

they are submitted in response to "RIN 2900-AH61." All written comments will be available for public inspection in the Office of Regulations Management, room 1176, 801 Eye Street NW., Washington, DC 20001 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**SUPPLEMENTARY INFORMATION:** The regulations affected by this document are authorized under provisions of 38 U.S.C. as follows:

Adult Day Health Care Program—38 U.S.C. 1712; Community Residential Care Program—38 U.S.C. 1730; and Contract Program for Veterans With Alcohol and Drug Dependence Disorders—38 U.S.C. 501 and 38 U.S.C. 1720A

**Regulatory Flexibility Act**

The Secretary hereby certifies that the provisions of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. In all likelihood, only similar entities that are small entities would conduct activities affected by this rule. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

**List of Subjects in 38 CFR Part 17**

Alcoholism, Claims, Dental Health, Drug Abuse, Foreign Relations, Government Contracts, Grants Program—Health, Health Care, Health Facilities, Health Professions, Medical Devices, Medical Research, Mental Health Programs, Nursing Homes, Philippines, Veterans.

Approved: August 29, 1995.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

**PART 17—MEDICAL**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 72 Stat. 1114, 38 U.S.C. 501, unless otherwise noted.

2. In § 17.51e, paragraph (c)(2) is revised to read as follows:

**§ 17.51e Adult day health care in private facilities.**

\* \* \* \* \*

(c) \* \* \*

(2) The institution shall meet the requirements of chapters 1-7, 10-11, and 31 of the National Fire Protection Association's Life Safety Code, entitled NFPA 101 Life Safety Code 1994, dated February 11, 1994 (which is

incorporated by reference). Incorporation of the 1994 edition of the Life Safety Code was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The code is available for inspection at the Office of the Federal Register, room 700, 800 North Capitol Street NW., Washington, DC and at the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Copies may be obtained from: National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.) The institution shall provide sufficient staff to assist patients in the event of fire or other emergency.

\* \* \* \* \*

3. In § 17.51j, paragraph (a)(2) is revised to read as follows:

**§ 17.51j Approval of community residential care facilities.**

\* \* \* \* \*

(a) \* \* \*

(2) Meet the requirements of chapters 1-7, 22-23, and 31 of the 1994 edition of the National Fire Protection Association's Life Safety Code, NFPA 101, and the 1995 edition of NFPA 101A, Guide on Alternative Approaches to Life Safety (which are incorporated by reference). The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Incorporation by reference of the 1994 edition of the Life Safety Code and the 1995 edition of NFPA 101A was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The code is available for inspection at the Office of the Federal Register, room 700, 800 North Capitol Street NW., Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.)

\* \* \* \* \*

4. In § 17.53b, paragraph (a)(1)(i) is revised to read as follows:

**§ 17.53b Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.**

(a) \* \* \*

(1) \* \* \*

(i) The building must meet the requirements of the applicable residential occupancy chapters 1-7, 22-23, and 31 of the Life Safety Code (NFPA 101) published by the National

Fire Protection Association (NFPA), Battery March Park, Quincy, MA 02269, 1994 edition. (For ordering information, call toll-free 1-800-344-3555.) The 1994 edition of the Life Safety Code is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., room 700, Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Regional Director.

\* \* \* \* \*

5. In § 17.53c, paragraph (a)(1)(i) is revised to read as follows:

**§ 17.53c Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.**

(a) \* \* \*

(1) \* \* \*

(i) The building must meet the requirements of the applicable business occupancy chapters 1-7, 26-27, and 31 of the Life Safety Code (NFPA 101) published by the National Fire Protection Association (NFPA), Battery March Park, Quincy, MA 02269, 1994 edition. (For ordering information, call toll-free 1-800-344-3555.) The 1994 edition of the Life Safety Code (NFPA 101) is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., room 700, Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Any Equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Regional Director.

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BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 15 and 32**

[FRL-5219-6]

RIN 2030-AA38

**Suspension, Debarment and Ineligibility for Contracts, Assistance, Loans and Benefits**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** In this notice, EPA proposes to remove Part 15 ("Administration of the Clean Air Act and the Clean Water Act with Respect to Contracts, Grants, and Loans—List of Violating Facilities") from Title 40 of the Code of Federal Regulations. EPA also proposes that 40 CFR Part 32, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drugfree Workplace (Grants), be amended simultaneously by adding procedures needed to administer the ineligibility provisions of the Clean Air Act (CAA), Clean Water Act (CWA), and EO 11738.

**DATES:** Comments must be submitted on or before November 13, 1995.

**ADDRESSES:** Comments may be mailed to Robert Meunier, Director, Suspension and Debarment Division (3902F), U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460, or delivered to EPA, Fairchild Building, 499 South Capitol St., room 217 between 8 a.m. and 4:30 p.m.

Comments and data may also be submitted electronically by electronic mail (e-mail) to: meunier.robert@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [FRL-5219-6]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Meunier, Director, Suspension and Debarment Division (3902F), 401 M Street S.W., Washington, DC 20460. Telephone: (202) 260-8025.

**SUPPLEMENTARY INFORMATION:***A. Background*

Last year, the EPA Administrator decided to reorganize the former Office of Enforcement (OE), now the Office of Enforcement and Compliance Assurance (OECA). As part of that reorganization, administrative responsibility for the Part 15 CAA and CWA contractor listing program was transferred from OECA to the Office of Administration and Resources Management (OARM) so that all EPA debarment functions would be conducted by a single office.

On October 5, 1994, EPA published technical amendments to 40 CFR Parts 15 and 32 to reassign specific functions from OECA to OARM. (See, 59 Fed. Reg. 50691). In the preamble to those amendments, EPA notified the public of its intention to consolidate the two rules into a single rule in 1995.

These proposed amendments would eliminate Part 15 in its entirety, and amend EPA's suspension and debarment rule at Part 32 by adding the few procedures needed to implement the statutorily mandated ineligibility provisions of the CAA and the CWA.

In addition to significantly reducing regulatory text, the proposed rule will reduce the confusion that occurred because EPA had one set of procedures for mandatory and discretionary facility ineligibility (Part 15), and another for discretionary suspension and debarment actions (Part 32). When the proposed amendments become final, pre-conviction cases involving violations of the CAA and CWA will, like cases involving other environmental statutes, be candidates for suspension and proposed debarment under 40 CFR Part 32 and 48 CFR Subpart 9.4.

The following regulatory provisions will be affected under this proposed rule.

Part 15 of Title 40 of the Code of Federal Regulations will be removed.

Part 32 of Title 40 of the Code of Federal Regulations will be amended to incorporate references to the CAA and CWA ineligibility provisions in the title, table of contents, and authorities section.

General references will be added to the purpose clauses at § 32.100(e) and the definitions of "facility" and "CAA or CWA ineligibility" will be added to the definitions at § 32.105.

New paragraphs (d) are added to §§ 32.110 (Coverage) and 32.115 (Policy), to indicate that CAA and CWA ineligibility are within the scope of this rule; and the statutory authority of agency heads to grant exceptions to CAA and CWA ineligible facilities has been added to the exceptions provisions

at § 32.215(a) according to the standards set forth in the statute.

A significant addition being proposed is a new paragraph (c) in the settlement provisions of § 32.315. The new text would state that, as part of a comprehensive settlement agreement and before a judgment of conviction is entered, the EPA debarring official may certify that the condition giving rise to the CAA or CWA violation has been corrected. Such certifications would be issued only if the Debarring Official has the same type of documentation which would be required to obtain reinstatement (under the new § 32.321) after a post-conviction CAA or CWA facility ineligibility.

A new § 32.321 is proposed which prescribes the procedures for seeking reinstatement of facility eligibility.

Finally, §§ 32.330 and 32.425 are proposed to be removed from this rule as part of EPA's effort to eliminate unnecessary regulatory provisions. These sections were part of EPA's original 1982 assistance debarment regulation and were retained when EPA published its version of the OMB Nonprocurement Governmentwide Debarment and Suspension Rule (Common Rule) in 1988. Although the Common Rule does not prescribe a "reconsideration" procedure, § 32.320(c) authorizes a debarred respondent to request, at any time, that the debarment decision be reversed or that the period or scope of a debarment be reduced. Even without this provision, EPA believes that the debarring and suspending official has inherent authority to reconsider a suspension or debarment decision.

The proposed removal of the §§ 32.330 and 32.425 reconsideration provisions will not affect a respondent's opportunity to file an appeal under §§ 32.335 and 32.430. Although also not prescribed in the OMB Common Rule, the seldom used Part 32 appeal provisions are being retained because they provide an inexpensive procedure for challenging EPA suspension and debarment determinations.

A record has been established for this rulemaking under docket number "[FRL-5219-6]" (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 217 of the EPA Fairchild Building located at 499 South Capitol Street, Washington, DC.

Electronic comments can be sent directly to EPA at: meunier.robert@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

**Rulemaking Analysis**

*B. Executive Order 12866*

This rulemaking has been determined not to be significant under EO 12866. However, it has been sent to the Office of Management and Budget for review for consistency with the OMB Common Rule.

*C. Regulatory Flexibility Act*

The EPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of OMB under 44 U.S.C. 3501 et seq.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not

apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duties on any of these governmental entities or the private sector. This proposed rule does not change the current statutory and regulatory duties that arise from conditions of federal assistance which, as defined by UMRA, do not constitute a "Federal intergovernmental mandate" or a "Federal private sector mandate." Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule would eliminate the separate procedures in 40 CFR Part 15 for administering the Clean Air Act and Clean Water Act ineligibility provisions, and incorporate simplified ineligibility procedures in EPA's existing nonprocurement suspension and debarment rules (40 CFR Part 32). None of these amended procedures would impose significant or unique regulatory requirements on small governments. Therefore, the proposed rule is not subject to section 203 of the UMRA.

**List of Subjects in 40 CFR Parts 15 and 32**

Administrative practice and procedure, Debarment and suspension, Ineligibility.

Dated: August 21, 1995.

**Alvin Peschowitz,**

*Acting Assistant Administrator, Office of Administration and Resources Management.*

For the reasons set out in the preamble, 40 CFR Parts 15 and 32 are proposed to be amended as follows:

1. Part 15 is removed.
2. The title of Part 32 is revised to read as follows:

**PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS); CLEAN AIR ACT AND CLEAN WATER ACT INELIGIBILITY OF FACILITIES IN PERFORMANCE OF FEDERAL CONTRACTS, GRANTS AND LOANS**

3. The authorities citation for part 32 is revised to read as follows:

**Authority:** EO 12549; 41 U.S.C. 701 et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4901, 6901, 7401, 9801 et seq.; EO 12689; EO 11738; Pub. L. 103-355 § 2455.

4. Section 32.100 is amended by adding new paragraph (e) as follows:

**§ 32.100 Purpose.**

\* \* \* \* \*

(e) Facilities ineligible to provide goods, materials, or services under Federal contracts, loans or assistance, pursuant to Section 306 of the Clean Air Act (CAA) or Section 508 of the Clean Water Act (CWA) are excluded in accordance with the terms of those statutes. Reinstatement of a CAA or CWA ineligible facility may be requested in accordance with the procedures at § 32.321.

5. Section 32.105 is amended by adding in alphabetical order the following definitions.

**§ 32.105 Definitions.**

\* \* \* \* \*

*CAA or CWA ineligibility.* The status of a facility which, as provided in section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), is ineligible to be used in the performance of a Federal contract, subcontract, loan, assistance award or covered transaction. Such ineligibility commences upon conviction of a facility owner, lessee, or supervisor for a violation of section 113 of the CAA or section 309(c) of the CWA, which violation occurred at the facility. The ineligibility of the facility continues until such time as the EPA Debarment Official certifies that the condition giving rise to the CAA or CWA criminal conviction has been corrected.

*Facility.* Any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations at which, or from which, a Federal contract, subcontract, loan, assistance award or covered transaction is to be performed. Where a location or site of operations contains or includes more than one building, plant, installation or structure, the entire location or site shall be deemed the facility unless otherwise limited by EPA.

\* \* \* \* \*

6. Section 32.110 is amended by adding a new paragraph (d) to read as follows:

**§ 32.110 Coverage.**

\* \* \* \* \*

(d) Except as provided in § 32.215 of this Part, Federal agencies shall not use a CAA or CWA ineligible facility in the performance of any Federal contract, subcontract, loan, assistance award or covered transaction.

\* \* \* \* \*

7. Section 32.115 is amended by revising paragraph (d) to read as follows:

**§ 32.115 Policy.**

\* \* \* \* \*

(d) It is EPA policy to exercise its authority to reinstate CAA or CWA ineligible facilities in a manner which is consistent with the policies in paragraphs (a) and (b) of this section.

\* \* \* \* \*

8. Section 32.215 is amended by revising paragraph (a) to read as follows:

**§ 32.215 Exception provision.**

\* \* \* \* \*

(a) Any agency head, or authorized designee, may except any Federal contract, subcontract, loan, assistance award or covered transaction, individually or as a class, in whole or in part, from the prohibitions otherwise applicable by reason of a CAA or CWA ineligibility. The agency head granting the exception shall notify the EPA Debarment Official of the exception as soon, before or after granting the exception, as may be practicable. The justification for such an exception, or any renewal thereof, shall fully describe the purpose of the contract or covered transaction, and show why the paramount interest of the United States requires the exception.

9. Section 32.215 is further amended by adding a new paragraph (b) to read as follows:

**§ 32.215 Exception provision.**

\* \* \* \* \*

(b) The EPA Debarment Official is the official authorized to grant exceptions under this section for EPA.

10. Section 32.315 is amended by adding a new paragraph (c) to read as follows:

**§ 32.315 Settlement and voluntary exclusion.**

\* \* \* \* \*

(c) The EPA Debarment Official may consider matters regarding present responsibility, as well as any other matter regarding the conditions giving rise to alleged CAA or CWA violations in anticipation of entry of a plea, judgment or conviction. If, at any time, it is in the interest of the United States to conclude such matters pursuant to a comprehensive settlement agreement, the EPA Debarment Official may conclude the debarment and ineligibility matters as part of any such settlement, so long as he or she certifies that the condition giving rise to the CAA or CWA violation has been corrected.

11. Section 32.321 is added to read as follows:

**§ 32.321 Reinstatement of facility eligibility.**

(a) A written petition to reinstate the eligibility of a CAA or CWA ineligible facility may be submitted to the EPA Debarment Official. The petitioner bears the burden of providing sufficient information and documentation to establish, by a preponderance of the evidence, that the condition giving rise to the CAA or CWA conviction has been corrected. If the material facts set forth in the petition are disputed, and the Debarment Official denies the petition, the petitioner shall be afforded the opportunity to have additional proceedings as provided in § 32.314(b).

(b) A decision by the EPA Debarment Official denying a petition for reinstatement may be appealed under § 32.335.

**§ 32.330 [Removed]**

12. Section 32.330 is removed.

**§ 32.425 [Removed]**

13. Section 32.425 is removed.

[FR Doc. 95-22088 Filed 9-8-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 52**

[CA 137-1-7051b; FRL-5262-4]

**Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District**

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to act on revisions to the California State Implementation Plan (SIP) which concern two negative declarations from the Mojave Desert Air Quality Management District for two volatile organic compound (VOC) source categories: Asphalt Air Blowing and Vacuum Producing Devices or Systems. The intended effect of proposing to include these negative declarations in the SIP is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is acting on the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by October 11, 1995.

**ADDRESSES:** Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the negative declarations are available for public inspection at EPA's Region 9 office and at the following locations during normal business hours.

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95812

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District, 15428 Civic Drive, Suite 200, Victorville, CA 92392-2382.