List of Subjects in 9 CFR Part 96

Imports, Livestock, Reporting and threshold requirements.

Accordingly, 9 CFR part 96 is amended to read as follows:

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

1. The authority citation for part 96 continues to read as follows:

Authority: 21 U.S.C. 111, 136, 136a; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 96.2, paragraph (b) is revised to read as follows:

§ 96.2 Casings from countries where African swine fever or bovine spongiform encephalopathy exists.

* * * * *

(b) The importation of bovine casings, except stomachs, that originated in or were processed in any country where bovine spongiform encephalopathy exists, as listed in § 94.18(a) of this subchapter, is prohibited.

Done in Washington, DC, this 23rd day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-13056 Filed 5-27-94; 8:45 am]

BILLING CODE 3410-34-P

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 604, 605, 611, and 615

RIN 3052-AB41

Miscellaneous Technical Changes; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 600, 604, 605, 611, and 615 on April 26, 1994 (59 FR 21640). The final regulation amends 12 CFR parts 600, 604, 605, 611, and 615 to reflect changes in the FCA organization and to update a statutory citation and a mailing address. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 26, 1994.

EFFECTIVE DATE: The regulation amending 12 CFR parts 600, 604, 605, 611, and 615, published on April 26, 1994 (59 FR 21640) is effective May 26, 1994.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

Frances A. Pederson, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: May 24, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94-13109 Filed 5-27-94; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-58-AD; Amendment 39-8921; AD 94-11-05]

Airworthiness Directives; Boeing Model 767-200 and 767-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767-200 and 767-300 series airplanes. This action requires repetitive inspections of the pumping unit assembly on the override and jettison fuel boost pump assemblies to detect looseness of the screws that attach the inlet diffuser assembly to the pumping unit housing, and repair or replacement of the pumping unit assembly with a serviceable assembly, if necessary. For certain airplanes, this AD also provides for deactivation of the center wing fuel tank as an alternative to the repetitive inspections. This amendment is prompted by reports of failures of the override and jettison fuel pumps due to damage to impeller units and pumping unit housings caused by loose diffuser rings in the fuel pump assemblies of these airplanes. During dry fuel operation, a loose diffuser ring may cause metal-to-metal contact. The actions specified in this AD are intended to prevent the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation.

DATES: Effective June 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-58-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lanny Pinkstaff, Aerospace Engineer, Propulsion Branch, ANM-140S; FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2684; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of failures of the override and jettison fuel pumps on certain Boeing Model 767-200 and -300 series airplanes. Investigation revealed that the screws that attach the inlet diffuser assembly to the pumping unit housing became loose and were ingested into the fuel pump assembly. Loose screws caused the diffuser ring to become loose and contact the impeller, which damaged the impeller and pumping unit housing and caused the fuel pump to seize. During dry fuel pump operation, a loose diffuser ring also could cause metal-to-metal contact. This condition, if not corrected, could result in the generation of sparks and a potential ignition source inside the fuel tank.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-28A0045, Revision 1, dated April 28, 1994, that describes procedures for repetitive inspections of the pumping unit assembly on the override and jettison fuel boost pump assemblies to detect looseness of the screws that attach the inlet diffuser assembly to the pumping unit housing, and replacement of the pumping unit assembly with a serviceable assembly, if necessary. As an alternative to the inspections, the alert service bulletin also describes procedures for deactivating the center wing fuel tank. Accomplishment of either of these actions will prevent the inlet diffuser assembly and various parts in the pump assembly from creating an ignition source during dry fuel pump operation.

In addition, the FAA has reviewed and approved Sundstrand Alert Service Bulletin 5006286-28-A5, Revision 2, dated May 3, 1994, which describes procedures for repair of the pumping unit assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 767-200 and -300 series airplanes of the same type design, this AD is being issued to prevent the generation of sparks and a potential ignition source inside the fuel tank. This AD requires repetitive inspections of the pumping unit assembly on the override and jettison fuel boost pump assemblies to detect looseness of the screws that attach the inlet diffuser assembly to the pumping unit housing, and repair or replacement of the pumping unit assembly with a serviceable assembly, if necessary. For certain airplanes, this AD also provides for deactivation of the center wing fuel tank as an alternative for the repetitive inspections. The inspections, replacement, and deactivation are required to be accomplished in accordance with the Boeing alert service bulletin described previously. The repair is required to be accomplished in accordance with the Sundstrand alert service bulletin described previously.

This AD also requires that operators submit a report of inspection findings to the FAA.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-58-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-11-05 Boeing: Amendment 39-8921. Docket 94-NM-58-AD.

Applicability: Model 767-200 and -300 series airplanes; line positions 001 through 473 inclusive, 475 through 504 inclusive, 506 through 532 inclusive, and 534; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the generation of sparks and a potential ignition source inside the fuel tank, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) Perform an inspection of the pumping unit assembly, part number 5006286 series, on the override and jettison fuel boost pump assemblies to detect looseness of the screws that attach the inlet diffuser assembly to the pumping unit housing, in accordance with Boeing Alert Service Bulletin 767-28A0045, Revision 1, dated April 28, 1994.

(i) If no looseness is found, prior to further flight, identify the pumping unit assembly with "28-A5" next to the part number in the part number block or other blank space of the identification plate. Repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service.

(ii) If any looseness if found, prior to further flight, accomplish either paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD; and repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service.

(A) Replace the pumping unit assembly with a serviceable assembly, in accordance with Boeing Alert Service Bulletin 767-28A0045, Revision 1, dated April 28, 1994. Or

(B) Repair the pumping unit assembly in accordance with Sundstrand Alert Service Bulletin 5006286-28-A5, Revision 2, dated May 3, 1994.

(2) For airplanes having a center tank scavenge system: In lieu of accomplishing the inspection required by paragraph (a)(1) of this AD, the center wing fuel tank may be deactivated in accordance with Boeing Alert Service Bulletin 767-28A0045, Revision 1, dated April 28, 1994. The tank may be reactivated only after accomplishment of the inspection required by paragraph (a)(1) of

this AD, and the repair or replacement, as necessary, required by paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this AD.

(b) Within 10 days after accomplishing the initial inspection required by paragraph (a) of this AD, submit a report of inspection findings to the Manager, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. The report must include the inspection results, the airplane line position, the location of the pump on the airplane, and the number of hours time-in-service on the pumping unit assembly since new or since its last removal. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) As of 30 days after the effective date of this AD, no person shall install an override fuel boost pump assembly, part number 5006283 series, or an override/jettison fuel boost pump assembly, part number 5009656 series, on any airplane unless that assembly has been inspected and identified previously in accordance with Boeing Alert Service Bulletin 767–28A0045, Revision 1, dated April 28, 1994.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–28A0045, Revision 1, dated April 28, 1994; and Sundstrand Alert Service Bulletin 5006286–28–A5, Revision 2, dated May 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 15, 1994.

Issued in Renton, Washington, on May 23, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13010 Filed 5–27–94; 8:45 am]

BILLING CODE 4910–13–U–M

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14 CFR Part 39

[Docket No. 94–NM–64–AD; Amendment 39–8922; AD 94–11–06]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This action requires modification of the external power feeder cable clamping installation. This amendment is prompted by reports of damage to the external power feeder cables located under the forward cargo compartment floor, which was caused by excessive cable length and/or maintenance personnel stepping on the cables. The actions specified in this AD are intended to prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location.

DATES: Effective June 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5347; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: One operator of McDonnell Douglas Model MD–11 series airplanes recently reported that, during fueling and loading of cargo, smoke was observed in the forward lower cargo compartment of one airplane. The forward cargo door was open and no cargo compartment smoke warning was noted in the cockpit. Maintenance personnel directed a fire extinguisher into the cargo compartment air outlet at approximately station Y=635. The airport fire department was notified and assisted in extinguishing all smoke. No injuries were reported. Investigation of this incident revealed heat damage under the cargo floor from station Y=602 to station Y=695, between longerons 48 left-hand side to 43 right-hand side. Insulation blankets at these locations were replaced. Vertical supports, part numbers (P/N) ADA0033–2, suffered possible heat damage and were replaced. Certain wiring located near the aircraft centerline, station Y=602 to Y=615, was discolored and replaced. Paint on the lower fuselage in three locations was slightly darkened. The airplane was repaired prior to return to service.

Approximately one month later, a second incident occurred on this same airplane in which, prior to flight, a burning smell was noticed in the First Class passenger seating area at about the same time that electrical power was being applied to the airplane. Subsequently, the airplane would not accept external power. Investigation revealed that the external power cables had chafed and arced to the fuselage frame at station Y=655. The metalized covering of one blanket at this location from the airplane centerline to one yard left of centerline was missing, and the blanket insulation had burn spots. The cables and blankets were replaced on this airplane.

Investigation of these incidents by McDonnell Douglas revealed that the damage to the external power feeder cables located under the forward cargo compartment floor could have been caused by excessive cable length and/or maintenance personnel stepping on the cable. Damage to the cables, such as chafing, can lead to arcing at the subject location. This condition, if not corrected, could result in a fire under the forward cargo compartment floor.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994, that describes procedures for replacing one cable clamp support (standoff) with a new bracket at station Y=655, and replacing six nylon cable clamps with new metal clamps having rubber cushions at station Y=635. Modifying the external power feeder cable clamping installation will minimize the possibility of damage and chafing of the cables, and thereby minimize the possibility of arcing and potential resultant fire. The manufacturer has advised that this installation will be incorporated prior to delivery on airplanes having manufacturer's serial numbers 559, 560, 562, and subsequent.

Since an unsafe condition has been identified that is likely to exist or develop on other Model MD–11 and MD–11F series airplanes of the same type design, this AD is being issued to prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location. This AD requires modification of the external power feeder cable clamping installation. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–64–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–11–06 McDonnell Douglas: Amendment 39–8922. Docket 94–NM–64–AD.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the external power feeder cable clamping installation in accordance with McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 15, 1994.

Issued in Renton, Washington, on May 23, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13011 Filed 5–27–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

15 CFR Parts 923, 926, 927

[Docket No. 940109–4009]

RIN 0648–AE11

Coastal Zone Management Program Regulations

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

ACTION: Final rule.

SUMMARY: The Coastal Zone Act Reauthorization Amendments of 1990, enacted November 5, 1990, amended the Coastal Zone Management Act (CZMA) and reauthorized NOAA's Coastal Zone Management (CZM) Program under that Act. Among the amendments were revisions to findings, policies and definitions in the CZMA; repeal of provisions on preliminary program approval grants, program segmentation, and significant improvements; and reorganization and consolidation of approval requirements for state programs. The purpose of this final rule is to conform NOAA's regulations implementing the CZM program to the statutory changes.

EFFECTIVE DATE: This rule is effective on June 30, 1994.

ADDRESSES: Additional information may be obtained from the National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management at 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910. Telephone: 301–713–3086.

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued under the authority of the CZMA, as amended, 16 U.S.C. 1451 *et seq.*

II. Background

The CZMA was enacted to encourage and assist coastal states and territories to develop and implement management programs to preserve, protect, develop and, where possible, restore or enhance the resources of the Nation's coasts.

Prior to the 1990 Amendments, the CZMA included statements of Congressional findings and policies for the CZM Program, identified nine national coastal management objectives and specified that all state CZM Programs were to make "significant improvements" in achieving these objectives, defined key terms, authorized grants for program development and implementation and specified allocation and match requirements, and specified program approval requirements. The program approval requirements were set forth in Section 305, Management Program Development Grants (at Section 305(b) (1)–(9)) and Section 306, Administrative Grants (at Section 306 (c)–(h)). NOAA's regulations at 15 CFR parts 923, 926 and 927 implemented these provisions.

III. Coastal Zone Act Reauthorization Amendments of 1990

The Coastal Zone Act Reauthorization Amendments of 1990 (Amendments) (Pub. L. No. 101–508, 104 Stat. 1388 (1990)) were enacted on November 5, 1990. The Amendments made a number of changes to the CZMA.

• New and revised Congressional findings. Section 6202 of the Amendments set forth nine new Congressional findings. In addition, the Amendments revise the existing findings at Section 302 (d) and (f) and add three new findings at Section 302 (k), (l) and (m).

• New and revised Congressional declarations of policy. The Amendments revise the statements of policy at Sections 303(2), 303(2)(B) and 303(3), and add new statements of policy at Section 303(2) (C) and (K) and Section 303 (5) and (6).

• New and revised definitions. The Amendments revise the definitions of "coastal zone" at Section 304(1) and "water use" at Section 304(18), and add a definition of "enforceable policy" at Section 304(6a).

• Revisions to Management Program Development Grants. Section 305 on Management Program Development Grants was completely revised. Old Section 305(b) (1)–(9), which contains requirements for management program approval, was moved to new Section 306(d)(2). The remaining provisions of old Section 305, including the authorization for preliminary approval grants, were deleted and replaced with an authorization for annual program developments grants for Fiscal Years 1991, 1992 and 1993 not to exceed $200,000 per year per state at a ratio of 4-to-1 Federal-to-state match. Program development grants are also an authorized use of the new Section 308 Coastal Zone Management Fund.

• Revisions to Administrative Grants. Section 306 on Administrative Grants also was completely revised. Section 306(a) was amended to change the match provisions for administrative grants to implement approved state CZM Programs. The "significant improvement" provisions of old Section 306(a)(3) were deleted. The minimum grants provisions of old Section 306(b) were deleted and a new provision was added which allows the Secretary, after consultation with the coastal states, to establish maximum and minimum grants for any fiscal year to promote equity and efficient coastal management. The program approval requirements of old Section 305(b) (1)–(9) and Section 306 (c)–(h) were revised and consolidated in new Section 306(d). New program approval requirements were added at Section 306(d) (14), (15) and (16). Section 306(d) (14) and (15) must be met within three years of enactment (or by November 1993) and Section 306(d)(16) must be met within 30 months of EPA's issuance of final guidance on management measures for controlling coastal nonpoint pollution (or at the same time the Coastal Nonpoint Pollution Control Programs under Section 6217 of the Amendments are due). Old Section 306(g) on program changes was revised and renumbered as Section 306(e). Old Section 306(h) authorizing program segmentation was deleted.

• Revisions to Resource Management Improvement Grants. Section 306A(b)(1) was revised to authorize use of Section 306A funds for restoring and enhancing shellfish production.

IV. Purpose of Today's Rule

Some of NOAA's current CZM Program regulations need to be revised to conform to the changes to the CZMA made by the Amendments. The purpose of this rule is to amend these regulations to make them consistent with the CZMA as amended. By modifying the current NOAA regulations to reflect the new statutory requirements, this notice serves to clarify the effect of the

Amendments on coastal states, Federal agencies and other affected groups.

V. Codification of the Regulations

The following is a brief description of changes made to the regulations.

A. National Coastal Zone Management Program

Part 923—Coastal Zone Management Program Development and Approval Provisions.

By reorganizing and consolidating CZM Program approval requirements previously found throughout Sections 305 and 306 of the CZMA into one section—Section 306(d)—the Amendments have changed almost all of the statutory references found throughout 15 CFR part 923. This rule replaces the old statutory references with the new references throughout 15 CFR part 923 and revises the referenced statutory citations wherever required.

The Amendments deleted several previously authorized program development and approval provisions, including authority for preliminary approval grants, authority for program segmentation, and the requirement that states devote an increasing proportion of Federal financial assistance for program implementation, up to 30%, toward making "significant improvement" in achieving nine national coastal management objectives. This rule removes the portions of NOAA's regulations implementing these provisions and renumbers the regulations as necessary.

This rule revises the references to Congressional findings and declarations of policy to reflect the Amendments. This includes revising the phrase "as well as the needs for economic development" to "as well as the needs for compatible economic development" and adding the new Congressional findings on water quality, sea level rise, and ocean resources planning.

A definition of "enforceable policy" is added and the definitions of the terms "coastal zone" and "water use" are revised to reflect the Amendments. this includes revising all references to "the outer limit of the territorial sea" to read "the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 20, 1962 (48 U.S.C. 1705), as applicable." It also includes revising all references to "direct and significant impacts on coastal waters" to read "direct and significant impacts on coastal waters or areas which are likely to be affected by or vulnerable to sea level rise."

Other changes include adding the word "historical" at §§ 923.22 (a) and (b) to read "preserving or restoring areas for their conservation, recreational, ecological, historical or esthetic values," revising the chart at § 923.71 which summarizes the findings necessary for CZM Program approval, revising the statutory reference to and citation of Section 312 at § 923.80, and changing the costs of equipment purchases requiring prior NOAA approval from $1,000 to $5,000 at § 923.93(f) pursuant to OMB Circular A-102.

Part 926—Coastal Zone Management Program Development Grants, Allocation of Funds to States.

This part is removed. The Amendments revised old Section 305 to authorize annual program development grants to states for Fiscal Years 1991, 1992, and 1993, not to exceed $200,000 per year per state at a 4-to-1 Federal-to-state match. In addition, program development grants are made an allowable use of the new CZM Fund (new Section 308).

Part 927—Allocation of Section 306 Program Administration Grants.

This part is revised to incorporate new statutory references and citations and new provisions for establishing annually the maximum and minimum share. The regulation on calculation of financial assistance award levels is revised to reflect the amendments to Section 312.

VI. Classification

A. Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

B. Administrative Procedure Act

The changes to the regulations made by this rule are required by the 1990 statute and, thus, are non-discretionary. Except for some minor editorial changes, the only revisions to the regulations are the incorporation of the new statutory language into them. Since no useful purpose would be served by giving notice and opportunity for comment, the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, for good cause, found under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) that notice and opportunity for public comment procedure thereon is unnecessary.

List of Subjects

15 CFR Part 923

Coastal zone, Grant programs—Natural resources, Reporting and recordkeeping requirements.

15 CFR Part 927

Allocation formula.

Dated: May 10, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set out the Preamble, 15 CFR chapter IX is amended as follows:

PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

1. The authority citation for Part 923 is revised to read as follows:

Authority: 16 U.S.C. 1451 *et seq.*

Subpart A—General

2. Section 923.1 is amended by revising the first sentence of paragraph (b), and by adding paragraphs (c)(7), (8) and (9) to read as follows:

§ 923.1 Purpose.

* * * * *

(b) Sections 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. * * *

(c) * * *

(7) Provides for public participation in permitting processes, consistency determinations, and other similar decisions.

(8) Provides a mechanism to ensure that all state agencies will adhere to the program.

(9) Not later than 30 months after the date of publication of final guidance under section 6217(g) of the Act, contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the state required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

* * * * *

3. Section 923.2 is amended by revising paragraphs (d)(2) and (h) to read as follows:

§ 923.2 Definitions.

* * * * *

(d) * * *

(2) The following are defined as relevant Federal agencies:

Department of Agriculture;
Department of Commerce;

Department of Defense;
Department of Education;
Department of Energy;
Department of Health and Human Services;
Department of Housing and Urban Development;
Department of the Interior;
Department of Transportation;
Environmental Protection Agency;
Federal Energy Regulatory Commission;
General Services Administration;
Nuclear Regulatory Commission.

* * * * *

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:
(1) coastal zone
(2) coastal waters
(3) enforceable policy
(4) estuary
(5) land use
(6) water use

* * * * *

4. Section 923.3 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 923.3 General requirements.

(a)(1) As required by subsection 306(d)(1) of the Act, before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone which is adequate to carry out the purposes of the Act and is consistent with the policy declared in section 303 of the Act.

(2) As stated in section 302 of the Act, the Congress finds that—

(i) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone.

(ii) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation.

(iii) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

(iv) The habitat areas of the coastal zone, and the fish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(v) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

(vi) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities in the Great Lakes, territorial sea, exclusive economic zone and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters.

(vii) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

(viii) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(ix) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage these states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(x) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

(xi) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitants, and efforts to control coastal water pollution from land use activities must be improved.

(xii) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

(xiii) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.

(3) As stated in section 303 of the Act, the Congress finds and declares that it is the national policy—

(i) to preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations;

(ii) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development;

(iii) to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decisionmaking;

(iv) to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title;

(v) to encourage coordination and cooperation with and among the appropriate Federal, state, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results and technical assistance, to support state and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

(vi) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging states to consider such issues as ocean uses potentially affecting the coastal zone.

(b) * * *

(1) The management program must provide for the management of those

land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise. The program must take steps to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the state's coastal zone a unique, vulnerable, or valuable area.

* * * * *

Subpart B—Uses Subject to the Management Program

5. Section 923.10 is revised to read as follows:

§ 923.10 General.

This subpart deals with land and water uses which, because of their direct and significant impacts on coastal waters or those geographic areas likely to be affected by or vulnerable to sea level rise, are subject to the terms of the management program. Determination of these uses will assist in determining the appropriate coastal management boundary (see Subpart D). This subpart deals in full with the requirements of subsection 306(d)(1)(B), Uses subject to the management program, 306(d)(2)(H), Energy Facility Planning, and 306(d)(12)(B), Uses of Regional Benefit.

6. Section 923.11 is amended by revising paragraphs (a), the second sentence of paragraph (b)(1) and (c)(4)(ii), and by adding paragraph (c)(4)(v) to read as follows:

§ 923.11 Uses subject to management.

(a) As required by subsection 306(d)(2)(B), the management program for each coastal state must include a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(b) *Requirements.* (1) * * * These uses shall be those with direct and significant impacts on coastal waters or on geographic areas likely to be affected by or vulnerable to sea level rise.

* * * * *

(c) * * *

(4) * * *

(ii) Historic, cultural and esthetic resources where coastal development is likely to affect these resources;

* * * * *

(v) Information on the impacts of global warming and resultant sea level rise on natural resources such as beaches, dunes, estuaries, and wetlands, on salinization of drinking water supplies, and on properties, infrastructure and public works.

7. Section 923.12 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 923.12 Uses of regional benefit.

(a) As required by subsection 306(d)(12), before approving a management program submitted by a coastal state, the Secretary shall find that the management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

(b) In order to meet the requirements of subsection 306(d)(12) of the Act, states must:

* * * * *

8. Section 923.13 is amended by revising paragraph (a), the first sentence of paragraph (b) introductory text and (b)(3)(ii) to read as follows:

§ 923.13 Energy facility planning process.

(a) As required by subsection 306(d)(2)(H), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a planning process for energy facilities likely to be located in or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

(b) *Requirements.* States must develop a planning process which is capable, at a minimum, of anticipating the management of the impacts from energy facilities in or affecting the state's coastal zone. * * *

* * * * *

(3) * * *

(ii) States must list relevant constitutional provisions, laws, regulations, judicial decisions and other appropriate official documents or actions that are specifically related to planning for, and anticipating the management of energy facilities or impacts, including licensing or permitting procedures.

* * * * *

Subpart C—Special Management Areas

9. Section 923.20 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 923.20 General.

(a) * * * This subpart deals with the following subsections of the Act: 306(d)(2)(C)—Geographic areas of Particular Concern; 306(d)(2)(E)—Guidelines on Priorities of Uses; 306(d)(2)(G)—Shorefront Access and Protection Planning; 306(d)(2)(I)—Shoreline Erosion/Mitigation Planning; and 306(d)(9)—Areas for Preservation and Restoration.

* * * * *

10. Section 923.21 is amended by revising paragraphs (a) and (b)(1)(i)(G) to read as follows:

§ 923.21 Areas of particular concern.

(a)(1) As required by subsection 306(d)(2)(C), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes an inventory and designation of areas of particular concern within the coastal zone.

(2) As required by subsection 306(d)(2)(E), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) * * *

(1) * * *

(i) * * *

(G) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, salt water intrusion, and sea level rise;

* * * * *

11. Section 923.22 is amended by revising paragraph (a) and the second sentence of paragraph (b)(1) to read as follows:

§ 923.22 Areas for preservation or restoration.

(a) As required by subsection 306(d)(9), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical or esthetic values.

(b) *Requirements.* (1) * * * Designations may be made for the purposes of preserving or restoring areas for their conservation, recreational ecological, historical or esthetic values.

* * * * *

12. Section 923.24(a) is revised to read as follows:

§ 923.24 Shorefront access and protection planning.

(a) As required by Subsection 306(d)(2)(G), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

* * * * *

13. Section 923.25 is amended by revising paragraphs (a) and (c)(1) and (2) to read as follows:

§ 923.25 Shoreline erosion/mitigation planning.

(a) As required by Subsection 306(d)(2)(I), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

* * * * *

(c) *Requirements.* (1) The management program must include a method for assessing the effects of shoreline erosion, including potential impacts of sea level rise, and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion.

(2) There must be an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion, including potential impacts of sea level rise, as the state's planning process indicates is necessary.

Subpart D—Boundaries

14. Section 923.30 is amended by revising paragraphs (a) and (c) to read as follows:

§ 923.30 General.

(a) This subpart deals in full with subsection 306(d)(2)(A) of the Act—Boundaries of the Coastal Zone.

* * * * *

(c) As required by subsection 306(d)(2)(A), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes an identification of the boundaries of the coastal zone subject to the management program.

(1) As required by subsection 304(1), the term "coastal zone" means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas seaward to the outer limit of state title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705, as applicable). The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(2) As required by subsection 304(2), the term "coastal waters" means (i) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows and marshes, and

(ii) in other areas, those waters, adjacent to shorelines, which contain a measurable quantity or percentage of sea water, including but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.

15. Section 923.31 is amended by revising paragraphs (a)(1) and (b)(1) and (2) to read as follows:

§ 923.31 Inland boundaries.

(a) * * *

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, or are likely to be affected by or vulnerable to sea level rise, pursuant to section 923.11 of these regulations.

* * * * *

(b) * * *

(1) Watersheds—A state may determine some uses within entire watersheds which have direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise.

* * * * *

16. Section 923.32 is amended by revising paragraph (a)(1) to read as follows:

§ 923.32 Seaward boundaries.

(a) *Requirements.* (1) For states adjoining the Great Lakes, the seaward boundary is the international boundary with Canada or the boundaries with adjacent states. For all other states participating in the program, the seaward boundary is the outer limit of state title and ownership under the Submerged Lands Act (48 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 10, 1963, (48 U.S.C. 1705, as applicable).

* * * * *

17. Section 923.33 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 923.33 Excluded lands.

* * * * *

(c) *General comments.* (1) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state's management program. Therefore, states should consider mapping the following types of excluded Federal lands:

* * * * *

Subpart E—Authorities and Organizations

18. Section 923.40 is amended by revising the second, fifth and sixth sentences of paragraph (b), and paragraphs (c) and (d) to read as follows:

§ 923.40 General.

* * * * *

(b) * * * They may be the state agency designated pursuant to section 306(d)(6) of the Act, other state agencies, regional or interstate bodies, and local governments. * * * This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(d)(11) of the Act. The requirements related to section 306(d)(12) are described in §§ 923.42 through 923.44 of this subchapter.

(c) In determining the adequacy of the authorities and organization of a state's programs, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(h) of the Act, which provides:

In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 306(d)(2)(D)—Means of Control; 306(d)(10)—Authorities; 306(d)(10)(A)—Control Development and Resolve Conflicts; 306(d)(10)(B)—Powers of Acquisition; 306(d)(11)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organization requirements of the Act dealt with in this subpart are those contained in sections 306(d)(2)(F)—Organizational Structure; 306(d)(6)—Designated State Agency; and 306(d)(7)—Organization.

19. Section 923.41 is amended by revising paragraphs (a), (b)(1) and (b)(2) introductory text to read as follows:

§ 923.41 Identification of authorities.

(a)(1) As required by subsection 306(d)(2)(D), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes an identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (B), including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions.

(2) As required by subsection 306(d)(10), before approving a management program submitted by a coastal state, the Secretary shall find that the state, acting through its chosen agency or agencies (including local governments, area-wide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone. Such authority shall include power:

(i) To administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(ii) To acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(b) * * *

(1) Identify relevant state constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the state's management program.

(2) This identification will include the authorities pursuant to sections 306(d)(10) and 306(d)(11) of the Act which require a state to have the ability to:

* * * * *

20. Section 923.42 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 923.42 State establishment of criteria and standards for local implemenation—Technique A.

(a) As required by subsection 306(d)(11), before approving a management program submitted by a coastal state, the Secretary shall find that the management program provides for any one or a combination of general techniques for control of land uses and water uses within the coastal zone. The first such control technique, at subsection 306(d)(11)(A), is state establishment of criteria and standards for local implementation, subject to administrative review and enforcement.

(b) There are 5 principal requirements associated with use of the control technique at subsection 306(d)(11)(A). They are that:

* * * * *

21. Section 923.43 is amended by revising paragraph (a), the first sentence of paragraph (b) introductory text and the second sentence of paragraph (c)(2)(i) to read as follows:

§ 923.43 Direct state land and water use planning and regulation—Technique B.

(a) As required by subsection 306(d)(11), before approving a management program submitted by a coastal state, the Secretary shall find that the management program provides for any one or a combination of general techniques for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B), is direct state land and water use planning and regulation.

(b) Control technique subsection 306(d)(11)(B) of the Act allows for direct state control of land and water uses subject to the management program on the basis of direct state authority. * * *

* * * * *

(c) * * *

(2) * * *

(i) * * * It will be sufficient if any of the following can act to ensure compliance: The state agency designated pursuant to subsection 306(d)(6) of the Act, the state's Attorney General, another state agency, a local government, or a citizen.

* * * * *

22. Section 923.44 is amended by revising paragraph (a) to read as follows:

§ 923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.

(a) As required by subsection 306(d)(11), before approving a management program submitted by a coastal state, the Secretary shall find that the management program provides for any one or a combination of general techniques for control of land and water uses within the coastal zone. The third such control technique, at subsection 306(d)(11)(C), is state administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

* * * * *

23. Section 923.45 is amended by revising paragraph (a), by removing paragraph (b)(2), by redesignating paragraph (b)(3) as paragraph (b)(2) and revising it to read as follows:

§ 923.45 Air and water pollution control requirements.

(a) As required by subsection 307(f), notwithstanding any other provision of the title, nothing in the title shall in any way affect any requirement:

(1) Established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or

(2) Established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(b) *General comments.* * * *

(2) Water quality standards are established by EPA promulgation or approval of state standards, taking into consideration public water supplies, protection and propagation of fish, shellfish and wildlife, recreation, agriculture, industry and navigation. EPA itself develops standards on

effluent limitations, new source performance standards, pre-treatment standards and toxic pollutant discharge standards.

* * * * *

24. Section 923.46 is amended by revising paragraphs (a), (c)(1) and (c)(2) to read as follows:

§ 923.46 Organizational structure.

(a)(1) As required by subsection 306(d)(2)(F), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, state, regional and interstate agencies in the management process.

(2) As required by subsection 306(d)(7), before approving a management program submitted by a coastal state, the Secretary shall find that the state is organized to implement the management program.

* * * * *

(c) *Requirements.* (1) States must describe the organizational structure that will be used to implement and administer the management program including a discussion of those state and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(d)(3)(B); 306(d)(10); 306(d)(10) (A) and (B); 306(d) (11) and (12); and 307(f).

(2) States must describe the relationship of these administering agencies to the state agency designated pursuant to subsection 306(d)(6) of the Act.

25. Section 923.47(a) is amended by revising paragraph (a) to read as follows:

§ 923.47 Designated state agency.

(a) As required by subsection 306(d)(6), before approving a management program submitted by a coastal state, the Secretary shall find that the Governor of the state has designated a single state agency to receive and administer the grants for implementing the management program.

* * * * *

SUBPART F—COORDINATION, PUBLIC INVOLVEMENT AND NATIONAL INTEREST

26. Section 923.50 is amended by revising paragraphs (a), (b)(2), (b)(3) and the third sentence of paragraph (d) and by adding paragraphs (b)(4) and (b)(5) to read as follows:

§ 923.50 General.

(a) As required by Section 303, the Congress finds and declares that it is the national policy:

(1) To preserve, protect, develop, and, where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations;

(2) To encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for compatible economic development;

(3) To encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decisionmaking;

(4) To encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this Act;

(5) To encourage coordination and cooperation with and among the appropriate Federal, state, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support state and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

(6) To respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging states to consider such issues as ocean uses potentially affecting the coastal zone.

(b)* * *

(2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and aesthetic values and needs for compatible economic development;

(3) The involvement of the public, of Federal, state and local governments and of regional agencies in the development and implementation of coastal management programs;

(4) The management of coastal development to improve, safeguard, and restore coastal water quality; and

(5) The study and development of plans for addressing the adverse effects of land subsidence and sea level rise.

* * * * *

(d) * * * This subpart addresses the requirements of the following subsections of the Act: 306(d)(1)—Opportunity for Full Participation; 306(d)(3)(A)—Plan Coordination; 306(d)(3)(B)—Continued State-Local Consultation; 306(d)(4)—Public Hearings; 306(d)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

27. Section 923.51 is amended by revising paragraph (a), the first sentence of paragraph (b), paragraph (d) introductory text and (d)(5)(vii) to read as follows:

§ 923.51 Federal-state consultation.

(a)(1) As required by subsection 306(d)(1), before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone with the opportunity of full participation by relevant Federal agencies.

(2) As required by section 307(b), the Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(b) The requirements of subsections 306(d)(1) and 307(b) of the Act and those of subsections 307 (c) and (d) establish reciprocal State-Federal relationships.* * *

* * * * *

(d) *Requirements.* In order to address that portion of subsection 306(d)(1) of the Act that deals with Federal agency participation, each state must:

* * * * *

(5) * * *

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the Act.

* * * * *

28. Section 923.52 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 923.52 Consideration of the national interest in facilities.

(a) As required by subsection 306(d)(8), the management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the state has given consideration to any applicable national or interstate energy plan or program.

(b) * * *

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any national or interstate energy plans or programs which are applicable to or affect a state's coastal zone.

* * * * *

29. Section 923.53 is amended by revising paragraph (a)(1) to read as follows:

§ 923.53 Federal consistency procedures.

(a) * * *

(1) An indication of whether the state agency designated pursuant to subsection 306(d)(6) of the Act or a single other agency will handle consistency review (see 15 CFR 930.18);

* * * * *

30. Section 923.54 is amended by revising paragraph (d) to read as follows:

§ 923.54 Mediation.

* * * * *

(d) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the state agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development grants) or for program implementation (if a state is receiving section 306 program implementation grants) may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees and to the Assistant Administrator.

* * * * *

31. Section 923.55 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 923.55 Full participation by state and local governments, interested parties and the general public.

(a) As required by subsection 306(d)(1), before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone with the opportunity of full participation by state agencies, local governments, regional organizations, port authorities, and other interested public and private parties.

(b) *Requirements.* In addition to consultation with Federal agencies, subsection 306(d)(1) of the Act requires that the opportunity for full participation in program development be provided state agencies, local governments, regional commissions and organizations, and other interested public and private parties. * * *

* * * * *

32. Section 923.56 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 923.56 Plan coordination.

(a) As required by subsection 306(d)(3)(A), before approving a management program submitted by a coastal state, the Secretary shall find that the state has coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone—

(1) existing on January 1 of the year in which the state's management program is submitted to the Secretary; and

(2) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency.

(b) * * *

(1) Identify local governments, areawide agencies and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

* * * * *

33. Section 923.57 is amended by revising paragraphs (a), (b)(1), (b)(2)(i) and (b)(2)(iv) to read as follows:

§ 923.57 Continuing consultation.

(a) As required by subsection 306(d)(3)(B), before approving a management program submitted by a coastal state, the Secretary shall find that the state has established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) of section 306(d) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this paragraph unless it requires that:

(1) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

(2) within the 30-day period commencing on the date of receipt of that notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

(3) such management agency, if any comments are submitted to it, within the 30-day period, by any local government:

(i) shall consider the comments;

(ii) may, in its discretion, hold a public hearing on the comments; and

(iii) may not take any action within the 30-day period to implement the management program decision.

(b) *Requirements.* (1) Establish a mechanism or mechanisms which will provide for continuing consultation and coordination after program approval between local governments, regional, areawide, multi-state and other state agencies with activities in the coastal zone and the state agency designated pursuant to subsection 306(d)(6) of the Act;

(2) * * *

(i) "Management agency" refers to the state agency designated to the Governor pursuant to subsection 306(d)(6) of the Act and to any other state agency responsible for implementing a management program decision;

* * * * *

(iv) "Local government" refers to these defined in section 304(11) of the Act which have some form of zoning authority.

* * * * *

34. Section 923.58 is amended by revising paragraph (a) to read as follows:

§ 923.58 Public hearings.

(a) As required by subsections 306(d)(1) and 306(d)(4), before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of the Act and is consistent with the policy declared in section 303; and shall find that the state has held public hearings in the development of the management program.

* * * * *

35. Subpart G is revised to read as follows:

Subpart G—Environmental Review

§ 923.60 Environmental assessment.

(a) Requirements. All state management program submissions must contain an environmental assessment at the time of submission of the management program to OCRM for threshold review. In accordance with the Council on Environmental Quality regulations, 40 CFR 1506.5 (a) and (b), state environmental assessments shall contain the following information:

(1) A summary of the state's management program;

(2) A brief discussion of the need for the state's participation in the Federal program;

(3) A succinct description of the environment to be affected by program implementation;

(4) A description and discussion of the major alternatives which were considered by the state in developing the coastal management program;

(5) A discussion of the environmental impacts of implementing the program;

(6) A listing of agencies or persons consulted in determining the impacts of the management program.

(b) General comments. OCRM will independently evaluate the state's environmental assessment and use as much as possible in developing an EIS on the management program. An EIS will be produced for all state programs submitted for 306 approval. The timing and review procedure for the EIS are discussed in § 923.72.

36. Section 923.70 is revised to read as follows:

Subpart H—Review/Approval Procedures

§ 923.70 General.

The purpose of this subpart is to describe the process of state program review and approval following submission of a state's management program to the Assistant Administrator. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; states should at least anticipate that it normally will take 7 months between the time a state first submits a draft management program to OCRM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in the sections that follow. This subpart also provides guidance on a recommended format for the program document submitted to the Assistant Administrator for review and approval.

37. Section 923.71 is amended by revising Table 2 in paragraph (b) and paragraph (c)(4) (i) through (vi), and removing paragraph (d) to read as follows:

§ 923.71 Recommended format for program submission.

* * * * *

(b) * * *

TABLE 2. CHART—FINDINGS NECESSARY FOR SECTION 306 APPROVAL

Section of the act	Associated section(s) of these regulations
Section 306(d) which includes:	
306(d)(2)(A): Boundaries	923.31–923.34
306(d)(2)(B): Uses subject to management	923.11
306(d)(2)(C): Areas of particular concern	923.21–923.23
306(d)(2)(D): Means of control	923.41
306(d)(2)(E): Guidelines on priorities of uses	923.21
306(d)(2)(F): Organizational structure	923.46
306(d)(2)(G): Shorefront planning process	923.24
306(d)(2)(H): Energy facility planning process	923.13
306(d)(2)(I): Erosion planning process	923.25
306(d)(1): Notice: full participation; consistent with sec. 303	923.3, 923.51, 923.55, & 923.58
306(d)(3)(A): Plan coordination	923.56
306(d)(3)(B): Continuing consultation mechanisms	923.57
306(d)(4): Public hearings	923.58
306(d)(5): Gubernatorial review and approval	923.48
306(d)(6): Designation of recipient agency	923.47
306(d)(7): Organization	923.46
306(d)(10): Authorities	923.41
306(d)(8): Adequate consideration of national interest	923.52
306(d)(9): Areas for preservation/restoration	923.22
306(d)(10)(A): Administer regulations, control development; resolve conflicts	923.41
306(d)(10)(B): Powers of acquisition, if necessary	923.41
306(d)(11): Technique of control	923.42–923.44
306(d)(12): Uses of regional benefit	923.12
Section 307 which includes:	
307(b): Adequate consideration of Federal agency views	923.51
307(f): Incorporation of air and water quality requirements	923.45

* * * * *

(c) * * *

(4) * * *

(i) *Boundaries.* The requirements of subsection 306(d)(2)(A) of the Act and Subpart D of these regulations should be addressed. States may want to indicate here, or as part of the EIA, major boundary alternatives considered.

General maps of the management boundaries and of excluded Federal lands, if provided, are recommended for inclusion in this section (or if more easily handled as a separate appendix, their location in the appendix should be indicated in this section).

(ii) *Uses subject to management.* The requirements of subsections 306(d)(2)(B), 306(d)(2)(H), and 306(d)(12) of the Act and related sections 923.11 through 923.13 of these regulations should be addressed.

(iii) *Special management areas.* The requirements of subsections 306(d)(2)(C), 306(d)(2)(E), 306(d)(2(G), 306(d)(2)(I), and 306(d)(9) and the associated requirements of Subpart C of these regulations should be addressed. States are encouraged to include generalized maps located designated Areas of Particular Concern.

(iv) *Authorities and organization.* The requirements of subsections 306(d)(2)(D), 306(d)(2)(F), 306(d)(6), 306(d)(10), 306(d)(11), and 307(f) of the Act and the associated requirements of Subpart E of these regulations should be addressed. This should include a discussion of the administrative and legal bases that will be used to implement and insure enforcement of and compliance with the policies of the management program. This section should include, as applicable, discussion of six types of legal authorities: state legislation, state agency regulations, gubernatorial executive orders, interagency agreements, significant judicial decisions and significant constitutional provisions. With respect to the organization structure that will be used to implement the management program, this section should include a discussion of the roles and responsibilities during the program implementation of the state agency designated pursuant to subsection 306(d)(6) of the Act and of other state, local or regional agencies that will be involved in carrying out the management program. The relationship of the designated state agency to these other agencies also should be described.

(v) *Consultation, participation and national interests.* The requirements of subsections 306 (d)(1) through (d)(4), 306(d)(8) and 307(b) of the Act and the related requirements of Subpart F of these regulations should be addressed. Included herein should be a summary of consultation efforts with relevant Federal and state agencies, local governments, regional, areawide and/or interstate entities. A summary of public information and participation during program development should be included. Also included herein should be discussions of national interest considerations; what procedures the state will use to implement the Federal consistency provisions of the Act; and what mechanisms will be used to insure continued governmental consultation and public participation after program approval. Detailed documentation regarding a number of the requirements addressed in this section can be reserved for appendices.

(vi) *Miscellaneous.* Normally, states will address the requirements of subsection 306(d)(5) and related section 923.48 in the gubernatorial transmittal that will accompany the program submission.

38. Section 923.73 is revised to read as follows:

§ 923.73 Miscellaneous.

The timelines laid out in § 923.72 may be shortened if reduction of the time allotted to review environmental impact statements is proposed consistent with applicable procedures and guidelines of CEQ and their concurrence is requested. Reductions in review time normally are limited to emergency circumstances or conditions which would result in impaired program effectiveness.

§§ 923.74, 923.75, 923.76 [Removed]

39. Sections 923.74, 923.75 and 923.76 are removed.

40. Section 923.80 is amended by redesignating paragraph (c) as paragraph (d), revising paragraph (b), and adding a new paragraph (c) to read as follows:

Subpart I—Amendments to and Termination of Approved Management Programs

§ 923.80 General.

* * * * *

(b) As required by subsection 306(e), any coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this subsection, subject to the following conditions:

(1) The state shall promptly notify the Secretary of any proposed amendment, modification, or other program change and submit it for the Secretary's approval. The Secretary may suspend all or part of any grant made under this subsection pending state submission of the proposed amendment, modification or other program change.

(2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the state whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal state that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

(3)(i) Except as provided in paragraph (3)(ii), a coastal state may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this paragraph.

(ii) The Secretary, after determining on a preliminary basis, that an amendment, modification or other change which has been submitted for approval under subsection 306(e) is likely to meet the program approval standards, may permit the state to expend funds awarded under subsection 306(e) to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of subsection 307 of the Act.

(c) As required by subsection 312(d), the Secretary shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that state under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state has failed to take the actions referred to in subsection 312(c)(2)(A).

* * * * *

41. Section 923.81 is amended by revising paragraphs (a) and (b)(3)(i) to read as follows:

§ 923.81 Requests for amendments.

(a) *Requirement.* Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal state with an approved management program or by the head of the state agency (designated pursuant to subsection 306(d)(6)) if the Governor had delegated this responsibility and such delegation is part of the approved management program.

(b) * * *

(3) * * *

(i) At least one public hearing must be held on the proposed amendment, pursuant to subsection 306(d)(4) of the Act.

* * * * *

42. Section 923.82 is amended by revising paragraphs (a)(1)(i)(A), (a)(1)(v)(D), (a)(2), (b) and (c) to read as follows:

§ 923.82 Amendment review/approval procedures.

(a) * * *

(1) * * *

(i) * * *

(A) Areas the management of which is necessary to control uses with direct and significant impacts on coastal waters or areas likely to be affected by or vulnerable to sea level rise;

* * * * *

(v) * * *

(D) In the case of energy facilities, consideration of any applicable interstate energy plan or program (see § 923.52(c)(3)).

(2) The procedural requirements of section 306(d) of the Act have been met. These procedural requirements are that:

(i) The state has developed the amendment with the opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested public and private parties (subsection 306(d)(1));

(ii) The state has coordinated the amendment with local, area-wide and interstate plans applicable to areas within the coastal zone affected by the amendment and existing on January 1 of the year in which the amendment request is submitted (subsection 306(d)(3)(A));

(iii) Notice has been provided and a public hearing held on the proposed amendment (subsections 306(d)(1), 306(d)(3) and 306(d)(4)); and

(iv) The Governor or the head of the state agency, designated pursuant to subsection 306(d)(6), has reviewed and approved the proposed amendment (subsection 306(d)(5)).

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(d) of the Act have not been met, the Assistant Administrator shall advise the state in writing of the reasons why the amendment request cannot be considered. * * *

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(d) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required. * * *

43. Section 923.83 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 923.83 Mediation of amendments.

* * * * *

(b) Mediation may be requested by a Governor or head of a state agency designated pursuant to subsection 306(d)(6) or by the head of a relevant Federal agency. * * *

* * * * *

44. Section 923.90 is amended by revising paragraphs (e) and (f) to read as follows:

Subpart J—Applications for Program Development or Implementation Grants

§ 923.90 General.

* * * * *

(e) For purposes of this subpart, the term "development grant" means a grant awarded pursuant to subsection 305(a) of the Act. "Administrative grant" and "implementation grant" are used interchangeably and mean grants awarded pursuant to subsection 306(a) of the Act.

(f) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

45. Section 923.91 is amended by revising paragraphs (a) and (b) to read as follows:

§ 923.91 State responsibility.

(a) Applications for program grants shall be submitted by the Governor of a participating state or by the head of the state entity designated by the Governor pursuant to subsection 306(d)(6) of the Act.

(b) In the case of a section 305 grant, the application shall designate a single state agency or entity to receive development grants and to be responsible for development of the state's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(d)(6) of the Act as a single agency to receive and administer implementation grants.

* * * * *

46. Section 923.92 is amended by revising paragraph (a) to read as follows:

§ 923.92 Allocation.

(a) Subsections 303(4), 306(d)(3)(B) and 306(d)(10) foster intergovernmental cooperation in that a state, in accordance with its coastal zone management program, may allocate its coastal zone management responsibilities to several agencies, including local governments, areawide agencies, regional agencies and interstate agencies. Such allocations provide for continuing consultation and more effective participation and cooperation among state and local governments, interstate, regional and areawide agencies.

* * * * *

§§ 923.93, 923.98 [Removed]

47. In Subpart J, sections 923.93 and 923.98 are removed and sections 923.94, 923.95, 923.96, 923.97 923.99 and 923.100 are redesignated as sections 923.93, 923.94, 923.95, 923.96, 923.97 and 923.98, respectively.

48. Section 923.93 is amended by revising paragraph (c)(2)(i) and the first sentence of paragraphs (d) and (f) to read as follows:

§ 923.93 Eligible implementation costs.

* * * * *

(c) * * *

(2) * * *

(i) Prevent or mitigate loss of life and property in such coastal hazard areas as floodplains, erosion-prone areas, areas subject to subsidence, saltwater intrusion, or sea level rise;

* * * * *

(d) Implementation funding may be applied to the management of designated areas of particular concern, especially areas designated for preservation or restoration purposes pursuant to section 306(d)(9) of the Act. * * *

(e) * * *

(f) Equipment purchases by the grantee of more than five thousand (5,000) dollars per item require NOAA approval prior to purchase. * * *

* * * * *

49. Section 923.95 is amended by revising paragraph (a)(4) to read as follows:

§ 923.95 Applications for subsequent program development grants.

(a) * * *

(4) Indicate when the state will submit a management program to the Assistant Administrator for review and final approval pursuant to section 306 of the Act.

* * * * *

50. Section 923.98 is amended by revising paragraph (a) to read as follows:

§ 923.98 Grant amendments.

(a) Actions which require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in OMB Circular A–102, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by him/her and the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with E.O. 12372 requirements.

* * * * *

51. In 15 CFR part 923, subpart K is removed.

§§ 923.1, 923.47, 923.62, 923.70, 923.71, 923.72, 923.81, 923.82, 923.84, 923.93 [Amended]

52. In addition to the amendments set forth above, in 15 CFR part 923, remove the word "OCZM" and add, in its place, the word "OCRM" in the following places:

a. Section 923.1(d)(5);
b. Section 923.47(b)(3) and (c)(1);
c. Section 923.70;
d. Section 923.71 (a) and (c);
e. Section 923.72(a);
f. Section 923.81(b)(4)(i);
g. Section 923.82(a) introductory text and (c)(1) introductory text;
h. Section 923.84(b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(2) introductory text, (b)(2)(i)(B), (b)(2)(i)(C), (b)(3), (b)(4) introductory text, (b)(4)(i)(A), and (b)(5);
i. Section 923.90(a); and
j. Section 923.93(e)(4)(ii) and (g).

53. Section 923.1(d)(5) is amended by removing the words "Office of Coastal Zone Management" and adding, in their place, the words "Office of Ocean and Coastal Resource Management".

54. Section 923.90(f) is revised to read as follows:

§ 923.90 General.

* * * * *

(f) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Program Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

PART 926—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT GRANTS, ALLOCATION OF FUNDS TO STATES

55. Part 926 is removed and reserved.

PART 927—ALLOCATION OF SECTION 306 PROGRAM ADMINISTRATION GRANTS

56. Section 927.1 is amended by revising paragraphs (a), (b) and (f) to read as follows:

§ 927.1 Allocation formula.

(a) As required by subsection 306(a), the Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-state contributions for the applicable fiscal year:

(1) For those states for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

(3) As required by subsection 306(b), the Secretary may make a grant to a coastal state under subsection 306(a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection 306(d).

(4) As required by subsection 306(c), grants under this section shall be allocated to coastal states under approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(b) Minimum/maximum allocations. The Assistant Administrator shall establish minimum and maximum state allocations annually, after consultation with the coastal states.

(c) * * *

(d) * * *

(e) * * *

(f) Calculation of financial assistance award levels. Actual financial assistance award levels will be set from base level allocations, any adjustments under paragraph (e) above, and in accordance with the provisions of Section 312(c) and (d).

* * * * *

[FR Doc. 94–11715 Filed 5–27–94; 8:45 am]
BILLING CODE 3510–08–P–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD10

Supplemental Security Income for the Aged, Blind, and Disabled; Financial Institution Account Policy in the Supplemental Security Income Program

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are codifying in regulations, certain procedures which currently appear in our internal operating instructions regarding how we attribute ownership of financial institution accounts for purposes of determining eligibility for supplemental security income (SSI). Existing regulations do not contain the rules we use to determine ownership of financial institution account funds.

EFFECTIVE DATES: These final regulations are effective May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235 (410) 965–1762.

SUPPLEMENTARY INFORMATION: These regulations codify present SSI procedures with respect to attributing ownership of financial institution account funds for SSI eligibility purposes. These procedures appear in our operating instructions. Title XVI of the Social Security Act and existing regulations are silent on the issue of how funds in financial institution accounts are attributed for SSI resource eligibility purposes. Regulations at § 416.1201 define resources as "cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance." The term "bank account" as used in § 416.1201(b) has been replaced by the term "financial institution account" because, in the past, the use of the term "bank" has been criticized as too restrictive. For example, credit unions and savings and loan institutions are not technically "banks," but our savings, checking, and time deposit account procedures apply to investments held in those institutions as well. So that our rules for determining ownership of financial institution account funds may be consistently used and relied upon as authority by our adjudicators at all administrative levels, and by the courts, and may be better understand by SSI claimants, recipients, representatives, and others, we are codifying those rules in the regulations.

Financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit) may either be individually-held or jointly-held. Funds held in a financial institution account are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can access the funds by looking at how the individual holds the account. This is reflected in the way the account is titled.

Individually Held Accounts

If an individual is designated as sole owner by the account title and can withdraw funds and use them for his or her support and maintenance, all of the funds, regardless of their sources, are that individual's resource for SSI purposes. This applies even if the individual does not consider the funds as belonging to him or her, has never made deposits to or withdrawals from the account, and has never used any of the funds for personal needs or benefit. Unless legal restrictions preclude the owner from using the funds for support and maintenance (e.g., under the terms of a divorce decree, the recipient must use all funds in the account to maintain a home for the former spouse), all of the funds are attributed to the owner as indicated on the account title.

We do not provide an opportunity for the owner of an individually-held account to rebut the presumption of 100 percent ownership. For example, as a result of an interface with the records of the Internal Revenue Service (IRS), we could learn that an SSI recipient owns a previously undisclosed solely-titled financial institution account. The recipient might allege that none of the funds in the account actually belong to him or her. However, for as long as the recipient is shown as sole owner and the account is not legally restricted, we determine that the funds are available for his or her support and maintenance and that the funds are a resource for SSI purposes.

Jointly Held Accounts

1. Account Holders Include One or More SSI Claimants or Recipients

If there is only one SSI claimant or recipient account holder on a jointly-held account, we presume that all of the funds in the account belong to that individual.

If there is more than one claimant or recipient account holder, we presume that all of the funds in the account belong to those individuals in equal shares. By allocating funds equally among claimant/recipient co-owners, we avoid double counting.

2. Account Holders Include One or More Deemors

If none of the account holders is a claimant or recipient, we presume that all of the funds in a jointly-held account belong to the deemor(s), in equal shares if there is more than one deemor. A deemor is a person whose income and resources are required to be considered when determining eligibility and computing the SSI benefit amount for an eligible individual (see §§ 416.1160 and 416.1202).

3. Right to Rebut Presumption of Ownership

If the claimant, recipient, or deemor objects or disagrees with an ownership presumption described in 1 or 2 above, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Successful rebuttal establishes that the individual does not own some or all of the funds.

The effect of successful rebuttal may be retroactive as well as prospective. To successfully rebut the ownership presumption on a retroactive and/or prospective basis, the individual must submit evidence showing:

- Who owns the funds in the joint account, why there is a joint account, who made deposits to or withdrawals from the account, and how the withdrawals have been spent;
- Any records of deposits, withdrawals, and interest in the months for which ownership is at issue; and
- The individual can no longer withdraw funds from the account (if he or she owns none of the funds); or
- The individual's funds have been removed from the account, or the other person's funds have been removed, and the account title has been redesignated.

Example: The recipient's first month of eligibility is January 1993. In May 1993, the recipient successfully establishes that none of the funds in a 5-year old jointly-held account belong to her. We do not count any of the funds as resources for the month of January 1993 and continuing.

The application of a presumptive finding that some or all of the funds in a jointly-held account belong to the SSI claimant or recipient could inconvenience that individual. However, we believe the current requirements are reasonable and any burdens on SSI claimants or recipients are minimal.

Our procedures with respect to jointly-held accounts reflect the legal reality that funds in a jointly-held account are available to meet a co-owner's day-to-day needs. However, the rebuttal process allows us to evaluate individual circumstances and not create administrative barriers to eligibility.

We believe the joint account rebuttal process minimizes the burden on individuals with respect to establishing SSI resource eligibility.

When an individual presents a jointly-held account, or when we become aware of such an account through interface with the nonwage records of the IRS, we inform the individual of the applicable ownership presumptions (described above) and of his or her right to provide evidence rebutting those presumptions. We assist the individual, where necessary, in establishing that some or all of the funds do not belong to him or her.

The administrative requirements with respect to rebuttal are not complicated or unreasonable. We obtain the individual's statement and corroborating statements from other account holders. We document account deposits and withdrawals. If the individual alleges owning none of the funds in the account, we ask that the title of the account be corrected so that the individual is no longer shown as a co-owner. If the individual owns only a portion of the funds, we ask that any solely owned funds be maintained separately from funds that do not belong to him or her.

We considered a change in our procedures whereby we would apply State laws in determining how much of the funds in a jointly-owned financial institution account an individual owns for SSI purposes. However, applying State laws to the ownership determination would not benefit all SSI claimants and recipients, since the current SSI joint ownership presumptions are rebuttable, whereas some State laws on ownership contain nonrebuttable presumptions. A practice of applying State laws would result in dozens of disparate rules on the SSI treatment of funds in joint accounts, and could serve as a barrier to the public's understanding of, and participation in, the SSI program.

These regulations were published in the Federal Register (57 FR 22187) on May 27, 1992, as a Notice of Proposed Rulemaking (NPRM). Interested parties were given 60 days to submit comments. Comments were received from four organizations in response to the NPRM.

Discussion of Comments

A summary of the comments and our responses follow. For ease of reference, we have grouped the comments according to the issues raised.

Comment: Four commenters believed that the proposed rules concerning solely-titled accounts were inequitable and did not take into consideration arrangements whereby funds may not actually belong to, or be accessed by, the titled individual. One of the commenters indicated that the preamble and the proposed rule at § 416.1208(b) conflict in that the preamble would allow rebuttal of the ownership presumption for individually-held accounts in cases where a legal restriction precludes the owner from using the funds for support and maintenance, but the proposed rule indicates that the ownership presumption is non-rebuttable. Several commenters stated that these rules could discourage family members or other concerned individuals from attending to the needs of SSI claimants and recipients.

Response: Unlike situations involving jointly-titled accounts—where a titled owner can submit evidence supporting an ownership allegation (for example, evidence of who has made account deposits and withdrawals in the past)—there would be no objective way for SSA to establish that funds in a solely-titled account did not belong to the titled owner. To permit rebuttal of the ownership presumption with respect to a solely-titled account, SSA would have to rely on potentially self-serving allegations regarding ownership. The possibility of program abuse under such a procedure would be unacceptably high.

With respect to the comment regarding a purported conflict between the preamble and the proposed rule at § 416.1208(b), that rule does not allow rebuttal of the ownership presumption in instances in which the individual is designated as sole owner of the account and can withdraw funds and use them for his or her support and maintenance. If the individual is so designated by the account title but cannot use the funds for his or her support and maintenance due to a legal restriction, the funds are not considered to be the individual's resource and the nonrebuttable presumption is inapplicable.

Current SSI financial institution account policy does not discourage family members or other concerned individuals from attending to the needs of SSI claimants and recipients. An individual who acts only in a fiduciary capacity on behalf of the owner of a financial institution account, and who is so designated by the account title, is not presumed to own any of the funds in the account. For example, if an account is titled "In Trust for John Jones, Subject to Sole Order of Mary Smith," SSA does not consider Mary Smith to own any of the account funds. We believe that current procedures in this area represent a balanced approach to administering the SSI program in a fair, yet responsible, manner.

Comment: Two commenters stated that the proposed rules should be amended to reflect legal realities regarding the ability to use funds for support and maintenance. They noted that under State law, funds may be legally unavailable for a titled owner's support and maintenance. One of these commenters believes that the proposed rules are inconsistent with the definition of resources at § 416.1201.

Response: As discussed in the proposed rules, we considered a change in our procedures whereby State law would be applied in determining ownership of funds in financial institution accounts. However, we rejected that approach because, due to the variance in State laws on property ownership, such a change would not benefit all individuals and would introduce unacceptable complexity into the SSI program.

In establishing the SSI program, Congress intended to improve the effectiveness of adult assistance programs by replacing then existing State-administered programs of assistance with one combined program with nationally uniform eligibility requirements, including the level and types of resources allowed (H.R. Rep. No. 231, 92d Cong., 1st Sess. 383(1971)). We believe that the proposed rules are consistent with Congress' mandate for nationally uniform eligibility requirements, since the rules clearly delineate controlling Federal standards and thereby, obviate the need to refer to a myriad of varying State laws in order to determine ownership rights in financial institution account funds. This is consistent with the need to administer a national program in a consistent manner.

These rules do not supersede or conflict with the definition of a "resource" in the SSI program (§ 416.1201). In order for a property right to be considered an individual's resource for SSI purposes, the individual must be able to liquidate the right and use the cash for support and maintenance. However, if an individual establishes that a property right cannot be liquidated, or that funds cannot be used for support and maintenance, the property right is not considered a resource for SSI purposes.

Comment: Two commenters stated that implementation of the rules will harm individuals whose cases come before administrative law judges (ALJ's). Absent the proposed rules, ALJ's can give claimants an opportunity to rebut financial institution account ownership by conducting "de novo" hearings and assessing the evidence in light of applicable law.

Response: Procedures with respect to financial institution accounts are currently contained only in SSA's operating instructions. The final rules will codify those procedures in the SSI regulations, not change the procedures. The operating instructions do not have the same force and effect as the SSI statute or regulations; therefore, they are frequently not relied upon as authority by ALJ's Appeals Council members or the courts. In the past, this has resulted in inconsistent decisions involving similarly-situated individuals. One reason for promulgating these rules is to ensure those procedures are consistently applied at all administrative levels.

Comment: Two commenters questioned the differential treatment accorded an individual who holds an account jointly with persons who are neither applying for, nor recipients of, SSI. Such an individuals is considered to own 100 percent of the funds in the account, whereas funds held jointly with other SSI claimants or recipients are considered to be owned by those persons in equal shares.

Response: We attribute equal shares when there is more than one claimant or recipient account holder in order not to count the same funds twice for SSI program purposes. When only one SSI claimant/recipient is a titled owner, the issue of double counting does not exist.

As described in the proposed rules, the SSI ownership presumption with respect to jointly-held accounts is rebuttable. The effect of successful rebuttal may be retroactive as well as prospective.

Comment: One commenter stated that SSA's presumptions regarding ownership of jointly-held funds is contrary to Third Circuit law (*Cannuni* v. *Schweiker*, 740 F.2d 260 (3rd Cir. 1984)). With *Cannuni*, the Court of Appeals recognized the importance of the intent of the parties with respect to jointly-held accounts.

Response: In *Cannuni*, the court ruled that it was appropriate to apply Pennsylvania property law to determine the extent of an individual's ownership interest in a jointly-held bank account. That decision conflicted with longstanding SSI procedures as set forth in operating instructions. However, as discussed above, SSA is not bound by State law when it determines ownership of financial institution account funds. These final rules will ensure that our procedures for determining ownership of financial institution accounts can be consistently used and relied upon as authority by the courts.

Comment: Three commenters stated that the rules should not require the retitling of, or the removal of funds from, jointly-titled accounts when a titled individual does not have actual ownership or use of funds in the account. For example, the rules should permit an individual to rebut the ownership presumption by submitting a signed statement from the other owner(s) or a power-of-attorney document indicating that the individual acts in a fiduciary capacity only.

Response: We recognize that the rebuttal procedures may inconvenience some individuals. However, we believe that generally the current procedures minimize the burden on individuals with respect to establishing SSI resource eligibility. Moreover, we believe that the alternate rebuttal procedures suggested by the commenters—procedures which, for the most part, would require SSA to rely on potentially self-serving allegations concerning ownership of funds—could significantly increase the incidence of SSI program abuse.

The retitling requirement for jointly-held accounts is based on the same principle used in determining ownership of solely-held accounts—namely, the principle that we determine whether an individual owns an account by looking at how he or she holds the account. Accordingly, if some of the funds in a jointly-titled account do not, in fact, belong to the SSI claimant or recipient, SSI procedures require that the account be redesignated to reflect that fact.

Comment: One commenter believed that the proposed rules unconstitutionally deny equal protection of the laws to similarly situated SSI claimants. In contrast to the rebuttal procedure for jointly-held accounts, the commenter pointed out that the holder of a solely-titled account is not permitted to rebut the 100 percent ownership presumption.

Response: SSA'ss practice of determining ownership based on how an account is titled applies equally in all cases. To determine ownership of a solely or jointly-titled account, we look at how the account is titled. SSI procedures do not prevent an individual who acts only in a fiduciary role from being so designated by the account title. Provided the account title reflects the fiduciary role, such an individual is not presumed to own any of the funds in the account.

As discussed above, in order to permit rebuttal of the ownership presumption for solely-titled accounts, SSA would have to rely on potentially self-serving ownership allegations. Such a change in procedures would introduce an unacceptably high possibility of program abuse and would not reflect our obligation to administer the SSI program in a responsible manner.

Comment: Two commenters suggested that the rules include the procedures for rebutting the joint account ownership presumption.

Response: We have revised the rules to include rebuttal procedures, which were briefly described in the proposed rules under "Supplementary Information." A complete description of the procedure for rebuttal is now included at § 416.1208(c)(4).

The proposed rules with the above noted changes are adopted as final regulations.

Regulatory Procedures

Paperwork Reduction Act of 1980

These regulations contain an information collection requirement in § 416.1208(c)(4). We would normally request clearance of this requirement (under the Paperwork Reduction Act) by the Office of Management and Budget (OMB). However, we are not doing so in this situation because we have already obtained OMB clearance to collect this information using Form SSA–2574, Joint Checking/Savings Account Rebuttal Statement, under OMB control number 0960–0461.

Public reporting burden for this collection of information is estimated to average 7 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and fill out the form. We estimate that there will be 200,000 responses yearly, making the annual burden approximately 23,333 hours. If you have any comments or suggestions on this estimate, or on any other aspect of this collection of information, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0461), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect eligibility for or the amount of SSI payments of individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplementary Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplementary Security Income.

Dated: November 3, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 22, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Public Law 93–66, 87 Stat. 154.

2. Section 416.1201 is amended by revising paragraph (b) to read as follows:

§ 416.1201 Resources; general.

* * * * *

(b) *Liquid resources.* Liquid resources are cash or other property which can be converted to cash within 20 days, excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit) and similar items. Liquid resources, other than cash, are evaluated according to the individual's equity in the resources. (See § 416.1208 for the treatment of funds held in individual and joint financial institution accounts.)

* * * * *

3. Section 416.1208 is added to read as follows:

§ 416.1208 How funds held in financial institution accounts are counted.

(a) *General.* Funds held in a financial institution account (including savings, checking, and time deposits, also known as certificates of deposit) are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can use the funds for his or her support and maintenance by looking at how the individuals holds the account. This is reflected in the way the account is titled.

(b) *Individually-held account.* If an individual is designated as sole owner by the account title and can withdraw funds and use them for his or her support and maintenance, all of the funds, regardless of their source, are that individual's resource. For as long as these conditions are met, we presume that the individual owns 100 percent of the funds in the account. This presumption is non-rebuttable.

(c) *Jointly-held account—(1) Account holders include one or more SSI claimants or recipients.* If there is only one SSI claimant or recipient account holder on a jointly held account, we presume that all of the funds in the account belong to that individual. If there is more than one claimant or recipient account holder, we presume that all the funds in the account belong to those individuals in equal shares.

(2) *Account holders include one or more deemors.* If none of the account holders is a claimant or recipient, we presume that all of the funds in a jointly-held account belong to the deemor(s), in equal shares if there is more than one deemor. A deemor is a person whose income and resources are required to be considered when determining eligibility and computing the SSI benefit for an eligible individual (see §§ 416.1160 and 416.1202).

(3) *Right to rebut presumption of ownership.* If the claimant, recipient, or deemor objects or disagrees with an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure as described in paragraph (c)(4) of this section, which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Successful rebuttal establishes that the individual does not own some or all of the funds. The effect of successful rebuttal may be retroactive as well as prospective.

Example: The recipient's first month of eligibility is January 1993. In May 1993 the recipient successfully establishes that none of the funds in a 5-year-old jointly-held account belong to her. We do not count any of the funds as resources for the months of January 1993 and continuing.

(4) *Procedure for rebuttal.* To rebut an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, the individual must:

(i) Submit his/her statement, along with corroborating statements from other account holders, regarding who owns the funds in the joint account, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent;

(ii) Submit account records showing deposits, withdrawals, and interest (if any) in the months for which ownership of funds is at issue; and

(iii) Correct the account title to show that the individual is no longer a co-owner if the individual owns none of the funds; or, if the individual owns only a portion of the funds, separate the funds owned by the other account holder(s) from his/her own funds and correct the account title on the individual's own funds to show they are solely-owned by the individual.

[FR Doc. 94-13166 Filed 5-27-94; 8:45 am]

BILLING CODE 4190-29-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4890-1]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

This rule adds 42 new sites to the NPL, 18 to the General Superfund Section and 24 to the Federal Facilities Section. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action results in an NPL of 1,232 sites, 1,082 of them in the General Superfund Section and 150 of them in the Federal Facilities Section. An additional 54 sites are proposed, 48 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,286.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be June 30, 1994. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see "Information Available to the Public" in Section I of the SUPPLEMENTARY INFORMATION portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or the Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Final Rule
IV. Executive Order 12866
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act"), in response to the dangers of