

Dated: May 31, 1994

Steven I. Pinter,

Acting Director, Office of Foreign Assets Control.

Approved: June 3, 1994

R. Richard Newcomb,

Acting Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 94-14726 Filed 6-13-94; 4:33 pm]

BILLING CODE 4810-25-F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

Prohibited Personnel Practices on the Installation of Fort Jackson, SC

AGENCY: Department of the Army, DOD.
ACTION: Final rule.

SUMMARY: This action establishes 32 CFR part 552, subpart L, Personnel—Prohibited Practices and authenticates Fort Jackson Regulation 600-3, printed in the *Federal Register* as a proposed rule on 29 July 1993 (58 FR 40611). This subpart establishes prohibited practices on the installation of Fort Jackson, South Carolina. These prohibited practices apply to all persons as signed to, attached to, or present on the installation of Fort Jackson, South Carolina. Prohibited practices listed in this part are not all inclusive.

EFFECTIVE DATE: This final rule is effective June 17, 1994.

ADDRESSES: Commander, U.S. Army Training Center and Fort Jackson, Office of the Staff Judge Advocate, Fort Jackson, SC 29207-5000.

FOR FURTHER INFORMATION CONTACT: CPT Thomas M. Gagne, Trial Counsel, telephone: (803) 751-6848.

SUPPLEMENTARY INFORMATION: This part does not list all activities or practices prohibited on the installation of Fort Jackson, South Carolina. Various other Army and Fort Jackson regulations specifically prohibit other activities or practices. See Appendix A to this subpart.

Executive Order 12291

This rule is not affected by Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act has no bearing on this rule.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 552

Military personnel, government employees.

Accordingly, 32 CFR part 552, subpart L is added to read as follows:

PART 552—SUBPART L—PROHIBITED PERSONNEL PRACTICES ON THE INSTALLATION OF FORT JACKSON, SOUTH CAROLINA

Sec.

552.150 Purpose.

552.151 Scope.

552.152 Prohibited practices.

552.153 Dissemination.

Appendix A to Subpart L—Partial List of Other Publications Applicable on Fort Jackson Which List Prohibited Practices

Authority: 10 U.S. Code, Ch. 47, 21 U.S. Code 801, *et seq.*

Subpart L—Prohibited Personnel Practices on the Installation of Fort Jackson, SC

§ 552.150 Purpose.

This part is punitive in nature and applies to all persons assigned to, attached to, or present on the installation of Fort Jackson, South Carolina. A violation of, attempted violation of, or solicitation or conspiracy to violate any provision of this part provides the basis for criminal prosecution under the Uniform Code of Military Justice, applicable Federal Law, other regulations, and/or adverse administrative action. Civilian visitors may be barred from the installation of Fort Jackson and prosecuted under appropriate Federal laws. The enumeration of prohibited activities in this part is not intended to preclude prosecution under other provisions of law or regulation.

§ 552.151 Scope.

This part does not list all activities or practices prohibited on the installation of Fort Jackson, South Carolina. Various other Army and Fort Jackson regulations specifically prohibit other activities or practices. See Appendix A to this subpart.

§ 552.152 Prohibited practices.

The following activities are prohibited:

(a) The possession, delivery, sale, transfer, or introduction into the installation of Fort Jackson of any device, instrument or paraphernalia designed or reasonably intended for use in introducing into the human body a controlled substance, as defined in the Controlled Substances Act, 21 U.S.C. 801, *et seq.*, is prohibited.

(b) Unless an exception is approved by the Chief of Staff or a Major

Subordinate Commander for a special occasion, consumption of alcoholic beverages, or the possession of an open container thereof, is prohibited under the circumstances listed in this section. For the purpose of this part, an "alcoholic beverage" is any liquid beverage containing any amount of ethyl alcohol, including wines, malt beverages and distilled spirits.

(1) By military personnel in uniform during duty hours (0730-1630).

(2) By military personnel during their assigned duty hours when different than those in paragraph (b)(1) of this section.

(3) By civilian employees during their assigned duty hours. Lunch time is not considered duty time for civilian employees.

(4) By civilian or military personnel in places of duty.

(5) By any person in a public place, except: in the Twin Lakes and Weston Lake Recreational Areas, in the immediate vicinity of Oyster Point (Officers' Club), at installation club facilities governed by section II of AR 215-2, and at Army/Air Force Exchange Service (AAFES) eating establishments which serve alcoholic beverages for on-premises consumption.

(6) By any person in any Fort Jackson parking lot or parking area, to include the Burger King parking lot and all parking lots of AAFES facilities and installation club facilities.

(c) The presence of any person in a training area or of any permanent party soldier or civilian employee in a trainee/receptee billeting area while impaired by alcoholic beverages or illegal drugs is prohibited. For the purpose of this part, "impaired by alcoholic beverages" for military personnel is defined as having a blood alcohol level of .05 percent (.05 is equivalent to 55 milligrams of alcohol per 100 milliliters of blood) or more.

(d) Privately Owned Firearms and Ammunition. For the purpose of this part, a "firearm" means any device which is designed to or readily may be converted to expel a projectile by the action of an explosive. Air/pellet guns, BB guns and bows are subject to all of the provisions of this paragraph except paragraph (d)(1) of this section.

(1) It is prohibited for persons residing on the installation to fail to register privately owned firearms with their unit commander.

(2) Storage of privately owned firearms in the barracks is prohibited. For the purposes of this part, "barracks" does not include BOQs or SBEQs.

(3) It is prohibited to store privately owned firearms in BOQs, SBEQs, or family quarters unless the firearm is unloaded, ammunition is stored

separately from the firearm in a locked container, and one of the following methods for firearms storage is employed: by using a trigger locking device, by storing the firearm in a locked container, by removing the firing pin from the firearm and storing the firing pin in a locked container, or by disassembling the firearm and storing the disassembled parts in separate places. For the purposes of this part a "locked container" and a "locking device" mean locked containers and locking devices the keys to which are stored in a place not assessable to persons under 18 years of age.

(4) It is prohibited to carry on one's person any privately owned firearm in a public place on the installation of Fort Jackson unless participating in an authorized sporting activity or hunting in accordance with applicable regulations.

(5) In addition to the requirements of paragraph (d)(4) of this section, a person under 18 years of age is prohibited from carrying on his or her person a firearm outside the presence of a responsible adult.

(6) Carrying a concealed firearm on one's person, except by military, state and Federal law enforcement authorities in the performance of their duties, is prohibited.

(7) It is prohibited to transport in a vehicle any privately owned firearm except in a manner prescribed by the laws of South Carolina.

(8) It is prohibited to carry on one's person or transport in a vehicle any privately owned firearm within the Weston Lakes and Twin Lakes Recreation areas.

(e) Weapons Other Than Privately Owned Firearms. The possession of the following privately owned weapons or devices is prohibited:

(1) Any knife having a switchblade or automatic blade.

(2) Brass knuckles or similar devices.

(3) Blackjacks, saps, nunchaku and similar devices. As exceptions, nunchucks may be possessed for bona fide educational instruction or competition in a recognized martial arts program and may be carried and transported directly to and from educational and competitive martial arts events.

(4) When carried on one's person in an unconcealed manner, knives with blades in excess of three inches in length except while engaged in authorized hunting, fishing, camping or other outdoor recreational activities, or when required by duty purposes.

(5) When carried on one's person in a concealed manner, knives with blades

in excess of three inches, razors and ice picks.

(f) The charging of a usurious interest rate, defined as a rate exceeding thirty-six (36) percent per annum or three (3) percent per month, for the loan of money or for the extension of credit, is prohibited.

(g) Sexual intercourse or any indecent, lewd or lascivious act in any office, barracks, training area, duty location, parking lot, public recreation area or public place is prohibited.

(h) Relationships between service members of different rank or sex which involve or reasonably give the appearance of partiality, preferential treatment, the improper use of rank or position for any personal gain, or which can otherwise be reasonably expected to undermine discipline, authority or morale, are prohibited.

(i) Being present in any "off-limits" or "limited access" areas, except as authorized in Fort Jackson Regulation 190-3, is prohibited (See Appendix A to this subpart).

(j) Use of a metal detector for other than official purposes is prohibited.

(k) When directed to do so by the Military Police, failure to relinquish possession or control to the Military Police of abandoned property found on the installation is prohibited.

(l) Scavenging in or removal of waste items or recyclable materials from dumpsters, garbage cans, outdoor trash receptacles, recycling collection points, or landfill areas is prohibited, except for official purposes. This part does not prohibit persons from collecting and disposing of scattered litter, including aluminum cans, from roadsides, parking lots and recreation areas.

(m) It is prohibited for military personnel to engage in outside employment of any nature, including ownership or operation of a private business, without the prior written approval of their commander. Soldiers reassigned or reattached from one Fort Jackson unit to another Fort Jackson unit must obtain approval for continued employment from the gaining commander within 30 days of reassignment.

(n) Except as authorized by the Installation Commander, Chief of Staff or a Major Subordinate Commander, the use of radios, stereos, tape players, compact disk players or any other similar electronic sound generating or amplification source, including equipment installed or located in motor vehicles, in a manner that can be heard more than 125 feet from the source, is prohibited. This paragraph does not apply to law enforcement or emergency vehicles, or safety warning devices.

(o) Loitering in any public place on Fort Jackson, to include all parking lots, is prohibited. Loitering is defined as remaining idle in essentially one location, spending time idly, loafing, or walking around without a purpose in a public place in such a manner as to create a disturbance or annoyance to the comfort of any person, create a danger of a breach of the peace, obstruct or interfere with any person lawfully in any public place, or obstruct or hinder the free passage of vehicles or pedestrians. Any person loitering as defined above in any public place may be ordered by a law enforcement officer to leave that place or the Fort Jackson military reservation.

§ 552.153 Dissemination.

(a) Unit commanders and supervisors shall ensure that newly assigned or attached military and civilian personnel are informed of the prohibitions contained in this regulation. Soldiers-in-training will be informed of the provisions of this regulation at the beginning of each training cycle.

(b) All permanent party personnel and civilian employees will be reminded annually of their duty to comply with this part.

Appendix A to Subpart L—Partial List of Other Publications Applicable on Fort Jackson Which List Prohibited Practices

These publications are available for inspection at the Office of the Staff Judge Advocate, Fort Jackson, SC 29207-5000.

1. Distribution of Written Materials on the Installation—Fort Jackson Supplement 1 to AR 210-10.

2. Demonstrations, Pickets, Sit-ins, etc.—Fort Jackson Supplement 1 to AR 210-10.

3. Standards of Ethical Conduct for Employees of the Executive Branch, 5 Code of Federal Regulations, Part 2635.

4. Improper Associations—Fort Jackson Regulation 600-5.

5. Mistreatment of Soldiers-in-Training—Fort Jackson Regulation 350-1.

6. Participation in Military Labor Unions—Army Regulation 600-20.

7. Traffic Violations—Fort Jackson Regulation 190-5.

8. Areas of Access—Fort Jackson Regulation 190-3.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-13947 Filed 6-16-94; 8:45am]

BILLING CODE 3710-08-M

Corps of Engineers**33 CFR Part 209****Administrative Procedure—Shipping Safety Fairways and Anchorage Areas, Gulf of Mexico; Guidelines for the Industry Capability Program**

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is revoking the regulations in 33 CFR 209.135 and 209.147. The regulations in § 209.135 prohibit structures within shipping safety fairways in the Gulf of Mexico and prescribe certain conditions for nationwide permits issued by the Corps for temporary anchors and chains for floating or semisubmersible drilling rigs. Similar rules were promulgated in 33 CFR 322.5 and through an oversight, the rules of Section 209.135 were not revoked at that time. Section 209.147 which establish the Guidelines for the Industry Capability Program is no longer needed and these guidelines are removed.

EFFECTIVE DATE: June 17, 1994.

ADDRESSES: HQUSACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Corps published rules pertaining to shipping safety fairways in 33 CFR 322.5(1) on November 13, 1986, (51 FR 41206-41260) to consolidate all permit matters under the same section. These rules replaced the rules in 33 CFR 209.135 and the Corps intended to subsequently revoke the rules in § 209.135. The rules in § 209.135 are duplicative and unnecessary. Pursuant to its general authorities to operate and maintain Federal navigation projects, the Corps conducted a study to determine the capability of the dredging industry to accomplish the Government's dredging work at reasonable costs and in a timely manner. The Guidelines in 33 CFR 209.147 provided uniform procedures to evaluate Corps/Industry roles over a four-year period. That study has been completed and accordingly, these Guidelines are no longer needed.

The Corps has determined that notice of proposed rulemaking and public procedures thereto are unnecessary and impractical in this instance since this action will only remove obsolete materials from the CFR.

Economic Assessment and Certification Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601

et seq.), it is certified that the removal of these regulations will not have a significant economic impact on a substantial number of small entities. The removal of these two regulations will not have any effect on the public, any private enterprise or any Government agency. This action will result in the removal of two obsolete regulations from the CFR.

Executive Order 12866: This document does not meet the criteria for a significant regulatory action as specified in E.O. 12866.

List of Subjects in 33 CFR Part 209

Electric power, Navigation (water), Water pollution control, Waterway.

In consideration of the above, 33 CFR Part 209 is amended as set forth below.

PART 209—ADMINISTRATIVE PROCEDURE

1. The authority citation for Part 209 continues to read as follows:

Authority: 5 U.S.C. 301; 33 U.S.C. 1; 10 U.S.C. 3012

§ 209.135 [Removed]

2. Section 209.135 is removed.

§ 209.147 [Removed]

3. Section 209.147 is removed.

Dated: June 9, 1994.

Approved:

Stanley G. Genega,

Major General, U.S. Army, Director of Civil Works.

[FR Doc. 94-14763 Filed 6-16-94; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Parts 261 and 290**

RIN 0596-AA02

Cave Resources Management

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for nominating, evaluating, and designating significant caves on lands administered as part of the National Forest System. The rule also establishes procedures for releasing information about the location of caves and establishes general prohibitions to protect cave resources from abuse and degradation. The intended effect is to fully implement the Federal Cave Resources Protection Act of 1988 on National Forest System lands and to ensure that National Forest System

lands are managed in a manner to protect and maintain, to the extent practicable, significant caves. These regulations have been developed in close consultation with the Department of the Interior to ensure uniformity and consistency in approach to the extent that statutory authority permits.

EFFECTIVE DATE: This rule is effective June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Brent Botts, Recreation, Cultural Resources and Wilderness Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1313.

SUPPLEMENTARY INFORMATION:**Background**

The Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301-4309; 102 Stat. 4546), hereafter referred to as the "Act", seeks to secure, protect, and preserve significant caves on Federal lands for the perpetual use, enjoyment, and benefit of all people. The Act also seeks to foster increased cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, educational, or recreational purposes. The Act requires the Secretary of Agriculture to issue such regulations as he deems necessary to achieve the purposes of the Act on National Forest System lands. The regulations are required to include, but need not be limited to, criteria for the identification of significant caves.

On March 3, 1989, the Forest Service published an advance notice of proposed rulemaking in the *Federal Register* inviting comments on what should be included in a proposed rule, and particularly requesting suggestions as to criteria for identifying a significant cave. A total of nine comments were received in response to that notice: 4 from agencies of State government, 2 from business entities, 2 from individuals, and 1 from a Federal agency.

Subsequently, a proposed rule was published on December 23, 1991 (56 FR 66388). The proposed rule described the process the Forest Service would use in designating significant caves, provided for public nomination of caves, specified six criteria by which a cave would be evaluated to determine whether it is significant, and identified the authorized officer as the authority for designating and documenting a significant cave. The proposed rule also specified how cave information and locations would be released. Lastly, the proposed rule revised certain

prohibitions specific to caves and cave resources. Seventy-six letters were received during the 90-day comment period in response to the proposed rule: 30 from individuals, 18 from cave-related organizations, 16 from Federal agencies, 5 from natural resource organizations, 4 from business entities, and 3 from State agencies.

All comments received are available for review in the Office of the Director, Recreation, Cultural Resources, and Wilderness Management Staff, Auditors Building, 4th Floor, 201 14th Street, S.W. at Independence Ave., SW., Washington, DC, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Analysis of Public Comment

Overall, almost all respondents were pleased that the Forest Service was promulgating regulations. Many offered valuable suggestions for improving or clarifying specific sections. Some of these suggestions were group efforts, using similar or identical language to identify and describe their interests, concerns, and recommended modifications to the proposed rule. A few letters endorsed other respondents' statements.

The majority of comments centered on four major issues in the proposed 261 and 290 rules: scope of the rule, including the definition and manner of determining the significance of a cave; confidentiality of cave information; public participation; and differences with the proposed rule (57 FR 1344) published by Department of the Interior on January 13, 1992.

Several comments also referred to information contained in a document entitled "Proposed Procedure for Listing Significant Caves," which was circulated at the same time as the proposed rule but was not intended for codification in the regulations. This document described a proposed implementation process in greater detail. These comments also were considered as part of the rulemaking record to the extent that they were relevant to the provisions of the rulemaking.

General Comments on 36 CFR Part 290

Under the proposed rule, cave protection regulations would be set out in title 36, part 290, of the Code of Federal Regulations. The following summarizes general comments received on the proposed rule and the Department's response to them.

1. Cooperation and Consultation With the Department of Interior

Many respondents noted disparities between the Forest Service proposed rule and the proposed rule issued at the same time by the U.S. Department of the Interior (USDI). Most respondents recommended that the final rule of both agencies be as similar as possible.

Response. Throughout the rulemaking process, the Forest Service and USDI land managing agencies have been participating in an interagency committee to agree on cave resource standards and procedures. The goal has been to adopt rules as similar as possible. However, each agency has a different statutory background and mission which result in some procedural differences such as in integrating cave resource protection into planning processes, delegations of authority, and information requirements. In these instances, the language may differ to reflect the specific authorities of the agencies involved.

2. Public Participation

The majority of respondents felt the proposed rule completely ignored Section 2(b)(2) of the Act which states that one purpose of the Act is "to foster increased cooperation and exchange of information between governmental authorities and those who utilize caves for scientific, education, or recreational purposes." Respondents believed the proposed rule denied the caving community access to cave information thus discouraging the exchange of information. Many respondents recommended that public interaction occur through establishment of an advisory committee and the development of volunteer agreements. Some respondents felt that these two actions were required by the Act in Sections 4(b)(3) and 4(b)(4).

Response. Under § 290.3 of the proposed rule, the agency intended that the public be given the opportunity to nominate significant caves. Additionally, proposed § 290.4 provided a process by which information on caves and their location could be disclosed to bona fide educational or research organizations although not to the general cave recreationing community. Additionally, under the proposed rule, the agency envisioned addressing cave resource protection standards in forest plans pursuant to National Forest Management Act and implementing regulations. Forest plans are developed with full public participation; however, in response to comments on the proposed rule, the

final rule does strengthen and encourage greater cooperation and exchange of information in the nomination and evaluation process as well as in a new provision permitting the disclosure of cave information to groups who assist the Federal land managing agencies with cave management. These changes are discussed in the section-by-section discussion of comments which follows.

The suggestion to form an advisory committee has not been adopted. It is not at all clear that such advisory groups are needed either nationally or locally. Whether local advisory groups are needed is a decision best left to the local land manager. Should the Forest Supervisor determine that an advisory committee would be helpful in achieving the purposes of the Cave Resources Protection Act, the Department has ample authority and procedures in place to establish such advisory committees.

3. Scope and Detail of the Regulations

Many respondents felt that the proposed rule should have provided more details on how to manage and protect significant caves. Most of these respondents understood that significant caves would be managed "to the extent practical" using current management plans, but wanted the final rule to incorporate or further clarify portions of the proposed rule. Respondents asked questions such as: how will significant cave listings and significant cave management concerns be integrated into forest plans; how will specific management concerns about significant caves be identified; how will ecosystem considerations, including protection of karst features and hydrological recharge areas, be made; and how will the Forest Service address proposed projects that potentially impact caves.

Another respondent requested that goals and standards for cave resource protection and management be described in the rule and that language be added emphasizing that land management decisions should balance consideration of cave resource protection with consideration of human activity.

Response. Through section 4(c)(1) of the Act, Congress made clear that caves should be managed through the agency's land and resource management planning process, and not through the significant cave designation process. Section 4(c)(1) states that significant caves are to be "... considered in the preparation of any land management plan if the preparation or revision of the plan began after the enactment of this Act." Forest land and resource management planning is a continuous,

dynamic process which is dependent on monitoring and evaluation of actions taken under the plan. The agency keeps plans current and updated through amendment or revision and maintains ongoing and meaningful communication with the public and other government entities. New data such as an inventory of significant caves is new information that Forest Supervisors consider as forest plans are implemented to determine if forest plan direction needs to be changed. Designating caves as significant will not automatically trigger the need to amend or revise forest plans. Upon development of the initial listing of significant caves on National Forest System lands, the Forest Supervisor will review the forest plan and determine if it is adequate to ensure protection of significant cave resources. If not, the Supervisor would initiate amendment or revision of the plan to address the protection of significant cave resources on the forest. The public must be involved in amendment or revision. Thus, any special management concerns for significant caves, including connected ecosystem considerations, can and should be identified by the public so that the comments can be analyzed and considered through the forest planning process. The forest planning process is already adequately regulated by the provisions of 36 CFR part 219; therefore, no additional change to this rule was made.

Where a proposed project might impact a significant cave or cave yet to be evaluated for significance, the effects of the project would be analyzed in compliance with the National Environmental Policy Act (NEPA) implementing regulations. Public input is solicited to identify environmental issues relevant to a proposed action (project).

Agency policy and procedures under the NEPA in Forest Service Handbook 1909.15 require that decision documents (Decision Memo, Decision Notice, Record of Decision) contain "Findings required by other laws." If a decision affects a significant cave, a finding will be disclosed describing how the decision considered this cave.

Section-by-Section Comments on 36 CFR Part 290

Section 290.1 Purpose and Scope

In considering the general comments on the scope and detail of the regulations addressed in the preceding section of this preamble, the Department concludes that the proposed rule was confusing in specifying that the initial determination of significant caves would be made by a special process and

that subsequent significant cave determinations would be made through the forest plan amendment or revision process. The final rule clarifies this concern by: (1) stating that significant cave resources will be managed pursuant to direction contained in individual forest plans and in accordance with the policies contained in the Forest Service Directive System and (2) by eliminating any reference to forest planning in the initial and subsequent listings. This change acknowledges that forest plans provide direction to manage significant caves but do not contain a list of these caves.

Section 290.2 Definitions

Authorized Officer

Several respondents expressed concern over the range of potentially designated authorized officers listed in the proposed rule. One respondent felt that the authorizing officer should be the Regional Forester while another felt this authority should not be delegated below the Forest Supervisor level. Another felt the final decision for determining significant caves should be at a senior management level. Further, some respondents indicated that the authorized officer should have qualifications and duties related to caves and/or cave resources.

The comments received on this definition reflect a lack of understanding of how authority is delegated through the Forest Service. Authority flows from the Chief through Regional Foresters to Forest Supervisors and District Rangers. These line officers have responsibility for managing all resources, including caves, and will be legally responsible for complying with this rule and the Act. The agency will delegate that responsibility through the issuance of internal agency directives and the delegation of authority will vary depending on the significance of the action being assigned. In general, the authorized officer will refer to the Forest Supervisor who must carry out the evaluations and documentations required by the rule in the context of forest planning. To avoid confusion, the definition in the final rule does not include the list of all potential authorized officers.

Cave

The agency received a range of opinions on this definition. Some respondents felt the definition was too narrow; others believed it was too broad. Some respondents, stating that a vug is one resource the Act is intended to protect, were concerned with the exclusion of vugs from the definition.

Individual respondents suggested modifying the definition to include qualifiers such as: a dark zone; a minimum horizontal or vertical length; absence or presence of an entrance at any specific time period, and a naturally formed subterranean open area. A couple of respondents were concerned about the requirement that an individual be able to enter. One felt this precluded passages accessible for small cave biota. Another felt this requirement may allow for enlarging small openings to make them accessible as caves. One respondent was concerned that the definition would not protect the "unnatural" portion of caves from destruction or restrict the location of such from the general public.

The Department has concluded that the definition in the proposed rule was confusing because it described both the components of a cave and the features that do not comprise a cave. Accordingly, in the final rule, this definition has been revised to focus on what a cave is, rather than what it is not. "Feature" was replaced with "opening" since it was felt the intent is to include small air passages that extend from the cave itself and that are integral parts of the cave. This definition encompasses any entranceways, including excavated passage; therefore, the location and passage associated with the excavated portion is considered under purposes of this Act. While the suggested qualifiers further define features associated with caves, they were not added because they extend beyond the scope of the cave definition listed in the Act.

Cave Resources

Some respondents suggested that historical resources be separated from the rest of the resources listed as naturally occurring. A few respondents noted that speleogens and speleothems should be defined since these terms are not commonly found in dictionaries.

The term "naturally" was removed as suggested since cultural materials do not occur naturally in caves. Speleogens and speleothems are not included in the definition in the final rule since they are but a couple of the features that comprise geologic and mineralogic materials or substances.

National Forest System Lands

Several respondents were confused over which lands the Act applied to: non-federal lands on which the agency has planned projects, private lands with caves affected by agency projects on Federal lands, lands owned in fee title, and/or National Forest System lands.

A definition for "National Forest System lands" has been added. This

rule applies only to lands managed by and under the legal jurisdiction of the Forest Service. The Act contains no language extending agency authority to private property.

Significant Cave

Several respondents noted that this definition should correspond to the criteria listed in proposed section 290.3(b).

This definition was revised to include the criteria now in § 290.3 (c) and (d).

Vug

Respondents overlapped their comments on "vug" with the "cave" definition. A couple of respondents suggested clarifications to the definition including: Add a size definition other than "small" and make clear that a vug is only a stand-alone cavity presumably intersected by a man-made passage.

Since the only reference to a vug was in the definition of a cave and this reference has now been removed, the separate definition of a vug is no longer necessary.

Section 290.3 Determining Significant Caves

Comments are presented by major paragraph of this section of the proposed rule.

Paragraph (a) Nominations for Initial and Subsequent Listings

Proposed paragraph (a) provided that the Secretary of Agriculture shall cooperate and consult with the Secretary of Interior to devise a similar nomination process for initial listing of significant caves and give public notice of the nomination process. In addition, subsequent determinations of significant caves would be made through the forest planning process. Many respondents felt that the review of nominations and the determination by the authorized officer should be conducted in consultation and cooperation with an advisory committee, team, acknowledged experts in the field of speleology, or appropriate private sector interests, including cavers. A few respondents felt an appeal process was needed for those caves determined not to be significant.

This paragraph was revised to focus more narrowly on the nomination process, and a new paragraph (b) was added to describe the evaluation process. The reference in the proposed rule to subsequent determination of significant caves through the forest planning process has been removed. Determination of significant caves can be made at any time by the authorized officer. Reference to consultation between the Secretaries of Agriculture

and Interior was removed since this coordination has occurred in the writing of the entire rule and through a separate effort to develop a Proposed Procedure for Listing Significant Caves. Both paragraphs emphasize public and agency input and consultation. Notice of the nomination procedures for the initial listing must be published in the *Federal Register*. Notice of future listings is not required as the rule provides that the public and government agencies are to submit such nominations to the Forest Supervisor where the cave is located.

Paragraph (c) Criteria for Significant Caves

Many respondents stated that the criteria were too broad; others felt the criteria were too restrictive. Those respondents who felt the criteria are too broad suggested that criteria be developed at the State-level, be eliminated, or be modified with a strong emphasis on the cave having an important value. The majority of respondents felt that these criteria would eliminate the majority of caves from listing as significant. Most requested that criteria be based only on a cave processing "one or more of the following features, characteristics, or values." Some recommended that the criteria focus on identifying insignificant caves; thus, managing all others as significant. Individual respondents identified the need to add new criteria categories for caves of undetermined status, caves with abnormal dangers, caves with other values, and caves within a special management area which was designated wholly or in part due to the cave resources found there.

Additionally, two business entities felt that the criteria for selection of significant caves are too broad and that the proposed rule neglected to consider the impacts that such a designation would have on oil and gas production. They felt that the designation of significant caves needed to be based on caves having an "important value", especially when considering other uses of the land. They recommended that significant cave values be weighed against the economic values of mineral development.

The Act in section 4(a) requires that the Secretary issue criteria for the identification of significant caves in regulations. Thus, criteria focusing on insignificant caves or criteria developed at the State level do not address the Act's mandate. To focus the criteria on an inventory procedure that can be interpreted and more consistently applied across the agency, the qualifier

"* * * which are deemed by the authorized officer to be unusual, significant, or otherwise meriting special management" has not been adopted on the final rule. This phrase confused respondents since it added another level of evaluation and review to the six stated criteria. There is nothing in the Act or its legislative history that indicates that a cave has to have a value more important than, or be weighed against, other uses of public lands before being designated significant. The criteria for designating significant caves are identical to those adopted in the Department of the Interior's final rule.

(1) *Biota*. All respondents commenting on this paragraph requested modifications to make the criteria less restrictive. They recommended the removal of qualifiers such as "cave dependent," "that occur in large numbers or variety," and "disturbance."

"Cave dependent" was replaced with "seasonal or yearlong" to better describe the conditions under which biota use a cave. The qualifier "* * * occur in large numbers or variety * * *" was removed because caves typically contain small populations and variety of flora and fauna by the very nature of the cave environment.

(2) *Cultural*. All respondents commenting on this paragraph felt the criterion was too restrictive to include potentially eligible sites, religious sites for native Americans, caves mined for saltpeter, and sites with ethnographic or historic associations with events or persons considered important to local communities or social groups. A few suggested eliminating the requirement that the site be eligible for or listed on the National Register or Historic Places.

This paragraph was clarified to address and refer to the terms "historic or prehistoric" that are already defined through other laws and regulations. These terms encompass "cultural" resources better than historical properties and archaeological resources. The paragraph also was expanded to better describe the types of resources that could be included or eligible for inclusion on the National Register of Historic Places based on the cave itself or the contents contained within. The paragraph as revised encompasses religious sites for native Americans, caves mined for saltpeter, and other sites with ethnographic or historic associations. Allowing for a site to be eligible for or listed on the National Register of Historic Places consistently ties to the agency management of cultural resources.

(3) *Geologic/Mineralogic/Paleontologic*. Respondents felt that the terms "outstanding" and "important" were too restrictive. Most recommended that "outstanding" be replaced with "other interesting" or that it and "important" be deleted completely. Several respondents felt these criteria would allow every cave to be determined significant. One recommended that this paragraph be completely eliminated; another recommended tying the criteria to only "fragile or outstanding" examples.

In the final rule the qualifiers "outstanding", "useful" and "important" have been eliminated and replaced with more tangible terms. However, while some restrictive qualifiers have been expanded, there are still qualifiers that could appropriately eliminate caves from listing under this criteria.

(4) *Hydrologic*. One respondent felt this criterion should be limited to waters that are necessary to maintain municipal water supplies and maintain scientifically important biota or cave features.

The Department disagrees. This criterion is adopted without change from the proposed rule since it addresses hydrological resources associated with caves and cave resources.

(5) *Recreational*. Most respondents requested that "challenge" be replaced and values such as wilderness, sporting, natural, aesthetic, exploration, educational, and scientific be substituted. One respondent felt that this section should be completely removed. Another noted that scenic values and challenge must have an important value.

This criterion responds to the Act which recognizes caves for their perpetual use, enjoyment, and benefit for all people and further notes that people utilize caves for recreational purposes. The qualifier "by virtue of challenge" has been eliminated since it does not describe a type of recreational opportunity that can be measured. In the final rule, this paragraph is written broadly enough to incorporate the suggested values of wilderness, sporting, aesthetic, and exploration if they tie to recreational and scenic opportunities.

(6) *Educational or scientific*. One respondent noted that any new cave discoveries would automatically qualify as significant under this proposed criterion. Several other respondents felt that qualifiers should be deleted to make the criteria less restrictive. One suggested adding wilderness and uniqueness to this category. Other felt

that these criteria must either note an important value or it should be removed.

Changes to this paragraph in the final rule are minor. "Contemporary" is inserted before "human disturbance" to ensure that cultural resources are considered rather than recent acts of vandalism. New cave discoveries could be designated significant if they lack evidence of contemporary human disturbance or impact. This acknowledges that a pristine cave offers potential values from a scientific, educational, and recreational standpoint.

A new paragraph (d), *Specially designated areas*, has been added to recognize that some management decisions have already been made wholly or in part due to caves. Where special management designations are already associated with protecting caves, it is efficient to designate them as significant without re-evaluating them under the requirements of paragraph (c).

Paragraph (e) Designation and Documentation

Several respondents felt clarification was needed for the authorized officer's designation of significant caves. They felt that designation should be tied to the authorized officer confirming that a cave met one of the criteria rather than evaluating the criteria itself. Another respondent requested that the rule be specific as to what information must be provided.

The wording of this paragraph in the final rule clarifies that the authorized officer will confirm whether or not a cave meets one of the criteria listed in § 290.3(c). This clearly defines the role of authorized officer as a decisionmaker not a reviewer of the criteria. The paragraph also specifies the minimum documentation to be retained for each cave designated as significant.

A new paragraph (f), *Undiscovered passages*, has been added to clearly recognize that once a cave has been listed, the designation applies to the entire cave on federal land, regardless of agency jurisdiction or extent of exploration.

A decision to place a cave on the significant cave list is an inventory type decision, and as such, is not appropriately subject to administrative appeal. Accordingly, new paragraph (g), *Decision final*, has been added to clearly state that this determination is not subject to appeal. However, paragraph (a) of this section of the final rule contains a new sentence that makes explicit that a nomination may be resubmitted for listing, thus acknowledging that a decision not to list

a cave may be changed when better or new information accompanies the nomination.

Section 290.4 Confidentiality of Cave Information

The majority of respondents focused on three concerns:

(1) That the confidentiality language of the proposed rule went beyond the intent of the Act. They specifically noted that the provisions were to apply only to cave locations, not other cave information. Further, they felt that these provisions would inhibit exchange of information between the caving community and the Federal agencies.

(2) That caves not designated significant have their locations protected under confidentiality provisions. Otherwise, all information about that cave would become public.

(3) That denial of cave location information be subject to appeal. A couple of respondents noted that the requirements for requesting information differed between the FS proposed rule and the USDI proposed rule. Two others expressed the concern that without knowing the exact location of a cave, it is impossible for a mineral lessee to know whether the cave will affect his lease.

Paragraph (a) has been revised to indicate that only location information will be held confidential, but other specific information could be withheld if, in the judgment of the authorized officer, it would reveal the location of a cave. Locational information for all caves will be protected until the designation decision is made. This protection will continue for caves listed as significant. The information submitted for caves that are not listed will be returned to the person or organization submitting the nomination. Consequently, the responsibility for maintaining the confidentiality of unlisted caves will rest with the originator of the information and not with the agency.

Paragraph (b) of this section has procedures to request confidential information, and has been rewritten to be identical to the language adopted by the USDI in its final rule for uniformity.

Paragraph (c), which states the decision regarding access to information is not appealable, has been retained. The Act provides specific exemption from the requirements of the Freedom of Information Act. It is the Department's determination that the appeal process would not further public interest in protecting cave information. A procedure exists to permit the release of cave locations. The authorized officer will release cave location information

based on a written request and a determination that the request would further the purposes of the Act and would not create a substantial risk of harm, theft, or destruction of such cave.

General Comments on 36 CFR Part 261

Implementation of Proposed Prohibitions

One respondent was confused by the prohibitions. Concern was expressed that some additional action must occur for the prohibition to take effect.

Prohibitions applying to National Forest System lands are separated into three Subparts: General Prohibitions; Prohibitions in Areas Designated by Order; and Prohibitions in Regions. General Prohibitions are enforced on all National Forest System lands and do not require any formal posting. Prohibitions in Areas Designated by Order require an additional action to inform a forest visitor. The order must be posted in accordance with 261.51 of this chapter.

Criminal and Civil Penalties

Several respondents noted that existing penalties do not correspond to the penalties described in Sections 7 and 8 of the Act.

The primary purpose of the current rulemaking was to establish the criteria for significant caves. Where it was expedient to make minor adjustments to existing prohibitions in order to help protect significant cave resources, this was also done. If experience with administering significant cave resources shows additional regulations and penalties are needed, subsequent rulemaking specific to those management concerns will be undertaken.

Collection and Removal From Federal Caves

Several respondents noted that the rule is unclear on how collecting permits will be issued or regulated.

The Forest Service has an established procedure for issuing special use permits, which is regulated through rules of subpart B of part 251, title 36. All permits for significant caves must be in accordance with this regulation.

Section-by-Section Comments on 36 CFR Part 261

Section 261.2 Definitions

All respondents commenting on definitions of caves and cave resources under 290.2, repeated their comments here. Several respondents noted that these definitions should be identical to those defined in section 290.2.

This suggestion was adopted and identical definitions are provided in §§ 290.2 and 261.2.

Section 261.8 Fish and Wildlife

Respondents were concerned that this prohibition would not allow a gate to be installed if it was needed to protect a species, including those listed as threatened or endangered.

The paragraph was modified to address this concern by adding "... except as authorized to protect a cave resource." A gate was not specifically cited since there may be other types of installations that could curtail the movement of cave life to protect a cave resource.

Section 261.9(j) Property

Two respondents were confused by the intent of this paragraph. One asked whether enlarging a naturally occurring cave passage or entrance would require a special use authorization. Another requested clarification stating that a special use authorization cannot permit damage to, or excavation of, a significant cave. One respondent suggested adding a new prohibition to address section 7(a)(2) of the Act dealing with possessing, consuming, selling, bartering, or exchanging any cave resource without authorization.

Section 7(a)(1) of the Act states that activities that may lead to destroying, altering, or removing of cave resources or interfering with free movement of plant or animal life may only be permitted with prior authorization. Thus, any excavation of a cave passage or entrance would have to be approved by a special use authorization. A special use authorization permitting excavation in a cave is site-specific, thus, this provision does not encourage nor allow blanket approval for this type of activity for all caves on a given forest. A clause has been added prohibiting the removal of any cave resource for commercial purposes.

Section 261.10(d) Occupancy and Use

One respondent requested the wording in this section include the cave entrance area. Another requested that the discharge of fireworks be prohibited.

The proposed wording has been retained. The cave entrance area is protected by the existing wording in paragraphs (d)(1) and (d)(2).

A new paragraph (n) was added to specifically address the discharge of fireworks. No existing prohibition addressed this human safety concern.

Section 261.58(ee) Occupancy and Use

Most respondents requested that "litter" be incorporated into this clause.

A couple of respondents felt that additional wording was needed to allow cavers to bring and remove their own receptacles. Another respondent recommended that fluid wastes be considered on a cave by cave basis.

Paragraph 11(b) of this section already prohibits "Possessing or leaving . . . litter in an exposed or unsanitary condition." Current wording does not specify who must provide the receptacles; therefore, it can be interpreted that cavers may bring in and remove their own receptacles. Since this prohibition is applicable to a specific area designated through an order by the Forest Supervisor, there is the flexibility to add an exception for a particular cave to only prohibit solid wastes.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. To the extent that small entities engaged in resource extraction activities may have to site operations to protect significant caves, these requirements are the minimum necessary to protect the public interest, and are well within the capability of small entities to perform.

Environmental Impact

Based on both experience and environmental analysis, this final rule (or final policy) will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

The information required by this rule constitutes new information collection requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the Forest Service received approval from the Office of Management and Budget to collect cave nomination information and confidential cave information. The agency estimates that each person will spend an average of three hours per response for a cave nomination and one-half hour per response for the confidential cave information request.

No Taking Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property.

List of Subjects

36 CFR Part 261

Prohibitions, National forests.

36 CFR Part 290

Cave resources management, National forests.

Therefore, for the reasons set out in the preamble, title 36 of the Code of Federal Regulations is amended by amending part 261 and adding a new part 290 as set forth below.

PART 261—PROHIBITIONS

1. Revise the authority citation for part 261 to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)-(d)(1); 16 U.S.C. 4306, 4307.

Subpart A—General Prohibitions

2. Amend § 261.2 by adding definitions for the terms "cave" and "cave resources" in alphabetical order to read as follows:

§ 261.2 Definitions.

Cave means any naturally occurring void, cavity, recess, or system of interconnected passages beneath the surface of the earth or within a cliff or ledge and which is large enough to permit a person to enter, whether the entrance is excavated or naturally formed. Such term shall include any natural pit, sinkhole, or other opening which is an extensive of a cave entrance or which is an integral part of the cave.

Cave resources mean any materials or substances occurring in caves including, but not limited to, biotic, cultural, mineralogic, paleontologic, geologic, and hydrologic resources.

3. Amend § 261.8 by adding a new paragraph (e) to read as follows:

§ 261.8 Fish and wildlife.

(e) Curtail the free movement of any animal or plant life into or out of a cave, except as authorized to protect a cave resource.

4. Amend § 261.9 by adding a new paragraph (j) to read as follows:

§ 261.9 Property.

(j) Excavating, damaging, or removing any cave resource from a cave without a special use authorization, or removing any cave resource for commercial purposes.

5. Amend § 261.10 by revising paragraph (d) introductory text and adding new paragraphs (d)(3) and (n) to read as follows:

§ 261.10 Occupancy and use.

(d) Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property as follows:

(1) * * *

(2) * * *

(3) into or within any cave.

(n) Discharging or igniting a firecracker, rocket or other firework, or explosive into or within any cave.

Subpart B—Prohibitions in Areas Designated by Order

6. Amend § 261.58 by adding a new paragraph (ee) to read as follows:

§ 261.58 Occupancy and use.

(ee) Depositing any body waste in caves except into receptacles provided for that purpose.

7. Add a new part 290 to read as follows:

PART 290—CAVE RESOURCES MANAGEMENT

Sec.

290.1 Purpose and scope.

290.2 Definitions.

290.3 Nomination, evaluation, and designation of significant caves.

290.4 Confidentiality of cave location information.

290.5 Collection of information.

Authority: 16 U.S.C. 4301–4309; 102 Stat. 4546.

§ 290.1 Purpose and scope.

The rules of this part implement the requirements of the Federal Cave Resources Protection Act (16 U.S.C. 4301–4309), hereafter referred to as the "Act". The rules apply to cave management on National Forest System lands. These rules, in conjunction with rules in part 261 of this chapter, provide the basis for identifying and managing significant caves on National Forest System lands in accordance with the Act. National Forest System lands will be managed in a manner which, to the extent practical, protects and maintains significant cave resources in accordance with the policies outlined in the Forest Service Directive System and the management direction contained in the individual forest plans.

§ 290.2 Definitions.

For the purposes of this part, the terms listed in this section have the following meaning:

Authorized officer means the Forest Service employee delegated the authority to perform the duties described in this part.

Cave means any naturally occurring void, cavity, recess, or system of interconnected passages beneath the surface of the earth or within a cliff or ledge and which is large enough to permit a person to enter, whether the entrance is excavated or naturally formed. Such term shall include any natural pit, sinkhole, or other opening which is an extension of a cave entrance or which is an integral part of the cave.

Cave resources mean any materials or substances occurring in caves including, but not limited to, biotic, cultural, mineralogic, paleontologic, geologic, and hydrologic resources.

National Forest System lands means all national forest lands reserved or withdrawn from the public domain, acquired through purchase, exchange, or donation, national grasslands and land utilization projects, and other lands, waters, or interests administered by the Forest Service.

Secretary means the Secretary of Agriculture.

Significant cave means a cave located on National Forest System lands that has been determined to meet the criteria in § 290.3 (c) or (d) and has been designated in accordance with § 290.3(e).

§ 290.3 Nomination, evaluation, and designation of significant caves.

(a) *Nominations for initial and subsequent listings.* The authorized officer will give governmental agencies and the public, including those who utilize caves for scientific, educational,

or recreational purposes, the opportunity to nominate caves. The authorized officer shall give public notice, including a notice published in the *Federal Register*, calling for nominations for the initial listing and setting forth the procedures for preparing and submitting the nominations. Nominations for subsequent listings will be accepted from governmental agencies and the public by the Forest Supervisor where the cave is located as new cave discoveries are made. Caves nominated but not approved for designation may be renominated as additional documentation or new information becomes available.

(b) *Evaluation for initial and subsequent listings.* The evaluation of the nominations for significant caves will be carried out in consultation with individuals and organizations interested in the management and use of caves and cave resources, within the limits imposed by the confidentiality provisions of § 290.4. Nominations shall be evaluated using the criteria in § 290.3 (c) and (d).

(c) *Criteria for significant caves.* A significant cave on National Forest System lands shall possess one or more of the following features, characteristics, or values.

(1) *Biota.* The cave provides seasonal or yearlong habitat for organisms or animals, or contains species or subspecies of flora or fauna native to caves, or are sensitive to disturbance, or are found on State or Federal sensitive, threatened, or endangered species lists.

(2) *Cultural.* The cave contains historic properties or archeological resources (as defined in Parts 800.2 and 296.3 of this chapter respectively, or in 16 U.S.C. 470, *et seq.*), or other features included in or eligible for inclusion on the National Register of Historic Places because of their research importance for history or prehistory, historical associations, or other historical or traditional significance.

(3) *Geologic/Mineralogic/Paleontologic.* The cave possesses one or more of the following features:

(i) Geologic or mineralogic features that are fragile, represent formation processes that are of scientific interest, or that are otherwise useful for study.

(ii) Deposits of sediments or features useful for evaluating past events.

(iii) Paleontologic resources with potential to contribute useful educational or scientific information.

(4) *Hydrologic.* The cave is a part of a hydrologic system or contains water which is important to humans, biota, or development of cave resources.

(5) *Recreational.* The cave provides or could provide recreational opportunities or scenic values.

(6) *Educational or scientific.* The cave offers opportunities for educational or scientific use; or, the cave is virtually in a pristine state, lacking evidence of contemporary human disturbance or impact; or, the length, volume, total depth, pit depth, height, or similar measurements are notable.

(d) *Specially designated areas.* All caves located within special management areas, such as Special Geologic Areas, Research Natural Areas, or National Monuments, that are designated wholly or in part due to the cave resources found therein are determined to be significant.

(e) *Designation and documentation.* If the authorized officer determines that a cave nominated and evaluated under paragraphs (a) and (b) of this section meets one or more of the criteria in paragraph (c) of this section, the authorized officer shall designate the cave as significant. The authorized officer will notify the nominating party of the results of the evaluation and designation. Each forest will retain appropriate documentation for all significant caves located within its administrative boundaries. At a minimum, this documentation shall include a statement of finding signed and dated by the authorized officer and the information used to make the determination. This documentation will be retained as a permanent record in accordance with the confidentiality provision in § 290.4.

(f) *Undiscovered passages.* If a cave is determined to be significant, its entire extent on federal land, including passages not mapped or discovered at the time of the determination, is deemed significant. This includes caves that extend from lands managed by any other Federal agency into National Forest System lands, as well as caves initially believed to be separate for which interconnecting passages are discovered after significance is determined.

(g) *Decision final.* The decision to designate or not designate a cave as significant is made at the sole discretion of the authorized officer based upon the criteria in paragraphs (c) and (d) of this section and is not subject to further administrative review or appeal under Parts 217 or 251.82 of this chapter.

§ 290.4 Confidentiality of cave location information.

(a) *Information disclosure.* No Forest Service employee shall disclose any information that could be used to determine the location of a significant

cave or a cave nominated for designation, unless the authorized officer determines that disclosure will further the purposes of the Act and will not create a substantial risk of harm, theft, or destruction to cave resources.

(b) *Requesting confidential information.* Notwithstanding paragraph (a) of this section, the authorized officer may make confidential cave information available to Federal or State governmental agencies, bona fide educational or research institutes, or individuals or organizations assisting the land management agencies with cave management activities. To request confidential cave information, such entities shall make a written request to the authorized officer which includes the following:

(1) Name, address, and telephone number of the individual responsible for the security of the information received;

(2) A legal description of the area for which the information is sought;

(3) A statement of the purpose for which the information is sought; and,

(4) Written assurances that the requesting party will maintain the confidentiality of the information and protect the cave and its resources.

(c) *Decision final.* The decision to permit or deny access to confidential cave information is made at the sole discretion of the authorized officer and is not subject to further administrative review or appeal under 5 U.S.C. 552 or parts 217 or 251.82 of this chapter.

§ 290.5 Collection of information.

The collection of information contained in this rule represents new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service has received approval by the Office of Management and Budget to collect cave nomination information under clearance number 0596-0123 and confidential information under 0596-0122. The information provided for the cave nominations will be used to determine which caves will be listed as "significant" and the information in the requests to obtain confidential cave information will be used to decide whether to grant access to this information. Response to the call for cave nominations is voluntary. No action may be taken against a person for refusing to supply the information requested. Response to the information requirements for obtaining confidential cave information is required to obtain a benefit in accordance with section 5 of

the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4304).

Dated: May 17, 1994.

James R. Lyons,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 94-14714 Filed 6-16-94; 8:45 am]

BILLING CODE 3410-11-M

POSTAL SERVICE

39 CFR Part 233

Removal of Provision Providing 10-Day Maximum Period for Giving Inventory of Property Seized for Forfeiture to Party Whose Property Was Seized

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Postal Service regulations on forfeiture procedures by removing the provision requiring the agency to provide a receipt of the inventory of the property seized for forfeiture to the party whose property was seized within 10 days of the seizure. This amendment is intended to make the inventory notice procedure of the Postal Service consistent with other federal agencies and to eliminate an unnecessary burden on the agency.

EFFECTIVE DATE: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Postal Inspector-Attorney Frederick I. Rosenberg, (202) 268-5477.

SUPPLEMENTARY INFORMATION: Postal Service regulations concerning inventory procedures for property seized for forfeiture are published in title 39 of the Code of Federal Regulations (CFR) as § 233.7(c). The last sentence of that section establishes a 10-day maximum period for the agency to give a written receipt of the inventory of the property seized for forfeiture and the identity of the Postal Inspector who conducted the seizure to the party from whom the property was seized. Section 233.7(c) is amended to remove the 10-day limit to make the inventory notice procedure of the Postal Service consistent with other federal agencies and to eliminate an unnecessary burden on the agency when the party whose property was seized cannot be readily identified.

List of Subjects in 39 CFR Part 233

Crime, Law enforcement, Postal Service, Seizures and forfeitures.

Accordingly, 39 CFR 233 is amended as set forth below.

PART 233—INSPECTION SERVICE/INSPECTOR GENERAL AUTHORITY

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401-3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95-4542, as amended), 5 U.S.C. App. 3.

2. Section 233.7(c) is amended by revising the last sentence to read as follows:

§ 233.7 Forfeiture authority and procedures.

* * * * *

(c) * * * A written receipt containing such information and identifying the Postal Inspector who conducted the seizure must be provided to the party from whom the property was seized, or the party's agent or representative, at the time of the seizure or as soon thereafter as is practicable.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 94-14719 Filed 6-16-94; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME-8-1-6282; A-1-FRL-4854-8]

Approval and Promulgation of Air Quality Implementation Plans; Maine; VOC RACT Catch-ups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Maine Department of Environmental Protection (DEP) on January 8, 1993. This SIP revision contains regulations which require the implementation of reasonably available control technology (RACT) for various types of volatile organic compound (VOC) sources. The EPA has evaluated this SIP revision and is approving it under the Clean Air Act, as amended in 1990.

EFFECTIVE DATE: This final rule will become effective on July 18, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection

Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air Docket 6102, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565-3166.

SUPPLEMENTARY INFORMATION: On December 1, 1993 (58 FR 63316), EPA published a notice of proposed rulemaking (NPR) for the State of Maine. The NPR proposed approval of several regulations adopted by the State of Maine which require the implementation of RACT for various types of VOC sources. No public comments were received on the NPR.

Background

Under the pre-amended Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Under the pre-amended Clean Air Act, Maine was designated as rural nonattainment and, therefore, was required to adopt regulations pursuant to the Group I and Group II CTGs for major sources. Based on monitored ozone exceedances in Maine, EPA notified the Governor of Maine on May 25, 1988 and November 8, 1988 that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990,

amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended Section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. Pursuant to the amended CAA, two counties in Maine were classified as marginal (these two counties constitute one marginal ozone nonattainment area) and seven counties in Maine were classified as moderate (these seven counties constitute three moderate ozone nonattainment areas). 56 FR 56694 (Nov. 6, 1991). The State submitted revisions to meet the RACT fix-up requirement and EPA approved these revisions to the Maine SIP on February 3, 1992 and March 22, 1993 (57 FR 3946 and 58 FR 15281).

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources. This RACT requirement which applies to nonattainment areas that previously were exempt from certain RACT requirements requires areas to "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas. As previously mentioned, the State of Maine contains three moderate ozone nonattainment areas. These areas are thus subject to the section 182(b)(2) RACT catch-up requirement.

Also, the State of Maine is located in the Northeast Ozone Transport Region (OTR). The entire State is, therefore, subject to section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented for all VOC sources covered by a CTG issued before or after the enactment of the CAAA of 1990 and for all major VOC sources (defined as 50 tons per year or greater for sources in the OTR).

Since Maine had previously submitted regulations for bulk gasoline terminals, fixed roof petroleum tanks, and paper coating sources pursuant to the RACT fix-up requirement, in order

to meet the RACT catch-up requirement, the State must, therefore, adopt regulations (or affirm that no sources exist) for the remaining 26 CTG categories as well as adopt rules for all major non-CTG sources. (Rules for non-CTG sources are not part of this SIP revision and will not be further discussed in this document).

EPA's Evaluation of Maine's Submittal

In response to the RACT catch-up requirement, on May 14, 1992 and June 12, 1992, Maine submitted negative declarations for the CTG categories listed below.

1. Surface coating of coils.
2. Surface coating of magnet wire.
3. Surface coating of large appliances.
4. Surface coating of automobiles and light duty trucks.
5. Manufacturing of synthesized pharmaceuticals.
6. Manufacturing of pneumatic rubber tires.
7. Manufacturing of vegetable oil.
8. Air oxidation processes in synthetic organic chemical manufacturing industry.
9. Manufacturing of high density polyethylene, polypropylene and polystyrene resins.
10. Leaks from synthetic organic chemical and polymer manufacturing.
11. Petroleum liquid storage in external floating roof tanks.
12. Equipment leaks from natural gas/gasoline processing plants.
13. Petroleum refinery processes.
14. Leaks from petroleum refinery equipment.
15. Large petroleum dry cleaners.

Through the negative declaration, the State of Maine is asserting that there are no sources within the State that would be subject to a rule for that source category. EPA is approving this negative declaration submittal as meeting the section 182(b)(2) and section 184(b) RACT requirements for the source categories listed.

After submitting the above negative declarations, Maine then proceeded with the process of adopting regulations to control the remaining CTG categories which include surface coating processes, solvent metal cleaning, graphic arts operations, the use of cutback asphalt, and gasoline marketing operations. Maine's gasoline marketing RACT catch-up regulations are not a part of this SIP revision, and will not be further discussed in this notice.

The VOC regulations that are included in Maine's January 13, 1993 SIP submittal are briefly summarized below.

Chapter 100: Definitions Regulation

This regulation was amended to include the following 19 newly adopted definitions: as applied, capture system, carbon adsorber, condensate, condenser, continuous emission monitor, control system, double block-and-bleed system, exempt VOC compounds, gaseous excess emissions, leak, maximum true vapor pressure, open-ended valve or line, organic compound, overall VOC emission reduction efficiency, pressure release, solvent, standard atmospheric conditions, and VOC incinerator.

Chapter 129: Surface Coating Facilities

This regulation contains requirements for limiting the VOC emissions from the surface coating of cans, fabric, vinyl, metal furniture, flatwood paneling, and miscellaneous metal parts and products. Surface coating facilities may comply with this regulation through the use of low VOC coatings, daily-weighted averaging, and/or add-on control equipment.

Chapter 130: Solvent Degreasers

This regulation contains equipment and operation standards for solvent degreasing operations. These requirements apply to cold cleaners, open-top vapor degreasers and conveyorized degreasers.

Chapter 131: Cutback and Emulsified Asphalt

This regulation contains prohibitions regarding the mixing, storage, use, and application of cutback and emulsified asphalts.

Chapter 132: Graphic Arts-Rotogravure and Flexography

This regulation contains requirements to limit the emissions from rotogravure and flexographic printing operations. Graphic arts facilities may comply with these requirements through the use of low VOC coatings, daily-weighted averaging, and/or add-on control equipment.

EPA has evaluated Maine's VOC regulations and has found that they are consistent with EPA model regulations and the applicable CTG documents. As such, EPA believes that the submitted rules constitute RACT for the applicable sources. By this action, EPA is approving Maine's submittal as meeting the requirements of sections 182(b)(2) and 184(b)(1)(B) for the applicable VOC sources. Maine's regulations and EPA's evaluation are detailed in a memorandum, dated July 16, 1993, entitled "Technical Support Document—Maine—VOC RACT Catch-ups." Copies of that document are available, upon request, from the EPA

Regional Office listed in the ADDRESSES section of this document.

Final Action

EPA is approving Maine's Chapter 100 "Definitions Regulation," Chapter 129 "Surface Coating Facilities," Chapter 130 "Solvent Degreasers," Chapter 131 "Cutback and Emulsified Asphalt," and Chapter 132 "Graphic Arts-Rotogravure and Flexography" as meeting the requirements of sections 182(b)(2) and 184(b) of the CAA for the following categories of VOC sources: the surface coating of cans, fabric, vinyl, metal furniture, flatwood paneling, and miscellaneous metal parts and products; solvent metal cleaning; the use of cutback asphalt; and rotogravure and flexographic printing operations. EPA is also approving the negative declarations submitted by the State of Maine as meeting the requirements of sections 182(b)(2) and 184(b) of the CAA for the 15 source categories for which negative declarations were submitted.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As noted elsewhere in this action, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the

State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Editorial Note: This document was received by the Office of the Federal Register June 13, 1994.

Dated: February 18, 1994.

Patricia L. Meaney,

Acting Regional Administrator, Region I.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(33) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(33) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on January 8, 1993.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated January 8, 1993 submitting a revision to the Maine State Implementation Plan.

(B) Revised Chapter 100 of the Maine Department of Environmental Protection Regulations, "Definitions" effective in the State of Maine on February 10, 1993.

(C) Chapter 129 of the Maine Department of Environmental Protection Regulations, "Surface Coating Facilities" effective in the State of Maine on February 10, 1993.

(D) Chapter 130 of the Maine Department of Environmental Protection Regulations, "Solvent Degreasers" effective in the State of Maine on February 10, 1993.

(E) Chapter 131 of the Maine Department of Environmental Protection Regulations, "Cutback and Emulsified Asphalt" effective in the State of Maine on February 10, 1993.

(F) Chapter 132 of the Maine Department of Environmental Protection Regulations, "Graphic Arts—Rotogravure and Flexography" effective in the State of Maine on February 10, 1993.

(G) Appendix A "Volatile Organic Compounds Test Methods and Compliance Procedures" incorporated into Chapters 129 and 132 of the Maine Department of Environmental Protection Regulations, effective in the State of Maine on February 10, 1993.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

§ 52.1031 [Amended]

3. In § 52.1031, Table 52.1031 is amended by adding a new entry to existing state citation "Chapter 100" and by adding new state citations "Chapter 129," "Chapter 130," "Chapter 131," and "Chapter 132" to read as follows:

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
Chapter: 100	Definitions	01/06/93	[Insert date of publication].	[Insert FR citation from published date].	(c)(33) Revised to add definitions associated with VOC RACT rules
129	Surface coating Facilities.	01/06/93	[Insert date of publication].	[Insert FR citation from published date].	(c)(33) Includes surface coating of: cans, fabric, vinyl, metal furniture, flatwood paneling, and miscellaneous metal parts and products
130	Solvent Degreasers	01/06/93	[Insert date of publication].	[Insert FR citation from published date].	(c)(33)
131	Cutback and Emulsified Asphalt.	01/06/93	[Insert date of publication].	[Insert FR citation from published date].	(c)(33)
132	Graphic Arts: Roto-gravure and Flexography.	01/06/93	[Insert date of publication].	[Insert FR citation from published date].	(c)(33)

[FR Doc. 94-14723 Filed 6-16-94; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 61

[FRL-4893-5]

Interpretive Rule for Roof Removal Operations Under the Asbestos NESHAP

AGENCY: Environmental Protection Agency.

ACTION: Interpretive rule.

SUMMARY: The Environmental Protection Agency ("EPA") is today publishing an interpretive rule regarding roof removal operations under the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP"). The purpose of the interpretive rule is to clarify the Asbestos NESHAP as it affects roof removal operations by: specifying which roof removal operations EPA construes the NESHAP to cover; and specifying roof removal work practices that EPA deems to be in compliance with the NESHAP in roofing operations where the NESHAP applies.

EFFECTIVE DATE: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Ripp at (703) 308-8727 at U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Stationary Source Compliance Division. For copies, contact Mr. Larry Tessier at 1-800-368-5888 or at (703) 305-5938.

SUPPLEMENTARY INFORMATION: On November 20, 1990, EPA published in the Federal Register (55 FR 48406) revisions to the Asbestos NESHAP, which is codified at 40 CFR part 61, subpart M. Members of the roofing industry have expressed confusion regarding the asbestos NESHAP and have requested clarification from EPA with regard to how compliance with the NESHAP can be achieved for roof removal operations.

EPA is today publishing, as a new appendix A to subpart M of 40 CFR part 61, the interpretive rule that is set forth below. The purpose of the interpretive rule is to clarify the Asbestos NESHAP as it affects roof removal operations by: (i) Specifying which roof removal operations EPA construes the NESHAP to cover; and (ii) specifying roof removal work practices that EPA deems to be in compliance with the NESHAP in roofing operations where the NESHAP applies.

The new appendix A to the Asbestos NESHAP does not supersede, alter or replace the Asbestos NESHAP; nor does it change the scope or stringency of the NESHAP. Rather appendix A interprets the NESHAP as it applies to roof removal operations, in order to provide particularized guidance which, if followed, would promote compliance with, and more effective and consistent enforcement of, the NESHAP in such operations. This interpretive rule is intended as guidance to the roofing industry and the public and does not constitute an action which is subject to

judicial review under section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. 704. In addition, because the rule prescribed in this notice is an interpretive rule and does not promulgate or revise a standard or regulation listed in section 307(d)(1) of the Clean Air Act (42 U.S.C. 7607(d)(1)), the procedural requirements for rulemaking under the Clean Air Act and the Administrative Procedure Act do not apply to this action. See 42 U.S.C. 7607(d); 5 U.S.C. 553(b).

It is the present intent of EPA that if this interpretive rule is revoked or withdrawn before new regulations regarding asbestos emissions or work practices for handling of asbestos containing materials during roof removal operations under the Clean Air Act are promulgated by EPA, then EPA shall replace the interpretive rule with another interpretation or guidance document that would address how the NESHAP applies to roof removal in renovation and demolition operations. It is also the present intent of EPA that prior to replacing or substantially revising this interpretive rule, EPA would consult with the public regarding such action.

List of Subjects in 40 CFR Part 61

Air pollution control Asbestos.