current rates are not available, state the HMO's estimated rates for these services.

(13) A description of any self-referral option that the HMO makes available to its enrollees, and specify any current deductibles and copayments for basic health services obtained through self-referral, imposed in accordance with § 417.104(a)(5), and the date these rates became effective. If current rates are not available, state the HMO's estimated rates.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: March 2, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 22, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93-15607 Filed 7-14-93; 8:45 am]

BILLING CODE 4120-01-M

Thursday
July 15, 1993

Part III

Department of the Interior

Bureau of Land Management

43 CFR Parts 3730 et al.
Rental Fees, Mining Claim Recordation, and Assessment Work; Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3730, 3820, 3830, and 3850

[WO-660-4191-02-24 1A; Circular No. 2648]

RIN 1004-AC07

Rental Fees, Mining Claim Recordation, and Assessment Work

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Interior Department and Related Agencies Appropriations Act of 1993 (the Act) that requires an annual rental fee of $100 for each mining claim and site located and held under the General Mining Law of 1872 for fiscal years 1993 and 1994. The final rule establishes the procedures for paying and administering the required annual rental fee, puts into regulation the statute's mandatory payment deadlines and its mandatory provision that failure to pay the rental fee on time constitutes abandonment of the claim or site, amends the recording and assessment work regulations to conform to the requirements of the Act, and establishes procedures by which small miners may obtain an exemption. The final rule also makes minor technical amendments to existing regulatory provisions to clarify procedures and further to implement the Federal Land Policy and Management Act of 1976, as amended (FLPMA).

EFFECTIVE DATE: July 15, 1993.

ADDRESSES: Any suggestions or inquiries should be sent to: Director (660), Mail Stop 501, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Roger Haskins, (702) 785-6576, or Frank Bruno (202) 653-5182.

SUPPLEMENTARY INFORMATION: A proposed rule amending certain sections of the regulations at 43 CFR 3730, 3820, 3860, and 3850 was published in the **Federal Register** on March 5, 1993 (58 FR 12878). There were 240 comments received concerning the proposal: 153 from individuals, 1 petition with 18 signatures, 52 from mining businesses, 19 from associations, 6 from offices of Federal agencies, 1 from State government, 8 from attorneys, and 1 from members of Congress. These comments were from all regions of the United States, but the majority originated from the public lands States west of the Mississippi River.

The Department of the Interior, in accordance with 5 U.S.C. 553(d), for good cause finds that it would not be in the public interest to delay the effective date until 30 days after publication. The mining industry needs as much time as possible to prepare to comply with the rule, and the Bureau of Land Management State Offices will not be able to accept filings and payments, or to assist the public in other ways, until the rule is effective.

The comments addressed all aspects of the proposed rule. They were all given careful consideration and are addressed in this preamble, either as general comments or specific comments dealing with particular provisions of the proposed rule. Descriptions of the comments and discussion of their consideration are grouped into either the general comments or specific comments sections below. Many comments criticized the Act requiring the rule and the rule itself. Since the requirements of the Act cannot be amended by this rule, the function of which is to implement the Act, these criticisms are not addressed here except where there may be sufficient confusion concerning the explicit requirements of the Act.

General Comments

Many comments stated that most small miners will not be able to afford the fee or that the fee would have a depressing effect on the mining industry and western economies generally. The rule cannot be amended based on these possible economic effects of the fee, because it has been required by Act of Congress. However, there is discussion later in this preamble concerning whether this rule is a major rule, a determination based primarily on its economic effect.

Many comments also stated that the rule would cause many claims to be abandoned. This may be true; in part, the law and the regulations will have the effect of encouraging the abandonment of frivolous claims that may interfere with multiple use of the public lands.

Several comments supported the fee and some called for consideration of larger fees, more stringent small miner qualifications, or different treatment for lode, placer, and mill site claims. This rule cannot incorporate requirements that go beyond the statutory language.

Two comments said that the proposed rule was confusing. Every effort has been made to make the rule understandable. Field office personnel of the BLM will be prepared to assist the public in complying with the new requirements.

Several comments said that the fee was a burden because only a few months will be left for all of the mining operators to make decisions and act before the fee is due. While it is true that the final rule is being put into place about two months before the fee is due, the general intent of the law and its deadlines have been known since last October. On October 16, 1993, BLM published a notice (57 FR 54102) that the Act had been passed and that the rental fees would go into effect and be payable on or before August 31, 1993. Miners were actually and constructively notified of the law and should be prepared to meet the processing requirements outlined in this final rule.

Several comments asked about the effect of this rule on State law. State law requirements are still required to be followed. Claimants should consult with the States for these requirements. One comment suggested that a provision be inserted to relieve miners from complying with State law. The States will determine what effect, if any, the Act has on their laws.

One comment said that mention of the fees required for oil shale claims under the Energy Policy Act would be confusing under this rule. The fee requirements of the Energy Act must be mentioned, however, because they supersede the requirements of this rule and this must be made clear.

One comment said that the rule should address what will take place in 1995 and beyond. The rule has been written to explain what is required under the new legislation, making clear that the rental fee payment requirement will not apply beyond September 30, 1994, absent further legislation.

Two comments said that the fee does nothing to combat nuisance mining claims because no one would hold a claim if there was no intent to mine, and the fee does not require that work be done on a claim. One comment addressed BLM's statement that the effect of the fee would be to reduce unnecessary surface disturbance and implied that a significant amount of exploration work done in frivolous. Some individuals hold mining claims on Federal lands that are not being diligently developed, but those who are seriously performing exploration work were not meant to be considered in this group. While it is true that the fee does not specifically require diligence, it does impose a cost on the claimant and thus is a disincentive to hold claims that are not being diligently worked. There is also an obvious benefit to the taxpayer in that the fee is paid to the government.

One comment said the rule was unconstitutional because mining claims recorded prior to the date of the Act are legal contracts and subject only to laws in effect prior to the date of claim location. The comment also stated that the rule is required to be based on law passed by Congress. The rule is based on the Department of the Interior Appropriations Act for 1993, passed by Congress and signed into law on October 5, 1992, which contained the language requiring the fee. In addition, as found in *Last Chance Mining Co.* v. *United States*, 12 Cl. Ct. 551, 555–556 (Cl. Ct. 1987), *aff'd* 846 F.2d 77 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 823 (1988), the statutes and regulations involving the general mining law "do not purport, even by implication, to constitute an offer * * *, it is certainly not an offer to contract." Therefore, the location of a mining claim does not establish a contract and is not subject to contractual legal theory.

Several comments rejected the finding in the preamble that this was not a major rule because it would not have an annual effect on the economy of $100 million or more. They stated that economic multiplier effects would increase the effect beyond $100 million, and that small miners are the principal explorers in the industry and would drop claims for financial, not technical, reasons and eventually would become virtually extinct. The comments referred to a survey of Alaska miners by the Alaska Miners Association, which concluded that more than half of all active Federal claims will be abandoned and that there will be a 50 to 75 percent reduction in exploration expenditures as a result of the fee. We disagree that the effect to the economy will be more than $100 million. The best estimate of the number of active claims on Federal land on the date of the Act is about 900,000. If imposition of the fee results in a 25% drop in claims, 225,000 claims would be dropped. The vast majority of these claims will have had little or no activity on them because claims with good prospects or production would more likely be maintained. Therefore, the economic effect of the loss of these valueless or minimal value claims being dropped will be de minimus. In addition, it is estimated that 380,000 claims may not be subject to the rental fee due to the small miner exemption. This leaves approximately 295,000 claims for which the annual fee would be paid, totaling $29.5 million per year (about $60 million in the first year because both annual payments are due by August 31, 1993, but closer to $5 million in the second year because fees will only be paid on new locations during that year), and well below the $100 million threshold. (It is estimated that the number of new claims located will be approximately one half of those located annually before enactment of the Act, or 40,000.) Small companies with good claim prospects would not be significantly dissuaded from pursuing these claims. In short, only claimants holding claims upon which little or no activity is taking place should find the fee economically prohibitive. Therefore, the fee requirement will not be enough to affect the economy beyond the $100 million level. Admittedly, it is difficult to make such projections, and it is likely that any projection will be proven to be somewhat over- or under-estimated in the end. Also, it is important to note that a certain amount of fluctuation above and below the $100 million annual economic impact figure is allowed for the purposes of determining whether a rule is major. Finally, it should be added that the basic provisions of this rule would be required to be promulgated regardless of any conjectural finding that the rule is major, because these provisions are required by Act of Congress.

One comment disagreed with the statement in the preamble that the rule did not constitute a taking. The comment stated that it constituted a taking because it unexpectedly required a payment of substantial fees. The fee is not expected to cause a taking because payment of the fee will not foreclose all reasonable possibility of the development of a valuable mining deposit, particularly since it in many cases replaces assessment work of equal value.

Several comments urged that existing claims be grandfathered and not be subject to the fee, but this is not possible since the Act specifically provides that "each unpatented mining claim" is subject to the fee. The Act does not generally except existing claims.

One comment said that the fee is unneeded because existing laws are not being enforced and other measures could be taken for the government to achieve the same results and effects as the fee. No other options can be considered in this rule, because the fee is statutorily required, and the rule must therefore be promulgated to implement the fee.

Two comments did not deal specifically with the issues of the rule.

Four comments called for a public hearing regarding the issues of this rule. Administrative hearings for this purpose were not scheduled because the basic fee and exemptions have already been determined by Congress, and are not practicable because it is imperative that the rule be finalized as soon as possible because of the approaching payment deadline.

One comment asked whether a notice of intent to hold could be filed in lieu of paying the rental fee. The answer is no; the only expressly stated exemption from paying the rental fee for claims on public domain lands applies to small miners. Also, a prerequisite for receiving the small miner exemption under the statute is that exploration or production work if performed on 10 or fewer claims, while the purpose of a notice of intent to hold is to allow claimants to maintain claims without developing them.

One comment suggested that a separate arrangement be created for prospectors that would continue to encourage prospecting. This is not possible because the statutory basis for the rule does not contemplate such an arrangement.

Two comments questioned what a claimant is renting when paying the rental fee. The purpose of the provision in the Act is to require miners to pay for utilizing Federal land for mining or mine development activities before it is patented.

One comment asked whether placer mining claims are exempt from the rule. They are not. The Act explicitly covers "each unpatented mining claim, mill or tunnel site."

Two comments questioned the statement in the preamble that a notice of intention to hold that is required under FLPMA would still be required. This statement in the proposed rule preamble was in error. The rental fee requirement can be satisfied by either paying the rental fee or filing the certification of exemption. If, under the Mining Law, assessment work is not required, FLPMA still requires a notice of intention to hold, regardless of rental payments. However, BLM has decided to accept the fee in lieu of a Notice of Intent to Hold, so the Notice is not required in addition to the fee payment. Language has been added to the rule at §§ 3833.0–5(t), 3833.1-5(g), and 3833.1-7(c) to make this clear.

One comment wanted clarification on whether filing notices of intention to hold mill and tunnel sites was still required and whether the tunnel site diligence provision of 30 U.S.C. 27 was affected. The filing of notices on these sites is not required for those who pay the fee and the cited diligence provision is not affected by this rule.

One comment asked whether the rule can address access issues, but this is not the purpose of the rule, and it does not affect access issues.

Two comments asked where the statute calls for claims to be voided for non-compliance. The statute does not use the word "void" but it specifically states that failure to pay the fee conclusively constitutes abandonment of the mining claim. In such cases BLM routinely issues a decision to void the claim.

One comment states that the rule should address situations where an insufficient amount of money is submitted to cover the claims desired to be held. This will be handled in a similar way to existing BLM manual policy procedures in that the filing will not be totally rejected and fees that are sufficient to cover a percentage of listed claims will be credited to hold those claims and the others will be rejected. Filings that are submitted without fees will not be accepted and will be returned to the claimant/owner without further action. Section 3833.1–3 has been amended to provide for this process.

One comment recommended a sliding scale that would raise the fee per claim for claimants who hold larger claim blocks. This is not possible because the statutory language requires one $100 fee per claim.

One comment stated that, instead of the fee, the assessment work requirement should be increased to $1,000 per year. This is not possible because the statutory language does not allow it, nor does any other provision in the Mining Law.

A comment disputed the proposed rule's preamble, which stated that only speculative and marginal claims would be dropped. The comment cited figures provided by mining companies that indicate a large percentage of active claims in the correspondent's State will be dropped and that many of these would be legitimate, rather than "nuisance" claims. A legitimate mining claim could be defined as one that may have some marginal prospects in the distant future. It is true that some of these may be dropped, but it is still likely that most claims that are considered valuable by those who hold them, for either present or future development, will be held despite the rental fee. Those that are dropped may be relocated by the same or new claimants at a later date, perhaps as soon as 1994, unless the lands are withdrawn from mineral entry, so that no resources will be lost to the nation.

43 CFR 3730.0–1

This new section was added pursuant to a comment. It explains the purpose of Public Law 359 and the regulatory framework for it.

43 CFR 3730.0–3

This new section was added pursuant to a comment. It outlines the proper authority for subpart 3730.

43 CFR 3734.1

This section was amended pursuant to a comment in order to explain more succinctly the interrelationship among Public Law 359, which governed mining in powersite withdrawals, the Interior Department and Related Agencies Appropriations Act of 1993, and FLPMA, which superseded the requirements of Public Law 359.

43 CFR 3821.0–3

This new section was added for purposes of clarification in order to relate the subpart to the proper statutory authorities.

43 CFR 3821.2

This section was amended pursuant to a comment. The language is an improvement over the proposed rule language. It also adds that after October 21, 1976, the 90-day recording time frame for new locations under FLPMA superseded the previous 60-day period under 62 Stat. 162, the Act to reopen the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands to exploration, location, entry, and disposition under the general mining laws (O and C Act).

43 CFR 3821.3

This section was amended to add that the $100 fee is also in lieu of a notice of intent to hold.

43 CFR 3833.0–3

The term "non-exempt" was added to paragraph (e) of this section to make it clear that the voiding of claims for failure to pay the fee does not apply to those claims that are exempt because of the small miner exemption.

One comment said that 43 U.S.C. 1212 should be removed from the list of authorities. This section of the United States Code makes it a crime to file false or fictitious documents with the Secretary, and is necessary for the enforcement of the regulations.

43 CFR 3833.0–5

The word "State" was added to paragraph (g) to make it clear that the proper BLM office is the relevant State Office. The word "State" was also added to paragraphs (p) and (t). Paragraph (t) was also amended to make it clear that those who pay the fee are not required to file the Notice of Intent to Hold. The definition in paragraph (v) was reworded to cite the specific instances in which fees are non-refundable. A new paragraph (w) was added to define "age to discretion," the term that was used in the statute and also in this rule.

One comment suggested making it clear that the December 30, 1992, FLPMA filing and the rental fee filing mentioned in paragraph (o) of this section can be filed at the same time, which would save administrative work. This is not possible since the deadline for the FLPMA filing is already in the past. Paragraph (o) was reworded to make it clear that small miners who qualify for the exemption will still be required to make FLPMA filings.

Several comments objected to the proposed change from 20 to 15 days for receipt of documents sent by mail in paragraph (m) of the proposed rule, citing future postal service cuts that may result in delays in delivery. There is no current evidence that future mail service will degenerate. However, BLM will monitor the situation to identify any problems reconciling this regulation with the realities of mail service.

One comment said that the filing years defined in paragraph (o) should be the same, in order to simplify the procedures, but that is not possible because the dates are statutorily set.

Two comments questioned whether the definition of "amended location" in paragraph (p) of this section preempts State law regarding the conveyance of unpatented mining claims. It does not. State law still applies for State filing purposes. This definition is amended to make it clear that transfers of interest submitted to BLM to update BLM records, are required to be submitted in accordance with section 3833.3 only.

43 CFR 3833.1–2

A new section was added as a cross-reference to sections 3741.1 and 3821.2 for claims and sites located on Public Law 359 and O and C Act lands respectively.

43 CFR 3833.1–3

This section has been reworded to clarify the processing of partial payments.

One comment stated that this section does not specify the point at which failure to submit the required rental constitutes abandonment of the claim. This is stated in section 3833.0–3(e).

43 CFR 3833.1–4

One comment asked if there was a service charge for filing for the small miner exemption. As outlined in this section, the answer is no. One comment stated that the waiver of the $5 service charge for those who pay the fee is not appropriate. This service charge was imposed as a fee to cover administrative costs for the processing of annual filings under FLPMA. Those who pay the $100 rental fee will not be causing the BLM to incur such FLPMA filing processing costs. Additionally, Congress specifically authorized BLM to spend up to $5 million annually, to be taken from rental fee receipts, to run the rental fee program, so the rental fee will partially defray BLM's administrative costs in the same way that the $5 does for FLPMA filings. On the other hand, a claimant who qualifies as a small miner and files for an exemption is still required to complete the annual assessment work and file evidence thereof, together with a service charge of $5 per claim, on or before December 30 of each year.

The word "non-refundable" has been added to paragraph (a) to make this charge consistent with other service charges which are also non-refundable. Paragraph (b) was amended to add that rental fees are also in lieu of notices of intent to hold and that certified exemption statements are not required to be accompanied by a service fee. Paragraph (e) was added to detail how credit card payments may be made. Paragraph (f) was added to outline how declining deposit accounts may be used for payment of fees.

43 CFR 3833.1–5

Paragraphs (a) has been reworded to explain more clearly the rental fees that are due and their deadlines. Paragraph (e) has been added in response to a number of comments. It explains that it is possible for a qualified small miner to claim the exemption for one year, but elect to pay the fee in another year. Paragraph (f) has been added to make clear the final date for filing the required annual $550 rental fee for oil shale claims. Paragraph (g) has been added to make it clear that payment of the rental fee releases the claimant from having to file a notice of intention to hold.

One comment stated that the rental fee for the second year should be sufficient to hold the claim through September 30, 1994, the expiration date of the Act, rather than September 1, 1994. In fact, the effect of that second payment is to hold the claim through the end of the assessment year ending September 1, 1994.

One comment stated that there is a duplication between the fee due upon location of a new claim in the first assessment year and the fee due on August 31, 1993, for the second assessment year. There is no duplication because a fee paid for location in the first year holds the claim until September 1, 1993, at which point the second payment holds the claim for the second assessment year. The first payment upon location is not prorated if the location occurs mid-year.

One comment stated that if a claimant locates a claim in the second assessment year there should be no fee required because such a fee cannot be "in lieu" of assessment work. This is not correct because the statute expressly states that new locations are subject to the $100 fee at the time of recordation. There is no reference in the "new location" provision of the statute to the fee being in lieu of assessment work.

One comment said that the second fee payment should not be due until the end of the second year. The August 31, 1993, due date cannot be changed in this rule, because it is a statutory deadline.

One comment stated that there was no reason to address proration in the rule. It is considered necessary because proration will not be allowed.

One comment asked whether a claimant who pays the fee and later decides to drop the claims can get a prorated refund. This section specifically provides that there can be no proration of rental fees for partial years. When the rental fee is paid, its purpose is to hold the claim for the appropriate assessment year. The law does not provide for pro rata refunds. Fee payment demonstrates an intent to hold the claims for that year.

Three comments objected to the "double payment" on August 31, 1993, for assessment years 1993 and 1994. This is not a double payment in the sense that one would pay twice for the same year; it is a requirement for two payments, one for each of two separate years, but with the same deadline for the payments. The payment requirements and deadlines are set by an Act of Congress, and may not be amended in this rule.

Two comments asked whether the fee was a one-time payment or whether assessment work would also be required by the BLM. This section explains that the fee is required for only two years and the fee requirement will expire on September 30, 1994, and that the fee replaces assessment work, unless the assessment work was performed during the period between September 1 and October 5, 1992, in which case the first year's rental fee is an additional payment. Development or exploration work toward developing a claim and producing ore is not prohibited by the rule, and presumably assessment work done during the five weeks before enactment of the Act furthered development or production.

One comment argued that claimants should be able to apply rental fees paid in assessment years 1993 and 1994 to years after 1994 if the claimant has already completed assessment work in one or both of those years. This is not possible because the statute clearly states that for the effective period of the Act, a claimant either pays the rental or, in some cases, files assessment for those years. The fact that work may have been done on a claim for which a rental fee is paid is of no consequence under the Act. The rental fee requirement expires on September 30, 1994. However, several bills are pending in Congress that could change and/or extend these requirements.

One comment interpreted the proposed rule to say that miners who pay the rental fee would not have to file a plan of operations. This is not true. Nothing in this rule changes the plan of operations requirements.

Two comments stated that the $100 fee should be refundable. The fee will be non-refundable except under certain conditions outlined in section 3833.0–5. Essentially, if a claimant pays the fee and receives the benefit expected from the government (in this case that the claim is held for the period covered by the fee) then the fee is non-refundable. The government cannot be responsible for factors beyond its control, such as if for some reason during the assessment year the claimant no longer finds it advantageous to hold the claim. Additionally, refunds would cause an excessive paperwork burden. The decision to pay the fee and hold a claim for the assessment year is one that the claimant must make without relying on the government to expend scarce resources to compensate the claimant for any business planning adjustments that he or she may have made during the year. However, if the claimant does not receive the benefit expected at the time of fee payment (an example would be that the fee is erroneously paid on a claim that is actually null and void at the time of payment, so that there is no claim to pay a fee on), then a refund would be in order.

Two comments said that the fee should not apply to mill sites or that the fee should be reduced for mill sites, but neither is possible because of the statutory language, which states plainly that the fee does apply to mill sites.

One comment, apparently misunderstanding the proposed rule, said that those who pay the fee for the assessment year ending on September 1, 1994, should not also have to file the

FLPMA assessment filing due on December 30, 1994. The proposed rule in fact provided that only those exempted from the fee by qualifying as a small miner will be required to file annual assessment proofs by December 30, 1994. No change is needed in the final rule for the suggestion in the comment to be implemented.

One comment suggested that the word "year" in the Act should be interpreted as ending on August 31, 1993, rather than September 1, which is the beginning and ending date of the two assessment years. The Act does not define the word "year." The August 31 date is clearly just the payment deadline in the same way that December 30 is the deadline for FLPMA filings. Therefore, it was decided that the definition of "year" that would be most consistent with past practice would be the assessment year.

43 CFR 3833.1–6

Language has been added to paragraph (a)(1) to make it clear that a claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise qualifies for the small miner exemption, is not precluded from paying the rental fee in addition to filing for a small miner exemption. Such a payment would ensure that the claims will not be declared void should the small miner status be denied for a particular claimant. Paragraph (a)(5) has been reworded for clarity, and adds new language to include special use permits for locatable minerals on national forest lands and equivalent State or local permits on non-Federal surface lands as permissible documents for the purpose of qualifying for the small miner exemption. Paragraph (b) was reworded to bring it into agreement with current judicial interpretations and to make reference to other permits being qualifying.

One comment said it was unfair that activity using non-mechanized means did not qualify the claimant for the small miner exemption. This was done because the statute requires that the claims be under a plan or notice, which is not required for most non-mechanized activity.

One commenter asked whether a prospecting club is an "individual" in order to qualify for the small miner exemption. The answer is yes if the claims are located in the name of the club.

The club could be eligible if it holds 10 claims or fewer and meets the remaining requirements for exemption. The members of the club could not each claim a small miner exemption unless claims are each held by one person individually, independently of the club.

One comment asked whether a valid plan of operations is required for operations where no significant disturbance takes place. A plan of operations is required for surface disturbance amounting to 5 acres or more. Operations with only negligible disturbance qualify as casual use under 43 CFR part 3809. One must be under a valid plan or notice in order to qualify for the small miner exemption and if no significant disturbance is taking place, it is not likely that the claimant would be required to file a plan.

One comment stated that no reference should be made to lode and placer claims and that "such" operation should be used rather than "the" operations because the suggested language would conform more precisely with the statute. The language in the proposed rule remains unchanged because it is not in conflict with the statute.

One comment said that paragraph (b) of this section is an unjustified expansion of the statute. It is not considered unjustified because, as with the rest of the rule, it implements in detail what is believed to be the best interpretation of what Congress intended when it passed the Act. The exploration guidelines included are considered to be accepted and routine industry exploration activities.

One comment asked whether assessment work can still be conducted on a percentage of a block of claims to benefit the entire block. The answer is yes, the rule does not change this.

One comment objected to the small miner exemption saying that the average small placer miner could not likely fulfill the work requirement on 10 claims in a lifetime. The comment suggested an alternative fee scheme. The 10-claim exemption and $100 fee is explicit in the statutory language and cannot be changed by regulation.

One comment stated that paragraph (a)(3) of this section appears to violate Constitutional and statutory guarantees against discrimination against women because it limits the rights of a married woman to hold a mining claim. This is a misreading of this provision because it is no way limits a woman's right to hold a mining claim. It treats a married couple as one entity for the purpose of qualifying for the same miner exemption. Both the married woman and man can locate and hold as many mining claims as they wish, but if they want to qualify for the small miner exemption they may hold no more than 10 claims as a family.

The limitation for the purposes of the exemption applies equally to the man as to the woman. It is similar to the limitation put on partnerships, corporations, and others discussed elsewhere in this rule. Finally, the limitation in this provision exists primarily because it is required by the Act.

One comment suggested adding a requirement regarding the evidence needed to certify exploration work by limiting money expended, in order to reduce excess surface disturbance. Surface disturbance is already limited to less than 10 acres, and this suggestion would institute a further restriction that would be impossible to police and is not specifically provided for in the statute.

One comment expressed concern that paragraph (a)(6) of this section could apply to old disturbance not related to the current operation. However, the Act specifies that the surface disturbance is to be "* * * from such mining or exploration operation," which is "under a valid notice or plan of operation." The language of this paragraph likewise specifies that the disturbance is that "* * * caused by the mining or exploration operation."

One comment stated that paragraph (a)(4) excludes any person who owns stock in a mining corporation which holds claims from qualifying personally and separately from the small miners exemption. This is not true because the legal corporation and the individual are separate entities under this section and are separately eligible for the small miner exemption.

Attesting to the ambiguity of the statutory language for the rental fee requirement, many comments were received addressing the two alternative approaches included in the proposed rule as to whether claimants who report that they have done assessment work between September 1 and October 5, 1992, should be excused from paying the rental for the first year.

Four comments supported Alternative One, which required payment from all except those who qualify as small miners, regardless of whether assessment work had been performed during the time in question. One comment came from the Chairman and the Ranking Minority Members of the Appropriations Subcommittee on Interior and Related Affairs of the U.S. House of Representatives. Their comment stated that it was not the intent of Congress to allow an exemption as outlined in Alternative Two, and that Alternative One reflects the will of Congress. They said that such an exemption was included in the House-passed bill, but was struck by the

Senate and not restored in the House-Senate conference. They further said that conferees discussed the deletion and decided that to allow such an exemption would seriously affect the amount of revenue to be generated by the rental fee. The other comments said that work is often not done but assessment work proofs are filed anyway. They said that Alternative Two would further encourage fraudulent reporting of assessment work, and that an adequate monitoring system does not exist. It may be true that fraud exists to some unknown extent. There is no adequate agency system to monitor the reported completion of assessment work for the period between September 1 and October 5, 1992. Because of this practical enforcement concern, the clarification of intent from the Appropriations Subcommittee on Interior and Related Affairs, and the reasoning set forth below, the Department has concluded that claimants who report having completed assessment work between September 1 and October 5, 1992, should be required to pay the rental fee for assessment year 1993. Although the comments from the Appropriations Subcommittee are not binding, the Department finds the reasoning of the comment to be persuasive, authoritative, and in correlation with the arguments made in support of Alternative One in the proposed rule.

In addition to the Congressional comment and the practical enforcement problems entailed in allowing the exemption, the following arguments also favor this alternative. First, the Act of October 5, 1992, does not contain an exemption provision for these claimants. Though earlier versions of the bill contained one, it was removed before enactment. Second, the language of the Act states that the rental fee is in lieu of assessment work "for the assessment year ending at noon on September 1, 1993." 106 Stat. 1378. The assessment year referred to began on September 1, 1992. Therefore, the rental fee requirement is in lieu of assessment work that was conducted or will be conducted during the period beginning on September 1, 1992, and ending on September 1, 1993. Third, the fee is in lieu of filings required by FLPMA that could not be filed for the assessment year beginning on September 1, 1992, until the period running from January 1, 1993, to December 30, 1993. As a result, it was impossible for any claimants to file the FLPMA filing before the enactment of the Act. No claimants, therefore, could have fully completed both requirements that the rental fee is intended to replace during the period between the beginning of the assessment year and enactment of the Act. Fourth, despite the portion of the assessment year that elapsed before the effective date of the Act, the rental fee requirement is prospective in nature because the fee is not due until the future date of August 31, 1993. Although the fee is a new, additional requirement for some claimants, it is nevertheless due prospectively. Last, the legislative history of the statute only shows an express congressional intent to allow an exemption from the rental fee requirement for qualified small miners. 135 Cong. Rec. S15849 (daily ed. September 30, 1992) and 135 Cong. Rec. S15970 (daily ed. October 1, 1992).

Many comments supported Alternative Two. The reasons included the rationale outlined in the proposed rule in addition to arguments of fairness. One comment attached a letter of December 7, 1992, to the Director of BLM from 6 members of Congress, which stated that they believe it was congressional intent to allow the exemption outlined in Alternative Two. Because the previously mentioned letter from the Appropriations Subcommittee was from the leadership of the House subcommittee with jurisdiction, and because the position urged by the December 7, 1992, letter was rejected by the House-Senate Conference Committee before final enactment of the appropriations bill, the Subcommittee letter was accorded more deference.

Several comments asked questions of interpretation if Alternative Two were chosen. Since Alternative One is promulgated in this final rule, these questions are moot, and no discussion is needed of them in this final rule.

Three comments stated that the situation where a small miner takes the exemption in the first assessment year and pays the fee for the second assessment year needed to be clarified. This would be perfectly permissible since the payment of the fee or the filing of assessment work is optional for qualified small miners. A qualified claimant could also pay for the first year and take the exemption for the second year.

One comment said that no one will be able to qualify for the small miner exemption. This section outlines clearly the qualifications for this exemption, and while the precise numbers of qualified miners is not known, it is clear that there are many who will meet the requirements.

Three comments asked whether the 10-claim exemption is State-wide or nation-wide. The exemption applies nation-wide and can include claims in more than one State as long as the number of claims totals 10 or fewer. In accordance with paragraph (a)(2) of this section, the exemption applies to claims on Federal lands in the United States.

Two comments asked whether partnerships were considered a "person" toward qualifying for the 10-claim exemption. Yes. One partnership can qualify for one exemption for up to 10 claims. This means that, for example, a two-person partnership can qualify for 10 claims, not 20 claims because they are two persons. One comment asserted that it was not the intent of Congress to allow partners only one 10-claim exemption. Congress was not clear regarding its intent for the definition of "claimant" under the exemption language of the statute. However, in tax law and business law, partnerships and other business associations are considered single entities.

One comment questioned the definition of the word "notice" in connection with the small miner exemption. The word "notice" as used in this section refers to a mining operation of 5 acres or less for which a claimant can give "notice" of mining activities in accordance with 43 CFR 3809.1–3, rather than file a Plan of Operations.

One comment asked whether miners whose mining activity is not at the plan or notice level can be eligible for the small miner exemption. The answer is no because, as stipulated in this section and the Act, the activity must be at plan or notice level as defined by the surface managing agency.

Two comments urged that claim blocks in different regions should each be allowed a 10-claim exemption, and one comment said that claimants holding more than 10 claims should be able to exempt 10 of them. One comment referred to a Congressional Budget Office (CBO) report as evidence that this was the intent of Congress. This suggestion is not adopted in the final rule, because the statute, as well as other evidence of Congressional intent, allows a claimant to hold no more than 10 claims in total to obtain an exemption. An analysis by the CBO, which is not a policy making office, is not dispositive of Congressional intent.

One comment stated that it was discriminatory for Congress to have required no less than $1,500 in gross revenues per claimant to qualify for the small miner exemption because in some cases small operations would be hampered by State requirements and market economics and fall under the minimum floor to qualify for the exemption. This is beyond the purview of this rule because the $1,500 floor has been required by Congress in the legislation.

One comment objected to the idea that a claimant's child beyond the age of discretion could alone qualify for the 10-claim small miner exemption, but that a husband or wife of a claimant who is also not a minor could not separately qualify for the 10-claim exemption. This language was expressly contained in the statute and therefore cannot be diverged from in the rule.

One comment stated that the small miner exemption was erroneously aimed at miners who were not serious, and ignored small companies who may locate 200 or more claims in order to explore prudently. No change in the small miner exemption may be made by regulation. Congress has defined the parameters of the exemption by statute. The same comment stated that the definition of small miner should be determined by small miners and junior companies, but this is not possible because the definition has already been established by Congress. Two other comments stated that small miners should be those with 20 or 30 claims or less, which also cannot be accommodated because of the statutory language.

One comment stated that in cases where a claimant overstakes the same ground with both a lode and a placer claim, that only the placer claim should be subject to the fee. The statute makes no such distinction in types of claims or their vicinity on the ground, and specifically requires only that no more than 10 claims may be possessed in order to qualify for the small miner exemption.

Several comments expressed concern about the effect on recreational miners. Some questioned whether a claimant, such as a "recreational" miner or any other, whose activities are not extensive enough to cross the surface management agency's threshold for a notice or plan level operation, would be excluded from the small miner exemption, and if so would this not increase unnecessary degradation of the land. Most stated that recreational miners or mining clubs should be exempted from the fee. The language of the Act specifically requires a claimant to be operating under a plan or a notice in order to qualify for the small miner exemption. It is unlikely that unnecessary disturbance will occur because of the additional requirements for production levels or exploration activity coupled with the authority cited in section 3833.0–3 of the rule, which includes the section of the U.S. Code that makes it a crime to file false or fictitious documents with the Secretary of the Interior. In addition, the surface disturbance is to be conducted pursuant to a valid notice or plan of operation that is subject to the "unnecessary and undue degradation" standard found in FLPMA. The basic requirements for a showing of production or exploration is required in the statute and cannot be excused for recreational miners. There were several comments that stated that recreational miners could not afford the fee, but the fee is required by statute if the small miner exemption requirements are not met. Additionally, all operations, regardless of how an individual claimant classifies his or her own operation, will be evaluated under the standards of this section, which are founded on the statute.

One comment asked whether the claimant who locates in the 1993 assessment year may qualify for the small miner exemption for the 1994 assessment year. The answer is yes. The statute requires that all new locators pay the fee for new claims regardless of how many claims they hold, but these claimants are free to file for the small miner exemption for the second year if they qualify.

One comment stated that the small miner exemption should apply to those who lease 10 or fewer claims. This is not possible because the statute specifically cites the word "claimants," and not lessees, when referring to the small miner exemption. The claimant is the party who owns the claim.

Several comments charged that this section discriminates against marriage and/or legitimate children because spouses and underage children cannot separately claim the small miner exemption within a family. The primary reason for this part of the rule is that the statute specifically requires it.

One comment rejected the idea that a small miner is one who holds 10 or fewer claims. The statutory language specifically defines a small miner in this way, and the rule is bound by the statutory language.

One comment urged that BLM institute a monitoring system to track the full economic impact of the fee. BLM will track the effects on mining claim retention and possibly other parameters.

One comment asked whether it is possible that a plan of operations that has been submitted but not approved can satisfy the requirement for a small miner exemption. The answer is no because the statutory language specifically refers to "valid" plans of operations. A plan that has not been approved cannot be considered valid.

One comment said that the word "corporation" should be removed from the section that deals with entities who qualify for the small miner exemption. The entities listed in the rule, including corporations, have always been regarded as "claimants" under the Mining Law. The clear intent of the Act was to exempt all claimants, including corporations, holding 10 claims or fewer. However, there is nothing in the law or this rule to prevent arm's length stockholders of a corporation—stockholders without control—that possess mining claims from locating their own claims and qualifying as small miners, regardless of the number of claims held by the corporation.

One comment stated that the requirement calling for a minimum gross revenue of $1500 was arbitrary. Two comments said that the August 31, 1993, date also was arbitrary. These requirements were specifically called for in the statute, which the rule is required to reflect.

Two comments stated that operators on private land with Federal minerals cannot comply with the requirement to have a plan of operations or a notice since on these types of lands neither is required. This problem has been addressed in an amendment of section 3833.1–6, which allows submission of a State or local permit in lieu of the Federal Plan of Operations or Notice. There is no evidence in the legislative history that Congress had any intention of singling out these types of claims and making it impossible for them to qualify for an exemption. The revised language of this paragraph is believed to be in accordance with Congressional intent.

Four comments urged that the small miner exemption be expanded to cover more than 10 claims, but this is not possible because the statute provides that 10 claims is the limit.

One comment urged that 10 inactive claims be allowed to be added to the 10-claim exemption, that mill sites be exempt, and that a bond should be the sole requirement for the exemption. None of these comments could be accepted, because they are contrary to specific statutory language.

One comment asked how association placers are counted toward the small miner exemption. Each owner of an association placer counts that claim toward the exemption claim limit. For example, if 8 claimants own a 160-acre association placer, then each claimant would count that claim for purposes of calculating individual holdings for small miner limitations. They would not each claim ⅛ of a claim.

One comment asked whether the $1500 in gross revenues is required to be produced from each claim or from the group of claims in the exemption. The answer is that a minimum of $1500 is required to be produced from the 10 or fewer claims as a group. This amount does not have to be produced from each claim.

One comment asked whether claims that are only being explored must be under a notice or a plan. The answer is yes because that is a statutory requirement.

One comment asked how this section affects 30 family members where no one member has more than one claim. Each "family" member can claim the exemption except as outlined in paragraph (a)(3). For instance, a husband and wife and children under the age of discretion are considered a group who would only be eligible for one 10-claim exemption, but, for example, two brothers over the age of discretion who are not partners could each exempt up to 10 claims for a total of 20.

One comment asked whether it is possible for claimant to pay the rental on two claims and take the exemption on eight. Because the language of the Act only allows for a choice between either paying the fee or doing the assessment work and meeting the filing requirements "* * * on such ten or fewer claims," a claimant may not pay the fee for a portion of his or her ten or fewer claims and take the exemption on the remaining portion. However, a claimant is not precluded from paying the rental fee for claims that have also been included on a small miner exemption form.

43 CFR 3833.1–7

Paragraph (b)(1) was amended to add the word "State" to clarify the proper office for filing. For clarity, paragraph (c) was amended by the addition of the ending date for claiming an exemption for the 1993 assessment year, and again the word "State" was added. Paragraph (c) also includes added language to specify that filing of the certified statement satisfies the requirement to file a notice of intent to hold for qualifying claims located within the period specified. Paragraph (d)(1) was amended to add the other types of permits acceptable to qualify for the exemption. Paragraph (d)(3) was amended to make it clear that multiple certifications for different claim blocks may be filed as long as the total number of claims does not exceed 10. Paragraph (d)(4) was amended to make it clear that the production requirements are not for each claim, but for the claims in total. The words "in detail" for the exploration declaration were removed, because a simple statement of work should suffice.

Paragraph (d)(6) was also amended to reference other allowable permits. A new paragraph (d)(7) was added to require all owners of a mining claim to sign the certified exemption statements. This is to ensure that the 10 claim limitation per claimant will be strictly followed. A new paragraph (d)(8) adds a requirement for a notarized statement intended further to bind the claimants legally to the statement that the claimants sign. Paragraph (e) was amended to add a 30-day payment period after a deferment expires to provide a more equitable process. The word "sites" was removed from this paragraph since sites are not subject to assessment work. Paragraph (e)(1) was amended to add the word "State." Paragraph (e)(1)(i) was amended to change the date from September 30, 1994, to September 1, 1994, which is the end of the 1994 assessment year. Paragraph (f) was revised to make it clear that when the mineral entry is allowed, a refund of previously paid fees is not possible. Paragraph (g) was taken from section 3852.1 and placed here. The phrase "notice of taking" has been changed to "declaration of taking" pursuant to comments received from the National Park Service (NPS).

One comment stated that deferments from the fee should not be allowed because deferments are granted for reasons such as denial of access, so that no assessment would take place. Since the fee is in lieu of assessment work, the comment argued that deferment from paying the fee is not appropriate. However, during debate on the Senate floor on the Act, it was stated and not disputed that claimants who cannot perform assessment work because of legal impediments should not have to pay a fee. This statement may be taken as evidence of congressional intent on this issue. In addition, claims for which assessment work has been deferred are given an exemption from the rental fee. The rental fee is not deferred. Rather, the deferred assessment work will be required upon cessation of the deferment pursuant to 43 CFR subpart 3852. The comment is not adopted in the final rule.

One comment said that the rule should provide that the surface disturbance requirement be measured as of August 31, 1993. This is not possible because it would allow no time for the claimant to submit a certification that same day. Rather, regardless of whether the claimant makes the certification early or on August 31, the certification should state that surface disturbance did not exceed 10 acres on the date of the certification by the claimant, and that surface disturbance would not exceed 10 acres at any time during the period for which the certification is made.

One comment said that failure to provide the evidence required by this section should be a curable defect. This is a curable defect as specified in section 3833.4(b).

One comment requested clarification concerning the proper agency to receive certifications under the rule. The proper agency is the BLM, as outlined in this section.

One comment asked why under paragraph (d)(5)(ii) of this section the claimant would have to make the declaration by August 31, 1993, that assessment work will be done in the following assessment year. This is because the statute requires qualified small miners who choose to do the assessment work to "certify the performance of such assessment work to the Secretary by August 31, 1993." Because the certification date occurs before the assessment work will be done for the assessment year ending September 1, 1994, the claimant is certifying that the assessment work will be done in the coming year. If the claimant determines that no assessment work will be performed in the second assessment year, then the claimant must make this determination and submit the fee by August 31, 1993.

One comment said that the term "first half of the mineral entry final certificate" has no legal significance. Paragraph (f) and section 3851.5 have been amended to make it clear that rental payment is not necessary for claims that are subjects of patent applications when the authorized officer has allowed mineral entry pursuant to 30 U.S.C. 29 and part 3860. The term "first half of the mineral entry final certificate" is no longer referred to in the final rule.

One comment questioned whether a person who is part of a corporation, association, or partnership that qualifies for a 10-claim exemption can also qualify for an additional small miner exemption under his or her own name. The answer is yes if the person is a non-controlling shareholder of a corporation. But if the person is a named partner or a named member of the association that holds 10 mining claims, that person cannot file for an additional 10 claim exemption. The reason is that a corporation exists as a legal entity on its own while a partnership or association is a group of individual co-owners. In these co-ownership arrangements, the interest will not be calculated in fractions such as for one-half ownership in a claim in order to qualify for the small miner exemption. One-half ownership in a claim will count as one claim for the purposes of qualifying for the small miner exemption.

One comment cited various interpretations of the 10 acre disturbance standard. The 10 acres applies to the claimant's entire mining operations. The 10 acres or less surface disturbance is related to the mining activity or exemption work being conducted pursuant to a valid notice or plan of operation. Any falsification under these or any other requirements of this rule is subject to penalty under 18 U.S.C. 1001.

One comment asked whether a claimant is required to apply for the small miner exemption at the same time for both 1993 and 1994. The answer is no. August 31, 1993, is the deadline for filing, but not the only day for filing, for both years for claims located on or before October 5, 1992. One certification could precede the other as long as they are both filed by August 31.

One comment asked if there are special forms to fill out for the small miner exemption. The answer is yes and they are explained in this section of the regulations.

Two comments asked whether a claimant will have a chance to pay the fee if turned down for a small miner exemption after August 31, 1993. The statute requires, for all active claims at the time of enactment, either payment of the rental fee or submission of a certification for the small miner exemption by August 31, 1993. If the claimant is found not to qualify for the exemption, there is no provision in the statute for payment after that date. If there is any doubt as to qualification, it will be advisable for the claimant either to submit the certification early enough for any defects to be cured before August 31, 1993, or to pay the rental fee.

One comment said that the rule does not precisely conform to the language of the Act pertaining to abandonment of a mining claim, because it refers to a "declaration" of abandonment while the Act does not mention a "declaration." The declaration of abandonment will simply be formal notice by the government that abandonment has taken place by the date specified in the law. A similar declaration has been used over the years for claims that are abandoned for failure to make proper filings under FLPMA, even though no "declaration" language appears in that law.

One comment questioned whether a joint-ownership claim could be declared abandoned and void for failing to pay the fee when a deferment of assessment work has been denied. The answer is yes because the failure to pay would apply to all the owners on record, including cases of single owner claims.

One comment said that exploration or production reporting should be done on the calendar year, as with Federal taxes, rather than the assessment year. The assessment year system was chosen because mining work is done based on assessment years under the Mining Law.

One comment suggested that a certification form be created to help claimants in their filings. Such a form is being created.

43 CFR 3833.2-1

The NPS requested that they be notified concerning the status of fee payments for claims on NPS lands, as they are notified of FLPMA filings. In response to this comment, paragraph (e) has been amended to direct BLM to report the status of all claims on NPS lands to NPS.

43 CFR 3833.2-3

Paragraph (e) was added to make it clear that payment of the rental fee for claims located and recorded on or after September 1, 1994, and on or before September 30, 1994, will serve as a notice of intention to hold for the purpose of holding the claim for assessment year 1995. No further FLPMA filing will be required for such claims by the December 30, 1995, filing deadline.

One comment stated that this section was unnecessary because it restates existing law. The new addition does not restate existing law, but rather explains the effect of the new statute on existing law.

43 CFR 3833.4

Paragraph (a)(1)(i) was reworked for clarity and includes new language that makes it clear that failure of a qualified small miner to make required assessment work filings results in abandonment of the claim. Paragraph (a)(2) was amended to make it clear that failure to file the certification as specified is likewise an abandonment. One comment pointed out that a December 2, 1988, final rule (53 FR 48876) apparently inadvertently removed language that provided that failure to provide the complete information required under section 3833.2-4 (a) and (b) is a curable defect. Section 3833.4(b) has been amended to correct this omission. This amendment does not negate the responsibility of the claim holder to make timely FLPMA filings.

One comment stated that paragraph (b) amounted to an abandonment of interest by BLM in verifying that the small miner exemption is justified. This paragraph merely provides for a 30-day period for a claimant to complete a timely but unintentionally insufficient filing. Such a failure to provide complete information for the certification filing for the small miner exemption within this 30-day period will reinstate the claimant's obligation to pay the rental fee. Failure to pay the rental fee on time constitutes abandonment. For all other requisite filings, a failure to provide the missing information within this time period will constitute abandonment for failure to make a complete annual filing as required by FLPMA.

One comment stated that when mistakes are found in rental fee documents by BLM that could cause an inadequate amount of fees to be submitted, BLM should allow claimants to correct the deficiency within 30 days after a notice of such a mistake is sent by BLM of the mistake allowing 30 days to comply. If a small miner certification filing is submitted by the August 31, 1993, deadline, and errors are found in the submission, the authorized officer will allow a grace period of 30 days after receipt of notification from BLM. However, there is no grace period after August 31, 1993, for payment of rental fees for claims existing on the date of the Act or located during the first assessment year.

43 CFR 3833.5

Paragraph (d) has been amended to require BLM to look only to official recordation files for ownership information when serving process in contest proceedings. This puts the burden on the owners to keep BLM informed of ownership changes as provided in section 3833.3.

43 CFR 3850.0-9

Three comments challenged the finding that it takes the public eight minutes per response to comply with assessment work. The public reporting burden estimate described in paragraph (b) of this section does not refer to the time it takes a claim holder to complete assessment. The time estimate refers to the time it may take the public to file for a deferment as described in section 3852.2. The information collection was approved by the Office of Management and Budget and comments should be forwarded to the Information Collection Officer at the address indicated.

43 CFR 3851.1

One comment asked whether assessment work on one claim could also apply to contiguous claims if the work benefits all claims. Yes, and in addition, this final rule makes no change in how assessment work is accomplished for those claimants who qualify as small miners and are required to file an annual assessment affidavit.

One comment asked whether claimants will be required to do assessment work in States that require it as well as pay the fee. The answer is yes for those States that require assessment work. The claimant should check with the State for the requirements of State law.

A comment suggested that the regulatory language stating that claims on which work is done as a group are required to be contiguous should be changed because recent court decisions held that such group work claims need not be contiguous. See *Powell* v. *Atlas Corp.*, 615 P.2d 1225, 1228 (Utah 1980). Paragraph (c) has been amended to remove reference to "contiguous" claims and instead insert the phase "covers the same mineral deposit."

43 CFR 3851.3

Paragraph (b) was amended to make it clear that failure to perform assessment work causes the mineral estate to revert to the public domain and remain open to location, absent a mineral withdrawal. Paragraph (c) was amended to make it clear that the $550 oil shale fee is an annual fee.

43 CFR 3851.5

Paragraph (a) was added to include a reference to the rental fee for completeness. Paragraph (b) was amended to make reference to mill sites and the payment of the rental fee, and to clarify when the rental fee is payable if the final certificate is canceled. The section has also been amended to make clear when mineral entry is allowed in cases where patent is applied for.

43 CFR 3852.1

Paragraph (b) was transferred to 3833.1–7(g) and amended to refer to exemption from the rental fee requirement. A comment requested a clarification of the phrase "* * * or the claimant has otherwise been denied access to his mining claims or sites * * *". The comment also requested a further clarification of what proof would be required to document a taking or access exemption. Denial of access means that BLM, in consultation with NPS, has determined as reasonable the claimant's assertion that he has been denied the ability to operate on his claims. This would include situations where the NPS has permanently denied authorization to the claimant to exercise rights to the mining claim. Concerning the forms of exemption proofs that would be acceptable, these would include copies of declarations of takings, or NPS letters that state the denial of access, or any other judicial or administrative order. A declaration by the claimant alone will not be acceptable. When a claim holder has been denied access to his/her mining claims by the NPS, the claim holder is not required first to obtain a deferment of assessment work from BLM pursuant to 43 CFR part 3852 in order to be exempt from the rental fee requirement.

The principal author of this final rule is Roger A. Haskins, Division of Mineral Resources, Nevada State Office, with assistance from Frank Bruno, Division of Solid Minerals, and from the Division of Legislation and Regulatory Management, BLM, Washington Office, and the Office of the Solicitor, Department of the Interior.

It has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual, chapter 2, appendix 1, item 1.10, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291. A major rule is any regulation that is 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, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is likely that some percentage of mining claims will be abandoned because of the rental fee requirement, but it is very difficult to identify a number. The $100 rental fee would be paid on top of expenditures for mining activity. A large company with the capacity to pay the fee may be reluctant to do so if it holds many speculative claims. Deciding factors would be the marginal nature of the operations and the speculative value of the claims. Because it is currently easy to hold a mining claim for speculative purposes, we may see claims in this category abandoned, since it will no longer be as attractive to hold them. Most claims with good production or exploration prospects would likely be held. Dropping the others should produce little negative economic effect. It is likely that the rental fee will result in a lower level of exploration activity, but it is not likely that this will have a significant economic effect, because the fee is nominal for a claim with good exploration prospects.

The Department also 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.*). The fee may represent an economic consideration for a small, marginal operation that does not quality for an exemption under the rule. However, most small operations would qualify. A small entity that holds a valuable mining claim will not be deterred by the annual fee, and many of them will qualify for an exemption.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. The rule will have no effect on private property rights.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The provisions for collection of information contained at 43 CFR parts 3730, 3820, 3833 and 3850 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004–0114, 1004–0104, and 1004–0110, and subsequently consolidated in 1004–0114, with minor revisions.

Public reporting for this collection of information is estimated to average 8 minutes (0.125 hours) per response, including time for gathering and maintaining the data needed, and reviewing and completing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of

Information Resources Management, BLM (783), 1849 C Street NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1004–0114, 1004–0104, or 1004–0110), Washington, DC 20503.

List of Subjects

43 CFR Part 3730

Administrative practice and procedure, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3820

Mines, Monuments and memorials, National forests, National parks, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3830

Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR 3850

Assessment work, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79); the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776); sections 441 and 2478 of the Revised Statutes, as amended, (43 U.S.C. 1457 and 1201); sections 2319, 2322, and 2324 of the Revised Statutes, as amended (30 U.S.C. 22, 26, and 28–28e), and section 310 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740); parts 3730, 3820 and 3850, Groups 3700 and 3800, Subchapter C, chapter II of title 43 of the Code of Federal Regulations are amended as follows:

Dated: June 25, 1993.

John D. Leshy,

Solicitor.

PART 3730—PUBLIC LAW 359; MINING IN POWER SITE WITHDRAWALS: GENERAL

1. The authority citation for part 3730 is added to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 106 Stat. 1374, 1378–1379.

Subpart 3730—Public Law 359; Mining in Power Site Withdrawals: General

2. Section 3730.0–1 is revised to read as follows:

§ 3730.0–1 Purpose; lands open.

The purpose of the Mining Claims Rights Restoration Act of August 11, 1955 ("Act") is to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development and other purposes, except for lands that:

(a) Are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress; or

(b) Are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission under an uncancelled preliminary permit which has not been renewed more than once.

3. Section 3730.0–3 is revised to read as follows:

§ 3730.0–3 Authority.

The authority for the regulations in this part is the Act of August 11, 1955 (69 Stat. 681, 30 U.S.C. 621–625), section 314 of the Act of October 21, 1976 (90 Stat. 2769, 43 U.S.C. 1744), and Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–1379).

4. Section 3730.0–9 is added to read as follows:

§ 3730.0–9 Information collection.

(a) The collections of information contained in subpart 3730 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0110 and subsequently consolidated with 1004–0114. The information will be used to allow the authorized officer to determine whether a mining claimant is qualified to hold a mining claim or site for the exploration, development, and utilization of minerals on all public lands that are withdrawn for power development. The information collected will be used to make this determination. A response is required to obtain a benefit in accordance with the Act of August 11, 1955 (Pub. L. 84–359, 30 U.S.C. 621–625), section 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), and the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379).

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St., NW, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

Subpart 3734—Location and Assessment Work

5. Section 3734.1 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 (a) and (b), shall file a notice or certificate of location or notice of transfer of interest with the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title, and pay the rental fees required by the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379). The document shall be marked by the owner that it is being filed pursuant to the Act of August 11, 1955, the Act of April 8, 1948, or both, as prescribed by § 3833.5(c) of this title.

* * * * *

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 shall perform and record annual assessment work or pay an annual rental fee of $100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or Notice of Intent to Hold, pursuant to subpart 3833 of this title.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

6. The authority citation for part 3820 is added to read as follows:

Authority: 62 Stat. 162; 48 U.S.C. 364a–364c; 16 U.S.C. 482a; 25 U.S.C. 461–479; 16 U.S.C. 251–255; 16 U.S.C. 447; 49 Stat. 1817; 16 U.S.C. 450z; 50 Stat. 1827; 16 U.S.C. 460y; 42 U.S.C. 4332; 30 U.S.C. 22 *et seq.*

Subpart 3821—O and C Lands

7. Section 3821.0–3 is added to read as follows:

§ 3821.0–3 Authority.

The authorities for the regulations in this subpart are the Act of April 8, 1948 (62 Stat. 162), section 314 of the Act of October 21, 1976 (90 Stat. 2769), and Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–1379).

8. Section 3821.2 is revised to read as follows:

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3821.1 shall file a notice or certificate of location or notice of transfer of interest with the proper State Office of the BLM pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title and pay the rental fees required by the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379). The document shall be marked by the owner as being filed under the Act of April 8, 1948 (62 Stat. 162).

9. Section 3821.3 is revised to read as follows:

§ 3821.3 Requirement for filing statements of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located upon O and C lands shall perform and record proof of annual assessment work, or pay an annual rental fee of $100 per unpatented mining claim, mill site, or tunnel site, pursuant to subpart 3833 of this title.

PART 3830—LOCATION OF MINING CLAIMS

10. The authority citation for part 3830 is revised to read as follows:

Authority: 30 U.S.C. 22, secs. 2319 and 2478 R.S., as amended (43 U.S.C. 1201), 31 U.S.C. 9701, 16 U.S.C. 1901, 1907; 43 U.S.C. 1734, 1740, 1744, and 1782; 106 Stat. 1374, 1378–1379.

11. Subpart 3833 is amended by removing the note at the beginning of the subpart and by revising the subpart heading to read as follows:

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites and Payment of Service Charges; and Payment of Rental Fees

12. Section 3833.0–1 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, by adding in newly designated paragraph (e), immediately following the word "Act" the parenthetical acronym "(FLPMA)", and adding a new paragraph (c) to read as follows:

§ 3833.0–1 Purpose.

* * * * *

(c) The payment in the same office of an annual rental fee, if required, for each mining claim, mill site, or tunnel site held by the claimant;

* * * * *

13. Section 3833.0–3 is amended by adding after "43 U.S.C. 2" in paragraph (b) the citations; ", 43 U.S.C. 1212, and 43 U.S.C. 1457," by revising paragraph (a); and by adding paragraphs (e) and (f) to read as follows:

§ 3833.0–3 Authority.

(a) Sections 314(a) and (b) of FLPMA (43 U.S.C. 1744) require the recordation of the notice or certificate of location of unpatented mining claims, mill sites, and tunnel sites, and the filing of affidavits of assessment work performed, notices of intent to hold, or detailed reports for each unpatented mining claim, mill site, and tunnel site, in the proper BLM office within specified time periods. Section 314(c) of FLPMA provides that a failure to record the required documents within the time limits imposed by the statute constitutes a conclusive abandonment of the mining claim, mill site, or tunnel site, which shall be void.

* * * * *

(e) The Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379), requires an annual rental fee of $100 to be paid to the proper office of the Bureau of Land Management for each non-exempt mining claim, mill site, or tunnel site located or held under section 314(b) of FLPMA for the assessment years ending in 1993 and 1994. With certain exceptions, this rental fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28–28e and section 314(a)(1) of FLPMA. Failure to pay the fee within the time limits prescribed by the Act of October 5, 1992, constitutes a statutory abandonment of the non-exempt mining claim, mill site, or tunnel site, which shall thereupon be void. Provisions relating to rental fee and exceptions are contained in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7.

(f) Section 2511(e)(2) of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776), requires oil shale claim holders to pay an annual fee of $550 per oil shale claim, notwithstanding any other provision of law, including the Act of October 5, 1992. This requirement supersedes the fee requirements of the Act of October 5, 1992, insofar as they relate to oil shale claims.

14. Section 3833.0–5 is amended by revising paragraphs (a), (g), (m), and (o), adding two sentences to the end of the concluding text of paragraph (p), and adding paragraphs (t), (u), (v), and (w) to read as follows:

§ 3833.0–5 Definitions.

* * * * *

(a) *FLPMA* means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701) *et seq.).*

* * * * *

(g) *Proper BLM office* means the Bureau of Land Management State Office listed in § 1821.2–1(d) of this title, and, in Alaska, the Fairbanks BLM Office, having jurisdiction over the area in which the claims or sites are located.

* * * * *

(m) *File* or *filed* means being received and date stamped by the proper BLM office. For the purposes of complying with § 3833.2, a filing is timely if the required affidavit of assessment work or notice of intent to hold is received within the time period prescribed by law, or if mailed to the proper BLM office, is in an envelope clearly postmarked by the United States Postal Service within the period prescribed by law and received by the proper BLM office within 15 calendar days subsequent to such period. This 15 day period does not apply to filings made pursuant to §§ 3833.1–2, 3833.1–5, or 3833.1–7. (See § 1821.2–2(e) of this title if the last day falls on a day the office is closed).

* * * * *

(o) *Filing year* means the time period during which documents and fees are required to be provided to the proper BLM office. The time periods set forth in each statue are as follows:

(1) Except for filing by a small miner qualifying for an exemption under § 3833.1–7(d), filings under FLPMA that would have been due on or before December 30, 1993, and December 30, 1994, are waived effective January 1, 1993, and so long thereafter as the Act of October 5, 1992, is in effect. The annual filing for each claim or site required for the assessment year ending on September 1, 1992, shall be filed with the proper BLM office on or before December 30, 1992.

(2) Filings under the Act of October 5, 1992, shall be made by August 31, 1993, except for new claims located after August 31, 1993.

(p) * * *

* * * An amendment to a notice or certificate of location shall not be used to effect a transfer of ownership of interest or to add owners. Such transfers or additions shall only be filed with the proper State Office of the BLM pursuant to § 3833.3.

* * * * *

(t) *Rental fee* means the fee required by the Act of October 5, 1992 (Public Law 102–381, 106 Stat. 1374, 1378–1379), which is paid to hold a mining claim, mill site, or tunnel site. The rental fee is in lieu of the requirements for performing assessment work under 30 U.S.C. 28–28e and for filing an annual affidavit of labor or Notice of Intent to Hold with the proper State Office of the Bureau of Land Management under section 314 (a) and (c) of FLPMA and § 3833.2. Under certain conditions, a small miner may be exempt from the rental fee requirement, or a claimant may be granted a deferment of assessment work pursuant to subpart 3852 of this title. The rental fee requirements will expire on September 30, 1994. The rental fee requirements and exceptions are governed by §§ 3833.1–5, 3833.1–6, and 3833.1–7.

(u) *Small miner* means a claimant/owner of a mining claim(s), that meets the requirements of §§ 3833.1–6 and 3833.1–7.

(v) *Nonrefundable* means non-returnable as follows:

(1) Service charges are not returnable after the document received has been docketed and/or serialized.

(2) Rental fees are not returnable unless the mining claim or site has been determined, as of the date the fees were paid, to be null and void *ab initio* or abandoned and void by operation of law.

(w) *Age of discretion* means that age at which, pursuant to State law, an individual is legally entitled to manage his or her own affairs, and to enjoy civic rights.

15. Section 3833.0–9 is added to read:

§ 3833.0–9 Information collection.

(a) The collections of information contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0114. The information will be used to allow BLM to record mining claims, mill sites, and tunnel sites; to maintain ownership records to those claims and sites; to determine the geographic location of the claims and sites recorded for proper land management purposes; and to determine which claims and sites are being held by their owner(s) under applicable Federal statute. A response is required to obtain a benefit in accordance with section 314 of FLPMA, as amended, and the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379).

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St. NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

§ 3833.1 [Amended]

16. Section 3833.1–1 is amended by replacing the term "the Act" wherever it appears in paragraph (a) with the acronym "FLPMA".

§ 3833.1–2 [Amended]

17. Section 3833.1–2(a) is amended by adding a new sentence at the end of the paragraph to read as follows:

(a) * * * (See § 3734.1(a) of this title for mining claims and sites filed under Pub. L. 84–359 (69 Stat. 681) and § 3821.2 of this title for mining claims and sites filed on O and C lands).

* * * * *

18. Section 3833.1–3 is revised to read as follows:

§ 3833.1–3 Service charges and rental fees; form of remittance.

(a) All service charges and rental fees shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency and shall be made payable to the Department of the Interior-Bureau of Land Management, or by a valid credit card acceptable to the Bureau of Land Management.

(b)(1) Filings submitted pursuant to § 3833.1–2 that are not accompanied by full payment of the rental fees required by § 3833.1–5 will be processed pursuant to paragraph (b)(3) of this section. Filings for which the required rental fee is deficient after application of paragraph (b)(3) of this section by the authorized officer will be rejected.

(2) Filings submitted pursuant to §§ 3833.2, 3833.3, or 3833.1–7, and amended locations filed under § 3833.0–5(p), that are not accompanied by the full payment of service charges set forth in § 3833.1–4 shall be curable. Such filings shall be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge shall cause the filing to be rejected and returned to the claimant/owner.

(3) If a claimant fails to submit the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer, the authorized officer will apply the service charges and rental fees received to existing recorded filings in ascending numerical order of serialization. Existing filings to which no service charge or rental fee could be applied because of the insufficiency of the funds paid to the authorized officer will be held for rejection in the same manner as service charges pursuant to paragraph (b)(2) of this section.

(4) Beginning on October 6, 1992, notices of location for new mining claims or sites that are filed with insufficient charges and rental fees will not be accepted and will be returned to the claimant/owner without further action.

19. Section 3833.1–4 is revised to read as follows:

§ 3833.1–4 Service charges.

(a) Each notice or certificate of location of a mining claim, mill site, or tunnel site filed for recordation shall be accompanied by a non-refundable service charge of $10.00.

(b) Annual filings submitted pursuant to § 3833.2 shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site. A service charge is not required to accompany the rental fee submitted in lieu of assessment work or Notice of Intent to Hold as required by § 3833.1–5 or the certified statement of exemption required to be filed by § 3833.1–7.

(c) Amendments to a previously recorded notice or certificate of location shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(d) Each transfer of interest document filed pursuant to § 3833.3 shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site affected.

(e) The claimant/owner may authorize the BLM to charge payment of service charges and rental fees to his credit card under § 3833.1–3(a), by transmission of a facsimile authorization bearing the signature of the claimant/owner to the authorized officer, or the authorized officer may accept such authorization telephonically if the identity of the claimant/owner is established to the satisfaction of the authorized officer.

(f) The claimant/owner may also maintain a declining deposit account with the State Office of the BLM where the mining claims and sites are recorded for the payment of service charges and rental fees. The authorized officer may deduct the necessary service charges and rental fees from such account at the direction of the claimant/owner.

20. Section 3833.1–5 is added to read as follows:

§ 3833.1–5 Rental fees.

Except as provided in §§ 3833.0–3(f) and 3833.1–6, each claimant shall pay a nonrefundable rental fee of $100.00 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. Claimants who completed assessment work during the period from September 1, 1992, through October 4, 1992, shall pay the rental fee for the year ending September 1, 1993. The assessment years specified in the Act of October 5, 1992, begin on September 1, 1992, and September 1, 1993. The $100 rental fee requirement does not apply to oil shale claims. Instead, oil shale claim holders shall pay an annual $550 fee for each oil shale claim as described in section 2511 of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776).

(a) *Mining claim or site located on or after October 6, 1992, and on or before September 30, 1994.* The $100.00 nonrefundable rental fee, for the assessment year in which the mining claim or site was located, shall be paid for each mining claim, mill site, or tunnel site at the time of recording of the mining claim, mill site, or tunnel site pursuant to section 314(b) of FLPMA and § 3833.1–2 in addition to the service charge required by § 3833.1–4(a).

(1) For all mining claims, mill sites, or tunnel sites located on or before August 31, 1993, and for which the notice of location is filed in a timely manner pursuant to section 314(b) of FLPMA before August 31, 1993, the $100 rental fee for the assessment year beginning on September 1, 1993, shall be paid on or before August 31, 1993. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the rental fee is being paid. The list shall state the assessment year to which the payment applies.

(2) For all mining claims, mill sites, or tunnel sites located within the assessment year beginning September 1, 1992, and for which the notice of location is filed in a timely manner in the proper BLM Office pursuant to section 314(b) of FLPMA and § 3833.1–2 after August 31, 1993, the $100 rental fee for the assessment year beginning September 1, 1993, shall be paid at the time of filing in addition to the requirements of paragraph (a) of this section and the service charge required by § 3833.1–4(a).

(3) For all mining claims, mill sites, or tunnel sites located and recorded on or after September 1, 1993, the $100 rental fee for the assessment year beginning on September 1, 1993, shall be paid at the time of recording in addition to the service charge required by § 3833.1–4(a).

(4) If the mining claim, mill site, or tunnel site is located during the period beginning at noon on September 1, 1994, and ending on September 30, 1994, and is recorded in a timely manner pursuant to section 314(b) of FLPMA and § 3833.1–2, and the date of timely recording is on or after October 1, 1994, the rental fee is required at the time of recording.

(b) *Mining claim or site located on or before October 5, 1992.* A nonrefundable rental fee of $100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of $200. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the rental fee is being paid. The list shall state the assessment years to which the payment applies.

(c) There will be no proration of rental fees for partial years of holding of mining claims, mill sites, or tunnel sites.

(d) A small miner may, under certain conditions described in §§ 3833.1–6 and 3833.1–7, perform assessment work and file the affidavit of labor pursuant to § 3833.2 in lieu of paying the rental fee.

(e) A small miner may elect to file for an exemption in one of the two years covered by the law and pay the rental fee for the other year.

(f) The owner of an oil shale claim shall pay the required $550 rental fee to the proper BLM office on or before December 31, 1993, and each December 31st thereafter.

(g) The payment of the required rental fee for a mining claim, mill site, or tunnel site satisfies the requirement to file a notice of intent to hold pursuant to § 3833.2.

21. Section 3833.1–6 is added to read as follows:

§ 3833.1–6 Rental fee exemption qualifications.

A small miner may, under certain conditions described in this section and in § 3833.1–7, perform the assessment work required under 30 U.S.C. 28–28e and record it pursuant to section 314(a) of FLPMA and § 3833.2 in lieu of paying the rental fee. Assessment work shall be of the nature described in paragraph (b) of this section.

(a) In order to qualify for an exemption from the rental fee requirements, a small miner shall meet all the following conditions:

(1) The claimant shall hold 10 or fewer mining claims, mill sites, and tunnel sites, on Federal lands in the United States. For purposes of determining the small miner exemption, oil shale claims will not be counted toward the 10-claim limitation for the small miner exemption to the $100 rental fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the rental fee in addition to filing for a small miner exemption.

(2) Mining claims held by a husband and wife, either jointly or individually, or their children under the age of discretion, shall be counted toward the 10-claim limit.

(3) Mining claims held in co-ownership, or by an association of locators, by a partnership, or by a corporation shall be counted toward the 10-claim limit for claimants that have an interest in these entities.

(4) The mining claims shall be under:

(i) One or more Notices or approved Plans of Operations pursuant to subparts 3802 or 3809 of this title; or

(ii) A Plan of Operations issued under parts 9 and 228 of Title 36 of the Code of Federal Regulations for National Park System lands and National Forest System lands respectively; or

(iii) A special use permit issued by a Federal agency for the mining or removal of locatable minerals; or

(iv) A State or local authority mining or reclamation permit if the surface estate of the mining claim is not in Federal ownership.

(5) The mining claims shall collectively have less than 10 acres of unreclaimed surface disturbance remaining that is caused by mining or exploration operations covered by the Notice(s) or approved Plan(s) of Operation, special use permit, or State or local mining or reclamation permit since January 1, 1981.

(6) The mining claims shall collectively either be producing or shall be under active exploration, as follows:

(i) The claimant shall be producing from the 10 or fewer collective mining claims no less than $1,500.000 and no more than $800,000.00 in gross revenues per year; or

(ii) The claimant shall be actively and diligently performing exploration work on the 10 or fewer claims to disclose, expose, or otherwise make known possible valuable mineralization.

(b) To qualify for the exploration exemption, the work shall be of a physical nature performed on or for the benefit of the claims, and of a nature that would require a notice or plan of operations and lead to the development of the mineral property for mining purposes. Examples of qualifying exploration work include, but are not limited to, drilling, excavations, sampling (geochemical or bulk), road construction for development of the property, and ground geophysical work that requires a plan of operations, a notice, or a permit as specified in paragraph (a)(4) of this section.

22. Section 3833.1–7 is added to read as follows:

§ 3833.1–7 Filing requirements for rental fee exemptions.

(a) The affidavit of assessment work performed by a small miner claiming a rental fee exemption shall be filed with the proper State Office of the BLM pursuant to § 3833.2 and meet the requirements of § 3833.2–4.

(b) For mining claims located on or before October 5, 1992, to claim the small miner's exemption, the following requirements shall be met.

(1) *For the assessment year beginning September 1, 1992.* The affidavit of assessment work for the period of September 1, 1992, through September 1, 1993, shall be filed on or before December 30, 1993, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed in the proper State Office of the BLM on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section.

(2) *For the assessment year beginning September 1, 1993.* The affidavit of assessment work for the period of September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section.

(c) For mining claims located on or before October 6, 1992, and before September 1, 1993, to claim the small miner's exemption for the year beginning September 1, 1993, the affidavit of assessment work for the period of September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed in the proper State Office of the BLM on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section. For exempt mining claims located on or after October 6, 1992, and on or before December 31, 1992, the filing of the certified statement in paragraph (d) of this section shall satisfy the requirements for filing or notice of intent to hold pursuant to § 3833.2–5.

(d) The small miner shall file a separate statement on or before August 31, 1993, supporting the claimed exemption for each assessment year a small miner's exemption is claimed (for the year ending September 1, 1993, the assessment affidavit required by FLPMA continues to be due on December 30, 1993; and for the year ending September 1, 1994, the assessment filing is due on December 30, 1994), certified to under penalty of 18 U.S.C. 1001. The certified statement shall contain:

(1) The serial number(s) or other designation(s) assigned by the Federal land management agency to the Notice(s), Plan(s) of Operations, special use permits, or the number(s) assigned by the State or local agency issuing mining or reclamation permits covering the mining claim or claims for which the exemption is sought.

(2) The claim names and BLM serial numbers assigned to the mining claims held by the small miner.

(3) A declaration that the exemption for the given assessment year that has been or is being claimed by the claimant, claimant's spouse, or children of claimant under the age of discretion, or the association of locators, or the partnership of locators, or the corporation, for the given assessment year does not exceed 10 claims in total.

(4) A declaration that specifies the gross dollar revenues from the mineral commodities produced from the beginning of the assessment year by commodity, that were produced from the claimant's claims in total, which are by law required to be 10 or fewer in number, or describes the level of exploration being performed to disclose, expose, or otherwise make known possible valuable mineralization.

(i) For the assessment year ending September 1, 1993, the gross dollar revenues shall be calculated for the period beginning on September 1, 1991, and ending on September 1, 1992.

(ii) For the assessment year ending September 1, 1994, the gross dollar revenues shall be calculated for the period beginning on September 1, 1992, and ending on September 1, 1993.

(5) A declaration that specifies that the assessment work requirements have been or will be completed as follows:

(i) For the assessment year ending September 1, 1993, the declaration shall state that the assessment work was completed in that year.

(ii) For the assessment year ending September 1, 1994, the declaration shall state that the assessment work will be completed in that year.

(6) A declaration that the mining claims collectively have less than a total of 10 acres of unreclaimed surface disturbance remaining that is caused by the mining or exploration operation covered by the Notice(s) or approved Plan(s) of Operations, special use permit, or State or local mining or reclamation permit.

(7) All the owners of the mining claim(s) for which an exemption is claimed shall sign the certified statement.

(8) The certified statement shall be notarized.

(e) Mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30 U.S.C. 28(b)–(e) and subpart 3852 of this title are exempt from the payment of the rental fee for the assessment period(s) during which the deferment is granted. The rental fee will be required to be paid by August 31, 1993, if the deferment expires on or before that date. The rental fee will be required to be paid within 30 days after the date the deferment expires if the expiration occurs on or after September 1, 1993, and on or before September 1, 1994. The claimant shall file evidence of a valid deferment on or before August 31, 1993, with the proper BLM office in the assessment year for which the deferment has been granted. The evidence shall include a list of mining claim names and serial numbers for which the deferment exemption is sought. Deferment exemptions are governed by the following conditions:

(1) If a petition for a deferment of assessment work, as required by § 3852.2 of this title, is filed with the proper BLM office on or before August 31, 1993, for the assessment year beginning on September 1, 1992, the rental fee need not be paid on the claims listed in the petition of deferment until the authorized officer has acted upon the petition.

(2) If the petition is granted, the claims are exempt from the rental fees for that assessment year. At the expiration of the deferment, if it occurs after September 1, 1994, all deferred assessment work shall be done as provided in § 3852.5 of this title.

(3) If the petition for deferment is denied by the authorized officer, the rental fees that were due on August 31, 1993, must be paid within 30 days of receipt of the decision of the authorized officer denying the petition for deferment. Failure to pay the rental fees owed shall cause the claims contained

within the petition to be declared abandoned and void.

(f) Mining claims for which an application for a mineral patent has been filed, and the mineral entry has been allowed by the authorized officer pursuant to 30 U.S.C. 29 and § 3862.4–6 and 3862.5 of this title, are exempt from the payment of the rental fee for the assessment years during which assessment work is not required pursuant to § 3851.5 of this title; however, no refund of previously deposited rental fees will be made to the mineral patent applicant.

(g) under the following circumstances, an exemption may be obtained from the payment of the rental fee for mining claims and sites located upon National Park System lands:

(1) The claimant has received a declaration of taking or a notice of intent to take from the National Park Service pursuant to sections 6 and 7 of the Act of September 28, 1976, as amended (16 U.S.C. 1905, 1906) or the Act of December 2, 1980, as amended (16 U.S.C. 3192); or the claimant has otherwise been denied access by the United States to his/her mining claims or sites on National Park Service lands.

(2) The claimant shall provide proof of the above conditions for exemption, filed as a certified statement, by August 31, 1993, with the proper BLM office.

23. Section 3833.2–1 is amended by adding in paragraph (a) after the date "1977," the phrase "except as provided under the Act of October 5, 1992," and by revising paragraph (e) to read as follows:

§ 3833.2–1 National Park System lands.

* * * * *

(e) The authorized officer will forward copies of annual filings on, and will periodically provide the status of, mining claims, mill sites, and tunnel sites located within a unit of the National Park System to the proper National Park Service office.

§ 3833.2–2 [Amended]

24. Section 3833.2–2 is amended by adding in the introductory paragraph after the word "System" the phrase, "except as provided in §§ 3833.1–5 through 3833.1–7,".

25. Section 3833.2–3 is amended by revising the section heading and adding new paragraphs (d) and (e) to read as follows:

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, and the Act of October 5, 1992.

* * * * *

(d) The Act of October 5, 1992, will not affect the requirements to do assessment work in the assessment year beginning on September 1, 1994, and ending on September 1, 1995, or to make annual filings on or before December 30, 1995, pursuant to §§ 3833.2 and 3851.1.

(e) For mining claims and sites located on or after September 1, 1994, and on or before September 30, 1994, and for which the required $100 rental fee was paid at the time of recording pursuant to section 314(b) of FLPMA and § 3833.1–2, payment of the rental fee satisfies the requirements of § 3833.2 for the 1995 year.

26. Section 3833.3 is amended by adding paragraph (a)(3) to read as follows:

§ 3833.3 Notice of transfer of interest.

(a) * * *

(3) A copy of the legal instrument or document that operates under State law to transfer the interest in the claim being sold, assigned, or otherwise transferred.

* * * * *

27. Section 3833.4 is amended by revising the section heading, paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 3833.4 Failure to file or pay rental fee.

(a)(1) The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before December 30, 1992, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void. The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before December 30, 1995, and within the time periods prescribed therein after that date, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void. For mining claims located on or after September 1, 1994, and on or before September 30, 1994, and for which the required rental fee was paid at the time of recording, the failure to make annual fillings required by §§ 3833.2–1 and 3833.2–2 on or before December 30, 1996, and within the time prescribed therein after that date, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(i) Failure to file the affidavit of assessment work required by § 3833.1–7 (a), (b), and (c) in a timely manner, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(ii) Except for the filings required on or before December 30, 1992, effective October 5, 1992, the requirements of §§ 3833.2–1 through 3833.2–5 are modified by the requirements of the Act of October 5, 1992, and the Energy Policy Act, and administrated through §§ 3833.1–5, 3833.1–6, and 3833.1–7.

(2) Failure to file the notice or certificate of location required by § 3833.1–2(a), § 3734.1(a), or § 3821.2 of this title, or to pay the rental fee required by § 3833.1–5, or file the documents required by § 3833.1–7 (a), (b), or (c) within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(b) Unintentional failure to file the complete information required in §§ 3833.1–2(b), 3833.1–7 (d) and (e), 3833.2–4 (a), 3833.2–4(b), 3833.2–5(c), and 3833.3, when the document is otherwise filed on time, shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. * * *

* * * * *

28. Section 3833.5 is amended by revising paragraph (b) and the first and last sentences of paragraphs (d) to read as follows:

§ 3833.5 Effect of recording and filing.

* * * * *

(b) Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the other requirements of Groups 3700 and 3800 of this title, and with laws and regulations issued by any State or other authority relating to locating, recording, and maintenance of mining claims, mill sites, and tunnel sites located, held, and maintained upon the public lands of the United States.

* * * * *

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill, or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1–2 and filed a notice of transfer of interest pursuant to § 3833.3 shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified and served by certified mail sent to their last address of record. * * * The provisions of this subpart shall not be applicable to procedures for public notice required under part 3860 of this title with respect to mineral patent applications.

* * * * *

PART 3850—ASSESSMENT WORK

29. The authority citation for part 3850 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28–28(e); and 106 Stat. 1374, 1378–1379.

30. Section 3850.0–1 is added to read as follows:

§ 3850.0–1 Purpose.

The purpose of this part is to recite the requirements of the General Mining Law of 1872, as amended, for the performance of assessment work; to identify the methods provided by statute for qualifying assessment work; to provide for the deferment or suspension of assessment work under certain conditions; and to advise the claimant of the consequences of failing to perform the work.

31. Section 3850.0–9 is added to read as follows:

§ 3850.0–9 Information collection.

(a) The collections of information contained in part 3850 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0104 and subsequently consolidated with 1004–0114. The information will be used to allow the BLM to process petitions for the deferment of assessment work, determine if the assessment work required by statute (30 U.S.C. 28–28(e)) was indeed performed, and to determine the ownership of a mining claim or site in cases of delinquency of co-owners under 30 U.S.C. 28. A response is required to obtain a benefit in accordance with Section 2324 of the Revised Statutes, as amended (30 U.S.C. 28–28(e)) and 43 CFR part 3850.

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St., NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

Subpart 3851—Assessment Work: General

32. Section 3851.1 is revised to read as follows.

§ 3851.1 Assessment work requirements.

(a) The assessment year begins at 12 o'clock noon on September 1st and ends at 12 o'clock noon on the following September 1st.

(b) All lode and placer mining claimants shall have performed, or caused to have been performed, not less than $100 of labor or improvements upon each lode or placer claim held by the claimant for each assessment year following the assessment year of the lode or placer claim's location.

(c) Where a group of lode or placer claims are held in common, and cover the same mineral deposit, the assessment work may be performed on one or several claims of the group, as long as the aggregate expenditure totals not less than $100 per claim, and the work performed or improvements made will benefit the development of the claim block as a whole.

§ 3851.1–1 [Removed]

33. Section 3851.1–1 is removed.

34. Section 3851.3 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3851.3 Effect of failure to perform assessment work.

* * * * *

(b) Except as provided in § 3851.5 and subpart 3852, failure to perform the assessment work required under § 3851.1 causes the interest of the claimant(s) in the minerals subject to the mining laws to revert back to the public domain.

(c) The Act of October 5, 1992, with certain exceptions for small miners, temporarily suspends and supersedes the requirements to perform assessment work under § 3851.1, and requires the payment of a $100 rental fee per mining claim or site in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $550 rental fee per oil shale mining claim in lieu of the assessment work. The rental fee requirements and exemptions from payment of the rental fee are described in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7 of this title.

35. Section 3851.4 is amended by revising the section heading and the first sentence of the section to read as follows:

§ 3851.4 Failure of a co-owner to contribute to annual assessment work or to the payment of rental fees.

Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners, who have performed the labor, where required, paid the rental fee required under § 3833.1–5 of this title, or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. * * *

36. Section 3851.5 is revised to read as follows:

§ 3851.5 Assessment work not required after allowance of mineral entry.

Performance of annual assessment work is not required after the date that the mineral entry has been allowed by the authorized officer pursuant to 30 U.S.C. 29 and § 3862.5 of this title.

(a) The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work is no longer required, and assessment work is not required in any assessment year thereafter if a mineral patent issues. If the mineral entry is canceled by the authorized officer, either in whole or in part, on or before September 30, 1994, assessment work by qualified small miners is required in order to maintain the claim, and the rental fees shall be paid by claimants who do not qualify as small miners. After September 30, 1994, assessment work by all claimants is required, except for those who locate between September 1, 1994, and September 30, 1994, who are not required to file an assessment affidavit in 1995.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of rental fees, beginning in the assessment year next following the assessment year that the mineral entry was canceled.

[FR Doc. 93–16689 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–84–M

federal register

Thursday
July 15, 1993

Part IV

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Department of Transportation

Office of the Secretary

49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Accessible Automated Teller Machines and Fare Vending Machines; Joint Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 92-1]

RIN 3014-AA14

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket 48463; Notice 92-22]

RIN 2105-AB97

Americans With Disabilities Act Accessibility Guidelines; Accessible Automated Teller Machines and Fare Vending Machines

AGENCIES: Architectural and Transportation Barriers Compliance Board and Department of Transportation.

ACTION: Joint final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) and the Department of Transportation are issuing a final rule amending the reach range requirement for automated teller machines and fare vending machines under the Americans With Disabilities Act Accessibility Guidelines (ADAAG). The rule sets out the reach ranges for controls when a person using a wheelchair can make a forward approach only, a parallel approach only, or both a forward and parallel approach to a machine. The rule includes a table of reach depths and maximum heights for the placement of controls where the controls are recessed or the installation of a surround in front of the machine results in a reach depth of more than 10 inches to any control from a parallel approach.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Access Board: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004-1111. Telephone (202) 272-5434 (voice) or (202) 272-5449 (TDD).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., room 10424, Washington, DC 20590. Telephone (202) 366-9306 (voice) or (202) 755-7687 (TDD).

The telephone numbers listed above are not toll-free numbers.

This document is available in alternate formats (cassette tape, braille, large print, or computer disc) from the Access Board upon request.

SUPPLEMENTARY INFORMATION:

Background

Under the Americans with Disabilities Act of 1990 (ADA), the Access Board is responsible for issuing guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards for newly constructed and altered buildings and facilities covered by the Act.[1] The Access Board issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991. See 36 CFR part 1191, appendix. The Department of Justice and the Department of Transportation adopted ADAAG as the accessibility standards for newly constructed and altered buildings in regulations implementing certain titles of the ADA. See 28 CFR part 36, appendix A; 49 CFR part 37, appendix A.

As originally adopted, ADAAG requires that accessible automated teller machines (ATMs) provide "both a forward and side reach to the unit allowing a person in a wheelchair to access the controls and dispensers."[2] See ADAAG 4.34.3. The provision was intended primarily to address the fact that the controls on ATMs are typically recessed or set back into the wall or the unit for privacy and security purposes. The installation of fixtures called "surrounds" in front of ATMs, which contain writing counters and bins for envelopes and waste paper, create a further obstruction that increases the reach depth to the controls.

In February 1992, two leading ATM manufacturers, NCR Corporation and InterBold, filed a petition for rulemaking with the Access Board claiming that their new ATMs cannot comply with "both a forward and side reach" and requested that ADAAG be amended to permit "either a forward or side reach." The American Bankers Association joined in the petition and raised questions regarding the effect that both a forward and side reach requirement would have on other user groups, especially persons with vision impairments, persons who have difficulty bending or stooping, and elderly persons.

The Access Board requested public comments on the matter and held a public hearing in May 1992. See 57 FR 19472 (May 6, 1992). An ATM surround manufacturer, Companion Systems, recommended that ADAAG include a table of reach depths and maximum heights for controls based on a straight line interpolation connecting the points between the maximum side reach with and without an obstruction from a parallel approach to address the increased reach depth resulting from recessed controls and the installation of surrounds in front of ATMs. In September 1992, the Access Board issued a notice of proposed rulemaking (NPRM) to amend the reach range requirement for ATMs by including such a table in ADAAG in place of requiring "both a forward and side reach" to the controls. See 57 FR 41006 (September 8, 1992).

The Department of Transportation issued a NPRM in November 1992 to amend its ADA regulations in several respects, including conforming the standards for transportation facilities to incorporate the proposed amendment to the reach range requirement for ATMs. See 57 FR 54210 (November 17, 1992). The amendment is relevant to transportation facilities because fare vending machines are required to comply with the same requirements as ATMs. See ADAAG 10.3.1(7).

The Department of Justice also issued a NPRM in April 1993 to amend its regulations on nondiscrimination on the basis of disability by public accommodations and in commercial facilities covered by title III of ADA (28 CFR part 36) to incorporate the proposed amendment to the reach range requirement for ATMs. See 58 FR 17558 (April 5, 1993). The Department of

---

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act of 1973, as amended, whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of whom are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

[2] The dimensions for a forward and side reach for wheelchair users are contained in ADAAG 4.2.5 and 4.2.6 and are taken from the "American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People" (ANSI A117.1-1980). The maximum forward reach permitted is 48 inches above the floor. See ADAAG 4.2.5 and Figure 5(a). If the forward reach is over an obstruction, clear floor space must be provided under the obstruction that equals or exceeds the reach depth for a maximum of 25 inches; and if the reach depth is between 20 inches and 25 inches, the maximum forward reach permitted is 44 inches above the floor. See ADAAG 4.2.5 and Figure 5(b). The maximum side reach permitted is 54 inches above the floor for a maximum reach depth of 10 inches. See ADAAG 4.2.6 and Figure 6(b). If the side reach is over an obstruction, the maximum side reach permitted is 46 inches. See ADAAG 4.2.6 and Figure 6(c).

Justice will issue a separate final rule notice in the Federal Register regarding the amendment of its regulations.

Summary of Rule and Comments

The Access Board and the Department of Transportation are adopting as a final rule the proposed amendment to the reach range requirement for ATMs and fare vending machines.[3] The technical provisions in ADAAG 4.34 are reorganized to more clearly set out the clear floor space and reach range requirements. The scoping provisions in ADAAG 4.1.3 (20) for buildings and facilities in general, and in ADAAG 10.3.1 (7) for transportation facilities in particular, are also revised to correctly reference the reorganized technical provisions in ADAAG 4.34.

ADAAG 4.34.1 provides that each ATM required to be accessible by the scoping provision in ADAAG 4.1.3 (20) must be on an accessible route and comply with the other requirements in ADAAG 4.34.2 through 4.34.5. ADAAG 10.3.1 (7) provides for fare vending machines in transportation facilities also to be on an accessible route and to comply with ADAAG 4.34.2 through 4.34.5.

ADAAG 4.34.2 requires that ATMs be located so that clear floor space complying with ADAAG 4.2.4 (i.e., 30 inches by 48 inches minimum with one full unobstructed side adjoining or overlapping an accessible route) is provided to allow a wheelchair user to make a forward approach, a parallel approach, or both to the machine.[4] Since ATMs are usually located in the lobby of buildings or installed through the exterior wall of buildings, there is generally adequate clear floor space for a wheelchair user to make a forward or parallel approach.

ADAAG 4.34.3 sets out the reach ranges for the various controls used to operate an ATM, including card readers, keypads, video display screen function keys, deposit slots, cash and receipt dispensers, and statement printers. ADAAG 4.34.3 (1) provides that if only a forward approach is possible (e.g., ATM located in narrow alcove), the operable parts of all the controls must be placed within the forward reach range specified in ADAAG 4.2.5 (i.e., 48 inches maximum height for a reach depth up to 20 inches and 44 inches maximum height for a reach depth between 20 inches and 25 inches; and clear floor space provided under the ATM that equals or exceeds the reach depth for a maximum of 25 inches).

ADAAG 4.34.3 (2)(a) and (b) specify the reach ranges if only a parallel approach is possible (e.g., ATM located in narrow corridor). Where the reach depth to the operable parts of all controls is not more than 10 inches, the maximum height for the placement of controls is 54 inches. Where the reach depth to the operable parts of any control is more than 10 inches, the table of reach depths and maximum heights in ADAAG 4.34.3 (2)(b) is to be used. Generally, for each additional inch of reach depth beyond 10 inches, the height of the controls would be lowered one-half inch below the 54 inch maximum height, with the controls being lowered an additional one-half inch at reach depths greater than 13 inches and 20 inches due to rounding-off numbers.

ADAAG 4.34.3 (3) provides that if both types of approaches are possible, the operable parts of all controls must be placed within at least one of the reach ranges in ADAAG 4.34.3 (1) or (2). Thus, if there is adequate clear floor space for a wheelchair user to make a forward or parallel approach, at a minimum the controls must be reachable from at least one of the approaches.

ADAAG 4.34.3 (4) requires that where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided must comply with the applicable reach ranges.

ADAAG 4.34.3 also contains an exception for ATMs which are equipped with an alternate control that can perform that same function in a substantially equivalent manner. Under the exception, only one of the controls needed to perform the function is required to comply with the reach range requirement. If the controls are identified by tactile markings, such markings must be provided at both controls so that the markings can be read by persons with vision impairments from a standing or sitting position.

ADAAG 4.34.4 regarding the operation of controls and ADAAG 4.34.5 regarding equipment for persons with vision impairments are unchanged from existing ADAAG. Only the section numbers have been changed as a result of the amendments discussed above.

NCR Corporation, InterBold, and the banking industry supported the proposed amendment to the reach range requirement.[5] The amendment will allow banks to choose among available ATM models and surround designs and, based upon their combined reach depth, install the ATM and surround so that the controls are placed at the appropriate height. The amendment also provides flexibility for banks when relocating older ATMs to lower traffic areas and will ensure that the market for used ATMs remains available.

Organizations representing individuals with disabilities expressed concern that the forward and side reach range requirements do not accommodate all wheelchair users and recommended that the Board conduct additional research in this area. For a summary of earlier research, see 57 FR 41012 (September 8, 1992). Some recommended that ADAAG not be amended until additional research is conducted. Others noted that additional research is also needed on equipment for persons with vision impairments, mounting heights for video display screens and related issues, and recommended that ATM manufacturers not be required to redesign their products to meet one requirement and then have to redesign their products again to meet another set of requirements. Rather, they recommended that accessibility requirements for ATMs be imposed on the industry as a "package" so that any required changes can be incorporated in a single redesign. Congress has expressed similar concern and has recommended that "when considering accessibility requirements for automated teller machines (ATMs) under the ADA, to take into account the fact that these sophisticated electronic systems are more difficult to modify and design than other vending machines because of their reliance on computers and their special security considerations." H. Rept. 102–918, at 34.

The Little People of America also commented on the amendment. According to the Little People of America, there are over 1.5 million Americans who are short statured. Their adult height ranges from 2 feet 6 inches to 4 feet 10 inches. For many of these individuals, the controls on ATMs are completely out of their reach. The Little People of America recommended that ADAAG not be amended without

[3] The Department of Transportation will be issuing a separate notice in the Federal Register regarding the final action taken on the other amendments proposed to its ADA regulations in November 1992.

[4] For a parallel approach, the clear floor space is positioned with the longer dimension (48 inches) parallel and adjacent to the object to be reached. See ADAAG 4.2.4 and Figure 4(c). For a forward approach, the clear floor space is positioned with the shorter dimension (30 inches) parallel and adjacent to the object to be reached. See ADAAG 4.2.4 and Figure 4 (b). The various approaches are illustrated in the NPRM at 57 FR 41011, Figure 2 (September 8, 1992).

[5] The American Bankers Association, Independent Bankers Association of America, Savings and Community Bankers of America, Credit Union National Association, California Bankers Association, and about a dozen banks submitted comments in support of the amendments.

conducting additional research on making ATMs accessible to persons who are short statured. About 700 members and friends of the Little People of America sent letters reiterating these points.

The Access Board recognizes that any reach range requirement must take into account the needs of various user groups, including persons who use wheelchairs, persons who have difficulty bending or stooping, persons who are short statured, and persons with vision impairments who may read tactile markings identifying equipment controls. One way to accommodate these various groups is to require two of each type of equipment to be provided at each location, with one placed at a higher height and one placed at a lower height. Such a requirement would be very costly to implement for ATMs. Another way to accommodate these various groups is to provide technological alternatives for operating equipment that can be used by persons who are not accommodated by established reach ranges. NCR Corporation and InterBold reported that they are investigating several technological alternatives for operating ATMs, including remote devices, voice activation devices, and contactless cards.

In addition to reach ranges for controls, the Access Board requested comment on the viewing height and angle for video display screens. The NPRM noted that the American National Standards Institute (ANSI) A117 Committee and California have established or proposed accessibility provisions for video display screens. All the ATM manufacturers objected to the ANSI provision because it would require the screen to be positioned almost horizontally to be viewable from a standing position which would be difficult for a wheelchair user to read. The ATM manufacturers preferred the California provision because it addresses both viewing height and angle. InterBold stated that its ATMs comply with the California provision.

The ANSI A117 Committee has recently established a task force on ATMs to further examine a variety of issues related to making the machines readily accessible to and usable by persons with various disabilities. The Access Board is a member of the task force. The task force includes representatives from organizations of persons with mobility impairments and vision impairments, ATM manufacturers, and banks. The Little People of America have also been invited to participate in the task force. The task force will be investigating such issues as access for person with vision impairments, reach ranges, viewing height and angle of video display screens, and technological alternatives for addressing these issues.

The Access Board also plans to sponsor research in fiscal year 1994 on clear floor space, maneuvering clearances, and reach ranges for persons using power wheelchairs and three wheeled scooters. See the Access Board's notice on ADA research priorities for fiscal years 1993 and 1994 published in the **Federal Register** on July 9, 1993 (58 FR 37058). Persons using power wheelchairs are more likely to have a restricted reach range due to limited upper body mobility. The research project will also include a literature review on reach ranges focusing on the population that was tested in earlier studies and the extent to which those studies examined the manipulation of controls at different heights and reach depths. Based on the results of the literature review, the Access Board may sponsor additional research on reach ranges.

In light of the further work being done by the ATM task force sponsored by the ANSI A117 Committee and the additional research planned for fiscal year 1994, the Access Board does not intend to propose any additional requirements for ATMs at this time.

The Department of Transportation received several comments on the application of the proposed amended reach range requirement for ATMs to fare vending machines. Nine commenters supported the proposed amendment as applied to fare vending machines. Five commenters said that the purpose and design of fare vending machines were different enough from those of ATMs to warrant a separate provision, at least with respect to some specifications. One commenter said that, if the reach range requirement is amended, existing models of fare vending machines which it had installed should be grandfathered so that retrofit was not necessary. Several comments recommended that additional provisions such as a voice synthesizer system was needed on fare vending machines for persons with vision impairments.

The Access Board and the Department of Transportation believe that the proposed amended reach range requirement for ATMs is reasonable for fare vending machines as well. The operations which consumers must perform on ATMs and fare vending machines are similar enough that the same requirements should apply to both machines. Those commenters who said that the two types of machines should have different requirements did not provide sufficient information on which to base separate specifications. The Department of Transportation would apply the current "grandfathering" provisions in its ADA regulations (49 CFR 37.9) to fare vending machines that meet the existing ADAAG requirements in the same way as that section applies to other features of transportation facilities. As for provisions for persons with vision impairments, ADAAG 10.3.1(7) already requires compliance with ADAAG 4.34.5 which specifies that all instructions and information needed to use the machine must be accessible to and usable by persons with vision impairments. Specifying a voice synthesizer system for fare vending machines does not seem necessary and, in any event, is beyond the scope of the NPRM.

Regulatory Analyses and Notices

The Access Board and the Department of Transportation have independently determined that this final rule is not a major rule under Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is a significant rule under the Department of Transportation's Regulatory Policies and Procedures since it amends the agency's ADA regulations, which are a significant rule. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board and the Department of Transportation hereby independently certify that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The Access Board and the Department of Transportation have also independently determined that there are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment under Executive Order 12612.

Text of Final Common Rule

Appendix A to this part is amended by revising paragraph (20) in section 4.1.3, by revising sections 4.34 and 4.34.1 through 4.34.4, by adding section 4.34.5, and by revising paragraph (7) in section 10.3.1. Pages 10, 58, and 69 of appendix A are republished with the revisions included and page 58A of appendix A is added to read as follows:

BILLING CODE 8150-01-P; 4910-62-P

in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly areas:

(a) in places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines are provided, each machine shall comply with the requirements of 4.34 except where two or more machines are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that

4.33.5 Access to Performing Areas

4.33.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems. *Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.*

4.34 Automated Teller Machines.

4.34.1 General. *Each automated teller machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.*

4.34.2 Clear Floor Space. *The automated teller machine shall be located so that clear floor space complying with 4.2.4 is provided to allow a person using a wheelchair to make a forward approach, a parallel approach, or both, to the machine.*

4.34.3 Reach Ranges.

(1) Forward Approach Only. If only a forward approach is possible, operable parts of all controls shall be placed within the forward reach range specified in 4.2.5.

(2) Parallel Approach Only. If only a parallel approach is possible, operable parts of controls shall be placed as follows:

(a) Reach Depth Not More Than 10 in (255 mm). Where the reach depth to the operable parts of all controls as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is not more than 10 in (255 mm), the maximum height above the finished floor or grade shall be 54 in (1370 mm).

(b) Reach Depth More Than 10 in (255 mm). Where the reach depth to the operable parts of any control as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is more than 10 in (255 mm), the maximum height above the finished floor or grade shall be as follows:

Reach Depth		***Maximum Height***	
In	*Mm*	*In*	*Mm*
10	*255*	*54*	*1370*
11	*280*	*53½*	*1360*
12	*305*	*53*	*1345*
13	*330*	*52½*	*1335*
14	*355*	*51½*	*1310*
15	*380*	*51*	*1295*
16	*405*	*50½*	*1285*
17	*430*	*50*	*1270*
18	*455*	*49½*	*1255*
19	*485*	*49*	*1245*
20	*510*	*48½*	*1230*
21	*535*	*47½*	*1205*
22	*560*	*47*	*1195*
23	*585*	*46½*	*1180*
24	*610*	*46*	*1170*

(3) Forward and Parallel Approach. If both a forward and parallel approach are possible, operable parts of controls shall be placed within at least one of the reach ranges in paragraphs (1) or (2) of this section.

(4) Bins. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided shall comply with the applicable reach ranges in paragraph (1), (2), or (3) of this section.

EXCEPTION: Where a function can be performed in a substantially equivalent manner by using an alternate control, only one of the controls needed to perform that function is required to comply with this section. If the controls are identified by tactile markings, such markings shall be provided on both controls.

4.34.4 Controls. *Controls for user activation shall comply with 4.27.4.*

4.34.5 Equipment for Persons with Vision Impairments. *Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.*

4.35 Dressing and Fitting Rooms.

4.35.1 General. *Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.*

4.35.2 Clear Floor Space. *A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.*

4.35.3 Doors. *All doors to accessible dressing rooms shall be in compliance with section 4.13.*

4.35.4 Bench. *Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm) bench fixed to the wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3. Where installed in conjunction with showers, swimming pools, or other wet locations, water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.*

4.35.5 Mirror. *Where mirrors are provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror, measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the bench as well as to a person in a standing position.*

NOTE: Sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

(7)* Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall comply with 4.34.2, 4.34.3, 4.34.4, and 4.34.5. At each accessible entrance such devices shall be located on an accessible route. If self-service fare collection devices are provided for the use of the general public, at least one accessible device for entering, and at least one for exiting, unless one device serves both functions, shall be provided at each accessible point of entry or exit. Accessible fare collection devices shall have a minimum clear opening width of 32 inches; shall permit passage of a wheelchair; and, where provided, coin or card slots and controls necessary for operation shall comply with 4.27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor and shall comply with 4.13. Where the circulation path does not coincide with that used by the general public, accessible fare collection systems shall be located at or adjacent to the accessible point of entry or exit.

(8) Platform edges bordering a drop-off and not protected by platform screens or guard rails shall have a detectable warning. Such detectable warnings shall comply with 4.29.2 and shall be 24 inches wide running the full length of the platform drop-off.

(9) In stations covered by this section, rail-to-platform height in new stations shall be coordinated with the floor height of new vehicles so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 5/8 inch under normal passenger load conditions. For rapid rail, light rail, commuter rail, high speed rail, and intercity rail systems in new stations, the horizontal gap, measured when the new vehicle is at rest, shall be no greater than 3 inches. For slow moving automated guideway "people mover" transit systems, the horizontal gap in new stations shall be no greater than 1 inch.

EXCEPTION 1: Existing vehicles operating in new stations may have a vertical difference with respect to the new platform within plus or minus 1-1/2 inches.

EXCEPTION 2: In light rail, commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38 shall suffice.

(10) Stations shall not be designed or constructed so as to require persons with disabilities to board or alight from a vehicle at a location other than one used by the general public.

(11) Illumination levels in the areas where signage is located shall be uniform and shall minimize glare on signs. Lighting along circulation routes shall be of a type and configuration to provide uniform illumination.

(12) Text Telephones: The following shall be provided in accordance with 4.31.9:

(a) If an interior public pay telephone is provided in a transit facility (as defined by the Department of Transportation) at least one interior public text telephone shall be provided in the station.

(b) Where four or more public pay telephones serve a particular entrance to a rail station and at least one is in an interior location, at least one interior public text telephone shall be provided to serve that entrance. Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(13) Where it is necessary to cross tracks to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and between the rails, except for a maximum 2-1/2 inch gap on the inner edge of each rail to permit passage of wheel flanges. Such crossings shall comply with 4.29.5. Where gap reduction is not practicable, an above-grade or below-grade accessible route shall be provided.

(14) Where public address systems are provided to convey information to the public in terminals, stations, or other fixed facilities, a means of conveying the same or equivalent information to persons with hearing loss or who are deaf shall be provided.

BILLING CODE 8150-01-C; 4910-62-C

Adoption of Joint Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 is revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12204).

Appendix to Part 1191 [Redesignated as Appendix A]

2. The appendix to part 1191 is redesignated as appendix A to part 1191 and the heading is revised to read as follows:

Appendix A to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

Appendix A [Amended]

3. Appendix A to part 1191 is amended as set forth at the end of the common preamble.

Authorized by vote of the Access Board on November 18, 1992.

Kathleen K. Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

Appendix A [Amended]

2. Appendix A to part 37 is amended as set forth at the end of the common preamble.

Dated: June 30, 1993.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93–16735 Filed 7–14–93; 8:45 am]

BILLING CODE 8150–01–P; 4910–62–P

federal register

Thursday
July 15, 1993

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 921
National Estuarine Research Reserve System Program Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket No. 910927-3012]

RIN 0648-AB68

National Estuarine Research Reserve System Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the existing interim-final rule for selecting, designating, operating, and funding National Estuarine Research Reserves to bring them into accord with requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (the Amendments). In addition, it adopts some of the revisions suggested by comments received on the interim-final rule dated July 23, 1990, and incorporates comments received on the proposed rule published on July 17, 1992 (57 FR 31926).

FOR FURTHER INFORMATION CONTACT: June Cradick at (301) 713-3132.

DATES: Effective July 14, 1993.

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued pursuant to the authority of section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461 (the Act). The National Estuarine Reserve Research System (the System) has been operating under interim-final regulations published July 23, 1990 (55 FR 29940).

II. Availability of Comments

All comments received in response to the notice of proposed rulemaking for this rule (57 FR 31926, July 17, 1992) are available for inspection at the Office of Ocean and Coastal Resource Management during normal business hours (8 a.m. to 4:30 p.m.) in room 12520, 1305 East-West Highway, Silver Spring, Maryland 20910.

III. Regulatory Issues

A. General Background

On July 23, 1990 (55 FR 29940) NOAA published interim-final regulations for continued implementation of the National Estuarine Reserve Research System Program pursuant to section 315 of the Act, 16 U.S.C. 1461. Written comments were accepted until September 21, 1990. On November 5, 1990, Public Law No. 101-508 was passed reauthorizing the Program. Several changes to the regulations are required as a result of the 1990 reauthorization. In addition, for the reasons stated below, some of the revisions suggested by the comments received on the interim-final rule have been adopted. A summary of the significant proposed changes to the interim-final regulations is presented below. On July 17, 1992, NOAA published a proposed rule incorporating revisions required by the Amendments and revisions suggested by public comments received on the interim-final rule. Two public comments on the proposed rule were received during the review period which ended on August 31, 1992. The public's comments and NOAA's response are set forth in Section VI, Summary of Public Comments and Responses.

B. Final Rule

These regulations establish the Program's mission and goals and revise the existing procedures for selecting, designating and operating National Estuarine Research Reserves.

1. Changing the Name of the Program

The name of the Program was changed from the National Estuarine Reserve Research System to the National Estuarine Research Reserve System by the Amendments. The revisions to the regulations revise the Program name accordingly when it appears in the regulations.

2. Revision of Match Requirements

The Amendments effectively reduce from 50% to 30% state, and where applicable, private party match requirements for the following financial assistance award types: Operations, research, monitoring, facility construction and education/interpretation. They also provide for 100% Federal support for educational-interpretive activities that benefit the entire System. Match requirements for site selection and land acquisition remain at 50%. The revisions make the regulations conform.

3. Definitions

The revisions add a definition for the term "state agency".

4. Increase in Acquisition Support

The Amendments increase the maximum amount of Federal financial assistance that can be awarded for the acquisition of land and waters, or interests therein, for any one National Estuarine Research Reserve from $4,000,000 to $5,000,000. The revisions make the regulations conform.

5. Change in Development Support

The regulations allow costs associated with the development of research, monitoring and education programs to be included as supplemental development costs and eliminate the ceiling of $1,500,000 on financial assistance which can be provided for development assistance directly associated with facility construction.

6. Simplification of Operational Support

The regulations reduce state and Federal paperwork burdens by combining support for routine monitoring and education activities with the annual non-competitive operations and management awards. Competitive awards for special monitoring, research and education projects continue as a separate activity.

7. Clarification of Site Selection

The regulations clarify the process to be followed by a coastal state which proposes to reactivate an inactive site previously approved by NOAA for development as an estuarine sanctuary or National Estuarine Research Reserve.

8. Resource Manipulation

The regulations recognize the possibility that in Reserve buffer areas long-term uses may have existed prior to designation which should be allowed to continue.

9. Performance Evaluation

The Amendments emphasize the importance of public participation in the performance evaluation process. They also establish interim sanctions, including partial or full withdrawal of financial assistance, and establish a process for instituting such sanctions. The revisions make the regulations conform.

IV. Summary of Comments on the Proposed Regulations and NOAA's Responses

NOAA received two comments on the proposed rule. A summary of those comments and NOAA's response appears below.

Comment: There is a need to recognize that manipulative uses occur within the core area of Reserves. Further, traditional uses is a more appropriate term to describe sport fishing and hunting, rather than manipulative uses.

Response: NOAA is aware that manipulative uses occur within core areas of certain Reserves. However, given the purposes of the Program, NOAA believes that some of these activities are inappropriate to be carried out in core areas. In response to the commenters' concerns regarding the use of the term "manipulative uses", the regulations have been clarified to better explain the meaning of that term.

V. Other Actions Associated With the Rulemaking

[A] Classification Under Executive Order 12291. NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

These rules amend existing procedures for identifying, designating, and managing national estuarine research reserves in accordance with the Coastal Zone Act Reauthorization Amendments of 1990. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts.

[B] Regulatory Flexibility Act Analysis. A Regulatory Flexibility Analysis is not required for this rulemaking. The regulations set forth procedures for identifying and designating National Estuarine Research Reserves, and managing sites once designated. These rules do not directly affect "small government jurisdictions" as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses. Accordingly, when these regulations were proposed, the General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these regulations, if adopted, would not have a significant economic impact on a substantial number of small entities.

[C] Paperwork Reduction Act of 1980. This rule contains collection of information requirements subject to Public Law 96–511, the Paperwork Reduction Act (PRA), which have already been approved by the Office of Management and Budget (approval number 0648–0121). Public reporting burden for the collections of information contained in this rule is estimated to average 2,012 hours per response for management plans and related documentation, 1.25 hours for performance reports, and 15 hours for annual reports and work plans. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to Richard Roberts, room 724, Department of Commerce, 6010 Executive Blvd., Rockville, Maryland 20852, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. ATTN: Desk Officer for NOAA.

[D] Executive Order 12612. This rule does not contain policies which have sufficient Federalism implications to warrant preparation of a Federalism Assessment pursuant to Executive Order 12612. However, the provisions of the rule setting forth what a state must do or agree to do in order to qualify for the various types of Federal assistance available under the rule has been reviewed to ensure that the rule grants the states the maximum administrative discretion possible in the administration of the National Estuarine Research Reserve System policies embodied in the qualification requirements. In formulating those policies, the NOAA worked with affected states to develop their own policies with respect to the use of National Estuarine Research Reserves. To the maximum extent possible consistent with the NOAA's responsibility to ensure that the objectives of the National Estuarine Research Reserve System provisions of the Coastal Zone Management Act are achieved, the rule refrains from establishing uniform national standards. Extensive consultations with state officials and organizations have been held regarding the financial assistance qualifications imposed. Details regarding awards of financial assistance have been discussed above under the heading "REVISION OF THE PROCEDURES FOR SELECTING, DESIGNATING AND OPERATING NATIONAL ESTUARINE RESEARCH RESERVES" and are not repeated here.

[E] National Environmental Policy Act. NOAA has concluded that publication of this final rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 921

Administrative practice and procedure, Coastal zone, Environmental impact statements, Grants programs, Natural resources, Reporting and recordkeeping requirements, Research. (Federal Domestic Assistance Catalog Number 11.420, National Estuarine Research Reserve Research System).

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: June 17, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set out in the preamble 15 CFR part 921 is revised to read as follows:

PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

Authority: Section 315 of the Coastal Zone Management Act, as amended (16 U.S.C. 1461).

Subpart A—General

§ 921.1 Mission, goals and general provisions.

(a) The mission of the National Estuarine Research Reserve Program is the establishment and management, through Federal-state cooperation, of a national system (National Estuarine Research Reserve System or System) of estuarine research reserves (National Estuarine Research Reserves or Reserves) representative of the various regions and estuarine types in the United States. National Estuarine Research Reserves are established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program are to:

(1) Ensure a stable environment for research through long-term protection of National Estuarine Research Reserve resources;

(2) Address coastal management issues identified as significant through coordinated estuarine research within the System;

(3) Enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation;

(4) Promote Federal, state, public and private use of one or more Reserves within the System when such entities conduct estuarine research; and

(5) Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas.

(c) National Estuarine Research Reserves shall be open to the public to the extent permitted under state and Federal law. Multiple uses are allowed to the degree compatible with each Reserve's overall purpose as provided in the management plan (see § 921.13) and consistent with paragraphs (a) and (b) of this section. Use levels are set by the state where the Reserve is located and analyzed in the management plan. The Reserve management plan shall describe the uses and establish priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. Consistent with resource protection and research objectives, public access and use may be restricted to certain areas or components within a Reserve.

(d) Habitat manipulation for research purposes is allowed consistent with the following limitations. Manipulative research activities must be specified in the management plan, be consistent with the mission and goals of the program (see paragraphs (a) and (b) of this section) and the goals and objectives set forth in the Reserve's management plan, and be limited in nature and extent to the minimum manipulative activity necessary to accomplish the stated research objective. Manipulative research activities with a significant or long-term impact on Reserve resources require the prior approval of the state and the National Oceanic and Atmospheric Administration (NOAA). Manipulative research activities which can reasonably be expected to have a significant adverse impact on the estuarine resources and habitat of a Reserve, such that the activities themselves or their resulting short- and long-term consequences compromise the representative character and integrity of a Reserve, are prohibited. Habitat manipulation for resource management purposes is prohibited except as specifically approved by NOAA as: (1) A restoration activity consistent with paragraph (e) of this section; or (2) an activity necessary for the protection of public health or the preservation of other sensitive resources which have been listed or are eligible for protection under relevant Federal or state authority (*e.g.*, threatened/endangered species or significant historical or cultural resources) or if the manipulative activity is a long-term pre-existing use (*i.e.*, has occurred prior to designation) occurring in a buffer area. If habitat manipulation is determined to be necessary for the protection of public health, the preservation of sensitive resources, or if the manipulation is a long-term pre-existing use in a buffer area, then these activities shall be specified in the Reserve management plan in accordance with § 921.13(a)(10) and shall be limited to the reasonable alternative which has the least adverse and shortest term impact on the representative and ecological integrity of the Reserve.

(e) Under the Act an area may be designated as an estuarine Reserve only if the area is a representative estuarine ecosystem that is suitable for long-term research. Many estuarine areas have undergone some ecological change as a result of human activities (*e.g.*, hydrological changes, intentional/unintentional species composition changes—introduced and exotic species). In those areas proposed or designated as National Estuarine Research Reserves, such changes may have diminished the representative character and integrity of the site. Although restoration of degraded areas is not a primary purpose of the System, such activities may be permitted to improve the representative character and integrity of a Reserve. Restoration activities must be carefully planned and approved by NOAA through the Reserve management plan. Historical research may be necessary to determine the "natural" representative state of an estuarine area (*i.e.*, an estuarine ecosystem minimally affected by human activity or influence). Frequently, restoration of a degraded estuarine area will provide an excellent opportunity for management oriented research.

(f) NOAA may provide financial assistance to coastal states, not to exceed, per Reserve, 50 percent of all actual costs or $5 million whichever amount is less, to assist in the acquisition of land and waters, or interests therein. NOAA may provide financial assistance to coastal states not to exceed 70 percent of all actual costs for the management and operation of, the development and construction of facilities, and the conduct of educational or interpretive activities concerning Reserves (see subpart I). NOAA may provide financial assistance to any coastal state or public or private person, not to exceed 70 percent of all actual costs, to support research and monitoring within a Reserve. Predesignation, acquisition and development, operation and management, special research and monitoring, and special education and interpretation awards are available under the National Estuarine Reserve Program. Predesignation awards are for site selection/feasibility, draft management plan preparation and conduct of basic characterization studies. Acquisition and development awards are intended primarily for acquisition of interests in land, facility construction and to develop and/or upgrade research, monitoring and education programs. Operation and management awards provide funds to assist in implementing, operating and managing the administrative, and basic research, monitoring and education programs, outlined in the Reserve management plan. Special research and monitoring awards provide funds to conduct estuarine research and monitoring projects with the System. Special educational and interpretive awards provide funds to conduct estuarine educational and interpretive projects within the System.

(g) Lands already in protected status managed by other Federal agencies, state or local governments, or private organizations may be included within National Estuarine Research Reserves only if the managing entity commits to long-term management consistent with paragraphs (d) and (e) of this section in the Reserve management plan. Federal lands already in protected status may not comprise a majority of the key land and water areas of a Reserve (see § 921.11(c)(3)).

(h) To assist the states in carrying out the Program's goals in an effective manner, NOAA will coordinate a research and education information exchange throughout the National Estuarine Research Reserve System. As part of this role, NOAA will ensure that information and ideas from one Reserve are made available to others in the System. The network will enable Reserves to exchange information and research data with each other, with universities engaged in estuarine research, and with Federal, state, and local agencies. NOAA's objective is a system-wide program of research and monitoring capable of addressing the management issues that affect long-term productivity of our Nation's estuaries.

§ 921.2 Definitions.

(a) *Act* means the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(b) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management or delegee.

(c) *Coastal state* means a state of the United States, in or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of these regulations the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas Islands, the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1453(4)).

(d) *State agency* means an instrumentality of a coastal state to whom the coastal state has delegated the authority and responsibility for the creation and/or management/operation of a National Estuarine Research Reserve. Factors indicative of this authority may include the power to receive and expend funds on behalf of the Reserve, acquire and sell or convey real and personal property interests, adopt rules for the protection of the Reserve, enforce rules applicable to the Reserve, or develop and implement research and education programs for the reserve. For the purposes of these regulations, the terms "coastal state" and "State agency" shall be synonymous.

(e) *Estuary* means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas with measurable freshwater influence and having unimpaired connections with the open sea, and estuary-type areas of the Great Lakes and their connecting waters (see 16 U.S.C. 1453(7)).

(f) *National Estuarine Research Reserve* means an area that is a representative estuarine ecosystem suitable for long-term research, which may include all of the key land and water portion of an estuary, and adjacent transitional areas and uplands constituting to the extent feasible a natural unit, and which is set aside as a natural field laboratory to provide long-term opportunities for research, education, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1453(8)) and meets the requirements of 16 U.S.C. 1461(b). This includes those areas designated as National Estuarine Sanctuaries or Reserves under section 315 of the Act prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990 and each area subsequently designated as a National Estuarine Research Reserve.

§ 921.3 National Estuarine Research Reserve System Biogeographic Classification Scheme and Estuarine Typologies.

(a) National Estuarine Research Reserves are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Research Reserve System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the System reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in appendix I, contains 29 regions. Figure 1 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in appendix II.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act, and to the Marine Protection, Research and Sanctuaries Act.

(a) The National Estuarine Research Reserve System is intended to provide information to state agencies and other entities involved in addressing coastal management issues. Any coastal state, including those that do not have approved coastal management programs under section 306 of the Act, is eligible for an award under the National Estuarine Research Reserve Program (see § 921.2(c)).

(b) For purposes of consistency review by states with a federally approved coastal management program, the designation of a National Estuarine Research Reserve is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal management program as provided by section 1456(c)(1) of the Act, and implementing regulations at 15 CFR part 930, subpart C. In accordance with section 1456(c)(1) of the Act and the applicable regulations NOAA will be responsible for certifying that designation of the Reserve is consistent with the state's approved coastal management program. The state must concur with or object to the certification. It is recommended that the lead state agency for Reserve designation consult, at the earliest practicable time, with the appropriate state officials concerning the consistency of a proposed National Estuarine Research Reserve.

(c) The National Estuarine Research Reserve Program will be administered in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431–1445), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect or restore such areas for their conservation, recreational, ecological, historical, research, educational or esthetic values.

National Marine Sanctuaries and Estuarine Research Reserves may not overlap, but may be adjacent.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§ 921.10 General.

(a) A coastal state may apply for Federal financial assistance for the purpose of site selection, preparation of documents specified in § 921.13 (draft management plan (DMP) and environmental impact statement (EIS)), and the conduct of limited basic characterization studies. The total Federal share of this assistance may not exceed $100,000. Federal financial assistance for preacquisition activities under § 921.11 and § 921.12 is subject to the total $5 million for which each Reserve is eligible for land acquisition. In the case of a biogeographic region (see appendix I) shared by two or more coastal states, each state is eligible for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Each separate National Estuarine Research Reserve is eligible for the full complement of funding. Financial assistance application procedures are specified in subpart I.

(b) In developing a Reserve program, a state may choose to develop a multiple-site Reserve reflecting a diversity of habitats in a single biogeographic region. A multiple-site Reserve allows the state to develop complementary research and educational programs within the individual components of its multi-site Reserve. Multiple-site Reserves are treated as one Reserve in terms of financial assistance and development of an overall management framework and plan. Each individual site of a proposed multiple-site Reserve shall be evaluated both separately under § 921.11(c) and collectively as part of the site selection process. A coastal state may propose to establish a multiple-site Reserve at the time of the initial site selection, or at any point in the development or operation of the Reserve. If the state decides to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award is made for a single site, the proposal is subject to the requirements set forth in § 921.33(b). However, a state may not propose to add one or more sites to an already designated Reserve if the operation and management of such Reserve has been found deficient and uncorrected or the research conducted is not consistent with the Estuarine Research Guidelines referenced in § 921.51. In addition, Federal funds for the acquisition of a multiple-site Reserve remain limited to $5,000,000 (see § 921.20). The funding for operation of a multiple-site Reserve is limited to the maximum allowed for any one Reserve per year (see § 921.32(c)) and preacquisition funds are limited to $100,000 per Reserve.

§ 921.11 Site selection and feasibility.

(a) A coastal state may use Federal funds to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in subpart I, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's contribution to the biogeographical and typological balance of the National Estuarine Research Reserve System. NOAA will give priority consideration to proposals to establish Reserves in biogeographic regions or subregions or incorporating types that are not represented in the system. (see the biogeographic classification scheme and typology set forth in § 921.3 and appendices I and II);

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site must be a representative estuarine ecosystem and should, to the maximum extent possible, be an estuarine ecosystem minimally affected by human activity or influence (see § 921.1(e)).

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. Reserve boundaries must encompass the area within which adequate control has or will be established by the managing entity over human activities occurring within the Reserve. Generally, Reserve boundaries will encompass two areas: Key land and water areas (or "core area") and a buffer zone. Key land and water areas and a buffer zone will likely require significantly different levels of control (see § 921.13(a)(7)). The term "key land and water areas" refers to that core area within the Reserve that is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the Reserve for research on natural processes. Key land and water areas, which comprise the core area, are those ecological units of a natural estuarine system which preserve, for research purposes, a full range of significant physical, chemical and biological factors contributing to the diversity of fauna, flora and natural processes occurring within the estuary. The determination of which land and water areas are "key" to a particular Reserve must be based on specific scientific knowledge of the area. A basic principle to follow when deciding upon key land and water areas is that they should encompass resources representative of the total ecosystem, and which if compromised could endanger the research objectives of the Reserve. The term "buffer zone" refers to an area adjacent to or surrounding key land and water areas and essential to their integrity. Buffer zones protect the core area and provide additional protection for estuarine-dependent species, including those that are rare or endangered. When determined appropriate by the state and approved by NOAA, the buffer zone may also include an area necessary for facilities required for research and interpretation. Additionally, buffer zones should be established sufficient to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonably could be expected to occur. National Estuarine Research Reserves may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced. However, NOAA will not approve a site for potential National Estuarine Research Reserve status that is dependent primarily upon the inclusion of currently protected Federal lands in order to meet the requirements for Reserve status (such as key land and water areas). Such lands generally will be included within a Reserve to serve as a buffer or for other ancillary purposes; and may be included, subject to NOAA

approval, as a limited portion of the core area;

(4) The site's suitability for long-term estuarine research, including ecological factors and proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas as well as approved coastal and estuarine management plans; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process the state must seek the views of affected landowners, local governments, other state and Federal agencies and other parties who are interested in the area(s) being considered for selection as a potential National Estuarine Research Reserve. After the local government(s) and affected landowner(s) have been contacted, at least one public meeting shall be held in the vicinity of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal newspaper at least 15 days prior to the date of the meeting and by NOAA in the Federal Register.

(e) A state request for NOAA approval of a proposed site (or sites in the case of a multi-site Reserve) must contain a description of the proposed site(s) in relationship to each of the site selection principals (§ 921.11(c)) and the following information:

(1) An analysis of the proposed site(s) based on the biogeographical scheme/typology discussed in § 921.3 and set forth in appendices I and II;

(2) A description of the proposed site(s) and its (their) major resources. including location, proposed boundaries, and adjacent land uses. Maps are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted. Copies of all correspondence, including contact letters to all affected landowners must be appended;

(4) A list of all sites considered and a brief statement of the reasons why a site was not preferred; and

(5) A nomination of the proposed site(s) for designation as a National Estuarine Research Reserve by the Governor of the coastal state in which the state is located.

(f) A state proposing to reactivate an inactive site, previously approved by NOAA for development as an Estuarine Sanctuary or Reserve, may apply for those funds remaining, if any, provided for site selection and feasibility (§ 921.11a)) to determine the feasibility of reactivation. This feasibility study must comply with the requirements set forth in § 921.11(c) through (e).

§ 921.12 Post site selection.

(a) At the time of the coastal state's request for NOAA approval of a proposed site, the state may submit a request for funds to develop the draft management plan and for preparation of the EIS. At this time, the state may also submit a request for the remainder of the predesignation funds to perform a limited basic characterization of the physical, chemical and biological characteristics of the site approved by NOAA necessary for providing EIS information to NOAA. The state's request for these post site selection funds must be accompanied by the information specified in subpart I and, for draft management plan development and EIS information collection, the following programmatic information:

(1) A draft management plan outline (see § 921.13(a) below); and

(2) An outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state role in Reserve management during the initial period of Federal funding and expressing the state's long-term commitment to operate and manage the Reserve.

(b) The state is eligible to use the funds referenced in § 921.12(a) after the proposed site is approved by NOAA under the terms of § 921.11.

§ 921.13 Management plan and environmental impact statement development.

(a) After NOAA approves the state's proposed site and application for funds submitted pursuant to § 921.12, the state may begin draft management plan development and the collection of information necessary for the preparation by NOAA of an EIS. The state shall develop a draft management plan, including an MOU. The plan shall set out in detail:

(1) Reserve goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative plan including staff roles in administration, research, education/interpretation, and surveillance and enforcement;

(3) A research plan, including a monitoring design;

(4) An education/interpretive plan;

(5) A plan for public access to the Reserve;

(6) A construction plan, including a proposed construction schedule, general descriptions of proposed developments and general cost estimates. Information should be provided for proposed minor construction projects in sufficient detail to allow these projects to begin in the initial phase of acquisition and development. A categorical exclusion, environmental assessment, or EIS may be required prior to construction;

(7)(i) An acquisition plan identifying the ecologically key land and water areas of the Reserve, ranking these areas according to their relative importance, and including a strategy for establishing adequate long-term state control over these areas sufficient to provide protection for Reserve resources to ensure a stable environment for research. This plan must include an identification of ownership within the proposed Reserve boundaries, including land already in the public domain; the method(s) of acquisition which the state proposes to use—acquisition (including less-than-fee simple options) to establish adequate long-term state control; an estimate of the fair market value of any property interest—which is proposed for acquisition; a schedule estimating the time required to complete the process of establishing adequate state control of the proposed research reserve; and a discussion of any anticipated problems. In selecting a preferred method(s) for establishing adequate state control over areas within the proposed boundaries of the Reserve, the state shall perform the following steps for each parcel determined to be part of the key land and water areas (control over which is necessary to protect the integrity of the Reserve for research purposes), and for those parcels required for research and interpretive support facilities or buffer purposes:

(A) Determine, with appropriate justification, the minimum level of control(s) required [*e.g.*, management agreement, regulation, less-than-fee simple property interest (*e.g.*, conservation easement), fee simple property acquisition, or a combination of these approaches]. This does not preclude the future necessity of increasing the level of state control;

(B) Identify the level of existing state control(s);

(C) Identify the level of additional state control(s), if any, necessary to meet the minimum requirements identified in paragraph (a)(7)(i)(A) of this section;

(D) Examine all reasonable alternatives for attaining the level of control identified in paragraph (a)(7)(i)(C) of this section, and perform a cost analysis of each; and

(E) Rank, in order of cost, the methods (including acquisition) identified in paragraph (a)(7)(i)(D) of this section.

(ii) An assessment of the relative cost-effectiveness of control alternatives shall include a reasonable estimate of both short-term costs (*e.g.*, acquisition of property interests, regulatory program development including associated enforcement costs, negotiation, adjudication, etc.) and long-term costs (*e.g.*, monitoring, enforcement, adjudication, management and coordination). In selecting a preferred method(s) for establishing adequate state control over each parcel examined under the process described above, the state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required. Generally, with the possible exception of buffer areas required for support facilities, the level of control(s) required for buffer areas will be considerably less than that required for key land and water areas. This acquisition plan, after receiving the approval of NOAA, shall serve as a guide for negotiations with landowners. A final boundary for the reserve shall be delineated as a part of the final management plan;

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any restrictions on use of the research reserve, and a strategy for research reserve surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions;

(10) If applicable, a resource manipulation plan, describing those portions of the Reserve buffer in which long-term pre-existing (prior to designation) manipulation for reasons not related to research or restoration is occurring. The plan shall explain in detail the nature of such activities, shall justify why such manipulation should be permitted to continue within the reserve buffer; and shall describe possible effects of this manipulation on key land and water areas and their resources;

(11) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the National Estuarine Research Reserve, and expressing a long-term commitment by the state to maintain and manage the Reserve in accordance with section 315 of the Act, 16 U.S.C. 1461, and applicable regulations. In conjunction with the MOU, and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection and operation of the National Estuarine Research Reserve. If other MOUs are necessary (such as with a Federal agency, another state agency or private organization), drafts of such MOUs must be included in the plan. All necessary MOU's shall be signed prior to Reserve designation; and

(12) If the state has a federally approved coastal management program, a certification that the National Estuarine Research Reserve is consistent to the maximum extent practicable with that program. See § 921.4(b) and § 921.30(b).

(b) Regarding the preparation of an EIS under the National Environmental Policy Act on a National Estuarine Research Reserve proposal, the state and NOAA shall collect all necessary information concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, the state will draft and provide NOAA with a preliminary EIS.

(c) Early in the development of the draft management plan and the draft EIS, the state and NOAA shall hold a scoping meeting (pursuant to NEPA) in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the **Federal Register** at least 15 days prior to the meeting. The state shall be responsible for publishing a similar notice in the local media.

(d) NOAA will publish a **Federal Register** notice of intent to prepare a draft EIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the draft EIS will appear in the **Federal Register**. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed national estuarine research reserve. The hearing will be held no sooner than 15 days after appropriate notice of the meeting has been given in the principal news media by the state and in the **Federal Register** by NOAA. After a 45-day comment period, a final EIS will be prepared by the state and NOAA.

Subpart C—Acquisition, Development and Preparation of the Final Management Plan

§ 921.20 General.

The acquisition and development period is separated into two major phases. After NOAA approval of the site, draft management plan and draft MOU, and completion of the final EIS, a coastal state is eligible for an initial acquisition and development award(s). In this initial phase, the state should work to meet the criteria required for formal research reserve designation; *e.g.*, establishing adequate state control over the key land and water areas as specified in the draft management plan and preparing the final management plan. These requirements are specified in § 921.30. Minor construction in accordance with the draft management plan may also be conducted during this initial phase. The initial acquisition and development phase is expected to last no longer than three years. If necessary, a longer time period may be negotiated between the state and NOAA. After Reserve designation, a state is eligible for a supplemental acquisition and development award(s) in accordance with § 921.31. In this post-designation acquisition and development phase, funds may be used in accordance with the final management plan to construct research and educational facilities, complete any remaining land acquisition, for program development, and for restorative activities identified in the final management plan. In any case, the amount of Federal financial assistance provided to a coastal state with respect to the acquisition of lands and waters, or interests therein, for any one National Estuarine Research Reserve may not exceed an amount equal to 50 per cent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient prior to designation in:

(1) Acquiring a fee simple or less-than-fee simple real property interest in land and water areas to be included in the Reserve boundaries (see § 921.13(a)(7); § 921.30(d));

(2) Minor construction, as provided in paragraphs (b) and (c) of this section;

(3) Preparing the final management plan; and

(4) Initial management costs, *e.g.*, for implementing the NOAA approved draft management plan, hiring a Reserve manager and other staff as necessary and for other management-related

activities. Application procedures are specified in subpart I.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction, or for proposed restorative activities, is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted during the initial acquisition and development phase. No more than five (5) percent of the initial acquisition and development award may be expended on such activities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a) through (c) of this section, construction projects, to be funded in whole or in part under an acquisition and development award(s), may not be initiated until the Reserve receives formal designation (see § 921.30). This requirement has been adopted to ensure that substantial progress in establishing adequate state control over key land and water areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in establishing adequate state control/acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) For any real property acquired in whole or part with Federal funds for the Reserve, the state shall execute suitable title documents to include substantially the following provisions, or otherwise append the following provisions in a manner acceptable under applicable state law to the official land record(s):

(1) Title to the property conveyed by this deed shall vest in the [recipient of the award granted pursuant to section 315 of the Act, 16 U.S.C. 1461 or other NOAA approved state agency] subject to the condition that the designation of the [name of National Estuarine Reserve] is not withdrawn and the property remains part of the federally designated [name of National Estuarine Research Reserve]; and

(2) In the event that the property is no longer included as part of the Reserve, or if the designation of the Reserve of which it is part is withdrawn, then NOAA or its successor agency, after full and reasonable consultation with the State, may exercise the following rights regarding the disposition of the property:

(i) The recipient may retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(ii) If the recipient does not elect to retain title, the Federal Government may either direct the recipient to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (after deducting actual and reasonable selling and repair or renovation expenses, if any, from the sale proceeds), or direct the recipient to transfer title to the Federal Government. If directed to transfer title to the Federal Government, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the original project to the current fair market value of the property; and

(iii) Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by Department of Commerce regulations at 15 CFR part 24, and Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs at 15 CFR part 11.

(f) Upon instruction by NOAA, provisions analogous to those of § 921.21(e) shall be included in the documentation underlying less-then-fee-simple interests acquired in whole or part with Federal funds.

(g) Federal funds or non-Federal matching share funds shall not be spent to acquire a real property interest in which the state will own the land concurrently with another entity unless the property interest has been identified as a part of an acquisition strategy pursuant to § 921.13(7) which has been approved by NOAA prior to the effective date of these regulations.

(h) Prior to submitting the final management plan to NOAA for review and approval, the state shall hold a public meeting to receive comment on the plan in the area affected by the estuarine research reserve. NOAA will publish a notice of the meeting in the **Federal Register** at least 15 days prior to the public meeting. The state shall be responsible for having a similar notice published in the local newspaper(s).

Subpart D—Reserve Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Research Reserves.

(a) The Under Secretary may designate an area proposed for designation by the Governor of the state in which it is located, as a National Esturaine Research Reserve if the Under Secretary finds:

(1) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(2) Key land and water areas of the proposed Reserve, as identified in the management plan, are under adequate state control sufficient to provide long-term protection for reserve resources to ensure a stable environment for research;

(3) Designation of the area as a Reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation;

(4) A final management plan has been approved by NOAA;

(5) An MOU has been signed between the state and NOAA ensuring a long-term commitment by the state to the effective operation and implementation of the area as a National Estuarine Research Reserve;

(6) All MOU's necessary for reserve management (*i.e.*, with relevant Federal, state, and local agencies and/or private organizations) have been signed; and

(7) The coastal state in which the area is located has complied with the requirements of subpart B.

(b) NOAA will determine whether the designation of a National Estuarine Research Reserve in a state with a federally approved coastal zone management program directly affects the coastal zone. If the designation is found to directly affect the coastal zone, NOAA will make a consistency determination pursuant to § 307(c)(1) of the Act, 16 U.S.C. 1456, and 15 CFR part 930, subpart C. See § 921.4(b). The results of this consistency determination will be published in the **Federal Register** when the notice of designation is published. See § 921.30(c).

(c) NOAA will publish the notice of designation of a National Estuarine Research Reserve in the **Federal Register**. The state shall be responsible for having a similar notice published in the local media.

(d) The term "state control" in § 921.30(a)(3) does not necessarily require that key land and water areas be owned by the state in fee simple. Acquisition of less-than-fee simple interests (*e.g.*, conservation easements) and utilization of existing state regulatory measures are encouraged where the state can demonstrate that these interests and measures assure adequate long-term state control consistent with the purposes of the research reserve (see also § 921.13(a)(7); § 921.21(g)). Should the state later elect to purchase an interest in such lands using NOAA funds, adequate justification as to the need for such acquisition must be provided to NOAA.

§ 921.31 Supplemental acquisition and development awards.

After National Estuarine Research Reserve designation, and as specified in the approved management plan, a coastal state may request a supplemental acquisition and/or development award(s) for acquiring additional property interests identified in the management plan as necessary to strengthen protection of key land and water areas and to enhance long-term protection of the area for research and education, for facility and exhibit construction, for restorative activities identified in the approved management plan, for administrative purposes related to acquisition and/or facility construction and to develop and/or upgrade research, monitoring and education/interpretive programs. Federal financial assistance provided to a National Estuarine Research Reserve for supplemental development costs directly associated with facility construction (*i.e.*, major construction activities) may not exceed 70 percent of the total project cost. NOAA must make a specific determination that the construction activity will not be detrimental to the environment. Acquisition awards for the acquisition of lands or waters, or interests therein, for any one reserve may not exceed an amount equal to 50 per centum of the cost of the lands, waters, and interests therein or $5,000,000, whichever amount is less. In the case of a biogeographic region (see Appendix I) shared by two or more states, each state is eligible independently for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Application procedures are specified in subpart I. Land acquisition must follow the procedures specified in § 921.13(a)(7), § 921.21(e) and (f) and § 921.81.

§ 921.32 Operation and management: Implementation of the management plan.

(a) After the Reserve is formally designated, a coastal state is eligible to receive Federal funds to assist the state in the operation and management of the Reserve including the management of research, monitoring, education, and interpretive programs. The purpose of this Federally funded operation and management phase is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the Reserve.

(b) State operation and management of the Reserves shall be consistent with the mission, and shall further the goals of the National Estuarine Research Reserve program (see § 921.1).

(c) Federal funds are available for the operation and management of the Reserve. Federal funds provided pursuant to this section may not exceed 70% of the total cost of operating and managing the Reserve for any one year. In the case of a biogeographic region (see Appendix I) shared by two or more states, each state is eligible for Federal financial assistance to establish a separate Reserve within their respective portion of the shared biogeographic region (see § 921.10).

(d) Operation and management funds are subject to the following limitations:

(1) Eligible coastal state agencies may apply for up to the maximum share available per Reserve for that fiscal year. Share amounts will be announced annually by letter from the Sanctuary and Reserves Division to all participating states. This letter will be provided as soon as practicable following approval of the Federal budget for that fiscal year.

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities.

§ 921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.

(a) Changes in the boundary of a Reserve and major changes to the final management plan, including state laws or regulations promulgated specifically for the Reserve, may be made only after written approval by NOAA. NOAA may require public notice, including notice in the **Federal Register** and an opportunity for public comment before approving a boundary or management plan change. Changes in the boundary of a Reserve involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, a categorical exclusion, an environmental assessment and possibly an environmental impact statement may be required. NOAA will place a notice in the **Federal Register** of any proposed changes in Reserve boundaries or proposed major changes to the final management plan. The state shall be responsible for publishing an equivalent notice in the local media. See also requirements of § 921.4(b) and § 921.13(a)(11).

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award for a single site has been made. NOAA will publish notice of the proposed new site including an invitation for comments from the public in the **Federal Register**. The state shall be responsible for publishing an equivalent notice in the local newspaper(s). An EIS, if required, shall be prepared in accordance with section § 921.13 and shall include an administrative framework for the multiple-site Reserve and a description of the complementary research and educational programs within the Reserve. If NOAA determines, based on the scope of the project and the issues associated with the additional site(s), that an environmental assessment is sufficient to establish a multiple-site Reserve, then the state shall develop a revised management plan which, concerning the additional component, incorporates each of the elements described in § 921.13(a). The revised management plan shall address goals and objectives for all components of the multi-site Reserve and the additional component's relationship to the original site(s).

(c) The state shall revise the management plan for a Reserve at least every five years, or more often if necessary. Management plan revisions are subject to (a) above.

(d) NOAA will approve boundary changes, amendments to management plans, or the addition of multiple-site components, by notice in the **Federal Register**. If necessary NOAA will revise the designation document (findings) for the site.

Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation

§ 921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.

(a) The Sanctuaries and Reserve Division shall conduct, in accordance with section 312 of the Act and procedures set forth in 15 CFR part 928, ongoing oversight and evaluations of Reserves. Interim sanctions may be imposed in accordance with regulations promulgated under 15 CFR part 928.

(b) The Assistant Administrator may consider the following indicators of non-adherence in determining whether to invoke interim sanctions:

(1) Inadequate implementation of required staff roles in administration, research, education/interpretation, and surveillance and enforcement. Indicators of inadequate implementation could include: No Reserve Manager, or no staff or insufficient staff to carry out the required functions.

(2) Inadequate implementation of the required research plan, including the monitoring design. Indicators of inadequate implementation could include: Not carrying out research or monitoring that is required by the plan, or carrying out research or monitoring that is inconsistent with the plan.

(3) Inadequate implementation of the required education/interpretation plan. Indicators of inadequate implementation could include: Not carrying out education or interpretation that is required by the plan, or carrying out education/interpretation that is inconsistent with the plan.

(4) Inadequate implementation of public access to the Reserve. Indicators of inadequate implementation of public access could include: Not providing necessary access, giving full consideration to the need to keep some areas off limits to the public in order to protect fragile resources.

(5) Inadequate implementation of facility development plan. Indicators of inadequate implementation could include: Not taking action to propose and budget for necessary facilities, or not undertaking necessary construction in a timely manner when funds are available.

(6) Inadequate implementation of acquisition plan. Indicators of inadequate implementation could include: Not pursuing an aggressive acquisition program with all available funds for that purpose, not requesting promptly additional funds when necessary, and evidence that adequate long-term state control has not been established over some core or buffer areas, thus jeopardizing the ability to protect the Reserve site and resources from offsite impacts.

(7) Inadequate implementation of Reserve protection plan. Indicators of inadequate implementation could include: Evidence of non-compliance with Reserve restrictions, insufficient surveillance and enforcement to assure that restrictions on use of the Reserve are adhered to, or evidence that Reserve resources are being damaged or destroyed as a result of the above.

(8) Failure to carry out the terms of the signed Memorandum of Understanding (MOU) between the state and NOAA, which establishes a long-term state commitment to maintain and manage the Reserve in accordance with section 315 of the Act. Indicators of failure could include: State action to allow incompatible uses of state-controlled lands or waters in the Reserve, failure of the state to bear its fair share of costs associated with long-term operation and management of the Reserve, or failure to initiate timely updates of the MOU when necessary.

§ 921.41 Withdrawal of designation.

The Assistant Administrator may withdraw designation of an estuarine area as a National Estuarine Research Reserve pursuant to and in accordance with the procedures of section 312 and 315 of the Act and regulations promulgated thereunder.

Subpart F—Special Research Projects

§ 921.50 General.

(a) To stimulate high quality research within designated National Estuarine Research Reserves, NOAA may provide financial support for research projects which are consistent with the Estuarine Research Guidelines referenced in § 921.51. Research awards may be awarded under this subpart to only those designated Reserves with approved final management plans. Although research may be conducted within the immediate watershed of the Reserve, the majority of research activities of any single research project funded under this subpart may be conducted within Reserve boundaries. Funds provided under this subpart are primarily used to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Special research projects may be oriented to specific Reserves; however, research projects that would benefit more than one Reserve in the National Estuarine Reserve Research System are encouraged.

(b) Funds provided under this subpart are available on a competitive basis to any coastal state or qualified public or private person. A notice of available funds will be published in the **Federal Register**. Special research project funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

§ 921.51 Estuarine research guidelines.

(a) Research within the National Estuarine Research Reserve System shall be conducted in a manner consistent with Estuarine Research Guidelines developed by NOAA.

(b) A summary of the Estuarine Research Guidelines is published in the **Federal Register** as a part of the notice of available funds discussed in § 921.50(c).

(c) The Estuarine Research Guidelines are reviewed annually by NOAA. This review will include an opportunity for comment by the estuarine research community.

§ 921.52 Promotion and coordination of estuarine research.

(a) NOAA will promote and coordinate the use of the National Estuarine Research Reserve System for research purposes.

(b) NOAA will, in conducting or supporting estuarine research other than that authorized under section 315 of the Act, give priority consideration to research that make use of the National Estuarine Research Reserve System.

(c) NOAA will consult with other Federal and state agencies to promote use of one or more research reserves within the National Estuarine Research Reserve System when such agencies conduct estuarine research.

Subpart G—Special Monitoring Projects

§ 921.60 General.

(a) To provide a systematic basis for developing a high quality estuarine resource and ecosystem information base for National Estuarine Research Reserves and, as a result, for the System, NOAA may provide financial support for basic monitoring programs as part of operations and management under § 921.32. Monitoring funds are used to support three major phases of a monitoring program: (1) Studies necessary to collect data for a comprehensive site description/characterization; (2) development of a site profile; and (3) formulation and implementation of a monitoring program.

(b) Additional monitoring funds may be available on a competitive basis to the state agency responsible for Reserve management or a qualified public or private person or entity. However, if the applicant is other than the managing entity of a Reserve that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. Funds provided under this subpart for special monitoring projects are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Monitoring projects funded under this subpart must focus on the resources within the boundaries of the Reserve and must be consistent with the applicable sections of the Estuarine Research Guidelines referenced in § 921.51. Portions of the project may occur within the immediate watershed of the Reserve beyond the site boundaries. However, the monitoring proposal must demonstrate why this is necessary for the success of the project.

Subpart H—Special Interpretation and Education Projects

§ 921.70 General.

(a) To stimulate the development of innovative or creative interpretive and educational projects and materials to enhance public awareness and understanding of estuarine areas, NOAA may fund special interpretive and educational projects in addition to those activities provided for in operations and management under § 921.32. Special interpretive and educational awards may be awarded under this subpart to only those designated Reserves with approved final management plans.

(b) Funds provided under this subpart may be available on a competitive basis to any state agency. However, if the applicant is other than the managing entity of a Reserve, that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. These funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Applicants for education/interpretive projects that NOAA determines benefit the entire National Estuarine Research Reserve System may receive Federal assistance of up to 100% of project costs.

Subpart I—General Financial Assistance Provisions

§ 921.80 Application information.

(a) Only a coastal state may apply for Federal financial assistance awards for preacquisition, acquisition and development, operation and management, and special education and interpretation projects under subpart H. Any coastal state or public or private person may apply for Federal financial assistance awards for special estuarine research or monitoring projects under subpart G. The announcement of opportunities to conduct research in the System appears on an annual basis in the **Federal Register**. If a state is participating in the national Coastal Zone Management Program, the applicant for an award under section 315 of the Act shall notify the state coastal management agency regarding the application.

(b) An original and two copies of the formal application must be submitted at least 120 working days prior to the proposed beginning of the project to the following address: Sanctuaries and Reserves Division Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for site selection, post-site selection, operation and management, research, and education and interpretive awards. The Application for Federal Financial Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in subpart B (predesignation), subpart C and § 921.31 (acquisition and development), and § 921.32 (operation and management) as applicable. Applications for development awards for construction projects, or restorative activities involving construction, must include a preliminary engineering report, a detailed construction plan, a site plan, a budget and categorical exclusion check list or environmental assessment. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Written approval from NOAA of the draft management plan for initial acquisition and development award(s); and

(3) A preliminary engineering report for construction activities.

§ 921.81 Allowable costs.

(a) Allowable costs will be determined in accordance with applicable OMB Circulars and guidance for Federal financial assistance, the financial assistant agreement, these regulations, and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) General guidelines for the non-Federal share are contained in Department of Commerce Regulations at 15 CFR part 24 and OMB Circular A–110. Copies of Circular A–110 can be obtained from the Sanctuaries and Reserves Division; 1825 Connecticut Avenue, NW., suite 714; Washington, DC 20235. The following may be used in satisfying the matching requirement:

(1) *Site selection and post site selection awards.* Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and development awards.* Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the Reserve boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. However, the fair market value of real property allowable as match is limited to the fair market value of a real property interest equivalent to, or required to attain, the level of control over such land(s) identified by the state and approved by the Federal

Government as that necessary for the protection and management of the National Estuarine Research Reserve. Appraisals must be performed according to Federal appraisal standards as detailed in Department of Commerce regulations at 15 CFR part 24 and the Uniform Relocation Assistance and Real Property Acquisition for Federal land Federally assisted programs in 15 CFR part 11. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state, pursuant to 15 CFR part 11, may also be used as match. Land, including submerged lands already in the state's possession, may be used as match to establish a National Estuarine Research Reserve. The value of match for these state lands will be calculated by determining the value of the benefits foregone by the state, in the use of the land, as a result of new restrictions that may be imposed by Reserve designation. The appraisal of the benefits foregone must be made by an independent appraiser in accordance with Federal appraisal standards pursuant to 15 CFR part 24 and 15 CFR part 11. A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the National Estuarine Research Reserve (see also § 921.20). Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match.

(3) *Operation and management awards.* Generally, cash and in-kind contributions (directly benefiting and specifically identifiable to operations and management), except land, are allowable.

(4) *Research, monitoring, education and interpretive awards.* Cash and in-kind contributions (directly benefiting and specifically identifiable to the scope of work), except land, are allowable.

§ 921.82 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget or original scope of work, or extension of the performance period must be submitted to NOAA on Standard Form 424 and approved in writing.

Appendix I to Part 921—Biogeographic Classification Scheme

Acadian

1. Northern of Maine (Eastport to the Sheepscot River.)
2. Southern Gulf of Maine (Sheepscot River to Cape Cod.)

Virginian

3. Southern New England (Cape Cod to Sandy Hook.)
4. Middle Atlantic (Sandy Hook to Cape Hatteras.)
5. Chesapeake Bay.

Carolinian

6. North Carolinas (Cape Hatteras to Santee River.)
7. South Atlantic (Santee River to St. John's River.)
8. East Florida (St. John's River to Cape Canaveral.)

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south.)
10. West Florida (Ft. Jefferson to Cedar Key.)

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay.)
12. Mississippi Delta (Mobile Bay to Galveston.)
13. Western Gulf (Galveston to Mexican border.)

Californian

14. Southern California (Mexican border to Point Conception.)
15. Central California (Point Conception to Cape Mendocino.)
16. San Francisco Bay.

Columbian

17. Middle Pacific (Cape Mendocino to the Columbia River.)
18. Washington Coast (Columbia River to Vancouver Island.)
19. Puget Sound.

Great Lakes

20. Lake Superior (including St. Mary's River.)
21. Lakes Michigan and Huron (including Straits of Mackinac, St. Clair River, and Lake St. Clair.)
22. Lake Erie (including Detroit River and Niagara Falls.)
23. Lake Ontario (including St. Lawrence River.)

Fjord

24. Southern Alaska (Prince of Wales Island to Cook Inlet.)
25. Aleutian Island (Cook Inlet Bristol Bay.)

Sub-Arctic

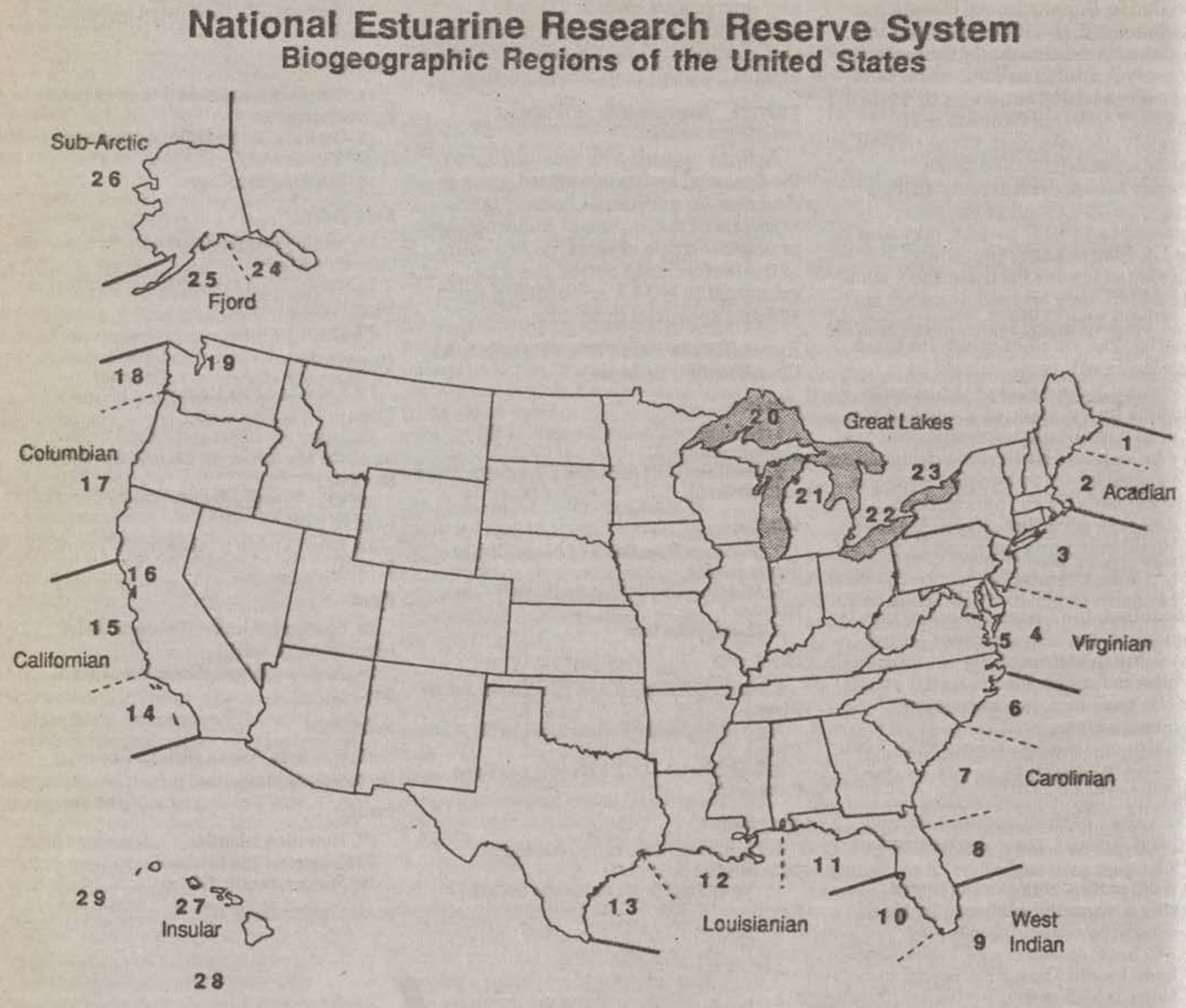
26. Northern Alaska (Bristol Bay to Damarcation Point.)

Insular

27. Hawaiian Islands.
28. Western Pacific Island.
29. Eastern Pacific Island.

BILLING CODE 3510-08-M

FIGURE 1



BILLING CODE 3510-08-C

Appendix II to Part 921—Typology of National Estuarine Research Reserves

This typology system reflects significant differences in estuarine characteristics that are not necessarily related to regional location. The purpose of this type of classification is to maximize ecosystem variety in the selection of national estuarine reserves. Priority will be given to important ecosystem types as yet unrepresented in the reserve system. It should be noted that any one site may represent several ecosystem types or physical characteristics.

Class I—Ecosystem Types

Group I—Shorelands

A. Maritime Forest-Woodland. That have developed under the influence of salt spray. It can be found on coastal uplands or recent features such as barrier islands and beaches, and may be divided into the following biomes:

1. Northern coniferous forest biome: This is an area of predominantly evergreens such as the sitka spruce (Picea), grand fir (Abies), and white cedar (Thuja), with poor development of the shrub and herb leyera, but high annual productivity and pronounced seasonal periodicity.

2. Moist temperate (Mesothermal) coniferous forest biome: Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. Temperate deciduous forest biome: This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibit a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distinct subdivision of this biome is the pine edible forest of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. Broad-leaved evergreen subtropical forest biome: The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarine, strangler fig, gumbo limbo, and palms.

B. Coast shrublands. This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems and a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. Northern areas: Characterized by Hudsonia, various erinaceous species, and thickets of Myricu, prunus, and Rosa.

2. Southeast areas: Floral dominants include Myrica, Baccharis, and Iles.

3. Western areas: Adenostoma, arcotyphylos, and eucalyptus are the dominant floral species.

C. Coastal grasslands. This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (5 to 8 feet tall), such as Spartina, and trees such as willow (Salix sp.), cherry (Prunus sp.), and cottonwood (Pupulus deltoides.) This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: Elymus;

2. Northeast/West: Ammophla;

3. Southeast Gulf: Uniola; and

4. Mid-Atlantic/Gulf: Spartina patens.

D. Coastal tundra. This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made up of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as Empetrum nigrum and Betula nana, the lichens Cetraria and Cladonia, and herbaceous plants such as Potentilla tridentata and Rubus chamaemorus. Common species on the coastal beach ridges of the high arctic desert include Bryas intergrifolia and Saxifrage oppositifolia. This area can be divided into two main subdivisions:

1. Low tundra: Characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and

2. High Tundra: A bare area except for a scanty growth of lichens and grasses, with underlaying ice wedges forming raised polygonal areas.

E. Coastal cliffs. This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and "higher" plant representatives.

Group II—Transition Areas

A. Coastal marshes. These are wetland areas dominated by grasses (Poacea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: (a) Tidal, which is periodically flooded by either salt or brackish water; (b) nontidal (freshwater); or (c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates as well as shorebirds and waterfowl and serve important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. Coastal swamps. These are wet lowland areas that support mosses and shrubs together with large trees such as cypress or gum.

C. Coastal mangroves. This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by a variety of salt-tolerant trees, such as the red mangrove (Rhizophora mangle), black mangrove (Avicennia Nitida), and the white mangrove (Laguncularia racemosa.) It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

D. Intertidal beaches. This ecosystem has a distinct biota of microscopic animals, bacteria, and unicellular algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (Emerita), amphipods (Gammeridae), ghost crabs (Ocypode), and bivalve mollusks such as the coquina (Donax) and surf clams (Spisula and Mactra.)

E. Intertidal mud and sand flats. These areas are composed of unconsolidated, high organic content sediments that function as a short-term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflaggellates, filamintous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell Donax, the scallop Pecten, tellin shells Tellina, the heart urchin Echinocardium, the lug worm Arenicola, sand dollar Dendraster, and the sea pansy Renilla. In mud, faunal dominants adapted to low oxygen levels include the terebellid Amphitrite, the boring clam Playdon, the deep sea scallop Placopecten, the Quahog Mercenaria, the echiurid worm Urechis, the mud snail Nassarius, and the sea cucumber Thyone.

F. Intertidal algal beds. These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. Northern latitude rocky shores: It is in this region that the community structure is best developed. The dominant algal species include Chondrus at the low tide level, Fucus and Ascophylium at the mid-tidal level, and Laminaria and other kelplike algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. Southern latitudes: The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentour green, blue-green, and red algae, and small thalloid brown algae.

3. Tropical and subtropical latitudes: The intertidal in this region is very reduced and contains numerous calcareous algae such as Porolithon and Lithothamnion, as well and green algae with calcareous particles such as Halimeda, and numerous other green, red, and brown algae.

Group III—Submerged Bottoms

A. Subtidal hardbottoms. This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic origin) and is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. A significant feature of estuaries in many parts of the world is the oyster reef, a type of subtidal hardbottom. Composed of assemblages of organisms (usually bivalves), it is usually found near an estuary's mouth in a zone of moderate wave action, salt content, and turbidity. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as keep, may also be found.

B. Subtidal softbottoms. Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a diverse population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. Subtidal plants. This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass Zostera marina predominates. In the South Atlantic and Gulf coast areas, Thalassia and Diplanthera predominate. The grasses in both areas support a number of epiphytic organisms.

Class II—Physical Characteristics

Group I—Geologic

A. Basin type. Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. Exposed coast: Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area making them chief stabilizers of the ocean shorefront.

2. Sheltered coast: Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined-waters-abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects pollution being more severe in this area than in exposed coastal areas.

3. Bay: Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced the flushing action is augmented by river discharge. Bays vary in size and in type of shorefront.

4. Embayment: A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. Tidal river: The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. Lagoon: Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. Perched coastal wetlands: Unique to Pacific islands, this wetland type found above sea level in volcanic crater remnants forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. Example: Aunu's Island, American Samoa.

8. Anchialine systems: These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs have only a subsurface connection in the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthis algae such as Rhizoclonium, the mineral encrusting Schiuzothrix, and the vascular plant Ruppia maritima. Characteristic fauna which exhibit a high degree of endemicity, include the mollusks Theosoxus neglectus and Tcariosus. Although found throughout the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. Basin structure. Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. Coastal plains estuary: Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries an irregular estuary results. Many estuaries of the eastern United States are of this type.

2. Fjord: Estuaries that form in elongated steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. They generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume river discharge is small. But many fjords have restricted tidal ranges at their mouths due to sills, or upreaching sections of the bottom which limit free movement of water, often making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800m to 1200m while sill depths usually range from 40m to 150m.

3. Bar-bounded estuary: These result from the development of an offshore barrier such as a beach strand, a line of barrier islands, reef formations a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars of barrier islands broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent seal level rises.

4. Tectonic estuary: These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding or movement of the earth's bedrock often with a large inflow of freshwater.

5. Volcanic estuary: These coastal bodies of open water, a result of volcanic processes are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic orgin.

C. Inlet type. Inlets in various forms are an integral part of the estuarine environment as they regulate to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea.

1. Unrestricted: An estuary with a wide unrestricted inlet typically has slow currents, no significant turbulence, and receives the full effect of ocean waves and local disturbances which serve to modify the shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. Restricted: Restrictions of estuaries can exist in many forms: Bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or bore. Such currents exert profound effects on the nature of the subtrate, turbidity, and biota of the estuary.

3. Permanent: Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea.

4. Temporary (Intermittent): Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea, and sound waters, the frequency of storms, and the amount of littoral transport.

D. Bottom composition. The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. Sand: Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shore and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. Mud. At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silts, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. Rock: Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. Oyster shell: Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

Group II—Hydrographic

A. Circulation. Circulation patterns are the result of combined influences of freshwater inflow, tidal action, wind and oceanic forces, and serve many functions: Nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. Stratified: This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from "drowned" river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. Non-stratified: Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. Lagoonal: An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. Tides. This is the most important ecological factor in an estuary as it affects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of the cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as datum. The tides, although complex, fall into three main categories:

1. Diurnal: This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. Semidiurnal: This refers to a twice daily rise and fall in water that can be observed along the shoreline.

3. Wind/Storm tides: This refers to fluctuations in water elevation to wind and storm events, where influence of lunar tides is less.

C. Freshwater. According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. Surface water: This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. Subsurface water: This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. Vadose water: This is water in the soil above the water table. Its volume with respect to the soil is subject to considerable fluctuation.

b. Groundwater: This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land being high hills and sloping into valleys.

Group III—Chemical

A. Salinity. This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand-ppt.)

1. Positive estuary: This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. Negative estuary: This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3 Salinity zones (expressed in ppt):

a. Hyperhaline—greater than 40 ppt.

b. Euhaline—40 ppt to 30 ppt.

c. Mixhaline—30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. Limnetic: Less than 0.5 ppt.

B. pH Regime: This is indicative of the mineral richness of estuarine waters and falls into three main categories:

1. Acid. Waters with a pH of less than 5.5.

2. Circumneutral. A condition where the pH ranges from 5.5 to 7 4.

3 Alkaline: Waters with a pH greater thar 7.4

[FR Doc. 93-14753 Filed 7-14-93; 8:45 am]

BILLING CODE 3510-08-M