bind [insert name of foreign producer] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart K, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart K, including 40 CFR 80.1165 apply to [insert name of foreign producer]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.

■ 20. Section 80.1167 is amended by revising paragraph (e) introductory text and paragraph (j)(2) to read as follows:

§ 80.1167 What are the additional requirements under this subpart for a foreign RIN owner?

* * * * *

(e) *Bond posting.* Any foreign entity shall meet the requirements of this paragraph (e) as a condition to approval as a foreign RIN owner under this subpart.

* * * * *

(j) * * *

(2) Signed by the president or owner of the foreign RIN owner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign RIN owner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart K, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart K, including 40 CFR 80.1167 apply to [insert name of foreign RIN owner]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.

[FR Doc. E8–23131 Filed 10–1–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

43 CFR Part 11

RIN 1090–AA97

Natural Resource Damages for Hazardous Substances

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule amends certain parts of the natural resource damage assessment regulations for hazardous substances. The regulations provide procedures that natural resource trustees may use to evaluate the need for and means of restoring, replacing, or acquiring the equivalent of public natural resources that are injured or destroyed as a result of releases of hazardous substances. The Department of the Interior has previously developed two types of natural resource damage assessment regulations: Standard procedures for simplified assessments requiring minimal field observation (the Type A Rule); and site-specific procedures for detailed assessments in individual cases (the Type B Rule).

This final rule revises the Type B Rule to emphasize resource restoration over economic damages. It also responds to two court decisions addressing the regulations: *State of Ohio* v. *U.S. Department of the Interior*, 880 F.2d 432 (DC Cir. 1989) (*Ohio* v. *Interior*); and *Kennecott Utah Copper Corp.* v. *U.S. Department of the Interior*, 88 F.3d 1191 (DC Cir. 1996) (*Kennecott* v. *Interior*), and includes a technical revision to resolve an apparent inconsistency in the timing provisions for the assessment process set out in the rule.

EFFECTIVE DATE: The effective date of this final rule is November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Frank DeLuise at (202) 208–4143.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. What The Natural Resource Damage Regulations Are About

The regulations describe how to conduct a natural resource damage assessment for hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601, 9607) (CERCLA) and the Federal Water Pollution Control Act (33 U.S.C. 1251, 1321) (Clean Water Act). CERCLA required the President to promulgate these regulations. 42 U.S.C. 9651(c). The President delegated this rulemaking responsibility to the Department of the Interior (DOI). E.O. 12316, as amended by E.O. 12580. The regulations appear in the Code of Federal Regulations (CFR) at 43 CFR Part 11.

A natural resource damage assessment is an evaluation of the need for, and the means of securing, restoration of public natural resources following the release of hazardous substances or oil into the environment. The regulations we are revising only cover natural resource damage assessments for releases of hazardous substances under CERCLA and the Clean Water Act. There are also natural resource damage assessment regulations at 15 CFR Part 990 that cover oil spills under the Oil Pollution Act, 33 U.S.C. 2701 (the OPA regulations). The current hazardous substance natural resource damage assessment and restoration regulations, this preamble, and the revisions to the regulations use ''restoration'' as an umbrella term for all types of actions that the natural resource damage provisions of CERCLA and the Clean Water Act authorize to address injured natural resources, including restoration,

rehabilitation, replacement, or acquisition of equivalent resources.

Natural resource damage assessments are conducted by government officials designated to act as ''trustees'' to bring claims on behalf of the public for the restoration of injured natural resources. Trustees are designated by the President, state governors, or tribes. If trustees determine, through an assessment, that hazardous substance releases have injured natural resources, they may pursue claims for damages against potentially responsible parties. ''Damages'' include funds needed to plan and implement restoration, compensation for public losses pending restoration, reasonable assessment costs, and any interest accruing after funds are due. *See* 43 CFR 11.15.

The regulations establish an administrative process for conducting assessments that includes technical criteria for determining whether releases have caused injury, and if so, what actions and funds are needed to implement restoration. The regulations are for the optional use of trustees. Trustees can use the regulations to structure damage assessment work, frame negotiations, and inform restoration planning. If litigation is necessary to resolve the claim, courts will give additional deference—referred to as a ''rebuttable presumption'' in CERCLA—to assessments performed by federal and state trustees in accord with the regulations.

The regulations provide guidance on two different types of assessment procedures identified in CERCLA: ''Type A'' and ''Type B'' procedures. Type A procedures are simplified procedures for small cases. The current Type A procedures are computer programs, available in a limited range of cases, that model the fate of a released substance in order to project the injuries caused by the release and calculate damages. Type B procedures outline an assessment process and assessment methods that trustees utilize on a case by case basis. We are revising certain parts of the Type B procedures (case by case assessment provisions) in the regulations.

II. Why We Are Revising the Regulations

CERCLA provides that we review and revise the regulations as appropriate every two years. 42 U.S.C. 9651(c)(3). To assist in this most recent review, in May 2005, DOI convened a Natural Resource Damage Assessment and Restoration (NRDAR) Federal Advisory Committee (advisory committee) to provide recommendations regarding DOI's NRDAR activities, authorities and responsibilities. The advisory committee comprised 30 members, representing a diverse group of interested stakeholders—including state, tribal, and federal trustee agencies, industry groups and potentially responsible party representatives, scientists, economists, and national and local environmental and public interest organizations.

A key recommendation of the advisory committee was that DOI should undertake, without delay, a targeted revision of the regulations to emphasize restoration over monetary damages. This revision implements that recommendation, and responds to two court decisions addressing the regulations: *State of Ohio* v. *U.S. Department of the Interior*, 880 F.2d 432 (DC Cir. 1989) (*Ohio* v. *Interior*); and *Kennecott Utah Copper Corp.* v. *U.S. Department of the Interior*, 88 F.3d 1191 (DC Cir. 1996) (*Kennecott* v. *Interior*). Finally, we are making a technical revision to resolve an inconsistency on the appropriate timing for the administrative process set out in the rule.

We have considered:

(a) The NRDAR advisory committee report, which was released in May of 2007;

(b) Comments provided on the proposed rule revisions published in the **Federal Register** on February 29, 2008;

(c) The *Ohio* v. *Interior* opinion;

(d) The *Kennecott* v. *Interior* opinion; and

(e) The OPA regulations.

III. Major Issues Addressed by the Revisions

Our revisions will largely leave the framework of the existing rule intact. We are not making substantive changes to legal standards for reliability of assessment data and methodologies. The NRDAR advisory committee made a number of recommendations to encourage faster, more efficient and more cost-effective resolution of claims. The committee endorsed a tiered approach to implementing its recommendations that would immediately address the option of emphasizing restoration over economic damages in the regulations, while leaving the implementation of a broader range of recommendations—including providing technical guidance documents and streamlining of the restoration planning process—to the future. The rest of this section discusses the major issues addressed by the revisions. The following section references the OPA regulations. These references are solely for the purpose of providing context and background. For guidance on conducting natural resource damage assessments under OPA, see 15 CFR Part 990.

A. Further Emphasizing Restoration Over Economic Damages

Under the current regulations, trustees utilizing the Type B procedures must base their claim on the cost of implementing a publicly reviewed restoration plan designed to return injured resources to their baseline condition, which is defined as the condition that would have existed had the release not occurred (see 43 CFR 11.80–82). CERCLA and the Clean Water Act authorize trustees to recover damages not only for the cost of restoring injured or destroyed resources to their baseline condition, but also for public losses pending restoration to baseline. The regulations call these interim losses ''compensable values'' (see 43 CFR 11.83(c)). The regulations define compensable value as the amount of money required to compensate the public for the loss in ''services'' provided by the injured resources pending restoration (see 43 CFR 11.83(c)(1)). Services are defined in the current regulations as the physical and biological functions performed by the resources, including the human use of those functions. The current regulations provide that compensable value should be measured by the economic value of public losses arising from the resource injury until restoration can be achieved, which arguably could be read as excluding restoration-based approaches to determining compensable value.

To comply with CERCLA and the Clean Water Act, trustees must spend any compensable value recoveries on restoration actions. Under the current regulations, however, trustees do not need to consider restoration actions to address interim losses until they have already determined and recovered damages. This can be inefficient and confusing. The NRDAR advisory committee recommended that DOI should amend its current regulation to explicitly authorize trustees to use the cost of restoration actions that address service losses to calculate all damages, including interim losses. Providing the option for a ''restoration-based'' approach to all damages better comports with CERCLA's overall restoration objectives. It also promotes an earlier focus on feasible restoration options, which can encourage settlements by providing opportunities for designing creative and cost-effective actions to address losses. We are revising 43 CFR 11.83(c) to provide trustees with the option of estimating compensable values for losses pending restoration

utilizing the cost of implementing projects that restore those lost natural resource services.

Methodologies that compare losses arising from resource injury to gains expected from restoration actions are frequently simpler and more transparent than methodologies used to measure the economic value of losses. Our revisions include four examples of project-based assessment methodologies—conjoint analysis, habitat equivalency analysis, resource equivalency analysis, and random utility models—which have been used successfully to resolve claims under both the CERCLA and the OPA regulations. We are also adding a brief description of these restoration-based methodologies to the non-exclusive list of economic valuation methodologies in the current regulation. Our revisions do not sanction or bar the use of any particular methodology, so long as it complies with the four mandatory ''acceptance criteria''—which include feasibility and reliability, reasonable cost, avoidance of double counting, and cost effectiveness—that appear in the current rule in § 11.83(a)(3).

The list of methodologies for assessing compensable values remains non-exclusive, allowing for the introduction of new and innovative techniques that may arise. As mentioned above, the current regulations provide that when choosing among any cost estimation or valuation methodology, trustees must ensure that the methodologies selected are feasible and reliable for a particular incident or type of damage to be measured. To assist trustees in evaluating feasibility and reliability, we are providing a list of factors that set out general principles of feasibility and reliability—such as the ability to provide useful restoration information, peer review, and methodological standards—for trustees to consider when evaluating the reliability of all valuation and damage assessment methodologies. Each of the listed factors may not be applicable in every case, and other relevant factors may be considered. Trustees continue to be required to document their consideration of relevant factors in the Report of Assessment.

B. Complying With Ohio v. Interior and Responding to Kennecott v. Interior

Several provisions of the current regulations were invalidated by the DC Circuit Court of Appeals in *Ohio* v. *Interior* and *Kennecott* v. *Interior*. Some invalidated provisions from the 1986 rule were carried over in the 1994 revisions responding to the *Ohio* v. *Interior* decision. Additionally, the *Kennecott* v. *Interior* decision in 1996 invalidated certain provisions from the 1994 revisions which have not yet been corrected to comply with the decision. In the final rule, we are making technical corrections to the CFR in accord with these decisions.

The *Ohio* v. *Interior* decision invalidated the limitation on estimating option and existence value in 43 CFR 11.83(c)(1)(iii). Our revisions will therefore delete this provision from the CFR. The restatement of this limitation in 43 CFR 11.83(c)(2)(vii)(B) will also be deleted from the CFR.

Estimating option and existence value through the use of contingent valuation methodologies remains controversial. We note, however, that our revision's focus on compensating for public losses pending restoration with restoration actions rather than monetary damages for the economic value of the losses will provide options for comparing functional losses from resource injuries to functional gains expected from restoration actions, which will reduce the need for trustees to seek to recover the monetary value of passive economic losses such as option and existence value.

The *Kennecott* v. *Interior* decision invalidated DOI's attempt to define the date of promulgation of the 1994 revisions to the rule. This was relevant because it affected the three-year statutory limitations for filing a claim at some CERCLA sites. In 43 CFR 11.91(e), DOI defined the date of promulgation as the later of the date when either the Type A or Type B Rule was finalized, pursuant to the *Ohio* v. *Interior* decision. The Court of Appeals found this interpretation unreasonable and invalidated the provision, which we will delete from the CFR. Since both the Type A and Type B revisions finalized pursuant to the *Ohio* v. *Interior* decision were finalized more than three years ago, this deletion is merely a technical correction which has no material effect.

The 1994 revisions to the NRDAR rule stated that the measure of natural resource damages under CERCLA was the cost of restoration of ''the injured natural resources and the services those resources provide'' (see 43 CFR 11.80(b)). In the *Kennecott* decision, the Court of Appeals invalidated this language because it was inconsistent with DOI's preamble explanation of the measure of damages, which endorsed the concept of quantifying resource injury and resulting public losses by utilizing a services metric. The court reasoned that creating an apparent dichotomy between restoration of resources and restoration of services implied an abandonment of the services approach that was unexplained. The court therefore invalidated the ''resources and services'' language and ''reinstated'' the services approach, pending further clarification.

Under the current rule, natural resource damages include both the cost of restoring injured resources to a condition where they can provide the level of services available at baseline level of services and, when appropriate, compensation for interim service losses pending restoration. Under the current rule, restoration to baseline focuses on the resource condition, while compensable value focuses on compensation for lost services pending the restoration of resources. ''Resources and services'' reflects the distinct emphases for different damage components, but it was not intended as a rejection of a services-based approach. As the revisions make clear, the metric for evaluating natural resource conditions for baseline restoration is the availability of the baseline level of services, while the compensable value for losses pending restoration is either the *value* of the services lost pending restoration or the *cost* of projects that compensate for services lost pending restoration.

The revision to 43 CFR 11.80(b) clarifies that the measure of damages is the cost of (1) restoring or rehabilitating the injured natural resources to a condition where they can provide the level of services available at baseline, or (2) replacing and/or acquiring equivalent natural resources capable of providing such services. Of course, damages can be measured by an appropriate combination of partial restoration or rehabilitation, and partial replacement and/or acquisition of equivalent resources, so long as there is no double counting. Damages may also include, at the discretion of the trustees, the compensable value of services lost pending restoration. This clear construct is carried over for conforming changes to 43 CFR 11.81(a)(1) and (2), 43 CFR 11.82(a), (b)(iii), and (c), and 43 CFR 11.83(a).

C. Technical Correction To Provide Consistent Timing Guidelines

The current regulations provide that a Restoration and Compensation Determination Plan (RCDP) which evaluates and selects restoration alternatives may be developed after completion of the injury determination and quantification phases of the assessment (see 43 CFR 11.81(d)(1)). However, an earlier provision of the current regulations provides that the RCDP can be developed ''at any time before'' completion of the injury determination or quantification phases.

(See 43 CFR 11.31(c)(4)). Since the evaluation and selection of restoration alternatives can benefit from more definitive injury determination and quantification data, we are resolving this inconsistency by correlating 43 CFR 11.31(c)(4) with 43 CFR 11.81(d)(1) to provide that the RCDP may be completed after the injury determination and quantification phases of the assessment.

IV. Response to Comments

The Department received 21 comments on the February 29, 2008 **Federal Register** Proposed Rulemaking Notice. The Department appreciates the time and effort expended by the commenters. This notice does not address any comments outside of the scope of the proposed targeted revisions. The NRDAR Advisory Committee considered other NRDAR practice issues—such as encouraging an early focus on restoration planning and streamlining the restoration implementation process. These and other issues concerning these regulations may be addressed in future biennial reviews.

A. Emphasizing Restoration Over Economic Damages

1. Providing the Option To Calculate All Natural Resource Damages Utilizing a Restoration-Based Approach

Comment: Most commenters who expressed an opinion on the issue of allowing for restoration-based approaches to public losses pending restoration generally supported this change. Many commenters believed that restoration-based approaches better comport with the purposes of CERCLA.

Response: We believe that in many cases, restoration-based approaches can lead to timelier, more efficient, and more cost effective —which is the key objective of these revisions. The NRDAR process is streamlined by focusing directly on restoration alternatives that address losses, rather than on first estimating the monetary value of losses and then determining how to address them with appropriate projects. Moreover, the transparency involved in comparing resource gains to resource losses reduces controversy and transaction costs, and encourages collaborative efforts to identify projects that yield high human and ecological benefits relative to their monetary cost.

Comment: The factors to consider when selecting restoration-based alternatives to compensate for interim public losses pending restoration should be the same as those for selecting restoration-based alternatives to restore, rehabilitate, replace, or acquire resources equivalent to those injured in § 11.82 of the rule.

Response: We agree that all restoration-based alternatives for damages should be evaluated consistently under the rule, and the revisions reflect this in § 11.82.

2. Preserving the Option To Calculate Interim Public Loss Damages Utilizing the Economic Value of the Loss

Comment: Some commenters expressed concern that restoration-based approaches were ''over-emphasized'' and that trustees should retain the option of making claims for public losses pending restoration based on the monetary value of the losses.

Response: The purpose of the revisions is to remove any barriers that exist to utilizing restoration-based approaches to all damages, including damages for public losses pending restoration (compensable values.) The revisions do not, however, bar the use of methodologies that estimate the monetary value of public losses pending resource restoration. Therefore, recovering the monetary value of public losses pending restoration remains an option for trustees. Nevertheless, regardless of how damages are calculated, the focus of the NRDAR program is on achieving restoration, not on recovering monetary damages for their own sake.

B. Examples of Restoration-Based Damage Determination Methodologies

1. Formally Sanctioning or Barring Particular Valuation and Assessment Methodologies

Comment: Some commenters suggested that DOI's decision not to formally sanction or bar particular valuation and assessment methodologies is inconsistent with CERCLA and prior rulemakings. These commenters suggest that since CERCLA requires DOI to select the ''best available procedures'' (42 U.S.C. 9651(c)) to determine natural resource damages, and since the *Ohio* decision confirmed that contingent valuation—which is listed as a valuation and assessment methodology in § 11.83 as a best available procedure—DOI is required to sanction or bar valuation and assessment methodologies.

Response: The *Kennecott* decision upheld the rule's use of ''catch-all'' provisions in § 11.83 that give trustees the discretion to utilize assessment methodologies other than those specifically listed in that section. This directly contradicts the idea that only specifically sanctioned assessment methodologies are consistent with CERCLA. More importantly, the *Kennecott* decision made clear that the procedures and protocols required by CERCLA at 42 U.S.C. 9651(c) are interpreted to mean a standard method of evaluation, not a determinative list of methodologies that are definitively accurate in all circumstances. ''Best available procedures'' for applying an assessment or valuation methodology to the wide range of site specific conditions trustees might encounter should be considered in the context of the entire rule. This includes utility for determining appropriate restoration actions, evaluation against the four mandatory acceptance criteria, and the documentation of trustee choices and rationales in a plan subject to public review and comment. This is consistent with CERCLA, judicial interpretations of this rule, and statements by DOI in prior rulemakings.

2. The Reliability of Restoration-Based Methodologies (Habitat/Resource Equivalency Analysis, Conjoint Analysis, and Random Utility Models) Referred to in the Revised Rule

Comment: Some commenters welcomed the proposal to provide some examples of restoration-based methodologies that have been used to formulate and resolve natural resource damage claims for calculating compensable values, and add those examples to a list that had exclusively included methodologies to determine monetary damages based on the economic value of the losses. A few commenters suggested that the CERCLA NRDAR rule should affirmatively encourage the use of habitat equivalency analysis, which is the case under the OPA NRDAR rule. Conversely, some commenters suggested that habitat equivalency, resource equivalency, and conjoint analyses were not unanimously considered to be reliable, and could be applied in a way that yielded unreliable results.

Response: The use of habitat equivalency analysis is explicitly encouraged under the OPA NRDAR rule. Conjoint analysis—a stated preference method that compares the resource services provided by various restoration alternatives to each other, rather than just estimating their monetary values—can be as properly applied and structured, consistent with the holdings of the *Ohio* court and the Report of the NOAA Blue Ribbon Panel on Contingent Valuation, as the currently listed contingent valuation methodology. Few of the methodologies currently listed in § 11.83 of the rule are universally accepted as definitively

accurate means for determining appropriate compensation for natural resource injury, and no listed methodology is immune from being applied in a way that could yield unreliable results. As stated in the previous response, the reliability of any methodology applied to a specific assessment is determined by a process that requires a trustee decision maker to develop and consider options, to evaluate those options based on certain criteria, and to document the rationale for choices made in a plan subject to public review and comment.

3. The Need for Further Guidance on the Use of Restoration-Based and Other Assessment Methodologies

Comment: Many commenters suggested that the Department should develop guidance on the proper utilization and application of restoration-based and other assessment methodologies.

Response: As recommended by the NRDAR FACA Committee, the Department plans to undertake and sponsor multi-stakeholder efforts to develop additional guidance to supplement existing guidance on best assessment practices.

4. Some of the Restoration-Based Methodologies Referred to in the Revised Rule Can Also Be Used To Estimate the Monetary Economic Value of Public Losses

Comment: One commenter said that although it is true that habitat equivalency, resource equivalency, and conjoint analyses, as well as random utility models are examples of restoration-based methodologies, conjoint analyses and random utility models can also be used to estimate monetary damages based on the economic value of losses.

Response: The list of methodologies is intended to include both restoration-based and the traditional monetary economic value based methodologies, since the rule gives the option to calculate damages for public losses pending restoration utilizing either approach. The revised rule specifically states that Random Utility Models may be suitable for to calculating either restoration-based or monetary economic damages.

C. Factors for Evaluating the Feasibility and Reliability of Methodologies

1. Reasonable Cost, Cost Effectiveness, and Avoiding Double Counting Should Remain Mandatory Criteria for Valuation and Assessment Methodologies, and Not Just Factors To Utilize To Evaluate Feasibility and Reliability

Comment: Some commenters indicated general support for offering guidance to trustees on discretionary factors to consider on methodology feasibility and reliability, but pointed out that no justification is given for transforming mandatory acceptance criteria for valuation and assessment methodologies into discretionary ''factors'' that trustees should consider and document in their Restoration and Compensation Determination Plan.

Response: We did not intend to suggest that reasonable cost, cost effectiveness, and avoiding double counting were no longer mandatory acceptance criteria. All three of these criteria are required by other parts of the rule, so the intent was that they would be applicable in all cases, even if they were included within a list of factors that would not be applicable in all cases. The final rule revision clarifies this by leaving the current rule's language on mandatory criteria for methodologies that includes feasibility and reliability, reasonable cost, cost effectiveness, and avoiding double counting intact, and distinguishing these criteria from discretionary factors that can be used to consider and document feasibility and reliability.

2. The New Feasibility and Reliability Factors in the Proposed Rule Amount to Additional Mandatory Criteria, Which Are Unnecessary and Will Lead to Increased Transaction Costs and Delay, Further Deterring Trustees From Using the Rule

Comment: Some commenters indicated they were strongly opposed to DOI suggesting additional factors that trustees could utilize to evaluate the feasibility and reliability of assessment methodologies. The mandatory application of some or all of these factors will increase transaction costs, create hurdles to completing assessments and implementing restoration, and thus deter trustees from utilizing this discretionary rule.

Response: As indicted in the response above, the four mandatory criteria for assessment methodologies remain unchanged in this final rule. We do not believe that including a new section that includes discretionary, non-exclusive factors for trustees to consider in evaluating the mandatory (but non-specific) ''feasibility and reliability'' criteria will unduly burden trustees, increase transaction costs, or deter trustees from utilizing the rule and availing themselves to a rebuttable presumption in any judicial or administrative proceeding on the claim. In fact, since feasibility and reliability are mandatory criteria for assessment methodologies under the rule, offering general guidance that includes examples of standard established indices of reliability will assist trustees in evaluating and documenting their choices, as required by the rule.

3. The Rule Should Affirmatively Provide That Methodologies Listed in 43 CFR 11.82 Are Feasible and Reliable

Comment: Some commenters said that the rule should make clear that all methodologies listed in § 11.83 have met the four mandatory criteria for assessment methodologies.

Response: The wide range of situations that trustees encounter when conducting a natural resource damage assessment makes it infeasible to determine that certain methodologies are definitively reliable in all circumstances and applications. As previously stated, the reliability of a particular assessment methodology in a particular situation is determined in the context of a rule which describes a process that requires a trustee decision maker to develop and consider options, to evaluate those options based on certain criteria, and to document the rationale for choices made in a plan subject to public review and comment.

D. Restoration of Resources vs. Services

1. The Reinstatement of the Services Based Approach to Quantifying Injury and Damages in the Rule Will Inappropriately Lead to the Restoration of Services Instead of Resources

Comment: The proposal ''overemphasizes'' the restoration of services over resources, and implies that CERCLA only requires the restoration of services, not the restoration of resources.

Response: CERCLA and the CWA unambiguously require that all NRDAR recoveries be used ''only to restore, replace, or acquire the equivalent'' of injured natural resources. Neither this rule, nor the *Kennecott* decision's ''reinstatement'' of the services-based approach alters these mandatory and fundamental statutory requirements. As we are specifically providing in these revisions, and have made clear in previous rulemakings (*See, e.g.*, 59 **Federal Register** 1472–73, March 25,

1994, 58 **Federal Register** 39339–41, July 22, 1993, and 51 **Federal Register** 27686, August 1, 1986) ''services'' are a metric for measuring resource conditions and resource restoration. They are not abstract functions that are disassociated from natural resources, and they are restored or replaced by actions related to the quality, quantity, or availability of natural resources.

2. Describing the Services-Based Approach

Comment: A few commenters suggested that to improve clarity and correct syntax, the description of the four types of restoration work (restoration, rehabilitation, replacement, or acquisition of equivalent resources) in § 11.80 should be described in two separate clauses.

Response: For the purpose of clarity, § 11.80 has been revised. Similar revisions have been made to §§ 11.81, 11.82, and 11.83.

3. Defining Services

Comment: One commenter suggested that DOI needs to emphasize that services include the full suite of human and ecological functions performed by natural resources.

Response: We believe the current definition of services in the rule includes both human and ecological services.

Comment: A few commenters said that the definition of ''restoration or rehabilitation'' in 43 CFR 11.14 needs to also be revised to reflect the services based approach, since it refers to actions that restore the physical, chemical, or biological properties of resources, as well as their services.

Response: The current definition of services in the rule, which remains unchanged, makes clear that services ''result'' from the physical, chemical, or biological quality of resources. Accordingly, we do not believe any revision is needed in the definition of ''restoration or rehabilitation'' to comport with the services-based approach.

E. Assessment Process Timing Clarification

1. Consistent Timing Guidelines

Comment: All commenters who addressed this issue voiced support for technical corrections to provide consistent timing guidelines for completion of the Restoration and Compensation Determination Plan.

Response: This technical correction is included in the final rule.

F. Deletion of the Bar on the Use of Contingent Valuation To Estimate Option and Existence Value To Comply With Ohio v. Interior

1. Technical Correction on Deleting the Bar on Estimating Option and Existence Value

Comment: All commenters who addressed this issue were supportive of this technical correction, which codifies an explicit ruling of the Ohio decision.

Response: This technical correction is included in the final rule.

G. Deletion of the Date of Promulgation for the Statute of Limitation Provision To Comply With Kennecott v. Interior

1. Technical Correction To Strike Out Rule Promulgation Date

Comment: All commenters who addressed this issue were supportive of this technical correction, which codifies an explicit ruling of the *Kennecott* decision.

Response: This technical correction is included in the final rule.

H. Miscellaneous Comments

1. Consideration of Damages for Compensable Values Pending Restoration Should Be Mandatory, not Discretionary

Comment: One commenter said that damages for public losses pending restoration should be mandatory, not discretionary as set forth in the existing rule.

Response: This is beyond the scope of the current revisions. The current rule grants broad discretion to trustees on formulating and pursuing claims.

2. Cultural Resources

Comment: One commenter expressed concern that the rule revisions would hinder trustees seeking recoveries for the value of cultural natural resource services lost as the result of natural resource injury.

Response: Cultural, religious, and ceremonial losses that rise from the destruction of or injury to natural resources continue to be cognizable under the revisions. The revisions do not affect the treatment of these losses under the rule.

3. Terminology—Monetary Damages

Comment: One commenter suggested that the preamble should distinguish restoration-based approaches from monetary damages for the economic value of losses, rather than from ''economic'' approaches, since some restoration-based approaches are economic methodologies.

Response: The revised preamble to this final rule utilizes the more precise terminology of ''monetary damages for the economic value of public losses''.

4. General Support for the Concept of Natural Resource Damages

Comment: One commenter voiced general support for the concept of damages to restore natural resources injured by releases of hazardous substances or oil.

Response: We acknowledge the comment, and believe that the revisions will improve the NRDAR practice and encourage quicker, more effective, and more efficient restoration of injured natural resources.

V. How We Have Complied With Rulemaking Requirements

Regulatory Planning and Review Under E.O. 12866

The Office of Management and Budget has reviewed these revisions. The revisions are a significant regulatory action under E.O. 12866 because the rule will raise novel legal or policy issues. The revisions clarify that trustees have the option of calculating total damages using the cost of restoration actions that compensate for losses, rather than requiring a two-part process where natural resource damages are calculated using the cost of restoration actions, and public losses pending restoration are calculated using the monetary economic value of the loss.

These revisions do not fall under other criteria in E.O. 12866:

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The regulations we are revising apply only to natural resource trustees by providing technical and procedural guidance for the assessment of natural resource damages under CERCLA and the Clean Water Act. The revisions are not intended to change the balance of legal benefits and responsibilities among any parties or groups, large or small. It does not directly impose any additional cost.

In fact, the revisions should assist in reducing natural resource damage assessment transaction costs by allowing trustees to utilize simpler and more transparent methodologies to assess damages when appropriate. The revisions do not sanction or bar the use of any particular methodology, so long as it meets the acceptance criteria for relevance and cost effectiveness that are set out in the rule.

We also believe that in many cases an early focus on feasible restoration and appropriate restoration actions, rather than on the monetary value of public

losses, can result in less contention and litigation, and faster, more cost-effective restoration. Meanwhile, existing criteria in the rule for evaluating restoration alternatives—including cost effectiveness—remain intact (see 43 CFR 11.82(d)). The likely result will be the encouragement of settlements, less costly and timelier restoration, and reduced transaction costs. To the extent any are affected by the revisions, it is anticipated that all parties will benefit by the increased focus on restoration in lieu of monetary damages.

b. The revisions will not create inconsistencies with other agencies' action. The general approach to losses pending restoration set forth in this rule is consistent with the OPA regulations. Both allow for basing damages on the cost of restoration actions to address public losses associated with natural resource injuries.

Regulatory Flexibility Act

We certify that this rule revision will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601) (see section on E.O. 12866 above for discussion of potential economic effects.)

Small Business Regulatory Enforcement Fairness Act

This rule revision is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule revision:

(a) Does not have an annual effect on the economy of $100 million or more (see section on E.O. 12866 above for discussion of potential economic effects.)

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions (see section on E.O. 12866 above for discussion of potential economic effects.)

(c) Does not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises (see section on E.O. 12866 above for discussion of potential economic effects.)

Unfunded Mandates Reform Act

This rule revision does not mandate any actions. The existing regulations do not require trustees to conduct assessment or pursue damage claims, and trustees who choose to conduct assessments and pursue damage claims are not required to do so in a manner described in the regulations. The revisions do not change the optional nature of the existing regulations. The revisions themselves do not replace existing procedures; they merely clarify that trustees have the option of employing other procedures. Therefore, this rule revision will not produce a Federal mandate of $100 million or greater in any year.

Takings Analysis Under E.O. 12630

A takings implication assessment is not required by E.O. 12630 because no party can be compelled to pay damages for injury to natural resources until they have received ''due process'' through a legal action in federal court. This rule and the revisions merely provide a framework for assessing injury and developing the claim.

Federalism Analysis Under E.O. 12612

E.O. 12612 requires federal agencies to consult with elected state officials before issuing rules that have ''federalism implications'' and either impose unfunded mandates or preempt state law. A rule has federalism implications if it has ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' This rule and the revisions do not require state trustees to take any action; therefore it does not impose any unfunded mandates. The rule and the revisions do not preempt state law. The rule and the revisions have no significant effect on intergovernmental relations because they do not alter the rights and responsibilities of government entities. Therefore, a federalism summary impact statement is not required under section 6 of the Order.

Civil Justice Reform Under E.O. 12988

Our Office of the Solicitor has determined that the revisions do not unduly burden the judicial system and meet the requirements of section 3(a) and 3(b)(2) of the Order. The revisions are intended to provide the option for an early focus on restoration, utilization of simpler and more cost-effective assessment methodologies, and increased opportunities for cooperation among trustees and potentially responsible parties. This should minimize litigation.

Paperwork Reduction Act

The revisions do not pose ''identical questions'' to, or impose ''identical reporting, record keeping, or disclosure requirements,'' on trustees. Therefore, the revisions do not include an ''information collection'' governed by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

We have analyzed the revisions in accordance with the criteria of the National Environmental Policy Act, 43 U.S.C. 433 *et seq.* (NEPA). Restoration actions identified through the revisions may sometimes involve major federal actions significantly affecting the quality of the human environment. In those cases, federal trustees will need to comply with NEPA. However, the revisions do not require trustees to take restoration action. Further, if the trustees decide to pursue restoration, they are not required to follow the rule when selecting restoration actions. Finally, the rule and the revisions do not determine the specific restoration actions that trustees can seek. Therefore, the rule and the revisions do not significantly affect the quality of the human environment. Even if the rule revisions were considered to significantly affect the quality of the human environment, they would fall under DOI's categorical exclusion for regulations that are of a procedural nature or have environmental effects too broad or speculative for meaningful analysis and will be subject later to the NEPA process.

List of Subjects in 43 CFR Part 11

Natural resources, environmental protection.

Dated: September 25, 2008.

James E. Cason,

Associate Deputy Secretary.

■ For the reasons given in the preamble, we are amending part 11 of title 43 of the Code of Federal Regulations as follows:

PART 11—NATURAL RESOURCE DAMAGES FOR HAZARDOUS SUBSTANCES

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 42 U.S.C. 9651(c), as amended.

■ 2. In § 11.31, revise paragraph (c)(4) to read as follows:

§ 11.31 What does the assessment plan include?

* * * * *

(c) * * *

(4) The Restoration and Compensation Determination Plan developed in accordance with the guidance in § 11.81 of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan as part of the Assessment Plan, the

Restoration and Compensation Determination Plan may be developed later, after the completion of the Injury Determination or Quantification phases. If the Restoration and Compensation Determination Plan is published separately, the public review and comment will be conducted pursuant to § 11.81(d) of this part.

* * * * *

■ 3. In § 11.38, revise paragraph (c)(2)(i) to read as follows:

§ 11.38 Assessment Plan—preliminary estimate of damages.

* * * * *

(c) * * *

(2) * * *

(i) The preliminary estimate of compensable value should represent the expected present value of the anticipated compensable value, expressed in constant dollars, accrued through the period for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to baseline conditions, *i.e.*, between the occurrence of the discharge or release and the completion of (A) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (B) the replacement and/or acquisition of equivalent natural resources capable of providing such services. The estimate should use the same base year as the preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The provisions detailed in §§ 11.80–11.84 of this part are the basis for the development of this estimate.

* * * * *

■ 4. In § 11.80, revise paragraph (b) to read as follows:

§ 11.80 Damage Determination Phase—general.

* * * * *

(b) *Purpose.* The purpose of the Damage Determination phase is to establish the amount of money to be sought in compensation for injuries to natural resources resulting from a discharge of oil or release of a hazardous substance. The measure of damages is the cost of (i) restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services. Damages may also include, at the discretion of the authorized official, the compensable value of all or a portion of the services lost to the public for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of baseline.

* * * * *

■ 5. In § 11.81, revise paragraph (a) to read as follows:

§ 11.81 Damage Determination Phase—Restoration and Compensation Determination Plan.

(a) *Requirement.* (1) The authorized official shall develop a Restoration and Compensation Determination Plan that will list a reasonable number of possible alternatives for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services, and, where relevant, the compensable value; select one of the alternatives and the actions required to implement that alternative; give the rationale for selecting that alternative; and identify the methodologies that will be used to determine the costs of the selected alternative and, at the discretion of the authorized official, the compensable value of the services lost to the public associated with the selected alternative.

(2) The Restoration and Compensation Determination Plan shall be of sufficient detail to evaluate the possible alternatives for the purpose of selecting the appropriate alternative to use in determining the cost of baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, and, where relevant, the compensable value.

* * * * *

■ 6. In § 11.82, revise paragraphs (a), (b)(1)(iii), and (c) to read as follows:

§ 11.82 Damage Determination Phase—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(a) *Requirement.* The authorized official shall develop a reasonable number of possible alternatives for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services. For each possible alternative developed, the authorized official will identify an action, or set of actions, to be taken singly or in combination by the trustee agency to achieve the baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources. The authorized official shall then select from among the possible alternatives the alternative that he determines to be the most appropriate based on the guidance provided in this section.

(b) * * *

(1) * * *

(iii) Possible alternatives are limited to those actions that (i) restore or rehabilitate the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) replace and/or acquire equivalent natural resources capable of providing such services.

* * * * *

(c)(1) The possible alternatives considered by the authorized official that return the injured resources to their baseline level of services could range from intensive action on the part of the authorized official to return the various resources and services provided by those resources to baseline conditions as quickly as possible, to natural recovery with minimal management actions. Possible alternatives within this range could reflect varying rates of recovery, combinations of management actions, and needs for resource replacements or acquisitions.

* * * * *

■ 7. In § 11.83, revise paragraph (a)(1), add new paragraphs (a)(4) and (a)(5), and revise paragraph (c) to read as follows:

§ 11.83 Damage Determination Phase—cost estimating and valuation methodologies.

(a) *General.* (1) This section contains guidance and methodologies for determining: The costs of the selected alternative for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services; and the compensable value of the services lost to the public through the completion of the baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources.

* * * * *

(4) Factors that may be considered by trustees to evaluate the feasibility and reliability of methodologies can include:

(i) Is the methodology capable of providing information of use in determining the restoration cost or compensable value appropriate for a particular natural resource injury?

(ii) Does the methodology address the particular natural resource injury and

associated service loss in light of the nature, degree, and spatial and temporal extent of the injury?

(iii) Has the methodology been subject to peer review, either through publication or otherwise?

(iv) Does the methodology enjoy general or widespread acceptance by experts in the field?

(v) Is the methodology subject to standards governing its application?

(vi) Are methodological inputs and assumptions supported by a clearly articulated rationale?

(vii) Are cutting edge methodologies tested or analyzed sufficiently so as to be reasonably reliable under the circumstances?

(5) All of the above factors may not be applicable to every case, and other factors may be considered to evaluate feasibility and reliability. The authorized official shall document any consideration of factors deemed applicable in the Report of Assessment.

* * * * *

(c) *Compensable value.* (1) Compensable value is the amount of money required to compensate the public for the loss in services provided by the injured resources between the time of the discharge or release and the time the resources are fully returned to their baseline conditions, or until the resources are replaced and/or equivalent natural resources are acquired. The compensable value can include the economic value of lost services provided by the injured resources, including both public use and nonuse values such as existence and bequest values. Economic value can be measured by changes in consumer surplus, economic rent, and any fees or other payments collectable by a Federal or State agency or an Indian tribe for a private party's use of the natural resources; and any economic rent accruing to a private party because the Federal or State agency or Indian tribe does not charge a fee or price for the use of the resources. Alternatively, compensable value can be determined utilizing a restoration cost approach, which measures the cost of implementing a project or projects that restore, replace, or acquire the equivalent of natural resource services lost pending restoration to baseline.

(i) Use value is the economic value of the resources to the public attributable to the direct use of the services provided by the natural resources.

(ii) Nonuse value is the economic value the public derives from natural resources that is independent of any direct use of the services provided.

(iii) Restoration cost is the cost of a project or projects that restore, replace, or acquire the equivalent of natural resource services lost pending restoration to baseline.

(2) *Valuation methodologies.* The authorized official may choose among the valuation methodologies listed in this section to estimate appropriate compensation for lost services or may choose other methodologies provided that the methodology can satisfy the acceptance criterion in paragraph (c)(3) of this section. Nothing in this section precludes the use of a combination of valuation methodologies so long as the authorized official does not double count or uses techniques that allow any double counting to be estimated and eliminated in the final damage calculation.

Type of Methodology	Description
(i) Market price	The authorized official may determine the compensable value of the injured resources using the diminution in the market price of the injured resources or the lost services. May be used only if: (A) The natural resources are traded in the market; and (B) The authorized official determines that the market for the resources, or the services provided by the resources, is reasonably competitive.
(ii) Appraisal	The measure of compensable value is the difference between the with- and without-injury appraisal value determined by the comparable sales approach as described in the Uniform Appraisal Standards. Must measure compensable value, to the extent possible, in accordance with the ''Uniform Appraisal Standards for Federal Land Acquisition,'' Interagency Land Acquisition Conference, Washington, DC, 1973 (incorporated by reference, see § 11.18).
(iii) Factor income (sometimes referred to as the ''reverse value added'' methodology).	May be used only if the injured resources are inputs to a production process, which has as an output a product with a well-defined market price. May be used to determine: (A) The economic rent associated with the use of resources in the production process; and (B) The in-place value of the resources.
(iv) Travel cost	May be used to determine a value for the use of a specific area. Uses an individual's incremental travel costs to an area to model the economic value of the services of that area. Compensable value of the area to the traveler is the difference between the value of the area with and without a discharge or release. Regional travel cost models may be used, if appropriate.
(v) Hedonic pricing	May be used to determine the value of nonmarketed resources by an analysis of private market choices. The demand for nonmarketed natural resources is thereby estimated indirectly by an analysis of commodities that are traded in a market.
(vi) Unit value/benefits transfer	Unit values are preassigned dollar values for various types of nonmarketed recreational or other experiences by the public. Where feasible, unit values in the region of the affected resources and unit values that closely resemble the recreational or other experience lost with the affected resources may be used.
(vii) Contingent valuation	Includes all techniques that set up hypothetical markets to directly elicit an individual's economic valuation of a natural resource. Can determine: (A) Use values and explicitly determine option and existence values; and (B) Lost use values of injured natural resources.
(viii) Conjoint Analysis	Like contingent valuation, conjoint analysis is a stated preference method. However, instead of seeking to value natural resource service losses in strictly economic terms, conjoint analysis compares natural resource service losses that arise from injury to natural resource service gains produced by restoration projects.
(ix) Habitat Equivalency Analysis	May be used to compare the natural resource services produced by habitat or resource-based restoration actions to natural resource service losses.
(x) Resource Equivalency Analysis	Similar to habitat equivalency analysis. This methodology may be used to compare the effects of restoration actions on specifically identified resources that are injured or destroyed.
(xi) Random Utility Model	Can be used to: (A) Compare restoration actions on the basis of equivalent resource services provided; and (B) Calculate the monetary value of lost recreational services to the public.

(3) *Other valuation methodologies.* Other methodologies that measure compensable value in accordance with the public's willingness to pay for the lost service, or with the cost of a project that restores, replaces, or acquires services equivalent of natural resource services lost pending restoration to baseline in a cost-effective manner, are acceptable methodologies to determine compensable value under this part.

* * * * *

■ 8. In § 11.91, remove paragraph (e).

[FR Doc. E8–23225 Filed 10–1–08; 8:45 am]

BILLING CODE 4310–RG–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2067; MB Docket No. 08–135; RM–11467]

Television Broadcasting Services; Freeport, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Gray Television Licensee, Inc., licensee of WIFR–DT, to substitute DTV channel 41 for DTV channel 23 at Freeport, Illinois.

DATES: The channel substitution is effective November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–135, adopted September 8, 2008, and released September 10, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act 0f 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Illinois, is amended by adding channel 41 and removing channel 23 at Freeport.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–23157 Filed 10–1–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 1 and 89

[Docket No. DOT–OST–1999–6189]

RIN 9991–AA53

Organization and Delegation of Powers and Duties; Assistant Secretary for Budget and Programs

AGENCY: Office of the Secretary of Transportation.

ACTION: Final rule.

SUMMARY: This amendment delegates debt collection, compromise, suspension and termination authority under 31 U.S.C. 3711 (except with respect to Working Capital Fund claims) from the Secretary of Transportation (Secretary) to the Assistant Secretary for Budget and Programs by removing that authority from the Assistant Secretary for Administration and granting it to the Assistant Secretary for Budget and Programs. In addition, this rulemaking removes a reporting requirement related to the delegation.

DATES: This final rule is effective on October 2, 2008.

FOR FURTHER INFORMATION CONTACT: Beth Kramer, Office of General Counsel, 1200 New Jersey Avenue, SE., Room W96–491, Washington, DC 20590, Telephone: (202) 366–0365.

SUPPLEMENTARY INFORMATION: Title 49 of the Code of Federal Regulations (CFR) 1.59(c)6) and 89.5(a) delegate to the Assistant Secretary for Administration the Secretary's authority under 31 U.S.C. 3711 to collect, compromise, suspend or end collection action on claims of the United States not exceeding $100,000 (excluding interest) arising out of the activities of, or referred to, the Office of the Secretary. The Secretary has determined that such authority (excluding authority to collect, compromise, suspend or end collection action on claims pertaining to the Working Capital Fund) should be delegated to the Assistant Secretary for Budget and Programs instead of the Assistant Secretary for Administration. This rulemaking makes the following changes to reflect the change in delegation:

- Adds ''debt and'' to 49 CFR 1.23(f);
- Adds a new paragraph (j) to 49 CFR 1.58;
- Adds language regarding the Working Capital Fund exclusion to 49 CFR 1.59(c)(6);
- Adds language regarding claims related to the Working Capital Fund to 49 CFR 89.5(a), renumbers subsection § 89.5(b) as § 89.5(c), and adds a new provision at § 89.5(b); and
- Removes '', reports,'' from the heading of § 89.15, adds ''and the Assistant Secretary for Budget and Programs'' to § 89.15(b)(1), removes § 89.15(b)(2), and renumbers paragraph (b)(3) as (b)(2).

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Department's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for