procedures, program processes, or instructions.'' The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement for this rule.

Controlling Paperwork Burdens on the Public

This rule does not require any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR 1320 do not apply.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forest, Reporting and recordkeeping requirements, Timber sales.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 223 of title 36 of the Code of Federal Regulations as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, unless otherwise noted.

Subpart B—Timber Sale Contracts

2. Section 223.85 is revised to read as follows:

§ 223.85 Noncompetitive sale of timber.

(a) Forest officers may sell, within their authorization, without further advertisement, at not less than appraised value, any timber previously advertised for competitive bids but not sold because of lack of bids and any timber on uncut areas included in a contract which has been terminated by abandonment, cancellation, contract period expiration, or otherwise if such timber would have been cut under the contract. This authority shall not be utilized if there is evidence of competitive interest in the product.

(b) Extraordinary conditions, as provided for in 16 U.S.C. 472(d), are defined to include the potential harm to natural resources, including fish and wildlife, and related circumstances arising as a result of the award or release of timber sale contracts pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246). Notwithstanding the provisions of paragraph (a) or any other regulation in this part, for timber sale contracts that have been or will be awarded or released pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246), the Secretary of Agriculture may allow forest officers to, without advertisement, modify those timber sale contracts by substituting timber from outside the sale area specified in the contract for timber within the timber sale contract area.

Dated: March 28, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–8095 Filed 4–2–96; 8:45 am]

BILLING CODE 3410–11–M

36 CFR Part 292

RIN 0596–AB39

Smith River National Recreation Area

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements Section 8(d) of the Smith River National Recreation Area Act of 1990 and sets forth the procedures by which the Forest Service will regulate mineral operations on National Forest System lands within the Smith River National Recreation Area. This rule supplements existing Forest Service regulations and is intended to ensure that mineral operations are conducted in a manner consistent with the purposes for which the Smith River National Recreational Area was established.

EFFECTIVE DATE: This rule is effective April 3, 1996.

FOR FURTHER INFORMATION CONTACT: Sam Hotchkiss, Minerals and Geology Management Staff, (202) 205–1535.

SUPPLEMENTARY INFORMATION:

Background

The Smith River National Recreation Area (SRNRA) was established by the Smith River National Recreation Area Act of 1990 (the Act) (16 U.S.C. 460bbb *et seq.*). The purpose of the Act is to ensure, ''. . . the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural resources. . . .''

In order to meet the purposes of the Act, Congress directed the Secretary to manage the SRNRA to provide for a broad range of recreational uses and to improve fisheries and water quality. The Act prohibits mining, subject to valid existing rights and limits extraction of mineral materials to situations where the material extracted is used for construction and maintenance of roads and other facilities within the SRNRA and in certain areas specifically excluded from the SRNRA by the Act.

The SRNRA consists of approximately 300,000 acres of National Forest System lands in the Six Rivers National Forest in northern California. The Act divides the SRNRA into eight distinct management areas and specifies a management emphasis for each. One of these eight areas is the Siskiyou Wilderness, most of which was designated by Congress in 1984. The Gasquet-Orleans Corridor was added to the Siskiyou Wilderness by the Act in 1990. The Act specifies that the Siskiyou Wilderness is to continue to be managed pursuant to the provisions of the Wilderness Act.

The Act also designates the Smith River, the Middle Fork of the Smith River, the North Fork of the Smith River, the Siskiyou Fork of the Smith River, and the South Fork of the Smith River as components of the National Wild and Scenic Rivers System and stipulates that they be managed in accordance with the Act and the Wild and Scenic Rivers Act. In the event of a conflict between the provisions of these two statutes, the Act specifies that provisions of the most restrictive statute apply. Finally, the Act expressly excludes four areas that lie within the boundary of the SRNRA from compliance with provisions of the Act.

Mining and prospecting for minerals have been an important part of the history of the Smith River area since the 1850's. Historically, mining operations within the Smith River area have been small-scale placer gold exploration and recovery operations within the bed and banks of the Smith River and its main tributaries. Panning, sluicing, and dredging operations occur predominantly during the summer months. In recent years, large, low-grade, nickel-cobalt resources in the uplands of the Smith River watershed have attracted the attention of prospectors. In 1990, there were approximately 5,000 mining claims covering about 30,000 acres of National Forest System lands within the SRNRA. By 1995, however, there were only approximately 320 mining claims covering about 8,000 acres of National Forest System lands in the SRNRA that met current Bureau of Land Management filing requirements. In

contrast to the large number of claims, actual operations were conducted on only three claims under approved plans of operations in 1995. In addition, there are outstanding mineral rights within the SRNRA.

In Section 8 of the Act, Congress addressed the extent to which mineral operations would be authorized within the SRNRA. Section 8(a) of the Act withdrew as of the effective date of the Act, all federal lands in the SRNRA from the operation of the mining, mineral leasing, and geothermal leasing laws subject to valid existing rights. Section 8(b) precludes the issuance of patents for locations and claims made prior to the establishment of the SRNRA. Section 8(c) of the Act prohibits all mineral operations within the SRNRA except where valid existing rights are established. Section 8(c) also prohibits the extraction of mineral materials such as stone, sand, and gravel, except if used in the construction and maintenance of roads and other facilities within the SRNRA and the excluded areas. Finally, under Section 8(d) the Secretary is to promulgate supplementary regulations to promote and protect the purposes for which the SRNRA was designated.

On or about November 8, 1994, the largest claimholder in the SRNRA filed suit against the Department of Agriculture in United States District Court for the Northern District of California alleging violations of the Act. *California Nickel Corporation* v. *Epsy*, No. C94–3904 DLJ (N.D. Cal.). Specifically, the suit alleged that the Department was in violation of the Act by not promulgating regulations for mineral operations in the SRNRA as required under Section 8(d). The Forest Service did not dispute that Section 8(d) of the Act required the promulgation of supplementary regulations for the SRNRA and had, in fact, made some preliminary progress in developing a regulation prior to the initiation of this litigation. The case is still pending and the agency anticipates its dismissal shortly after the publication of the final rule.

On June 23, 1995, the Forest Service published a proposed rule for notice and comment in the Federal Register which contained supplementary regulations for mineral activities on National Forest System lands in the SRNRA pursuant to Section 8(d) of the Act (60 FR 32633). Seven letters expressing a variety of viewpoints were received during the 60-day comment period which expired on August 22, 1995. These letters were from a mining company, several individual prospectors, an environmental organization, a local resident, and another interested party. All comments received are available for review in the Office of the Director, Minerals and Geology Management Staff, Auditors Building, 4th Floor, 201 14th Street, SW., Washington, DC, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday. The Department appreciates the time and energy the reviewers invested in preparing these letters and articulating their views on concerns with the proposed rule.

Analysis of Public Comment

Comments on the proposed rule dealt with general issues such as terminology, noncommercial recreational mineral collecting, civil rights, property rights, and constitutional protections related to such rights. In addition, there were several issues raised in the comments that dealt with specific provisions of the proposed rule. A summary of the comments and the Department's responses to them follows.

General Comments

1. *Omission of the word ''resources'' as used in the Act from the Supplementary Information.* One reviewer noted that the supplementary information provided in the proposed rule omitted the word ''resources'' from the section of the Act in which Congress articulated the purpose for which the SRNRA was established. The reviewer believed the omission was significant because it was not clear that a companion goal of preservation, protection, enhancement, and interpretation of the SRNRA is to provide for the wise use and sustained productivity of the SRNRA's natural resources.

Response: The stated purpose of the Act did include the word ''resources'' as this reviewer noted. The omission of this word from the preamble of the proposed rule was inadvertent, and the complete excerpt from Section 4 of the Act, including the word ''resources,'' has been set forth in the preceding ''Background'' section of this final rule.

2. *Disparity between proposed rule and Six Rivers LRMP on the number of current mining claims in the SRNRA.* One reviewer noted that the supplementary information section of the proposed rule stated that approximately 5,000 mining claims currently existed in the SRNRA, but that the June 1995 Final Environmental Impact Statement (FEIS) for the Six Rivers National Forest Land and Resource Management Plan (LRMP) identified only 300 current mining claims. The reviewer requested clarification as to which of these figures is accurate.

Response: The information in the FEIS for the Six Rivers National Forest LRMP is correct. As of November 23, 1995, approximately 300 mining claims in the SRNRA met Bureau of Land Management filing requirements. This is a significant reduction from the approximately 5,000 mining claims that existed in the SRNRA in 1990 and this reduction was not reflected in the preamble to the proposed rule. However, it has been corrected in the ''Background'' section of this final rulemaking.

3. *Lack of any new substantive standards in addition to those in the current Forest Service mineral regulations.* One reviewer observed that the proposed rule set forth no additional substantive standards for environmental protection beyond those set forth in 36 CFR part 228, subpart A, and requested that if additional substantive standards are subsequently added, they be articulated with greater clarity.

Response: The Department eschews attempts to characterize the standards in the proposed rule as ''substantive'' or ''procedural'' because such labels are fraught with subjectivity, and no useful purpose will be served by specifying whether the standards in the proposed rule are substantive or procedural.

4. *Characterization of nickel-cobalt resources as ''low grade.''* One reviewer objected to the characterization of the nickle-cobalt resources in the uplands of the Smith River watershed as ''low-grade'' to the extend that this characterization suggests that the resources are either insignificant or unworthy of development and requested that the characterization ''low-grade'' be deleted from the preamble.

Response: ''Low grade'' is a phrase commonly used within the mining industry to describe situations where the anticipated percentage of elements in a given area is less than the percentage of the same elements currently being mined elsewhere. This is an apt description of the nickel-cobalt resources in the SRNRA. In fact, the corporation holding most of the claims in the portion of SRNRA where the nickel-cobalt resources are located has previously acknowledged that the grade of the nickel-cobalt resources in the SRNRA is less than the grade of nickel-cobalt resources being mined in other parts of the world.

5. *Need for supplementary regulations for mineral operations to protect SRNRA.* One reviewer stated that there is no need for additional regulations of mineral operations in the SRNRA since the existing regulations governing these

activities provide ample protection to the SRNRA and its resources.

Response: The issue of whether additional regulation of mineral operations is necessary in the SRNRA was conclusively determined by Congress in Section 8(d) of the Act. This provision specifically states that ''the Secretary [of Agriculture] is authorized and directed to issue supplementary regulations to promote and protect the purposes for which the [SRNRA] is designated.'' It is not within the discretion of the Department to evaluate whether such regulations are necessary; the Act obligates the Department to issue them.

6. *Duplication of current mining law and Bureau of Land Management and California Fish and Game Department regulations.* One reviewer felt that the proposed rule is duplicative of current mining law and BLM and California Department of Fish and Game regulations. Although the reviewer made no specific recommendation based on this observation, the agency has construed it as a suggestion that the supplementary regulations for mineral operations in the SRNRA are unnecessary.

Response: As noted in the previous response, it is not within the Department's prerogative to determine whether supplementary regulations for mineral operations in the SRNRA are necessary if Congress specifically directs the agency to promulgate them. Furthermore, although the reviewer failed to identify which laws or BLM or California Department of Fish and Game regulations were duplicative of the proposed rule, the Department does not believe that such duplication exists.

7. *Applicability of rule to all uses in the SRNRA, not just mineral operations.* One reviewer noted that the provisions of the Act directing the Forest Service to promulgate regulations were not limited to mining. Therefore, the reviewer concludes that the agency should have expanded the subject matter of the proposed rule to address all uses occurring in the SRNRA.

Response: The reviewer correctly notes that Section 8(d) of the Act makes no specific reference to mineral operations in the SRNRA as the subject of the supplementary regulations. However, Section 8 is entitled ''Minerals'' and subsections (a), (b), and (c) all involve the administration of minerals and mining activities in the SRNRA. It is, therefore, reasonable for the agency to infer that the specific subject matter of the regulations required by Section 8(d) of the Act involves mineral operations in the SRNRA.

This inference is supported by the Act's legislative history. Early versions of the legislation to establish an SRNRA contained an outright prohibition on all mining activities in the SRNRA. Due to concerns associated with the cost entailed by a blanket prohibition, the legislation was subsequently amended as it moved through the legislative process, to prohibit only those mining activities in the SRNRA where valid existing rights had not been established as of the date of enactment of the Act. Where valid existing rights had been established, the legislation authorized the continuation of mineral development activities, provided that these activities would be subject to supplementary regulations designed to ensure the protection of the resource values for which the SRNRA was designated. One of the principal sponsors of the SRNRA legislation explained:

> With regard to mining, the amendments would give explicit recognition to the rights associated with valid existing claims, and direct the Secretary to issue supplementary regulations designed to 'promote and protect' the purposes for which the recreation area is created. Although I remain concerned about the potential for destructive mining, I am hopeful that the supplemental regulations will address these concerns. * * * 136 Cong. Rec. H13045, 13046 (Oct. 26, 1990) (Statement of Rep. Bosco).

Since limiting the scope of this rule to mineral operations in the SRNRA is fully consistent with the Act and its associated legislative history, the Department declines to expand the scope of this rule to address other activities occurring within the SRNRA.

8. *Improper withdrawal procedures after enactment of the Act.* One reviewer felt that certain procedures for the withdrawal of federal lands from the operation of federal mining laws were not complied with in the SRNRA following the enactment of the Act. According to this reviewer, in order to legally withdraw an area, the Bureau of Mines must evaluate existing mining claims and estimate the mineral value of the area. Claim holders who disagree with the findings of the Bureau of Mines should be allowed to appeal these findings and conduct their own discovery on appeal. This reviewer concluded that claim holders in the SRNRA should be allowed to perform additional discovery before submitting their plans of operation and proof of discovery, since this withdrawal procedure was not followed.

Response: Section 8 of the Act expressly withdrew all federal lands within the SRNRA from the operation of the mining law subject to valid existing rights. Therefore, no additional procedures must be followed by any federal agency to effectuate this withdrawal.

9. *Limiting operations to 5 months per year.* One reviewer contends that the proposed rule unreasonably restricts operations in the SRNRA to not more than five months a year and thus prevents operators from making a living.

Response: There was no provision in the proposed rule which imposed a limit on the maximum number of months during which mineral operations could be conducted in the SRNRA, nor is there such a provision in the final rule.

10. *Exorbitant bonding.* One reviewer contended that the requirement for a plan of operations includes exorbitant bonding which would effectively eliminate the prudent operator/claimant from mining.

Response: There was no provision in the proposed rule which established a bonding requirement. The only applicable bonding provisions for mineral operations in the SRNRA are those already set forth in the agency's general mining regulations at 36 CFR 228.13, which of course, do apply to mining operations in the SRNRA.

11. *Exemption of ''recreational mining''.* Three reviewers noted that the proposed rule did not distinguish between individuals who engage in mineral development activities for recreational reasons as opposed to those who engage in such activities for business purposes. These reviewers objected to any attempt to prohibit or regulate ''recreational'' mineral development activities in the SRNRA based upon, among other things, the history of this type of activity in the SRNRA and the value in preserving and interpreting it, the Act's recognition of a broad range of recreation uses in the SRNRA, representations made by government officials during deliberations of SRNRA legislation that such ''recreational'' activities would be unaffected by the passage of the Act, and the fact that permission has been granted for similar activities on the Rogue River National Recreation Area.

Response: The reviewers correctly observed that the proposed rule did not distinguish between mineral development activities engaged in for pleasure as opposed to mineral development activities engaged in for profit. The reason the proposed rule did not make such a distinction is, simply stated, that the applicable law does not allow for it. Under the United States mining laws, federal land is either open to mineral entry or it is withdrawn from such entry. Therefore, once an area like

the SRNRA is withdrawn from the operation of the mining laws subject to valid existing rights, the Department has no authority to allow for the continuation of mineral development activities, unless the Forest Service can verify that valid existing rights have been established. This applies even if the individual is mining for personal enjoyment rather than financial gain and even if the impact on the lands and resources of the SRNRA is minimal.

With respect to the reviewers' observations in support of a continuation of ''recreational'' mineral collecting activities in the SRNRA, the following should be noted. First, the historical significance of ''recreational'' mineral activities in the SRNRA cannot controvert the mining laws of the United States or the Act's express prohibitions against mining. Second, if government officials made representations that legislation to designate the SRNRA would not effect this activity, such statements cannot controvert the unambiguous prohibitions in the Act. If Congress intended to create an exception for the SRNRA for noncommercial mineral collecting activities, it could have included such a provision in the Act. Third, Section 2 of the Act lists wilderness, water sports, fishing, hunting, camping, and sightseeing as examples of specific recreational pursuits that already occur in the SRNRA and for which the area was designated. While it is not exhaustive, the list in Section 2 of the Act is instructive in its omission of mining, sluicing, and panning from the other, more traditional types of recreational activities. Fourth and finally, there is no Rouge River National Recreation Area. There is, however, a Rouge Wild and Scenic River that was designated in 1968 and is administered under the Wild and Scenic Rivers Act. A withdrawal provision similar to Section 8 of the Act is contained in Section 9(a)(iii) of the Wild and Scenic Rivers Act and applies only to those federal lands within segments of the Rogue River Wild and Scenic River classified as ''wild.'' Federal lands within segments of the Rogue River Wild and Scenic River classified as ''scenic'' or ''recreational'' are not subject to this provision of the Wild and Scenic Rivers Act and hence it may be permissible to engage in this type of activity in these areas.

In summary, the only mineral development activities that may occur in the SRNRA are those for which valid existing rights have been established or have been authorized by a mineral materials contract or permit. Neither the subjective intent of the individual nor the impact of the activity may be used to justify mineral development activities, in the absence of valid existing rights or a mineral materials contract or permit.

12. *Length of the proposed rule.* One reviewer stated that the length of the proposed regulations, 30 pages—twice the length of the 15-page Act, was excessive.

Response: The proposed rule as printed in the Federal Register was only seven pages long, and of those seven pages, only three contained proposed regulatory text; the balance was background and explanatory materials. The agency does not consider the length of this regulation to be excessive.

13. *Allowing patenting of claims.* One reviewer contended that there is no bona fide reason to preclude the issuance of patents in the SRNRA in light of the existing regulations which adequately protect the area.

Response: The proposed rule did not deal with the issuance of patents. That matter was definitively resolved in Sections 8(a) and (b) of the Act which withdrew the SRNRA from patenting under the mining laws and prohibited patenting under the mining laws for locations and claims made before the date of enactment of the Act. This rule cannot authorize the issuance of patents in contravention of the Act.

14. *Prohibitions of all mining activities on ''high ground''.* One reviewer stated that the proposed rule would accommodate only ''water mining'' in the SRNRA and would prohibit ''high ground mining'' everywhere else. This reviewer further stated that such a prohibition would affectively confiscate 94% of the area currently available to this reviewer for mining operations.

Response: There was no mention of ''water mining'' or ''high ground mining'' classifications in the proposed rule and hence there was no prohibition against such activities per se. The only prohibition against mineral operations addressed in the Act is when the operator is unable to establish valid existing rights as of the date of enactment of the Act. This prohibition was merely reiterated in the proposed rule and is retained in the final rule.

15. *Recognition of an existing large-scale mining operation as an appropriate activity within the SRNRA.* One reviewer, the largest claimholder in the SRNRA, stated that the proposed rule should recognize its large-scale mining operation as an appropriate activity within the SRNRA.

Response: Although it is unclear what the reviewer meant by recognition as an ''appropriate activity,'' it would be entirely arbitrary for the Forest Service to single out the mining operations of one company for special treatment of any kind. There is nothing in the Act to suggest that Congress intended the Forest Service to evaluate mining operations in the SRNRA differently depending on the party who may hold the valid existing rights. As noted above, the SRNRA was established for the purpose of ''ensuring the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural resources.''

These supplementary regulations are intended to ensure that all mining operations in the SRNRA, not just some of them, are carried out in conformance with the Act and in such a way as to preserve, protect, and enhance the values for which the SRNRA was designated.

16. *Applicability of California's Surface Mining and Reclamation Act to mining on SRNRA lands.* One reviewer recommended that the rule should specifically make reference to the applicability of California's Surface Mining and Reclamation Act (SMARA) to federal lands in the SRNRA based on a 1992 Memorandum of Understanding (1992 MOU) executed by and between the State of California, the Department of the Interior, and the Department of Agriculture. This reviewer also suggested that the rule should specify that the Forest Service would assume financial and administrative responsibility for the implementation of SMARA if the County of Del Norte fails to properly discharge its duties under this statute.

Response: It is unnecessary to include a provision in this rule which singles out the applicability of the California Act to mining operations in the SRNRA. The rule already provides that mineral operations in the SRNRA are subject to all applicable laws, regulations, policies, and procedures governing these activities on National Forest System Lands. The 1992 MOU is merely one of the ''policies and procedures'' currently governing the administration of mining operations in the SRNRA. Consequently, it is unnecessary to include a separate provision in this rule which includes a specific reference to the California Act.

The agency also declines to include a provision in the rule under which it would assume the administrative and financial obligations of Del Norte

County, if the county is unable to carry out its responsibilities under the State surface mining statute. Such a commitment of Forest Service staff and financial resources without assurance of Federal funds for such purposes would be in violation of the Anti-Deficiency Act, 31 U.S.C. 1341. This Act prohibits federal agencies from ''mak[ing] or authoriz[ing] an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.''

17. *Civil Rights Impact Analysis.* One reviewer felt that the agency was required by Chapter 30 of Forest Service Handbook 1709.11 to complete a Civil Rights Impact Analysis, since he believes that this is a major action involving quite a number of concerned citizens.

Response: Pursuant to Departmental Regulation (DR 4300–4) a Civil Rights Impact Analysis is required only for major policy actions when the consequences of those actions ''will negatively and disproportionately affect minorities''. This rulemaking is determined not to have an adverse or disproportionate effect on minorities.

18. *Compliance with NEPA in developing the regulations.* One reviewer felt that the agency failed to comply with the National Environmental Policy Act (NEPA) and should have prepared an environmental impact statement (EIS) to verify the need for the proposed regulation.

Response: Environmental impact statements are prepared where there may be significant effects resulting from the proposed action. Service-wide procedural regulations will not cause significant environmental effects and generally can be categorically excluded from documentation in an EIS or environmental assessment except where there are extraordinary circumstances (Forest Service NEPA procedures at FSH 1909.15, Ch. 30, 57 FR 43180 (Sept. 18, 1992)). After further consideration, the Forest Service has determined that the geographically specific nature of the Smith River NRA regulations cannot be considered applicable Service-wide and thus are not subject to a categorical exclusion. Accordingly, an Environmental Assessment and Finding of No Significant Impact have been prepared on this final rule.

19. *Intent to harass miners and deter mining operations in the SRNRA.* One reviewer asserted that the agency would use the rule to harass miners and deter mining by burdening claimants with unnecessary and expensive procedures and that this is the real intent of the rule, rather than environmental protection.

Response: The Forest Service respects every individual's right to his or her opinion, but it categorically rejects any assertion that the purpose of this rule is to harass miners or deter legitimate mining operations where operators have established valid existing rights. As stated at the outset, the purpose of this rule is to develop standards for mining operations in the SRNRA that will ensure that the fishery, scenic, and other values for which the area was designated will be protected and enhanced in perpetuity.

20. *Taking of private property without just compensation.* One reviewer disagreed with the statement in the proposed rule that the proposed rule does not have a takings implication. Another reviewer contended that the withdrawal of federal lands from the operation of the mining laws effected a taking.

Response: The Fifth Amendment states in part ''. . . nor shall private property be taken for public use without just compensation.'' Executive Order 12630 requires the agency to evaluate proposed agency actions to determine whether it presents the risk of a taking. The proposed rule explained that the Forest Service had concluded that the promulgation of this regulation did not present a takings risk.

One reviewer disputed the Forest Service's conclusion and, in essence, contended that the mere promulgation of this rule has taken his property without compensation and thus affected a taking. The Supreme Court has held that in order for the promulgation of a regulation to effect a taking, the property owner must demonstrate that the regulation on its face, rather than as applied, prevents the economically viable use of a compensable property interest. In this instance, the rule itself does not preclude economically viable use of mining claims in the SRNRA where valid existing rights have been established. Rather, it merely requires the operator to conform his operations to certain standards. None of these standards, individually or collectively, would deprive an operator of the economically viable use of his or her valid existing rights.

The other reviewer is incorrect in his assertion that the mere withdrawal of federal lands in the SRNRA from the operation of the mining laws effected a taking. Because the withdrawal language in the Act specifically stated that it was subject to valid existing rights, no taking of private property interests was effected by this measure. The withdrawal merely reflected Congress' decision to prohibit the use of National Forest System lands in the SRNRA for mining purposes. In other words, except where an operator can establish valid existing rights, mining is no longer one of the uses for which the National Forest System lands in the SRNRA will be managed. Congress' authority to prescribe the management of federal lands is derived from the Property Clause of the United States Constitution, Art. IV, Section 3, cl. 2, which vests in it the power to ''dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.'' The Property Clause has been construed expansively. The Supreme Court has on more than one occasion stated that ''. . . the power over the public land thus entrusted to Congress [under the Property Clause] is without limitations.''

In this case, the withdrawal of federal land in the SRNRA from the operation of the mining laws subject to valid existing rights is merely an example of Congress exercising its authority under the Property Clause to prescribe how the federal land in the SRNRA will be administered. This provision cannot effect a taking because no private property interests were impacted by the withdrawal.

Specific Comments on Proposed Subpart G of 36 CFR Part 292

The following is a discussion of comments that were received pertaining to specific sections of the proposed rule and the resulting changes that have been made in the final rule. The final rule contains only two minor changes from the text of the proposed rule. The first is a modification of the date in the definition of ''valid existing rights'' to reflect the different dates that the Smith Wild and Scenic River, the Siskiyou Wilderness, and the SRNRA were established. Because federal lands within these three areas were withdrawn from the operation of the mining and mineral leasing laws at different times, the dates by which valid existing rights must be established are different. The second change corrects an improper citation to 36 CFR 228.5(a) in § 292.63(d). Both of these changes are addressed in more detail in the section-by-section analysis that follows.

No comments were received on § 292.60—Purpose and Scope, § 292.65—Operating Plan Requirements, § 292.66—Operating Plan Acceptance, and § 292.67—Mineral Material Operations. Consequently, the final rule adopts the text of these sections as proposed, and they are not discussed further in this analysis.

Section 292.61. Definitions

The proposed rule defined certain terms that are either not defined in 36 CFR part 228, subpart A, or have special meaning as used in this rule.

Comment: The ''operating plan'' definition is erroneously applied. One reviewer contended that the definition of ''operating plan'' was erroneously confined to the exercise of outstanding mineral rights.

Response: The term ''operating plan,'' as defined in this section is used only in those portions of the rule dealing with outstanding mineral rights (§§ 292.65 and 292.66 and portions of § 292.68). The term ''plan of operations'' is used only in those portions of the rule dealing with operations on claims where valid existing rights have been established (§§ 292.62, 292.63, and 292.64 and portions of § 292.68). These two terms were purposely used in the proposed rule to differentiate operations on mining claims with valid existing rights from operations on lands with outstanding mineral rights. Moreover, the use of the terms ''operating plan'' and ''plan of operations'' in the proposed rule is consistent with the terminology in the agency's mining regulations at 36 CFR part 228, subpart A, and in the agency's directive system. Accordingly, no changes have been made in the final rule in response to this comment.

Comment: The Forest Service is without authority to alter the General Mining Laws in defining valid existing rights. One reviewer agreed with the definition of valid existing rights to the extent that it merely requires that the claimant have had a valid mining claim pursuant to the General Mining Laws as of the date of passage of the Act and has not abandoned it or otherwise failed to make appropriate filings and pay the annual maintenance fees. The reviewer objected, however, to other aspects of the definition which the reviewer alleged would alter the General Mining Laws. In particular, the reviewer contended that paragraph (4) of the definition of ''valid existing rights'' in the proposed rule which required continuity of the valuable mineral deposit even after the date of withdrawal is impermissible under the General Mining Laws.

This reviewer recommended that the definition of ''valid existing rights'' be revised and confined to the ''technical aspects'' of maintaining a claim's validity following the withdrawal of the SRNRA. This reviewer felt that the definition should not include within its scope any evaluation of the claim with respect to discovery of a valuable mineral as of the date of determination of valid existing rights.

Response: As an initial matter, it should be noted that there is no definition of ''valid existing rights'' in the General Mining Laws. The definition of ''valid existing rights'' (to the extent one exists), is largely the product of judicial and administrative interpretations of the General Mining Laws. The definition of ''valid existing rights'' in this rule is fully consistent with the General Mining Laws, relevant case law, and administrative interpretations. These authorities have long held that in order to establish valid existing rights, a mining claim must include the discovery and location of a valuable mineral deposit at the time of a withdrawal. In addition, these authorities have also held that in order to retain valid existing rights, an operator must comply with certain filing requirements, pay nominal fees, and the mineral deposit must remain valuable. The exhaustion of a mineral deposit or loss of its marketability may lead to a finding that the operator no longer possesses valid existing rights. Since the Act withdraws all federal lands from the operation of the general mining laws subject to valid existing rights, it is not within the agency's discretion to authorize mineral operations within the SRNRA if the operator can no longer prove that he or she possesses valid existing rights.

Comment: The date by which valid existing rights must be established for claims in the Siskiyou Wilderness and wild segments of the Smith Wild and Scenic Rivers is different from the date by which valid existing rights must be established for claims in the rest of the SRNRA.

Response: The proposed rule's definition of ''valid existing rights'' required operators to establish a valid mining claim in the SRNRA as of November 16, 1990. This is the date on which (1) The Act became law and (2) the federal land within the SRNRA was withdrawn from the operation of the mining and mineral leasing laws. The respondent is correct that this date is not accurate when applied to claims in wild segments of the Smith Wild and Scenic River and the Siskiyou Wilderness.

In considering this comment, the Department recognized that the proposed rule failed to take into account that some of the federal land within the SRNRA was withdrawn from the operation of the mining and mineral leasing laws prior to the enactment of the Act and that the establishment of valid existing rights varies depending on the date that the land was withdrawn. Both the Smith Wild and Scenic River (including the Middle Fork, North Fork, and South Fork and tributaries thereto) and the Siskiyou Wilderness are located within the SRNRA, but their designations predate the designation of the SRNRA. The Smith Wild and Scenic River was designated on January 19, 1981 and the Siskiyou Wilderness was designated on September 28, 1984. At the time of these designations, federal lands within wild segments of the Smith Wild and Scenic River and the Siskiyou Wilderness were withdrawn from the operation of the mining and mineral leasing laws. Consequently, in order to establish valid existing rights in wild segments of the Smith Wild and Scenic River or the Siskiyou Wilderness, the operator must demonstrate that there was a valid claim at the time of the designation of these areas, not at the time of the designation of the SRNRA.

One final point of clarification regarding the Siskiyou Wilderness is necessary. Though originally established on September 28, 1984, the Act added the Gasquet-Orleans Corridor to the Siskiyou Wilderness on November 16, 1990. Consequently, in order to determine whether valid existing rights have been established within the Gasquet-Orleans Corridor of the Siskiyou Wilderness, the operative date remains November 16, 1990.

In the final rule, the definition has been modified to reflect that the dates by which valid existing rights must be established for claims in the SRNRA will vary depending on where the claim is located. For claims on wild segments of the Smith Wild and Scenic River, valid existing rights must be established as of January 19, 1981. For claims in the Siskiyou Wilderness (minus the Gasquet-Orleans Corridor addition), valid existing rights must be established as of September 28, 1984. Finally, for claims in the rest of the SRNRA including, but not limited to, ''scenic'' and ''recreational'' segments of the Smith Wild and Scenic River and the Gasquet-Orleans Corridor addition to the Siskiyou Wilderness, the final rule makes clear that valid existing rights must be established as of November 16, 1990.

Section 292.62, Plan of Operations Supplementary Requirements

The proposed rule specified when a plan of operations is required for activities within the SRNRA and included suction dredge operations. Paragraph (b) of this proposed section would require as part of the plan of operations information necessary to evaluate the operator's claim of valid

existing rights and information necessary to evaluate the impacts of the proposed mining operation on SRNRA resources and determine the appropriate standards to mitigate and reclaim the affected areas.

Comment: Additional regulations and plans of operations should not be required for suction dredging. One reviewer contends that subsurface suction dredging should not be subject to these regulations or require the preparation of a plan of operations, as the activity is already well regulated and even benefits the SRNRA.

Response: Locatable mineral operations on National Forest System lands are primarily governed by the current locatable mineral regulations at 36 CFR part 228, subpart A. For the 1995 operating season, two plans of operations for suction dredging in the SRNRA were received, and both were approved. In the past, suction dredging operations in the SRNRA have been authorized by plans of operations, notices of intent, and, occasionally, without any written authorization at all. As noted previously, in establishing the SRNRA, Congress specified that all mineral operations, including suction dredging, are prohibited subject to valid existing rights. Further, even in those instances where an operator establishes valid dredging rights, the mineral operations would still be subject to regulation to ensure that the values for which the SRNRA was established were protected and enhanced.

By requiring a plan of operations for suction dredging activities, the Forest Service can accomplish two objectives. First, the Forest Service can verify that the operator engaging in the suction dredging operations possesses valid existing rights. Second, the Forest Service can ensure that the impacts of the suction dredging operations are minimized to the extent practicable in order to protect and preserve the values for which the SRNRA was established. The Department believes that in order to protect the unique fishery and other resource values of the SRNRA, careful and considered evaluation of all suction dredging activities is necessary. The best mechanism by which such evaluation can occur is through a plan of operations. Therefore, no changes were made in the final rule to exempt suction dredging activities from the purview of the plan of operations requirements.

Section 292.63, Plan of Operations Approval

Upon the submission of a plan of operations in accordance with § 292.62, this section of the proposed rule first directed the authorized officer to review it to determine whether the operator has established valid existing rights. If valid existing rights have not been established or if the plan of operations contains insufficient information in this regard, the proposed rule directed the authorized officer to notify the operator and request further information to assist in the determination. If valid existing rights are established, the proposed rule directed the authorized officer to so notify the operator and commence reviewing the operational aspects of the proposed mineral development activity in accordance with 36 CFR 228.5. If these requirements are met, this provision would authorize the approval of the plan of operations for a term not to exceed five years. The proposed rule also authorized the modification of approved plans of operations to take into account resource impacts or mineral development activities that were not contemplated in the original plan.

Comment: Requiring claim holders to prove their claims may deprive individuals of property rights guaranteed under the 1872 Mining Law. One reviewer asserted that the proposed rule's requirement that a claim holder prove that a valuable mineral is present in sufficient quantity gives the Forest Service too much discretion and could lead to the elimination of individual property rights guaranteed in the Mining Law of 1872.

Response: In order to establish valid existing rights under the General Mining Law of 1872, a claimant must: (1) discover a valuable deposit of a locatable mineral on lands open to the operation of the mining laws; (2) locate a claim on the valuable deposit; (3) monument the claim as required by state law; (4) do annual assessment work or pay holding fees; and (5) file various documents with the Bureau of Land Management. Furthermore, once established, the claimant has a continuing obligation to maintain the claim and discovery of a valuable mineral deposit in order to preserve its valid existing rights status.

The system devised under the 1872 Mining Law for establishing valid existing rights only applies if the federal land is open to mineral entry. When Congress enacts legislation that withdraws federal land from the operation of the mining laws, the valid existing rights that have been established as of the date of withdrawal in accordance with the above are generally protected providing that the mineral deposit remains valuable. However, if valid existing rights have not been established by this time, they may not be established thereafter.

Federal land in the SRNRA has been withdrawn from the operation of the mining laws on three separate occasions. The first occurred on January 19, 1981 when the Smith Wild and Scenic River was designated. The second occurred on September 28, 1984, when the Siskiyou Wilderness was designated. The third occurred on November 16, 1990, when the SRNRA was established.

The provision of the proposed rule at issue here simply requires that a claimant submit information which will enable the Forest Service to verify whether valid existing rights were established prior to the date of the withdrawal of federal land and, if so, whether claimant has maintained the claim and discovery of a valuable mineral deposit. In those instances where valid existing rights have been established, the Forest Service will authorize the associated development activities in accordance with these and other applicable regulations. At present, the agency would contemplate acquiring an operator's valid existing rights only if the proposed mineral development activities could not be conducted without unacceptable impacts to fishery and other resources for which the SRNRA was established.

It should be noted, that if valid existing rights have not been established an accordance with federal law, the Forest Service is legally obligated to prohibit further mineral development activities associated with these claims.

The process set forth in the proposed rule to evaluate the information regarding valid existing rights does not vest the agency with unbridled discretion to eliminate valid existing rights if the evidence provided confirms that valid existing rights have been established. Forest Service certified mineral examiners conduct field reviews and analyze information to form conclusions on the evidence of valid existing rights; their reports are reviewed by certified review examiners. Consequently, no change was made in the final rule in response to this comment.

Comment: There is a conflict of interest if the Forest Service goal is to eliminate mining, and the authorized officer has authority to determine validity of claims. One reviewer stated that if the goal of the Forest Service is to eliminate mining in the SRNRA, the Forest Service authorized officer would have a conflict of interest making valid existing rights determinations for mining claims located within the SRNRA.

Response: The goal of the Department in promulgating this rule is not to eliminate mining in the SRNRA. The goal of the Department in promulgating this rule is to comply with the Act and to allow the Forest Service to administer the SRNRA in a manner consistent with the purposes for which it was established. In making valid existing rights determinations, the agency strives to establish a system which provides for prompt, efficient, and accurate determinations. No conflict of interest implications are presented by this rule.

Comment: The rule should authorize the agency to modify a plan of operations. One reviewer felt that the proposed rule should expressly state that the Forest Service can initiate modification of a plan of operations, even though such authority exists in the agency's current regulations at 36 CFR part 228, subpart A.

Response: The proposed rule, at 36 CFR 292.60(c), specifically provided that other regulations applicable to the administration of National Forest System lands would continue to apply to the SRNRA, unless there was a conflict between them. Current rules at 36 CFR 228.4(e) authorize the Forest Service to request an operator to furnish a proposed modification of the plan of operations that addresses ways of minimizing a significant disturbance of surface resources not anticipated or foreseen when the plan of operations was originally approved. Nothing in the proposed rule conflicts with this provision; consequently, it remains in force and is applicable in the SRNRA. Therefore, there is no need to restate that the agency can initiate modification of a plan of operations in this rule.

Comment: The rule should include set timeframes for an initial response to an operator's submission of a plan of operations. One reviewer felt that the rule should include a provision requiring the agency to notify an operator within 30 days as to the completeness of the information provided on valid existing rights. This reviewer also encouraged the Forest Service to adopt a provision requiring immediate acknowledgement of receipt of a plan of operations.

Response: It would be inappropriate to include a provision in the rule requiring the agency to notify the operator within thirty days as to whether all the necessary information to evaluate a plan of operations has been submitted. The time necessary to review the information for completeness depends on several factors including, but not limited to, the amount of information to review in the plan of operations, other plans of operations already scheduled for review, the time of year when the plan of operations is received, and the availability of Forest Service certified mineral examiners to conduct the reviews.

Since 1991, the Six Rivers National Forest has established priorities for scheduling the review of proposed operations for valid existing rights as follows: (1) highest priority cases with unauthorized residential occupancy; (2) proposed activities on claims with known potential for significant resource disturbance; (3) proposed activities within the Siskiyou Wilderness and ''wild'' portions of designated Wild and Scenic Rivers; (4) proposed activities within the Middle Fork/Highway 199 Management Area; and (5) all other proposed activities. Once a mineral examination is scheduled in accordance with the above, its priority is not changed.

It is difficult and unrealistic to establish rigid timeframes for notifying operators of the completeness of the information submitted in their plan of operations due to the relatively short season during which field examinations may be conducted. For example, suction dredge field work must be done during the season prescribed by the California Department of Fish and Game.

In summary, due to current workload, weather, and other circumstances beyond the control of the agency, the time required for reviewing plans of operations for completeness, and the limited staff and budget to conduct mineral examinations, it is impracticable to establish a rigid deadline in this rule for notifying operators as to whether the information contained in their plans of operations regarding valid existing rights is complete.

The Forest Service also believes that it is unnecessary to include a specific provision in this rule requiring the agency to acknowledge receipt of a plan of operations submitted for review. If an operator believes that acknowledgment of receipt of a plan of operations is important, he or she may send it via registered or certified mail, return receipt requested.

Comment: Time limitations from 36 CFR 228.5 for reviewing a plan of operations should be expressly incorporated into the rule. One reviewer contended that the proposed rule eliminated the time limitations set forth in 36 CFR 228.5 for reviewing plans of operations. This reviewer requested that the rule be modified to specifically incorporate the timeframes in 36 CFR 228.5 for reviewing a plan of operations once the valid existing rights determination is complete.

Response: The Department disagrees with this reviewer. The proposed rule at § 292.60 made clear that plans of operations in the SRNRA are subject to 36 CFR part 228, subpart A, unless specifically exempted by these regulations. While the agency will make every effort to process plans of operations as expeditiously as possible, the Department has made no changes to the text of this section in the final rule.

Comment: The Forest Service authorized officer lacks the legal authority to make binding determinations regarding valid existing rights. On reviewer contends that the Forest Service has exceeded its authority under the General Mining Laws by including a provision in the proposed rule which arrogates unto itself the authority to make ''binding determination as to whether the operator has a valid mining claim.'' The reviewer states that this authority resides only in the Secretary of the Interior pursuant to the General Mining Laws.

Response: The Department of the Interior has primary jurisdiction to determine the validity of mining claims on public lands. However, the Forest Service need not await the outcome of a validity determination by the Secretary of the Interior in cases where an individual asserts a mining claim on National Forest System lands in bad faith. In such cases, the Forest Service may eject the individual as a trespasser in conformance with its authority under the Organic Act and other statutes which require the agency to regulate the occupancy and use of National Forest System lands to prevent their destruction.

Since 1957, the Forest Service has been conducting validity determinations involving mining claims on National Forest System lands in accordance with a Memorandum of Understanding (1957 MOU) with the Bureau of Land Management. Under the 1957 MOU, where mining claims involve National Forest System lands, the Forest Service conducts field examinations, writes reports, and makes determinations on valid existing rights. Forest Service validity determinations may be reviewed by the Department of the Interior which is the final administrative arbiter of the dispute.

The proposed rule did not claim to vest the Forest Service with the authority to make ''binding'' validity determinations involving mining claims in the SRNRA. Rather, this rule is consistent with the current agency practice elsewhere throughout the National Forest System in conformance with the 1957 MOU. With the exception

of mining claims that are asserted in bad faith, validity determinations by the Forest Service may be reviewed by the Department of the Interior as the final administrative arbiter of the dispute. Therefore, no change has been made to the text of the final rule as a result of this comment.

Comment: The rule should include provisions requiring prompt notification to the operator of Forest Service determinations of insufficient evidence of valid existing rights and the agency's recommendation of contest action. One reviewer felt that if the authorized officer determines that valid existing rights have not been established, the rule should specifically require the Forest Service to immediately request BLM to initiate a contest action and to notify the operator of this request.

Response: The proposed rule contained a provision requiring the authorized officer to notify the operator in writing if, upon review of the information submitted as part of the plan of operations, insufficient evidence of valid existing rights was presented. Since mining operations can only take place in the SRNRA if valid existing rights have been established, it would be incumbent upon the Forest Service to forward its findings and determination to the Bureau of Land Management with a recommendation for contest action if the operator persisted with plans to conduct mineral operations in the SRNRA. Obviously, contest actions would be unnecessary if the operator decides not to go forward with any mineral operations and abandons his or her claim(s) following the Forest Service's determination.

The Department believes that the Forest Service's standard procedures already provide for prompt request for contest action and timely notice to the operator of same sought by this reviewer and, hence, no change has been made in the final rule.

Comment: Potential for ''double jeopardy'' on proof of valid existing rights. One reviewer felt that the proposed rule would give the Forest Service ''two bites at the apple'' to challenge an operator's claim of valid existing rights. The reviewer believed that this would increase the operator's administrative burden to prove valid existing rights and would also be an inefficient use of Forest Service resources.

Response: The purpose of this provision is not to give the Forest Service ''two bites at the apple'' or to increase the time and expense associated with establishing valid existing rights. Rather, the purpose of this section is to ensure that the operator still possesses valid existing rights after the passage of time. As noted earlier in response to a comment about the continuity requirement in the definition of ''valid existing rights,'' an operator must be able to demonstrate not only that valid existing rights were established as of the date of the withdrawal of the federal land on which the claim is located, but he or she must also be able to prove that the valid existing rights were maintained continuously thereafter. This means, among other things, that the marketability of the minerals that are the subject of the claim must persist.

Several examples of when the Forest Service might conduct another determination of an operator's claim of valid existing rights may be illustrative.

When a Forest Service certified mineral examiner concludes that a claim contains discovery of a valuable mineral deposit, resulting in a finding that there is sufficient evidence of valid existing rights to process a plan of operations, and operations are approved, the approved operations should result in extraction of the valuable mineral deposit constituting the discovery. Upon the exhaustion of the valuable mineral deposit, there will no longer be sufficient evidence of valid existing rights to support a claim, and the claim holder would be expected to abandon or relinquish the claim. Should the holder not abandon or relinquish the claim, the Forest Service could challenge it and obtain a determination that the operator no longer possess valid existing rights.

Another situation that merits a second valid existing rights determination might occur when an operator fails to conduct or complete the mineral operations as described in a previously approved plan of operations and desires to reinitiate the mining activity. If the originally approved plan of operations has expired or is obsolete, the operator must be able to provide sufficient evidence of valid existing rights from the date of withdrawal and continuously thereafter to the date of determination related to the new proposal. In this situation, there would have been sufficient evidence of valid existing rights from the date of withdrawal to the date of the first valid existing rights determination, but the operator would need to provide additional evidence that there was a valuable mineral deposit from the first determination continuously to the present time. The term ''continuously'' within the context of these regulations means taking into consideration the relevant historic range of market prices and costs as well as the likelihood of their continuation or change.

The Forest Service has an obligation under the Act to ensure that development only occurs on claims with valid existing rights. Since a claim with valid existing rights at one point in time may not continue to have valid existing rights, it may be necessary for the claim holder to prove that valid existing rights have been established on more than one occasion since the date of withdrawal.

Comment: There is an improper reference to 36 CFR § 228.5(b). One reviewer noted that the reference to 36 CFR 228.5(b) in § 292.63(d) of the proposed rule should have been to 36 CFR 228.5(a).

Response: The reviewer is correct, and this citation has been corrected in the final rule.

Comment: Duration of plans of operations is not appropriate. Two reviewers noted that five years is too short a duration for a plan of operations and that the maximum term for such a plan should be 25 years. Their arguments in favor of a longer term are: (1) The high cost associated with preparing multiple short term plans of operation compared to preparing one long term plan; (2) the inefficient use of agency resources that would be required to review new plans of operation at five year intervals; and (3) the potentially adverse effects on the operator's financing arrangements.

In contrast to these views, one reviewer interpreted this provision of the proposed rule as providing for continual cooperative discussions between the operator and the Forest Service following the development and approval of plan of operations. This individual suggested the inclusion of a provision requiring reevaluations every five years for plans of operation approved for more than five years.

Response: The Forest Service is disinclined to approve plans of operations in the SRNRA for more than five years. The agency's current mining regulations require that a plan of operations be prepared for the entire life of the proposed mining operation, except for aspects of the operation that are unknown at the time the plan is prepared. Even in these cases, the mining regulations require the operator to describe in the plan the operations that are reasonably foreseeable at that time and to supplement or modify the plan if these operations are changed.

This rule does not change that requirement. Plans of operations for mineral development activities in the SRNRA should describe all the proposed operations throughout the

projected life of the mine. The only difference between this rule and the agency's current mining regulations concerns the duration for which the plans of operations may be approved. Under this rule, even though the plan of operations describes the entire mining operation which in some cases will exceed five years, the approval will only be valid for a 5-year period. Under the current mining regulations, the plan of operations may be approved for the full duration of the proposed operation.

The Department believes that assessing the effects of proposed mining operations in the SRNRA and prescribing appropriate mitigation over the entire projected life of the mine would be difficult in light of the dynamic environment of the SRNRA and the significant and fragile resource values for which the area was designated. The agency agrees that even after a plan of operations is approved, cooperative discussions between the Forest Service and the operator will be necessary to monitor ongoing impacts of the mining operation on SRNRA resource values and whether further adjustments in those operations are necessary.

The Department believes that it is appropriate and in the public interest to limit the approval period for plans of operations in the SRNRA to not more than five years. An operator may choose whether to submit a new plan of operations for each successive 5 year term or simply to resubmit the original plan with appropriate modifications. While the duration of approval of the plan of operations is not changed from that proposed, the text of § 292.63(e) in the final rule makes clear that the 5-year approval is different than the length of approval that may be granted under 36 CFR 228.5. No change was made in the final rule as a result of this comment.

Section 292.64—Plan of Operations Suspension

This section of the proposed rule would authorize the Forest Service to direct an operator to suspend mineral development activities even if a plan of operations has been approved. The proposed rule authorizes the Forest Service to suspend an operator's mineral operations if they are being conducted in violation of applicable law, regulation, or the terms and conditions of the operator's approved plan of operations. Except in cases in which the violations present an imminent threat of harm to public health, safety, or the environment, the Forest Service must notify the operator not less than thirty days in advance of the suspension. The thirty day notice should, in most instances, give the operator sufficient time to cure the violations prior to the suspension taking effect. In cases where mineral operations present an imminent threat of harm to public health, safety, or the environment (or where such harm is already occurring) regardless of whether the operator is in violation of applicable laws, regulations, or the terms and conditions of the plan of operations, the Forest Service is authorized to take immediate action to suspend the mineral development activity. In these cases, the rule directs the Forest Service to notify the operator of the suspension as soon as is reasonably practicable thereafter.

Comment: Suspension of a plan of operations without prior notice to the operator is a denial of due process. One reviewer felt that the suspension of a plan of operations without notice to the operator is a violation of constitutional requirements of due process.

Response: The proposed rule describes two scenarios under which the suspension of mineral operations may occur. The first scenario deals with mineral operations that are not being conducted in accordance with the applicable laws, regulations, or the approved plan of operations but do not present an immediate threat to public health, safety, or the environment. In these cases, the proposed rule specifically provides that the authorized officer will notify the operator not less than 30 days prior to the suspension during which time the operator may modify the operations and thus avoid the suspension. The second scenario deals with mineral operations that pose a ''threat of imminent harm to public health, safety, or the environment.'' In these cases, the proposed rule authorizes immediate suspension of operations but requires that the operator be notified of the basis for the suspension ''as soon as reasonably practicable following the suspension.''

The Supreme Court has held that the type of due process required under the Constitution varies depending upon the private interest affected by the government action, the risk of an erroneous deprivation of the private interest by the government action, and the Government's interest (including the functions involved and the fiscal and administrative burdens) that additional or substitute procedural requirements would entail. While the Supreme Court has maintained that due process must afford individuals an opportunity to be heard ''at a meaningful time and in a meaningful manner,'' it has not required that such opportunities must necessarily occur prior to the challenged government action in order to be constitutional. Indeed, there have been numerous cases in which the court has upheld procedures that offer an individual after-the-fact opportunities to challenge government actions against due process challenges. These procedures have been routinely upheld in contexts where government actions have been taken to abate an immediate threat to public health, safety, and welfare.

The only situation described in the proposed rule when ex post notice of a suspension would be provided is when a clear and present threat to public health, safety and welfare is presented. This is not a violation of constitutional standards of due process. Therefore, no changes have been made to the text of the final rule based on this comment.

Section 292.68, Indemnification

The proposed rule specified that the owners and/or operators of mining claims and the owners and/or lessees of outstanding mineral rights would be liable for the following: (1) indemnifying the United States for injury, loss, or damage which the United States incurs as a result of any mining operation in the SRNRA; (2) payments made by the United States in satisfaction of claims, demands or judgments for such injury, loss, or damage; and (3) costs incurred by the United States for any action resulting from noncompliance with an approved plan of operations or activities outside a mutually agreed to operating plan.

Comments: The indemnification provision is vague and of questionable legal authority. In addition to suggesting that this section was vague and potentially over inclusive, one reviewer requested the agency to specify the authority under which it may seek indemnification from operators to recover costs associated with, among other things, injury, loss, or damage to National Forest System lands and resources resulting from mineral operations in the SRNRA. This reviewer concluded that since this is a new provision for the SRNRA, there must be new statutory authority or a recent change in the law from which it is derived. If no such new authority exists, the reviewer argued that this provision must be deleted.

Response: The authority for the indemnification provision in the supplementary regulations for mining in the SRNRA is derived from the Organic Administration Act of 1897, 16 U.S.C. 551, which states in relevant part that,

> The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon

the public forests and national forests which may have been set aside or which may hereafter be set aside * * * and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction * * *

The reviewer's presumption that the Forest Service must be able to point to a recent change in the law to support the inclusion of an indemnification provision in this rule because it is ''new and unique'' in the SRNRA is unfounded. The authority has always existed, at least since the enactment of the Organic Administration Act in 1897. Similar indemnification provisions are incorporated into several other written instruments which authorize the use of National Forest System lands. For example, special use authorizations for outfitters and guides and ski area operators and the consent authorization for oil and gas lease operators and lessees contain indemnification provisions.

The Department does not find the indemnification provision unconstitutionally vague or overly inclusive. In *Village of Hoffman Estates* v. *The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982), the Supreme Court enumerated a number of factors which affect the degree of vagueness which the Constitution tolerates. For example, a less strict vagueness test will apply if a regulation is economic in nature, does not contain criminal sanctions, and does not implicate constitutionally protected rights. In *United States* v. *Doremus*, 888 F.2d 630 (9th Cir. 1989), the United States Ninth Circuit Court of Appeals rejected a vagueness challenge to a Forest Service regulation prohibiting certain types of conduct related to mining activities on National Forest System lands.

This rule meets all the factors required by the Supreme Court ruling. However, it does not invoke criminal sanctions and does not affect constitutionally protected rights. The Department believes that the 9th Circuit's reasoning in *Doremus* is also instructive and relevant and that this rule would withstand a vagueness challenge under that ruling as well. Consequently, there have been no changes made to the text of the final rule based on this comment.

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 regulation is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy and will not adversely affect productivity, competition, jobs, the environment, public health and safety, or State and 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. In short, little or no effect on the National economy will result from this rule, since it affects only mining activities on National Forest System lands in the SRNRA. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (RFA) (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 the RFA because of its limited scope and application. Also, this proposed rule does not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in local or foreign markets.

Environmental Impact

After an initial conclusion that the proposed rule was categorically excluded from documentation in an environmental assessment (EA) or impact statement, it was determined that the Forest Service should prepare an EA. A copy of the EA and the Finding of No Significant Impact are available upon request by calling the contact listed earlier in this rulemaking under **FOR FURTHER INFORMATION CONTACT.**

Controlling Paperwork Burdens on the Public

In the proposed rule, the agency requested comment on two new information requirements. Proposed § 292.62(b) specified that in addition to the requirements of § 228.4, an operator must provide information to substantiate valid existing rights as part of a plan of operations. Proposed § 292.65(b) required those who wish to exercise outstanding mineral rights to submit an operating plan. Only one person commented on the first collection; no comments were received on the second collection. The one respondent said that the requirement for information supporting valid existing rights would be burdensome to the claim holder or operator. As stated in the preceding indepth response to this comment, the agency does not consider this information collection burdensome since most of the required information has been generated already by the claim holder or operator. The agency needs this information for verification of valid existing rights in order to authorize use, as required under the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*). Therefore, no changes were made in the final rule based on the comment regarding information requirements.

This information collection has been reviewed by the Office of Management and Budget according to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320. The information requirements in this rule have been assigned control number 0596–0138 for use through September 30, 1998.

No Takings Implications

In compliance with Executive Order 12630 and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, the takings implication of this proposed rule have been reviewed and considered. It has been determined that there is no risk of a taking.

Civil Justice Reform Act

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Upon adoption of this rule, (1) all State and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule and; (3) it would not require administrative proceedings before parties would file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 292

Administrative practice and procedure, Environmental protection, Mineral resources, National forests, and National recreation areas.

Therefore, for the reasons set forth in the preamble, Part 292 of Chapter II of title 36 of the Code of Federal Regulations is amended by adding a new Subpart G to read as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart G—Smith River National Recreation Area

Sec.

Subpart G—Smith River National Recreation Area

Authority: 16 U.S.C. 460bbb *et seq.*

§ 292.60 Purpose and scope.

(a) *Purpose.* The regulations of this subpart set forth the rules and procedures by which the Forest Service regulates mineral operations on National Forest System lands within the Smith River National Recreation Area as established by Congress in the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

(b) *Scope.* The rules of this subpart apply only to mineral operations on National Forest System lands within the Smith River National Recreation Area.

(c) *Applicability of other rules.* The rules of this subpart supplement existing Forest Service regulations concerning the review, approval, and administration of mineral operations on National Forest System lands including, but not limited to, those set forth at parts 228, 251, and 261 of this chapter.

(d) *Conflicts.* In the event of conflict or inconsistency between the rules of this subpart and other parts of this chapter, the rules of this subpart take precedence, to the extent allowable by law.

(e) *Applicability to ongoing operations.* Operations under an acceptable operating plan or an approved plan of operations in effect prior to the effective date of these regulations shall be for a limited time not to exceed 5 years. If ongoing operations have a shorter specified operating time, the shorter operating time shall remain in effect.

§ 292.61 Definitions.

The special terms used in this subpart have the following meaning:

Act means the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*)

Authorized officer means the Forest Service officer to whom authority has been delegated to take actions pursuant to the provisions of this subpart.

Hazardous substance means any substance so classified under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601).

Operating plan means the document submitted in writing by the owner or lessee, or a representative acting on behalf of an owner or lessee, to exercise outstanding mineral rights for minerals underlying National Forest System lands.

Outstanding mineral rights means the rights owned by a party other than the surface owner at the time the surface was conveyed to the United States.

SRNRA is the abbreviation for the Smith River National Recreation Area, located within the Six Rivers National Forest, California.

Valid existing rights means mining claims on National Forest System lands in the SRNRA excluding the Siskiyou Wilderness (except for the Gasquet-Orleans Corridor addition) and wild segments of the Smith Wild and Scenic River (including the Middle Fork, North Fork, and South Fork and tributaries thereto) which: (1) were properly located prior to November 16, 1990, for a mineral that was locatable at that time; (2) were properly maintained thereafter under the applicable law; (3) were supported by a discovery of a valuable mineral deposit within the meaning of the general mining law prior to November 16, 1990, which discovery has been continuously maintained since that date; and (4) continue to be valid. For mining claims in the Siskiyou Wilderness (except for the Gasquet-Orleans Corridor addition), the location and discovery must have occurred prior to September 26, 1984. For mining claims in wild segments of the Smith Wild and Scenic River, the location and discovery must have occurred prior to January 19, 1981.

Valid Existing Rights

§ 292.62 Plan of operations—supplementary requirements.

(a) *Applicability*. In addition to the activities for which a plan of operations is required under § 228.4 of this part, a plan of operations is required when a proposed operation within the SRNRA involves mechanical or mechanized equipment, including a suction dredge and sluice.

(b) *Information to support valid existing rights*. A plan of operations within the SRNRA must include at least the following information relevant to the existence of valid existing rights from the date the affected area of land was withdrawn from mineral entry to the present:

(1) The mining claim recordation serial number assigned by the Bureau of Land Management;

(2) A copy of the original location notice and conveyance deeds, if ownership has changed since the date of location;

(3) A copy of the affidavit of assessment work or notice of intention to hold the mining claim since the date of recordation with the Bureau of Land Management;

(4) Verification by the Bureau of Land Management that the holding fees have been paid or have been exempted;

(5) Sketches or maps showing the location of past and present mineral workings on the claims and information sufficient to locate and define the mining claim corners and boundaries on the ground;

(6) For lode and placer mining claims—

(i) An identification of the valuable mineral that has been discovered;

(ii) An identification of the site within the claims where the deposit has been discovered and exposed;

(iii) Information on the quantity and quality of the deposit including copies of assays or test reports, the width, locations of veins, the size and extent of any deposit; and

(iv) Evidence of past and present sales of the valuable mineral; and

(7) For millsite claims, information proving that the millsite is associated with a valid mining claim and that the millsite is used or occupied for mining or milling purposes.

(c) *Minimum information on proposed operations.* A plan of operations must include the information required at 36 CFR 228.4 (c)(1) through (c)(3) which includes information about the proponent and a detailed description of the proposed operation. In addition, if the operator and claim owner are different, the operator must submit a copy of the authorization or agreement under which the proposed operations are to be conducted. A plan of operations must also address the environmental protection requirements of 36 CFR 228.8 which includes reclamation. In addition, when practicable, reclamation will proceed concurrently with the mineral operation.

§ 292.63 Plan of operations approval.

(a) Upon receipt of a plan of operations, the authorized officer shall review the information related to valid existing rights and notify the operator in writing that one of the following circumstances apply:

(1) That sufficient information on valid existing rights has been provided

and the date by which the Forest Service expects to complete the valid existing rights determination; or

(2) That sufficient information on valid existing rights has not been provided and the specific information that still needs to be provided.

(b) If upon receipt, review, and verification of all requested information, the authorized officer finds that there is not sufficient evidence of valid existing rights, the authorized officer shall so notify the operator in writing, provide the reasons for the determination, and advise that the proposed mineral operation cannot be conducted.

(c) If upon receipt, review, and verification of all requested information, the authorized officer finds that there is sufficient evidence of valid existing rights, the authorized officer shall so notify the operator, in writing, that a review of the proposed plan of operations is underway and the date by which the review is expected to be completed. A prior determination that there is sufficient evidence of valid existing rights shall not bar the authorized officer from requesting the Department of the Interior to file a mineral contest against a mining claim if the authorized officer has a reasonable basis to question that determination.

(d) Upon completion of the review of the plan of operations, the authorized officer shall ensure that the minimum information required by § 292.62(c) has been addressed and, pursuant to § 228.5(a) of this chapter, notify the operator in writing whether or not the plan of operations is approved.

(e) Notwithstanding the provisions of 36 CFR § 228.5, the period for which a plan of operations is approved within the SRNRA may not exceed five years and must be explicitly identified by the authorized officer in giving notice of approval of a plan of operations.

(f) If an operator desires to make substantive changes in the type, scope, or duration of mineral operations from those described in an approved plan of operations and those changes may result in resource impacts not anticipated when the original plan was approved, the operator must submit a supplemental plan or a modification for review and approval of the authorized officer pursuant to § 292.62 of this proposed rule.

§ 292.64 Plan of operations suspension.

The authorized officer may suspend mineral operations, in whole or in part, due to an operator's noncompliance with applicable statutes, regulations, or terms and conditions of the approved plan of operations. Except as otherwise provided in this section, prior to suspending operations, the authorized officer must first notify the operator in writing of the basis for the suspension and provide the operator with a reasonably sufficient time to respond to the notice of the authorized officer or to bring the mineral operations into conformance with applicable laws, regulations, or the terms and conditions of the approved plan of operations. Generally, the authorized officer shall notify the operator not less than thirty days prior to the date of the proposed suspension; however, in those cases that present a threat of imminent harm to public health, safety, or the environment, or where such harm is already occurring, the authorized officer may take immediate action to stop the threat or damage without prior notice. In such case, written notice and explanation of the action taken, shall be given the operator as soon as reasonably practicable following the suspension.

Outstanding Mineral Rights

§ 292.65 Operating plan requirements.

(a) Proposals for mineral operations involving outstanding mineral rights within the SRNRA must be documented in an operating plan and submitted in writing to the authorized officer for review at least 60 days in advance of surface occupancy.

(b) An operating plan for operations involving outstanding mineral rights within the SRNRA must include the following:

(1) The name and legal mailing address of the operator, owner, and any lessees, assigns, and designees;

(2) A copy of the deed or other legal instrument that conveyed the outstanding mineral rights;

(3) Sketches or maps showing the location of the outstanding mineral rights, the proposed area of operations, including but not limited to, existing and/or proposed roads or access routes identified for use, any new proposed road construction, and the approximate location and size of the areas to be disturbed, including existing or proposed structures, facilities, and other improvements to be used;

(4) A description of the type of operations which includes, at a minimum, a list of the type, size, location, and number of structures, facilities, and other improvements to be used;

(5) An identification of the hazardous substances and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation, and the means for disposing of such substances;

(6) An identification of the character and composition of the mineral wastes that will be used or generated and a method or strategy for their placement, control, isolation, or removal; and

(7) A reclamation plan to reduce or control on-site and off-site damage to natural resources resulting from mineral operations.

(i) The plan should provide, to the extent practicable, that reclamation proceed concurrently with the mineral operations and must show how public health and safety are maintained.

(ii) Reclamation measures to be identified and described in the plan include, but are not limited to, the following:

(A) Reduction and/or control of erosion, landslides, and water runoff;

(B) Rehabilitation of wildlife and fisheries habitat to be disturbed by the proposed mineral operation; and

(C) Protection of water quality.

(iii) The area of surface disturbance must be reclaimed to a condition or use that is consistent with the SRNRA Management Plan.

§ 292.66 Operating plan acceptance.

(a) Upon receipt of an operating plan, the authorized officer must review the information related to the ownership of the outstanding mineral rights and notify the operator in writing that one of the following circumstances apply:

(1) That sufficient information on ownership of the outstanding mineral rights has been provided and the date by which the review is expected to be completed; or

(2) That sufficient information on ownership of outstanding mineral rights has not been provided and the specific information that still needs to be provided.

(b) If the review shows that outstanding mineral rights have not been established, the authorized officer must notify the operator in writing of this finding, the reasons for such a finding, and that the proposed mineral operation cannot be conducted.

(c) If the review shows that outstanding mineral rights have been established, the authorized officer must notify the operator in writing of this finding, that review of the proposed operating plan is underway, and the date by which the review is expected to be completed.

(d) The authorized officer shall focus review of the operating plan to determine if all of the following criteria are met:

(1) The operating plan is consistent with the rights granted by the deed;

(2) The operating plan is consistent with the SRNRA Management Plan; and

(3) The operating plan uses only so much of the surface as is necessary for the proposed mineral operations.

(e) Upon completion of the review of the operating plan, the authorized officer shall notify the operator in writing that one of the following two circumstances apply:

(1) The operating plan meets the criteria of paragraphs (d)(1) through (d)(3) of this section, and, therefore, the Forest Service has no objections to commencement of operations and that the Forest Service intends to monitor operations to ensure that operations conform to the operating plan; or

(2) The operating plan does not meet all of the criteria in paragraphs (d)(1) through (d)(3) of this section and the reasons why the operating plan does not meet the criteria. In this event, the authorized officer shall propose changes to the operating plan and attempt to negotiate modifications that will enable the operating plan to meet the criteria in paragraphs (d)(1) through (d)(3) of this section.

(f) To conduct mineral operations beyond those described in an acceptable operating plan, the owner or lessee must submit in writing an amended operating plan to the authorized officer at the earliest practicable date. The authorized officer shall have not less than 60 days in which to review and respond to a proposed amendment before the new operations begin. The review will be conducted in accordance with paragraphs (d)(1) through (d)(3) of this section.

Mineral Materials

§ 292.67 Mineral material operations.

Subject to the provisions of part 228, subpart C and part 293 of this chapter, the authorized officer may approve contracts and permits for the sale or other disposal of mineral materials, including but not limited to, common varieties of gravel, sand, or stone. However, such contracts and permits may be approved only if the material is not within a designated wilderness area and is to be used for the construction and maintenance of roads and other facilities within the SRNRA and the four areas identified by the Act that are within the exterior boundaries of the SRNRA but are not classified as part of the SRNRA.

Indemnification

§ 292.68 Indemnification.

The owner and/or operator of mining claims and the owner and/or lessee of outstanding mineral rights are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for:

(a) Injury, loss, or damage, including fire suppression costs, which the United States incurs as a result of the mineral operations;

(b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss, or damage, including fire suppression costs, which result from the mineral operations; and

(c) Costs incurred by the United States for any action resulting from noncompliance with an approved plan of operations or activities outside a mutually agreed to operating plan.

Dated: March 28, 1996.

Mark Gaede,

Acting Deputy Under Secretary, Agriculture.

[FR Doc. 96–8097 Filed 4–2–96; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–111–1–7094a; FRL–5442–7]

Approval and Promulgation of Implementation Plans Tennessee: Revisions to Chattanooga/Hamilton County Regulations for Definitions and Ambient Air Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Chattanooga/Hamilton County portion of the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation on May 18, 1993. This submittal included revisions to the current regulations concerning definitions and ambient air quality standards for Chattanooga/Hamilton County. EPA finds that the regulations provide for consistency with the Clean Air Act as amended in 1990 (CAA) and corresponding Federal regulations.

DATES: This final rule is effective June 3, 1996 unless adverse or critical comments are received by May 3, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Ms. Karen Borel, at the Regional Office Address listed below.

Copies of the material submitted by the State of Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Division of Air Pollution Control, 9th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407.

FOR FURTHER INFORMATION CONTACT: Interested persons wanting to examine documents relative to this action should make an appointment with the Region 4 Air Programs Branch at least 24 hours before the visiting day. To schedule the appointment or to request additional information, contact Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 EPA, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4197. Reference file TN111–01–7094.

SUPPLEMENTARY INFORMATION: On May 18, 1993, the State of Tennessee submitted a formal revision to the Chattanooga/Hamilton County portion of its SIP incorporating changes to the ambient air quality standards for particulate matter and definitions. They also submitted changes to their asbestos emission standard, their hazardous air pollutants (HAP) standard and their new source performance standards (NSPS). In a letter from Mr. Doug Neeley, Chief of the Air Programs Branch in EPA Region 4, to Mr. John Walton, Director of the Division of Air Pollution Control of the Tennessee Department of Environment and Conservation, dated June 15, 1995, EPA requested that the NSPS, HAP, and asbestos related revisions be withdrawn by the State. This withdrawal was requested because the Federally enforceable National Emission Standards for Hazardous Air Pollutants (NESHAP) are contained in 40 CFR Parts 61 and 63, and the Federally enforceable NSPS are contained in 40 CFR Part 60; therefore, these are not required to be approved in the SIP. On October 3, 1995, the State of Tennessee officially withdrew their request to amend the NSPS Rule 15, the Emissions Standards for Hazardous Air