

ACTION: Final rule.

SUMMARY: The Department of the Army is amending its rule for administering the Privacy Act by permitting Access and Amendment Refusal Authorities to delegate their responsibilities.

DATES: Effective on June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Walker, Policy Division, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310-0107.

SUPPLEMENTARY INFORMATION: This amendment permits Access and Amendment Refusal Authorities to delegate their authority to an office or subordinate commander in the grade of GS/GM 15 and Colonel (O-6). The rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The Department of the Army certifies that this document will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule has no collection of information requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 32 CFR Part 505

Information, Archives and records, Privacy, Freedom of information.

PART 505—[AMENDED]

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: 5 U.S.C. 52a; DOD Directive 5400.11, June 9, 1982; and DOD Regulation 5400.11R, August 31, 1983.

2. 32 CFR § 505.1 [Amended] 505.1 is amended by revising the introductory text of paragraph (g) as follows:

(g) *Access and Amendment Refusal Authority (AARA).* Each Access and Amendment Refusal Authority is responsible for action on requests for access to or amendment of, records referred to them under this regulation. The officials listed below and their designees are the only Access and Amendment Refusal Authorities for records in their authority to an office or subordinate commander. All delegations must be in writing. If an AARA's delegate denies access or amendment, the delegate must clearly state that he or she is acting on behalf of the AARA and identify the AARA by name and position in the written response to the

requester. Denial of access or amendment by an AARA's delegate must have appropriate legal review. Delegations will not be made below the colonel (O6) or GS/GM 15 level. Such delegations must not slow Privacy actions. AARA's will send the names, offices and telephone numbers of their delegates to the Director of Information Systems for Command, Central, Communications and Computers, HQDA, ATTN: SAIS-PDD Washington, DC 20310-0107.

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John O. Roach,
*Department of the Army, Liaison Officer
With the Federal Register.*

[FR Doc. 91-15417 Filed 6-27-91; 8:45 am]

BILLING CODE 3710-06-M

Corps of Engineers, Department of the Army**36 CFR Part 327****Shoreline Management Fees at Civil Works Projects**

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: This fee schedule complies with the Office of Management and Budget Circular A-25, User Charges. This rule provides policy and guidance to implement the fee schedule for shoreline management at Civil Works water resource projects. This action incorporates changes deemed necessary to meet new and changing conditions.

EFFECTIVE DATE: October 1, 1991.

ADDRESSES: Office of the Chief of Engineers, Attn: CECW-ON, 20 Massachusetts Avenue, NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis (202) 272-0247.

SUPPLEMENTARY INFORMATION: 36 CFR 327.30 Lakeshore Management at Civil Works Projects, published in the *Federal Register* in December 1974, stated in part " * * * As permits become eligible for renewal after July 1, 1976, a charge of \$10 for each new permit and a \$5 annual fee for inspection of floating facilities will be made. There will be no annual inspection fee for permits for vegetation modification of lakeshore areas. In all cases, the total administrative charge will be collected initially at the time of permit issuance rather than on a piecemeal annual bases." The cost of a five year permit was \$30.

On June 8, 1988, a proposed rule was published in the *Federal Register* (53 FR 21495) which called for the Fee Schedule

for Shoreline Management permits to be published separately from 36 CFR 327.30. A final rule was published in the *Federal Register* on July 27, 1990 (55 FR 30690).

Office of Management and Budget Circular A-25 requires that when a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the full cost to the Federal Government for providing the special benefits.

The fee schedule will appear in § 327.31, a new section. Permits will be issued for a five year period to reduce costs to the permittee. To reduce the governments administrative workload, permits may be issued for a term less than five years. The new fees will not be assessed until the expiration of a current valid permit.

As stated in § 327.30 appendix A(2)(a), fees shall be paid prior to issuing the permit.

When an applicant receives a permit that covers more than one activity and/or facility, only a single permit covering the activities/facilities will be issued. A one time fee will be charged for all permit activities/facilities which are simultaneously authorized as if the permit was for a single activity/facility. If both a moorage facility and vegetation modification are authorized concurrently under one permit, only the fee for a moorage facility will be charged. This will apply to permit renewals as well as new facilities/activities.

Similarly, if multiple activities/facilities are authorized, under a single permit renewal, only one periodic fee will be charged for each year of the permit as if the permit was for a single activity/facility.

If one or more activity/facility modifications are authorized, on a permit which contains multiple activities/facilities, a one time activity/facility modification will apply. No periodic inspection fees will be charged for activity/facility modifications.

This fee schedule does not affect the fees charged for real estate instruments. These fees are established by a separate regulation.

The fees for Shoreline Management permits issued in accordance with 36 CFR 327.30, are as follows:

New facility—A one time fee of \$400 plus \$15 per year periodic inspection fee (payable in advance for 5 year increments).

New owner—A one time fee of \$200 plus \$15 per year periodic inspection fee

(payable in advance for 5 year increments).

Facility modifications—A one time fee of \$100 for each modification request.

Facility renewal—A \$15 per year periodic inspection fee (payable in advance in 5 year increments).

Vegetation modification—new permit—A one time fee of \$200 plus \$15 periodic inspection fee (payable in advance for 5 year increments).

Vegetation modification—change—A one time fee of \$100.

Vegetation modification—new adjacent land owner—A one time fee of \$100 plus \$15 periodic inspection fee (payable in advance in 5 year increments).

Vegetation modification—permit renewal—A \$15 per year periodic inspection fee (payable in advance in 5 year increments).

Fees will not be assessed for erosion control permits when the government, the public, and the permittee all benefit directly or indirectly from the construction of erosion control structures. However, they are still subject to section 404 and section 10 permit requirements.

No refunds will be made for any unused portions of permits terminated by the permittee before the permit expiration date. A refund may be issued if the permit is terminated by the government.

Classification

The Secretary of the Army has determined that this revision is not a "major" rule within the meaning of Executive Order (E.O.) 12291. This is because the revision will not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

The purpose and effect of this revision is to incorporate changes deemed necessary to meet new and changing conditions. The revision is consistent with the regulation and strengthens the regulation for more effective management of Corps of Engineers water resource development projects. This rule is also intended to make the regulation consistent with legislative actions. No increased administrative or

paperwork burden is imposed by this revision.

This revision was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Background

On August 10, 1990, a notice of proposed Shoreline Management Fees at Civil Works Projects, was published in the *Federal Register* (55 FR 32644). A 45 day period for public review was provided. During this period, 276 letters of comment were received from a broad spectrum of interests including individuals, businesses, local and national associations and state, local and federal agencies. The number of responses to the proposed fee schedule change were less than 1% of the existing shoreline management permits nationwide. The majority of the comments received were opposed to a fee increase. Other comments agreed with the increase but called for a smaller percentage of increase. The Army has considered and evaluated all the comments and recognizes that the new fee schedule is a substantial increase over the existing schedule. Since there has not been an increase to the fee schedule since 1974 the new schedule better enables the government to recover a greater percentage of the cost incurred in administering the shoreline management program. It should be noted that many of the comments were almost identical in their content. The following discusses the issues raised and the Army's response. Copies of all written comments are available for public inspection at the Office of the Chief of Engineers, room 6223, 20 Massachusetts Avenue NW., Washington, DC. Copies of the final rule are also available upon request.

Comments

Comment: Fee increases should be phased in over several years.

Response: Phasing the fee schedule in over several years would not be cost effective. Delaying the implementation of the new fees would increase the overall cost of administering the shoreline management program.

Comment: Shoreline Management fees should be more reasonable.

Response: Office of Management and Budget Circular A-25, requires that when a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the full cost to the Federal Government for providing the special benefits." 36 CFR part 327 Fees reflect a greater portion of the

administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies. The fees were determined by dividing the nationwide administrative costs by the number of permits issued. There are currently over 38,000 shoreline management permits with an average term of 3.81 years. The current annual revenue from shoreline management permits is approximately \$245,000 and the total annual cost of administering this program is approximately \$3,600,000. It is estimated that the new fee schedule will produce an annual revenue of \$1,310,575.

Comment: Present fees are more than adequate.

Response: The new fee schedule reflects a portion of the administrative costs to manage the program, and includes base labor, fringe benefits, overhead, equipment, materials and supplies. The new fee schedule enables the government to recover a greater portion of the cost of administering the program.

Comment: Increased fees penalize people for upgrading facility.

Response: The new fee schedule is not a penalty, it simply insures that those individuals or groups deriving the most benefit from shoreline management are paying the administrative cost of the program. The new fee schedule will also enable the government to recover a greater portion of the cost of the program.

Comment: Increased fees will jeopardize property values, and hurt the economy.

Response: The Corps has determined this rule will not have a significant adverse economic effect on consumers, individuals, geographic regions, or federal, state or local governmental agencies.

Comment: Advanced payments are a way to accrue additional monies by questionable ethics.

Response: Advanced payments will help to reduce the government's cost in administering this program by reducing the administrative workload.

Comment: There is no provision for the return of advanced payments if an owner moves.

Response: Advanced payments will not be refunded. The administrative cost associated with issuing refunds would increase the overall program cost. Refunds may be granted if the government terminates the permit.

Comment: The cost of a new facility should be identical to Facility-Renewal periodic inspection fees.

Response: The cost of administering a new permit is significantly higher than a

renewal. Initial site visits and meetings with property owners make processing a new permit more expensive than reviewing facility renewals.

Comment: The fee schedule should be commensurate with the use of property by the owner.

Response: The fee schedule reflects a portion of the cost accrued to the government in administering the shoreline management program. The extent of use is not a factor.

Comment: Shoreline Management fee increases will deter development, and affect business on the lake.

Response: The Corps believes this rule will not have significant adverse economic effect on business or development and will not effect productivity, competition, investment, or employment.

Comment: The Corps is using cost as a way to prevent new docks.

Response: Fees reflect the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies. Shoreline permit holders are deriving the most benefit from this program and should pay the cost. The focus of the Corps Shoreline Management program will continue to allow development in limited development areas and strike a balance between permitted private use and resource protection for general public use.

Comment: A new owner has already paid for his property.

Response: The issuance of a shoreline management permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. Consistent with 36 CFR 327.30 appendix C, Shoreline Use Permits Conditions (20), permits are not transferable, "upon the sale or other transfer of the permitted facility or the death of the permittee and his/her legal spouse, this permit is null and void".

Comment: Charge non-compliance dock owners for return inspections.

Response: The cost of non-compliance will not be recovered under this rule. Any non-compliance will be handled through 36 CFR 327.19. Methods and procedures for enforcing non-compliance will be set forth in individual project Shoreline Management Plans. Permit holders who allow a permit to expire will be charged the "New Facility" fee if and when they desire to obtain a new permit.

Comment: The new fees pose an unfair burden on current and future property owners.

Response: The cost of the shoreline management program will be paid by those individuals who are deriving the

most benefit, i.e., shoreline management permit holders.

Comment: Vegetation modifications fees should be prorated based on the area covered by the permit.

Response: The government's cost to administer a permit for 1,000 sq. ft. of mowed area is the same as for 10,000 sq. ft. of mowed area. The proration of fees is not a reasonable method of recovering administrative cost.

Comment: Allow adjacent property owners to take care of the shoreline at a reasonable cost.

Response: The new fees are reasonable and reflect a portion of the government's administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies. The new fee schedule will allow the government to recover a greater portion of the cost of administering the program.

Comment: Since people do the work fees should stay the same.

Response: The shoreline maintenance work done by adjacent property owners is generally for their benefit. The new fees reflect a portion of the government's administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies.

Comment: I do not feel we should pay to mow grass or clean the beach for the U.S. government.

Response: Mowing the cleaning the beach are not requirements of the Corps of Engineers nor are they requirements for obtaining/issuing a vegetation modification permit. Shoreline clean up is generally for the benefit of the adjoining private property owner. There is no fee associated with removing trash or debris from public lands.

Comment: Lot owners clean up the mess left by boaters and others.

Response: The Corps recognizes that not all persons who use the Corps lakes and lands practice good stewardship. Through programs such as Take Pride In America the Corps of Engineers sponsors events and activities that attempt to instill a respect for public property. Participation in these events by adjacent property owners is encouraged.

Comment: We do not want weeds or poison ivy growing next to our house.

Response: It is not the intent of the Corps of Engineers to have their neighbors put up with noxious weeds next to their houses. In many cases our neighbors have located their homes close to the Corps boundary line so that they can get a better view of the lake. The fee schedule allows the government to recover a greater portion of the

administrative cost associated with issuing vegetation modification permits.

Comment: Opposed to paying for clearing a walk to the lake.

Response: Vegetation modification is an authorized activity that requires significant government expenditure to administer. The cost of administering these permits should be paid by those deriving the greatest benefit, i.e. shoreline permit holders.

Comment: Hold public hearing before fee implementation.

Response: The proposed rule, published in the Federal Register August 10, 1990, provided a 45 day public review period. The purpose of this comment period was to provide ample opportunity for the public to make their views and positions known.

Comment: The fee schedule should have been mailed to all permit holders.

Response: The proposed rule, published in the Federal Register August 10, 1990, provided a 45 day public review period. The purpose of this comment period was to provide ample opportunity for the public to make their views and positions known. The proposed fee schedule was also published in newspapers, public notices and was available for public review at the project Resource Managers office.

Comment: Inadequate advance on notice of rate increase.

Response: Federal regulation requires that the proposed fee schedule be published in the Federal Register. The proposed fee schedule was published in the Federal Register August 10, 1990. There was a 45 day period available for public comment. This review period has proven to be sufficient to receive public comment. Press releases were also made available to media sources on a nationwide basis.

Comment: Corps should sell land and eliminate problems.

Response: Joint Acquisition regulations require the Corps to retain sufficient land for authorized project purposes. The shoreline management program enables the Corps to effectively manage those lands it is required to maintain.

Comment: Do shoreline management permit inspections in-house instead of by contract.

Response: The Corps is required to administer the shoreline management program with the most cost effective methods possible. In some locations the most cost effective method is contracting.

Comment: With local tax increases this amounts to a double tax.

Response: The fee schedule is not a tax. It simply enables the government to

recover a greater portion of the cost that it incurs in administering the shoreline management program.

Comment: Costs should be passed on to all who use the lake.

Response: The cost of limited private exclusive use should be paid by those individuals gaining the most benefit, i.e. shoreline management permit holders.

Comment: If we pay increased fees, we should have authority on how property is used.

Response: Shoreline management permits convey only the privilege to use public property under the conditions of the permit and do not convey any ownership or special privilege beyond what is conveyed in the permit.

Comment: Make charges based on actual costs.

Response: Fees reflect a portion of the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies.

Comment: Increases have no relationship to Cost of Living increases.

Response: There has been no increase to the fee schedule since 1974. The new fee schedule reflects a greater portion of the cost accrued to the government in administering the program. No attempt has been made to link these fees to any cost of living increase.

Comment: There appears to be no increase for marinas, restaurants, etc.

Response: The objective of the fee schedule is to assess fees for private users more commensurate with the cost of administering the program.

Commercial development activities are covered by lease, license or other legal real estate instruments and pay rental fees based on fair market values.

Comment: Dock and mowing fees are a bonus to the government.

Response: Shoreline management fees reflect a portion of the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies.

Comment: Power generation profits should offset project costs.

Response: Power generation fees from customers are sent directly to power market agencies (such as Bonneville or Western Power Administrations), and from them directly to the U.S. Treasury. There are not current plans to change this process.

Comment: The money received from shoreline management fees will do little to improve the environment.

Response: Shoreline management fees are intended to recover a portion of the administrative costs of managing the program. It was never the intent of the

Corps to use these fees for environmental improvement projects.

Comment: Give 50% discount to senior citizens.

Response: A 50% discount is given to seniors through the Golden Age and Golden Access Programs by all Federal land management agencies. These discounts apply only to entrance and special use fees such as camping. 16 U.S.C. 4601 does not allow for a reduction of shoreline management fees.

Comment: Do not penalize the land owners for keeping the shoreline clean.

Response: The fee schedule was not developed to penalize property owners. It enables the government to recover a portion of the cost of administering the shoreline management program.

Comment: The Corps should encourage shoreline management.

Response: 36 CFR 327.30 provides the policy and guidance for shoreline management at Civil Works projects. The objective of all management actions is to achieve a balance between permitted private use and resource protection for general public use.

Comment: I just renewed my five year permit last year. When will I have to pay the new fees?

Response: The new renewal fee will be charged when your present permit expires. If, for some reason, you modify your facility you would be charged the appropriate facility modification fee after October 1, 1991.

Comment: Do not charge a one time fee.

Response: The one time fee is necessary to recover a portion of the cost associated with the initial administration of new permits, permit modifications and new owner permit reassignments. Charging an annual fee would increase the cost of administering the program and increase the level of fees accordingly.

Comment: Will the expiration date of a Shoreline Management Permit be adjusted when a Facility Modification Permit is issued?

Response: A Facility Modification Permit fee of \$100 will be charged each time a facility is modified. Payment of the Facility Modification Fee will not change the expiration date of the Shoreline Management Permit.

Comment: Will the issuance of a Facility Modification Permit require payment of additional inspection fees?

Response: No. A Facility Modification Permit will only be issued to a current holder of a Shoreline Management Permit. Therefore, a periodic fee of \$75 (\$15 × 5 years) for inspections had already been paid.

Comment: Retain one year Vegetation Modification Permits instead of

increasing them to a five year permit because mowed areas need to be inspected once a year. Many Vegetative Permit holders are renters who may not stay five years.

Response: The increase of Vegetation Permits to five year periods does not suggest abandoning periodic inspections of these properties.

Comment: Combining vegetative modification and floating facilities into one permit is acceptable, but there should be a separate fee for each activity/facility.

Response: The one time fee will be charged as if the permit was for a single activity. In all cases the highest fee will be charged.

Comment: A one time fee (say \$30) should be assessed for all permit renewals and "new owner" permits.

Response: The cost associated with issuing New Facility or New Owner permits is significantly higher than permit renewals. Renewals will not require a one time fee. New owner permits will be assessed a one time fee of \$200 and the \$75 periodic fee (\$15 × 5 years).

Comment: Some of the proposed fees are higher than forfeiture schedule requirements for violation of affected sections of title 36 (i.e. 327.14(a)).

Response: The fee schedule is designed to recover a portion of the expense that the government incurs when administering the shoreline management program and includes base labor, fringe benefits, overhead, equipment, materials and supplies. The title 36 forfeiture schedules are determined by Federal Magistrates, not the Corps.

Comment: Expand the term "new owner" to "new owner/new permittee".

Response: A new owner has been defined as any reassignment of an existing permit other than a single permittee of a multi-slip community dock.

Comment: Limited mowing and underbrushing permits (such as along boundary lines, within corporate limits, to meet fire and health codes) should continue to be issued free of charge.

Response: The issuance of non-shoreline management permits to meet health and safety codes and commitments consistent with local project policy may be issued free of charge and will be evaluated on a case by case basis and approved by the project Resource Manager.

Comment: The draft schedule does not allow for multi-slip/multi-owner facilities where the most common transaction would be a change to one individual who is part of that

community dock. Perhaps a separate section is needed for community docks.

Response: There is no separate fee for community docks. In the case of multi-owner facilities any reassignment of an individual owner would be done free of charge.

Comment: Will additional "periodic fees" be charged when a Facility Modification Permit is issued?

Response: No additional "periodic fees" will be charged when a Facility Modification Permit is issued. The fee schedule has been changed to reflect this suggestion.

Comment: Will "one time fees" be applied every time that an applicant proposes a specific activity/facility?

Response: The "one time fees" will be required every time a separate application is made for a specific activity/facility.

Comment: What fee is assessed to a co-permittee of an existing permit?

Response: In the case of a single facility, the assigning of co-permittees, other than husband and wife, is not allowed.

Comment: Please define New Owner, New Facility, Vegetation Modification—New Permit & New Owner, Facility Modification, Permit Renewal, and Vegetation Modification Change.

Response: Based on comments, these definitions were developed to clarify the Fee Schedule terminology. Vegetation Modification Change and Permit Renewal were added in response to comments received.

New Facility—A facility for which a permit has expired or where no facility has existed previously.

New Owner—The reassignment of an existing permit (other than single permit holder in a multi-slip community dock) to a different person.

Vegetation Modification—New Permit—A vegetation modification for which a permit has expired or where no vegetation modification has previously existed.

Vegetation Modification—New owner—An existing permit for a new adjacent land owner or reassignment of an existing permit to a different adjacent landowner.

Vegetation Modification—Change—Any substantial change as defined by the project Shoreline Management Plan, to an existing vegetation modification permit.

Facility Modification—Any substantial change, as defined by the project Shoreline Management Plan, to an existing permit or replacement of an existing facility.

Permit Renewal—The term of an existing permit has expired and the

activity/facility is being reauthorized, without change, under a new permit.

List of Subjects in 36 CFR Part 327

Penalties, Recreation, and Recreation areas, Water resources.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Army has determined that this document is not a major rule under E.O. 12291 and certifies that this document 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.).

For the reasons set out in the preamble, the U.S. Army Corps of Engineers amends 36 CFR part 327 as set forth below.

PART 327—[AMENDED]

1. The authority citation for part 327 continues to read as follows:

Authority: The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1).

2. Section 327.30 is amended by revising the last sentence of paragraph (k) as follows:

§ 327.30 Shoreline management on civil works projects.

* * * * *

(k) * * * The Fee Schedule is published in 327.31.

3. Section 327.31 is added as follows:

§ 327.31 Shoreline Management fee schedule.

(a) *Applicability.* This fee schedule is applicable to all permits issued in accordance with § 327.30, Shoreline Management at Civil Works Projects.

(b) *General.* (1) Permits will be issued for a five year period to reduce costs to the permittee. To reduce administrative workload, projects may elect to issue a permit for a term less than five years. The new fees will not be assessed until the expiration of a valid permit.

(2) When an applicant receives a permit that covers more than one activity and/or facility, only a single permit covering the activities/facilities will be issued. A one time fee will be charged for all permit activities/facilities which are simultaneously authorized as if the permit was for a single activity/facility. If both a moorage facility and vegetation modification are authorized concurrently under one permit, only the fee for a moorage facility will be charged. This will apply to permit renewals as well as new activities/facilities.

(3) Similarly, if multiple activities/facilities are authorized under a single permit renewal, only one periodic fee will be charged for each year of the permit as if the permit was for a single activity/facility.

(4) If one or more activity/facility modifications are authorized, on a permit which contains multiple activities/facilities, a one time activity/facility modification will apply. No periodic inspection fees will be charged for activity/facility modifications.

(5) No periodic inspection fee will be charged for facility modifications.

(6) This fee schedule does not affect the fees charged for real estate instruments. Those fees are established by a separate regulation.

(7) This fee schedule reflects a portion of the administrative costs to manage the program, and includes base labor, fringe benefits, overhead, equipment, materials and supplies. This fee schedule enables the government to recover a greater portion of the cost of administering the shoreline management program.

(8) This fee schedule insures that those individuals or groups deriving the most benefit from shoreline management are paying a larger portion of the administrative cost of the program.

(9) The one time fee is necessary to recover a portion of the cost associated with the initial administration of new permits, permit modifications and new owner permit reassignments.

(10) Payment of the Facility Modification Fee will not change the expiration date of the Shoreline Management Permit.

(11) A Facility Modification Permit will only be issued to a current holder of a Shoreline Management Permit. Current permit holders have already paid a periodic fee, therefore no additional periodic fees will be paid for the duration of the permit.

(12) There is no separate fee for community docks. In the case of multi-owner facilities any reassignment of an individual owner will be done free of charge.

(13) Fees will not be assessed for erosion control permits because the government, the public, and the permittee all benefit directly or indirectly from the construction of erosion control structures.

(14) No refunds will be made for any unused portions of permits terminated by the permittee before the permit expiration date. A refund may be issued if the permit is terminated by the government.

(15) The 50% fee reduction to senior citizens available through the Golden Age and Golden Access programs does not apply to shoreline management fees.

(16) The "one time fees" will be required each time an application is made for a specific activity/facility.

(17) Co-permit holders, other than husband and wife, are not allowed.

(18) Definitions:

New facility—A facility for which a permit has expired or where no facility has previously existed.

New owner—The reassignment of an existing permit (other than single permit holder in a multi-slip community dock) to a different person.

Vegetation modification new permit—A vegetation modification for which a permit has expired or where no vegetation modification has previously existed.

Vegetation modification—New owner—An existing permit for a new adjacent land owner or reassignment of an existing permit to a different adjacent landowner.

Vegetation modification—Change—Any substantial change as defined by the project Shoreline Management Plan, to an existing vegetation modification permit.

Facility modification—Any substantial change, as defined by the project Shoreline Management Plan, to an existing permit or, replacement of an existing facility.

Permit renewal—The term of an existing permit has expired and the activity/facility is being reauthorized, without change, under a new permit.

(c) **Fee schedule.** The fee schedule is as follows:

Type of permit	One time fee	Periodic fee*	Total 5 year fee
Facilities:			
New facility	\$400	\$15/year	\$475
New owner	200	15/year	275
Facility mod.	100	0	100
Permit renewal ..	0	15/year	75
Vegetation modification:			
New permit	200	15/year	275
New owner	100	15/year	175
Permit renewal ..	0	15/year	75
Change	100	0	100
Erosion control ..	0	0	0

*Periodic fees (inspection fees) are set at \$15 per year and are payable in advance for 5 year increments.

Approved.

Robert L. Herndon,

Colonel, Corps of Engineers, Chief of Staff.
[FR Doc. 91-15418 Filed 6-27-91; 8:45 am]

BILLING CODE 3710-92-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 91-9]

Cable Compulsory and Satellite Carrier Statutory Licenses: Electronic Payment of Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office amends the regulations for statements of account and filing requirements for sections 111 and 119 of title 17, United States Code. Those sections provide, respectively, a compulsory license for the secondary transmission by cable systems of broadcast signals, and a statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners.

Such transmissions by cable systems and satellite carriers require payment to copyright owners of royalties, which, under existing regulations, are remitted to the Copyright Office by certified or cashier's checks, or by money order. 37 CFR 201.11 (f) and (h); § 201.17(i) and (j) (1990).

The new regulation provides the additional option of electronic payment by electronic funds transfer, which should facilitate payment by cable systems and satellite carriers, and lessen the administrative burden of the Copyright Office.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION: Under the cable compulsory license of section 111 of the Copyright Act, title 17 of the United States Code, and the satellite carrier statutory license of section 119 of the Act, secondary transmissions by cable systems of broadcast signals and certain secondary transmissions by satellite carriers to home dish owners are subject to payment of royalties. The royalty payments are remitted to the Copyright Office semi-annually. The Copyright Office invests the royalties in United States Treasury securities, pending ultimate distribution of the royalties to entitled copyright owners by the Copyright Royalty Tribunal.

The current Copyright Office regulations permit cable systems and satellite carriers to pay royalty fees by certified or cashier's checks, or by

money orders. 37 CFR 201.11 (f), (g) and (h); § 201.17 (i) and (j) (1990). The Copyright Office is amending the existing regulations to provide cable systems and satellite carriers with the additional option of paying royalties by electronic funds transfer.

Electronic payment allows cable systems and satellite carriers to preauthorize their financial institutions to debit their accounts, instead of having to factor in mail or other delivery time. Cable systems and satellite carriers will have the ability to transfer funds until the due date without incurring interest assessments. Royalties will go directly to the Department of Treasury, streamlining the current process of sending checks to the Copyright Office to be sent later to Treasury. The royalties will be invested in a more timely manner, earning additional funds for copyright owners. Finally, electronic payment will lessen the Copyright Office's administrative workload, reducing paperwork and related administrative costs, and improving reporting and audit control of cable and satellite royalty payments.

By these technical amendments to the regulations, we simply make it possible for cable systems and satellite carriers to effect electronic payment of royalties. The United States Treasury Department specifies the governing procedures. The Licensing Division of the Copyright Office should be contacted for further details about electronic payment of royalties. Treasury regulations are subject to change, but they generally establish minimum amounts for electronic transfer of funds.

Regulatory Flexibility Act Statement

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.¹

¹ The Copyright Office was not subject to the Administrative Procedure Act before 1976, and it is now subject to it only in areas specified by section

Continued

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation, which establishes an optional procedure, will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Cable compulsory license, Satellite carrier license.

Final Regulations

In consideration of the foregoing, part 201 of 37 CFR is amended in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat 2541, 17 U.S.C. 702; § 201.7 is also issued under 17 U.S.C. 408, 409, and 410; § 201.16 is also issued under 17 U.S.C. 116.

§ 201.11 [Amended]

2. In § 201.11 paragraph (f) is revised to read as follows:

(f) *Royalty fee payment.* All royalty fees may be paid by electronic transfer of funds, provided the payment is received in the designated United States Federal Reserve Bank by the filing deadline for the relevant accounting period. Except in the case of an electronic payment, the royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or a money order, payable to: Register of Copyrights; or a United States Treasury electronic payment.

§ 201.11 [Amended]

3. Section 201.11(g)(3)(iv)(B) is amended by removing the period and adding a semi-colon after the word "Copyrights" and inserting the phrase "or electronic payment."

3a. In § 201.11(h)(1) the third sentence is amended by removing the words "or money order" and replacing them with the words "money order, or electronic payment."

701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits"). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

§ 201.17 [Amended]

4. In § 201.17 paragraph (i)(1) is revised to read as follows:

(i) *Royalty fee payment.* (1) All royalty fees may be paid by electronic transfer of funds, provided the payment is received in the designated United States Federal Reserve Bank by the filing deadline for the relevant accounting period. Except in the case of an electronic payment, the royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or a money order, payable to: Register of Copyrights; or a United States Treasury electronic payment.

5. In § 201.17(i)(2) the third sentence is amended by removing the words "or money order" and replacing them with the words "money order, or electronic payment."

6. Section 201.17(j)(3)(iv)(B) is amended by deleting the period and adding a semi-colon after the word "Copyrights" and inserting the phrase "or an electronic payment."

Dated: June 14, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-15206 Filed 6-27-91; 8:45 am]

BILLING CODE 1410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3969-2]

Mississippi; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Mississippi has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Mississippi's revision consists of the Toxicity Characteristic Leaching Procedure (TCLP) Rule, a component of HSWA Cluster II. The Environmental Protection Agency (EPA) has reviewed Mississippi's application and has made a decision, subject to

public review and comment, that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revision. Mississippi's application for the TCLP program revision is available for public review and comment.

DATES: Final authorization for Mississippi's program revision shall be effective August 27, 1991, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Mississippi's program revision application must be received by the close of business, July 29, 1991.

ADDRESSES: Copies of Mississippi's program revision application are available during 8 a.m. to 4 p.m. at the following addresses for inspection and copying: Mississippi Department of Environmental Quality, 2380 Highway 80 West, Post Office Box 10385, Jackson, Mississippi 39209; (601) 961-5062; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460; 202/382-5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; 404/347-4216. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-268 and 124 and 270.

B. Mississippi

Mississippi initially received final authorization for its base RCRA program effective on June 27, 1984. Mississippi received authorization for revisions to its program on October 17, 1988, October 9, 1990, and March 29, 1991. On February 6, 1991, Mississippi submitted a program revision application for additional program approval. Today, Mississippi is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's application and has made an immediate final decision that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modification to Mississippi. The public may submit written comments on EPA's immediate final decision up until July 29, 1991.

Mississippi's application for this program revision is available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

On the effective date of final authorization, Mississippi will be authorized to carry out, in lieu of the Federal Program, the TCLP provisions of the State's program which are analogous to the Toxicity Characteristic Revisions promulgated by EPA on March 29, 1990 (55 FR 11798-1877).

Mississippi incorporates the Federal regulations by reference. The TCLP Rule was adopted on November 26, 1990 by the Mississippi Commission on Environmental Quality and became effective December 26, 1990. A copy of these regulations are available at the Mississippi Department of Environmental Quality as indicated in the "ADDRESSEES" section of this notice.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Mississippi is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

Approval of Mississippi's program revision shall become effective in 60 days, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

C. Decision

I conclude that Mississippi's application for this program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian

lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: June 21, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91-15471 Filed 6-27-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6864

[Docket No. CO-932-4214-10; C-015944]

Opening of Land Subject to the Provisions of Section 24 of the Federal Power Act in Power Project No. 400; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 15.48 acres of National Forest System lands withdrawn by Power Project No. 400. This action will permit consummation of a pending Forest Service land exchange, but will not authorize any nonproject use without the consent of the Federal Energy Regulatory Commission or the Project Licensee. The lands continue to be open to mineral leasing, but remain closed to all other uses.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO-535, it is ordered as follows:

1. At 9 a.m. on June 28, 1991, the lands in Power Project No. 400 being 50 feet either side of the flowline of an underground pipeline, within the following described areas, will be opened to disposal by land exchange subject to the provisions of section 24 of the Federal Power Act, 16 U.S.C. 818, and that any use of the lands not authorized by the Federal Energy

Regulatory Commission license for Project 400 without the consent of the Federal Energy Regulatory Commission or the Project Licensee is prohibited. This action is subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

New Mexico Principal Meridian

T. 39 N., R 9 W.,

Sec. 13, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 24, Lot 2, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ N
E $\frac{1}{4}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 25, lots 3 and 9.

The lands described aggregate approximately 15.48 acres in La Plata and San Juan Counties.

Dated: June 24, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-15458 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 78

RIN 0905-AD32

Conditions for Waiver of Denial of Federal Benefits

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends title 45 of the Code of Federal Regulations by adding a part 78 to provide definitions to assist Federal and State courts to implement section 5301 of Public Law 100-690, the Anti-Drug Abuse Act of 1988, 21 U.S.C. 853a, relating to the denial of Federal benefits to convicted drug traffickers and possessors. Among other things, this rule establishes definitions by which an individual may have his or her denial of Federal benefits waived under section 5301. The Department suggests that this rule be read in conjunction with the Department of Justice Guidelines, Denial of Federal Benefits for Certain Drug Offenders, published in the *Federal Register* (55 FR 37424) on September 11, 1990.

EFFECTIVE DATE: This regulation is effective July 29, 1991.

FOR FURTHER INFORMATION CONTACT:

Dr. Frank Sullivan, Associate Administrator for Policy Coordination, Alcohol, Drug Abuse, and Mental Health Administration, room 12C06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443-4111.

SUPPLEMENTARY INFORMATION: On September 11, 1990, the Assistant

Secretary of Health, with the approval of the Secretary of Health and Human Services, published in the *Federal Register* (55 FR 37436), a Notice of Proposed Rulemaking (NPRM) to add a new part 78 to title 45 of the Code of Federal Regulations. The rule proposed definitions and procedures to assist Federal and State courts in their determination whether to deny Federal benefits to persons convicted of drug trafficking or drug possession. The public comment period on the proposed regulations closed on October 11, 1990, and comments were received from one Federal agency. This document considers those comments, makes minor changes to the NPRM, and adopts a final rule.

Response to Comments

The respondent's principal comment related to the Department's definition of "deemed to be rehabilitated" provided in § 78.2(a). That term, in relevant part, means "an individual has abstained from the illicit use of a controlled substance for the period of at least 180 days immediately prior to the date of sentencing * * *." According to 21 U.S.C. 853a (a)(2) and (b)(2), certain Federal benefits of drug traffickers and drug possessors will not be denied if the sentencing court determines that the individuals are "deemed to be rehabilitated."

The respondent requests modifications of the definition of "deemed to be rehabilitated" so that it can be applied consistently with the related term "has otherwise been rehabilitated" provided in 21 U.S.C. 853a(c)(B). Section 853a(c)(B) deals with the suspension of the period of ineligibility for Federal benefits, which occurs following the court's original decision to deny such benefits, and provides that the period of ineligibility will, among other things, be suspended if the individual "has otherwise been rehabilitated."

Respondent is concerned that a court at a hearing for suspension of the period of ineligibility may wish to apply the definition of "deemed to be rehabilitated" to the term "has otherwise been rehabilitated," but will find itself unable to do so. This inability would result because the proposed definition of "deemed to be rehabilitated" requires the court to find that the individual was drug-free for 180 days prior to sentencing. Since the determination whether to suspend the period of ineligibility under section 853a(c)(B) occurs after sentencing, this means that the definition of "deemed to be rehabilitated" could not literally be applied in that situation.

While the Department recognizes the reasonableness of having consistent definitions for the court to follow for these two closely related terms, it is unable to make the change requested because its authority to issue rules is limited to sections 853a (a)(2) and (b)(2); thus, it cannot explicitly extend its definition to the term "has otherwise been rehabilitated." Nevertheless, we believe a court may use the Department's definition of "deemed to be rehabilitated" as guidance and accomplish the same result, simply by requiring that an individual be drug-free for the 180 day period preceding the date on which the court finds that he or she had "otherwise been rehabilitated."

This approach is consistent with the Department of Justice Guidelines (55 FR 37434) which defines the term "has otherwise been rehabilitated" to mean, among other things, that an "individual has abstained from the illegal use of a controlled substance for a period of at least 180 days * * *." The Department of Justice Guidelines do not limit the 180 consecutive drug-free days to the date of sentencing; rather the individual must have abstained from drug use "for a period of at least 180 days." Thus, under the Department of Justice Guidelines and consistent with these regulations, a court can apply the 180 day drug-free period prior to the date of suspension of ineligibility of Federal benefits, rather than prior to sentencing.

The Department has also made some minor corrections and changes in the rule. In § 78.3(a), the reference to section 853a(a)(1) was changed to 853a(a)(2), and in § 78.3(a)(1), the reference to § 78.2(c) was changed to § 78.2(b). In § 78.3(b), the reference to section 853a(b)(1) was changed to 853a(b)(2). The words "and including" were also added to § 78.2(a) to clarify that an individual may be "deemed to be rehabilitated" only if he or she were drug-free for at least 180 days immediately prior to and including the date of sentencing. This clarifies that the individual must be drug-free on the date of sentencing as well as the period preceding.

Regulatory Flexibility Act and Executive Order 12291

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities and that therefore a regulatory flexibility analysis need not be prepared.

The Secretary has determined that this rule does not meet the criteria for a