; Amdt. No. 171-91, 175-39]

Implementation of the ICAO Technical Instructions

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

ACTION: Final rule.

SUMMARY: This document amends the Hazardous Materials Regulations (HMR) in order to permit the offering, acceptance and transportation by aircraft, of hazardous materials shipments conforming to the most recent edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft when the 1987-88 edition of the ICAO Technical Instructions becomes effective on January 1, 1987, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Elaine Economides, International Standards Coordinator, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; telephone, (202) 366-0656.

SUPPLEMENTARY INFORMATION: On August 18, 1986, the RSPA published a notice (Docket HM-184D, Notice No. 86-5) in the **Federal Register** [51 FR 29503] which requested public comment on the need to amend the Hazardous Materials Regulations (HMR) in order to take account of the 1987-88 edition of the ICAO Technical Instructions.

Three commenters responded to Notice 86-5. Following full consideration of the comments received, the proposals contained in the notice are being adopted as proposed. Two of the commenters supported the proposed rulemaking in full. The third commenter supported the actions proposed in the notice, but recommended a further action be taken to ensure compliance with the additional requirements of the HMR relative to liquids that are toxic by inhalation.

The third commenter, E.I. du Pont de Nemours & Company (Du Pont), noted that the HMR at § 171.11(d)(7) requires persons who transport hazardous materials in accordance with the ICAO Technical Instructions to comply with all U.S. variations indicated therein. Du Pont further pointed out that there is currently no U.S. variation filed with ICAO requiring transporters to comply with the provisions of the HMR relative to the description, marking, labelling and packaging of liquids which are toxic by inhalation when transporting such liquids to, from or within the United States by air. In view of this apparent gap in coverage, Du Pont recommended: (1) That the U.S. file such a variation with ICAO and (2) that 49 CFR 171.11(d) be amended to include a new paragraph setting forth the requirement for compliance with the inhalation toxicity requirements as a specific condition for transporting hazardous materials in accordance with the ICAO Technical Instructions.

Subsequent to receipt of this comment, the United States filed a variation to the ICAO Technical Instructions specifically requiring persons who transport liquids toxic by inhalation to, from or within the United States by air to comply with the additional provisions of the HMR relative to the description, marking, labeling and packaging of such liquids. This variation will be published in the Addendum to the 1987-88 edition of the ICAO Technical Instructions. While recognizing that paragraph (d)(7) of 49 CFR 171.11 requires the transport of hazardous materials under the ICAO Technical Instructions to be performed in conformance with all U.S. variations thereto, RSPA agrees with Du Pont that specific reference to the additional requirements for liquids with poison inhalation hazards would clearly show U.S. shippers their legal obligations. This would be consistent with the inclusion in § 171.11 of references to other regulatory requirements which are the subject of U.S. variations from the ICAO Technical Instructions.

Du Pont suggested specific language for the new paragraph (d)(9) of § 171.11, but this necessarily differed from the phrasing of the new U.S. variation on liquids toxic by inhalation. Therefore, while adopting Du Pont's recommendation that § 171.11(d) be amended, RSPA has adopted text which more closely follows the phrasing of the new variation.

Administrative Notices

A. Executive Order 12991

The RSPA has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures [44 FR 11034] and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act [49 U.S.C. 4321 *et seq.*]. A regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning the size and nature of entities likely to be affected, I certify that this rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 175

Hazardous materials transportation, Air Carriers.

In consideration of the foregoing, 49 CFR Parts 171 and 175 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

2. In 171.7, paragraph (d)(27) is revised to read:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(27) International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284–AN/905 (ICAO Technical Instructions), 1987–88 edition.

* * * * *

3. In 171.11, paragraph (d)(9) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(9) When a hazardous material, which is subject to the requirements of the ICAO Technical Instructions, falls within the inhalation hazard criteria described in § 173.3a(b)(2):

(i) The shipping description must include the words "Poison-Inhalation Hazard", except that only the word "Poison" is required when the material is shipped in a combination packaging with inner packagings containing one liter or less;

(ii) The material must be packaged in accordance with the requirements of § 173.3a; and,

(iii) The package must be marked and labelled in accordance with the requirements of §§ 172.301(a) and 172.402(a)(10).

PART 175—CARRIAGE BY AIRCRAFT

3. The authority citation for Part 175 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

4. In § 175.10, the introductory text to paragraph (a)(4) and paragraph (a)(15) are revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(4) Non-radioactive medicinal and toilet articles carried by a crewmember or passenger in checked or carry-on baggage, and aerosols, with no subsidiary risk, for sporting or home use, when carried in checked baggage only, when:

* * * * *

(15) Alcoholic beverages, perfumes, colognes, and liquefied gas lighters that have been examined by the Bureau of Explosives (B of E) and approved by the Director, Office of Hazardous Materials Transportation, carried aboard a passenger-carrying aircraft by the operator for use or sale on the aircraft.

* * * * *

5. In § 175.30, in paragraph (e)(1)(ii) the period at the end of the sentence is revised to read "; or" and paragraph (e)(1)(iii) is added to read as follows:

§ 175.30 Accepting and inspecting shipments.

* * * * *

(e) * * *

(1) * * *

(iii) Not more than one package is overpacked.

* * * * *

Issued in Washington, DC, on December 8, 1986 under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86–27965 Filed 12–11–86; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 26, 36, and 96

Alaska National Wildlife Refuges, Management Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is issuing final regulations for Alaska National Wildlife Refuges (NWR). These rules further define two existing regulations and amend one other. These also remove 50 CFR 26.37 and Part 96, which were superseded by the enactment of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (16 U.S.C. 3101) and the subsequent development of 50 CFR Part 36. No new or additional restrictions or closures are contained in these regulations.

EFFECTIVE DATE: January 12, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William Knauer, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, telephone (907) 786–3399, or the respective refuge manager at the address or telephone number listed below:

Refuge Manager, Alaska Maritime NWR, P.O. Box 3069, Homer, Alaska 99603, telephone (907) 235–6546

Refuge Manager, Alaska Peninsula NWR, P.O. Box 277, King Salmon, Alaska 99613, telephone (907) 246–3339

Refuge Manager, Arctic NWR, Federal Building and Courthouse, 101–12th Ave., Box 2, Fairbanks, Alaska 99701, telephone (907) 456–0250

Refuge Manager, Becharof NWR, P.O. Box 277, King Salmon, Alaska 99613, telephone (907) 246–3339

Refuge Manager, Innoko NWR, General Delivery, McGrath, Alaska 99627, telephone (907) 524–3251

Refuge Manager, Izembek NWR, Pouch 2, Cold Bay, Alaska 99571, telephone (907) 532–2445

Refuge Manager, Kanuti NWR, Federal Building and Courthouse, 101–12th Ave., Box 20, Fairbanks, Alaska 99701, telephone (907) 456–0329

Refuge Manager, Kenai NWR, P.O. Box 2139, Soldotna, Alaska 99669, telephone (907) 262–7021

Refuge Manager, Kodiak NWR, P.O. Box 825, Kodiak, Alaska 99615, telephone (907) 487–2600

Refuge Manager, Koyukuk NWR, P.O. Box 287, Galena, Alaska 99741, telephone (907) 656–1231

Refuge Manager, Nowitna NWR, P.O. Box 287, Galena, Alaska 99741, telephone (907) 656–1231

Refuge Manager, Selawik NWR, P.O. Box 270, Kotzebue, Alaska 99752, telephone (907) 442–3799

Refuge Manager, Tetlin NWR, P.O. Box 155, Tok, Alaska 99780, telephone (907) 883–5312

Refuge Manager, Togiak NWR, P.O. Box 10201, Dillingham, Alaska 99576, telephone (907) 842–1063

Refuge Manager, Yukon Delta NWR, P.O. Box 346, Bethel, Alaska 99559, telephone (907) 543–3151

Refuge Manager, Yukon Flats NWR, Federal Building and Courthouse, 101–12th Ave., Box 20, Fairbanks, Alaska 99701, telephone (907) 452–0407.

SUPPLEMENTARY INFORMATION: These final rules further define two sections and amend a third in the Management Regulations for Alaska NWRs (50 CFR Part 36). They were proposed in accordance with the requirements for public participation found in 50 CFR 36.42. The definition of off-road vehicles (ORV) is clarified to reduce confusion and to more closely conform with the definitions used by other Federal agencies.

The regulations governing the use of live standing timber for subsistence purposes is amended based on a request by the Interior Regional Council Committee in the Annual Report to the Secretary for 1983 and on field examination which showed the existing regulations to be burdensome and overly restrictive.

Certain terminology is deleted from the regulation (§ 36.21(e)) prohibiting the harassment of wildlife by aircraft to make it more consistent with the general National Wildlife Refuge System's regulation (§ 27.34).

The two rules in 50 CFR 26.37 (finalized 3/4/80) and Part 96 (finalized 12/26/78 and amended 3/14/79) were superseded by 50 CFR Part 36 and are no longer necessary. They, therefore, are removed from 50 CFR.

Corrections made in this final rule include the listing of current Office of Management and Budget (OMB) collection approval numbers and the listing of new refuge headquarters locations for permit applications and submissions.

The policy of the Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On April 30, 1986, the proposed rule setting out these modifications was published in the **Federal Register** (51 FR 16083) and comments were solicited for 90 days. During that period and after notice in statewide and local newspapers and massive direct mailings, public hearings to receive comments were held in Anchorage, Fairbanks, Fort Yukon, and Galena, Alaska.

Responses to Comments

During the comment period, three letters were received. Substantive comments from the letters and the meetings are outlined and responded to below:

Issue 1: Three commenters expressed concern for the limited timber resources in the southern reaches of the Brooks Range and the potential impact of cutting.

Response: The Service has obtained additional data which indicates possible adverse impacts and fewer areas of timber in this area than initially suspected. Therefore, the northern limit for cutting on Arctic NWR under these regulations has been changed from "south of the divide of the Brooks Range" to "68 degrees North latitude."

Issue 2: All commenters addressed the confusion fostered by the "20 trees in 20 acres" standard. There was also a question whether the 20 trees applied to a party or one individual and whether it was for one cutting trip or some other period.

Response: The Service acknowledges the need for clarification and simplification on this section. As a result, the acre standard has been deleted and the wording has been improved.

Issue 3: Two commenters expressed concern for visual impacts of tree cutting especially along Wild and Scenic Rivers.

Response: The Service acknowledges this as a valid concern. Accordingly, a setback requirement has been added to the rules and other limitations on cutting have also been included.

Issue 4: One commenter requested that the format advising the public where to apply for permits be revised for ease of readability.

Response: The requested revision has been accomplished.

Conformance With Statutory and Regulatory Authorities

In accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd), the Secretary of the Interior (Secretary) is authorized under such regulations as he may prescribe to permit the use of any area within the System for any purpose whenever he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Act requires: (a) That any recreational use permitted not interfere with the primary purposes for which the area was established, and (b) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Additionally, section 304 of ANILCA requires the Secretary to prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that any activities carried out on a NWR in Alaska under any permit or easement granted under any authority are compatible with the purposes of that refuge.

Finally, with regard to those portions of the NWRs in Alaska that are also designated as wild and scenic rivers, section 10(c), 16 U.S.C. 1281(c), provides that components of the Wild and Scenic River System administered by the Secretary through the Fish and Wildlife Service shall become part of the National Wildlife Refuge System. The lands are to be subject to the provisions of the Wild and Scenic Rivers Act, as well as the National Wildlife Refuge System Administration Act. In case of conflict between the two Acts, the more restrictive provisions will apply. To the extent that the lands are designated as "wilderness units" under the Wilderness Act, 16 U.S.C. 1131–1136, the provisions of 50 CFR Part 35 will apply in addition to the general Refuge System regulations.

The purposes of all 16 Alaska NWRs were specified in sections 302 and 303 of ANILCA. Refuges that are affected by these regulations were all established with the following purposes: (a) Conservation of fish and wildlife populations and habitats, (b) fulfillment of international treaty obligations, and (c) protection of water quality and quantity. In addition, all Alaska refuges, except Kenai NWR, have as a purpose the opportunity for continued subsistence use when consistent with purposes (a) and (b) above. In addition to purposes (a), (b) and (c) above, Kenai NWR has the purposes of providing opportunities for scientific research, interpretation, environmental education and land management training, and providing opportunities for fish and wildlife oriented recreation, and Alaska Maritime NWR has the purpose of providing a program of scientific research on marine resources.

The Service has analyzed the impacts of public use and access on certain Alaska refuges in the following final environmental impact statements: Proposed Alaska Coastal NWR (October 1974); Proposed Alaska Peninsula NWR (1976); Proposed Arctic NWR (October 1974); Proposed Selawik NWR (1975); Proposed Koyukuk NWR (1974); Proposed Togiak NWR (October 1974); Proposed Yukon Delta NWR (October 1976); Operation of the National Wildlife Refuge System (November 1976); and Alternative Administrative Actions, Alaska National Interest Lands (1978).

Public use and access were also evaluated for compatibility with refuge purposes in an environmental assessment (EA) on proposed rules for management of Alaska NWRs in May 1981, and were found to be compatible with the purposes for which these Alaska refuges were established, as provided therein.

The regulations were also evaluated as to the impact on subsistence as required by section 810 of ANILCA. Based on the determination that the public use and access would not be significantly different from that previously allowed, these final regulations are consistent with the purposes and intent of section 810, and result in no significant restrictions on subsistence activities.

Environmental Considerations

The Final Environmental Statement for Operation of the National Wildlife Refuge System was filed with the Council on Enviromental Quality

November 12, 1976, and a notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131). An EA and Finding of No Significant Impact (FONSI) for proposed interim rules for Alaska NWRs was approved on May 13, 1981. These regulations do not involve a significant change in the level of use previously permitted. A thorough review was made of the environmental impact statements, EA, and FONSI mentioned in the section above. A FONSI for these rules was made on May 23, 1985.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) requires each information collection requirement to display an OMB clearance number and contain a statement to inform the person receiving the request why the information is being collected, how it will be used, and whether a response is voluntary, mandatory, or required to obtain a benefit. The Service has received approval from OMB for the information collection requirements of these regulations under the approval number 1018–0014. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that public uses be compatible with the primary purposes for which the areas vere established. The information collection is necessary for the refuge manager to issue permits and a response is required to obtain benefits.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organization or governmental jurisdictions.

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This rule is expected to cost the National Wildlife Refuge System less than $1,000 annually for permit processing and is expected to cost the users of refuge resources who need permits less than $500 annually ($15 estimated individual cost for time and information to develop a permit application). This rulemaking will impose no costs on small entities; the exact number of businesses and the amount of trade that will result from this refuge-related activity is unknown. The aggregate effect is a positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of refuge areas indicates that they will not be significant.

William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of these regulations.

List of Subjects

50 CFR Part 26

National Wildlife Refuge System, Recreation, Wildlife refuges.

50 CFR Part 36

Alaska, National Wildlife Refuge System, Public land-mineral resources, Public lands-rights-of-way, Recreation, Traffic regulations, Wildlife refuges.

50 CFR Part 96

Alaska, Recreational areas, Wildlife refuges.

Accordingly, 50 CFR is amended as follows:

PART 26—[AMENDED]

1. The authority citation for Part 26 is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 680d, 685, 690d, 715, 725; 43 U.S.C. 315a.

§ 26.37 [Removed]

2. Section 26.37 is removed from 50 CFR Part 26.

PART 36—[AMENDED]

3. The authority for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460k et seq., 668dd et seq., 742(a) et seq., 3101 et seq.; 44 U.S.C 3501 et seq.

§ 36.2 [Amended]

4. Amend 36.2(h) by adding the following sentence to the end of the paragraph:

* * * * *

(h) * * * "It includes, but is not limited to, four-wheel drive or low-pressure-tire vehicles, motorcycles and related two-, three-, or four-wheel vehicles, amphibious machines, ground-effect or air-cushion vehicles, air-thrust boats, recreation vehicle campers, and any other means of transportation deriving motive power from any source other than muscle or wind." immediately after the words "as defined in this section."

* * * * *

§ 36.3 [Amended]

5. Revise the first sentence of § 36.3 to read as follows: "The information collection requirements contained in §§ 36.15, 36.21, 36.22, 36.23, 36.24, 36.33, 36.39 and 36.41 of these regulations have been approved by the Office of Management and Budget under 44 U.S.C. 3501 and assigned clearance number 1018–0014. * * *"

§ 36.15 [Amended]

6. Revise paragraphs (a) (1) and (2), and add a new paragraph (a)(3) to read as follows:

(a) * * *

(1) For live standing timber greater than six inches diameter at breast height (4½ feet above ground level), the Refuge Manager may allow cutting in accordance with the specifications of a special use permit if such cutting is determined to be compatible with the purposes for which the refuge was established;

(2) For live standing timber between three and six inches diameter at breast height, cutting is allowed on the Arctic National Wildlife Refuge south of latitude 68 degrees North and on the Innoko, Kanuti, Koyukuk, Nowitna, Selawik, Tetlin, and Yukon Flats National Wildlife Refuges unless restricted by the Refuge Manager, except that no more than 20 trees may be cut annually by an individual without a special use permit, no cutting may be done within 50 feet of a stream, lake, or river and no more than one tree in five (20%) may be cut in any specific stand; on the remainder of the Arctic National Wildlife Refuge and on all other Alaska National Wildlife Refuges, the Refuge Manager may allow cutting in accordance with the specifications of a special use permit if such cutting is determined to be compatible with the purposes for which the refuge was established;

(3) For live standing timber less than three inches diameter at breast height, cutting is allowed unless restricted by the Refuge Manager.

* * * * *

§ 36.21 [Amended]

7. Revise § 36.21(e) to read as follows:

* * * * *

(e) The operation of aircraft resulting in the harassment of wildlife is prohibited.

* * * * *

§ 36.41 [Amended]

8. Revise Subpart F, § 36.41(a)(1), to read as follows:

(a) * * * (1) These regulations and other regulations generally applicable to the National Wildlife Refuge System require that permits be obtained from the Refuge Manager. For activities on the following refuges, permits are to be obtained from the respective refuge office as indicated:

Refuge	Office location
Alaska Peninsula National Wildlife Refuge	King Salmon.
Alaska Maritime National Wildlife Refuge	Homer.
Aleutian Islands Unit, Alaska Maritime NWR	Adak.
Arctic National Wildlife Refuge	Fairbanks.
Becharof National Wildlife Refuge	King Salmon.
Innoko National Wildlife Refuge	McGrath.
Izembek National Wildlife Refuge	Cold Bay.
Kanuti National Wildlife Refuge	Fairbanks.
Kenai National Wildlife Refuge	Soldotna.
Kodiak National Wildlife Refuge	Kodiak.
Koyukuk National Wildlife Refuge	Galena.
Nowitna National Wildlife Refuge	Galena.
Selawik National Wildlife Refuge	Kotzebue.
Tetlin National Wildlife Refuge	Tok.
Togiak National Wildlife Refuge	Dillingham.
Yukon Delta National Wildlife Refuge	Bethel.
Yukon Flats National Wildlife Refuge	Fairbanks.

In all cases where a permit is required, the permittee must abide by the conditions under which the permit was issued.

* * * * *

PART 96—[REMOVED]

9. Part 96 is removed from 50 CFR Subchapter H.

Dated: November 20, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-27901 Filed 12-11-86; 8:45 am]

BILLING CODE 4310-55-M