

proposes to amend 14 CFR part 71 as follows:

**PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points*, dated September 1, 2000, and effective September 16, 2000, is to be amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AAL AK E5 Cape Newenham, AK [New]**

Cape Newenham LRRS, AK

(Lat. 58°38'47" N., long. 162°03'46" W.)

That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Cape Newenham LRRS; and that airspace extending upward from 1,200 feet above the surface from lat. 58°38'00" N long. 162°18'00" W, clockwise to lat. 58°50'00" N long. 162°26'00" W, to lat. 59°14'00" N long. 162°26'00" W, to lat. 59°14'00" N long. 161°35'00" W, to lat. 59°00'00" N long. 161°35'00" W, to the point of beginning.

\* \* \* \* \*

Issued in Anchorage, AK, on September 14, 2000.

**Anthony M. Wylie,**

*Acting Manager, Air Traffic Division, Alaskan Region.*

[FR Doc. 00–24481 Filed 9–22–00; 8:45 am]

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1310**

[DEA Number 198P]

RIN 1117–AA57

**Control of Red Phosphorus, White Phosphorus and Hypophosphorous Acid (and Its Salts) as List I Chemicals**

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Comprehensive Drug Abuse Prevention and Control Act (hereinafter the “Controlled Substances

Act” or “CSA”) provides the Attorney General with the authority to specify by regulation, additional chemicals as “List I” chemicals if they are used in the manufacture of a controlled substance in violation of the CSA and are important to the manufacture of the controlled substance. Because of their use and importance in the illicit manufacture of methamphetamine, a Schedule II controlled substance, the DEA is proposing the addition of red phosphorus, white phosphorus (also known as yellow phosphorus) and hypophosphorous acid (and its salts) as List I chemicals.

These phosphorus chemicals have been identified as being important chemicals for the illicit production of methamphetamine. As List I chemicals, handlers of these materials will be subject to CSA chemical regulatory controls including registration, recordkeeping, reporting, and import/export requirements. The Drug Enforcement Administration (DEA) has determined that these controls are necessary to prevent the diversion of these chemicals to clandestine drug laboratories.

Given the small quantities and limited uses of these chemicals necessary for the production of methamphetamine, the DEA is proposing that no threshold be established for domestic and international transactions. As such, all transactions (regardless of size) shall be considered regulated transactions, subject to recordkeeping, reporting and/or import/export notification requirements.

**DATES:** Written comments must be submitted on or before November 24, 2000.

**ADDRESSES:** Comments should be submitted in triplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington D.C. 20537 at (202) 307–7183.

**SUPPLEMENTARY INFORMATION:**

**What Is the Purpose of This Notice?**

The Controlled Substances Act (CSA) and its implementing regulations, specifically 21 U.S.C. 802(34) and 21 CFR 1310.02 (c), provide the Attorney General with the authority to specify, by regulation, additional chemicals as “List I” chemicals if they are used in the manufacture of a controlled substance in violation of the CSA and are important to the manufacture of the

controlled substance. This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 and redelegated to the Deputy Administrator under 28 CFR 0.104 (Subpart R) Appendix Sec. 12.

This notice proposes the addition of red phosphorus, white phosphorus (also known as yellow phosphorus) and hypophosphorous acid (and its salts) as List I chemicals. Additionally, this notice proposes that no threshold be established for domestic and international transactions.

**What Specific Chemicals Does This Proposed Regulation Include? What Related Chemicals Will Not Be Subject to This Control Action?**

Phosphorus is a nonmetallic element that can occur in three main allotropic (*i.e.* crystalline) forms (white, red and black). Elemental phosphorus is derived from phosphate rock. The most abundant variety produced is white phosphorus (also known as yellow phosphorus). Most other forms of phosphorus and phosphorus chemicals are produced from white phosphorus. The white form is extremely flammable and toxic and must be stored and shipped in water.

The second crystalline form is red phosphorus. Red phosphorus is usually prepared as a powder and is more stable and less toxic than the white form. A black crystalline form of phosphorus is also occasionally made and is similar to graphite in its physical, thermal and electrical properties.

The DEA is proposing that the white and red forms of elemental phosphorus be designated as List I chemicals. Black phosphorus and phosphate rock will not be affected by this proposed action.

Additionally, the DEA is proposing to designate hypophosphorous acid and its salts as List I chemicals. While hypophosphorous acid (H<sub>3</sub>PO<sub>2</sub>) is most commonly sold as 10%, 30% or 50% solutions, the DEA is proposing the control of all aqueous dilutions of hypophosphorous acid. Salts of hypophosphorous acid are known as hypophosphite salts. The DEA is also proposing that these salts be included as List I chemicals. Examples of these salts include: ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite and sodium hypophosphite. Sodium hypophosphite is the most commercially available salt and is distributed in a white crystalline form.

### **What Is Phosphorus Used for and How Large Is the Industry?**

DEA's research indicates that there are currently only two domestic producers of elemental phosphorus. The primary material derived from phosphate rock is white phosphorus. Other forms of phosphorus and other phosphorus chemicals are manufactured from white phosphorus. DEA obtained 1998 and 1999 sales data from both producers. Over a two-year period, the two firms had only a few customers. Each customer appears to be a large industrial firm.

The DEA reviewed independent data for 1997 indicating that approximately 250,000 metric tons of elemental phosphorus were consumed in the U.S. Most consumers are large entities, which primarily use elemental phosphorous in the manufacture of phosphorous chemicals not impacted by this proposed regulation.

White phosphorus is primarily used to produce phosphoric acid and other phosphorus compounds including phosphorus trichloride and phosphorous pentasulfide and phosphorus pentoxide. Over 98% of the annual U.S. phosphorus demand is used in the production of these four compounds, none of which is subject to this proposed action.

Industrial uses of red phosphorus include the manufacture of pyrotechnics, safety matches, phosphoric acid and other phosphorus compounds, fertilizers, incendiary shells, smoke bombs, tracer bullets, and pesticides. Very small volumes are used to produce ultra-high-purity phosphorus semiconductor grades) for application in the electronics industry.

Hypophosphorous acid is commonly used by large industry as a bleaching, color stabilization or decoloring agent for plastics, synthetic fibers (primarily polyester) and chemicals. It is also used in the preparation of hypophosphite salts, which are in turn used in synthetic fibers as wetting agents, dispersing agents, anti-static agents and emulsifying agents. Hypophosphorous acid is also used as a chemical intermediate in organic syntheses and as a polymerization and polycondensation catalyst. It also has applications as a reducing agent and as an antioxidant.

The two most common salts of hypophosphorous acid are sodium hypophosphite and manganese hypophosphite. The sodium salt is used primarily in electroless nickel plating. It is also used as a reducing agent, analytical reagent, polymerization catalyst, polymer stabilizer, and fire retardant. While the manganese salt is

used primarily in nylon fiber production, it also has application as a chemical intermediate. The DEA has identified two manufacturers of sodium hypophosphite in the United States.

### **Why Does the DEA Believe That Control of Red Phosphorus, White Phosphorus, and Hypophosphorous Acid (and Its Salts) Is Necessary?**

The DEA has identified these chemicals as being used in the illicit production of methamphetamine. The public health consequences of the manufacture, trafficking, and abuse of methamphetamine are well known and documented.

These phosphorus chemicals play an important role in the chemical reaction to produce methamphetamine. A review of the 50 largest methamphetamine laboratories seized by DEA in 1998 was recently conducted. The study revealed that in those instances where the production method could be ascertained, red phosphorus was used in 87% of these laboratories. Additionally, a review of calendar years 1998-1999 clandestine laboratory seizure data (reported by the El Paso Intelligence Center and the Western States Information Network) indicated that more than 3750 seized methamphetamine laboratories were confirmed as utilizing phosphorus.

The majority of clandestine methamphetamine laboratories seized in the U.S. utilize phosphorus chemicals as catalysts to drive the chemical conversion of ephedrine or pseudoephedrine to methamphetamine. Since catalysts are necessary for the preferred method used by illicit laboratory operators, these phosphorus chemicals are important to the production of methamphetamine.

While the vast majority of these laboratories utilized red phosphorus, DEA is aware that a number of seized laboratories have used white phosphorus. DEA believes that the use of white phosphorus is under-reported. Many forensic laboratories do not differentiate samples as being white versus red phosphorus. These analytical laboratories have historically identified seized material simply as 'phosphorus'.

The Idaho State Police, however, have closely monitored the illicit use of white phosphorus. Their information indicates that in southeastern Idaho, white phosphorus is frequently encountered in methamphetamine laboratories. From 1997 through the first quarter of 2000, 86 methamphetamine laboratories were seized in this region of Idaho. White phosphorus was encountered at 35 of these laboratories; red phosphorus was encountered at 27 laboratories and the

type of phosphorus was not identified at 24 of these laboratories.

Recently the DEA has noted a small but increasing use of hypophosphorous acid at seized clandestine laboratories. During 1998, the DEA identified a total of only six methamphetamine laboratories utilizing hypophosphorous acid. In 1999, the DEA documented an additional 48 laboratories utilizing hypophosphorous acid. The trend continues into calendar year 2000.

The DEA has also noted that detailed recipes describing the production of methamphetamine (using red phosphorus, white phosphorus and hypophosphorous acid) are being disseminated on the Internet. If red phosphorus alone is controlled, DEA has concluded that clandestine laboratory operators would rapidly move to white phosphorus and hypophosphorous acid. This would be an undesired consequence, since both the white phosphorus and hypophosphorous acid methods of illicit methamphetamine production are significantly more hazardous methods. White phosphorus is much more flammable and toxic than red phosphorus. If not stored in a solution, white phosphorus spontaneously combusts. The hypophosphorous acid method is also extremely hazardous since it produces phosphine gas. If not confined within the reaction vessel, ingestion of this poisonous gas can result in death. Therefore, use of these alternate methods poses increased hazards for both law enforcement and for the public.

Based on analysis of chemistry and actual illicit use, DEA finds that these three chemicals are important to the manufacture of methamphetamine and therefore meet the definition of List I chemicals. Hence, this Notice proposes that these chemicals be subject to CSA regulatory controls for List I chemicals, including registration, recordkeeping, reporting, and import/export requirements as specified in 21 CFR parts 1309, 1310 and 1313. DEA believes that these regulatory controls are needed to prevent the diversion of these phosphorus chemicals to clandestine laboratories.

### **What Regulatory Controls Will Apply to These Chemicals?**

As List I chemicals, red phosphorus, white phosphorus, and hypophosphorous acid and its salts will become subject to the chemical regulatory control provisions and civil and criminal sanctions of the CSA. As such, recordkeeping, reporting and import/export notification requirements (as described in 21 U.S.C. 830 and 971

and 21 CFR parts 1310 and 1313) shall apply. Manufacturers, distributors, importers and exporters of white phosphorus, red phosphorus and hypophosphorous acid (and its salts) will be required to register with the DEA pursuant to 21 U.S.C. 822 and 823 and 21 CFR part 1309.

Handlers of these chemicals will also be required to maintain records and meet CSA import/export notification requirements for "regulated transactions" of these chemicals. The CSA (21 U.S.C. 802(39)) defines the term "regulated transaction" as a "distribution, receipt, sale, importation, or exportation of, or an international transaction involving the shipment of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical," a transaction involving a threshold amount". The CSA, therefore, provides the Attorney General with authority to establish a threshold amount for "listed chemicals" if the Attorney General so elects.

#### **Why Is No Threshold Being Established?**

As noted above, these chemicals are used as catalysts in the illicit synthesis of methamphetamine. Therefore, the manufacture of methamphetamine requires only small quantities of these chemicals.

DEA has not been able to identify any household uses for red phosphorus, white phosphorus or hypophosphorous acid and its salts. However, these materials are being distributed in small quantities via Internet on-line auctions and through chemical supply houses directly to consumers. It is common to find 500 ml bottles of hypophosphorous acid or multi-ounce quantities of red phosphorus repackaged in unlabeled bags at seized laboratories.

Therefore the DEA believes that all transactions should be regulated, regardless of size, to prevent the diversion of these phosphorus chemicals to clandestine laboratories. This notice proposes, therefore, that no threshold be established for domestic and international transactions.

#### **What Steps Has the DEA Taken To Solicit Information From the Legitimate Phosphorus Industry?**

DEA recognizes that these chemicals have legitimate industrial uses and that regulation of these phosphorus chemicals may have some effect upon certain industries. Therefore, DEA has sought information on the phosphorus chemical trade so that diversion of these chemicals may be prevented with minimal impact on legitimate industry.

Since red phosphorus was the phosphorus chemical most frequently encountered in clandestine methamphetamine laboratories, the DEA initially published an Advance Notice of Proposed Rulemaking on February 2, 2000 (65 FR 4913) to solicit input from potentially affected parties regarding: (1) The nature of the legitimate red phosphorus industry; (2) the legitimate uses of red phosphorus at all levels of distribution (including industrial uses and use by individual end-users at the retail level of distribution); (3) the potential burden such regulatory controls may have on legitimate industry (particularly with respect to the impact on small businesses); (4) the potential number of individuals/firms which may be adversely affected by increased regulatory requirements; and (5) any other information on the manner of manufacturing, distribution, consumption, storage, disposal, and uses of red phosphorus by industry and others. Both quantitative and qualitative data were invited.

The DEA did not receive any comments or input from the phosphorus industry in response to this Notice. The DEA did receive six comments from law enforcement entities and two comments from Federal prosecutors in support of the control of red phosphorus as a listed chemical.

Since laboratory seizure data sparked concerns over the illicit use of white phosphorus and hypophosphorous acid, the DEA broadened the scope of its research to include the entire phosphorus chemical industry. Since no industry input was received in response to the Advance Notice of Proposed Rulemaking, DEA directly contacted domestic producers of elemental phosphorus and importers of phosphorus chemicals.

#### **What Portion of the Phosphorus Industry Is Potentially Impacted by This Regulation? Why Does DEA Believe That This Regulation Will Not Impose a Significant Burden on a Substantially Large Number of Firms?**

DEA has identified only two domestic producers of white phosphorus. While producers of white phosphorus will be required to register with DEA and maintain records of each regulated transaction (*i.e.* all transactions of these chemicals), over 98% of the phosphorus distributed by these two producers is eventually converted to a form not impacted by this proposed regulation. Handlers which acquire phosphorus and convert it to non-regulated forms will not be subject to CSA regulatory requirements.

The remaining 2% of the phosphorus (used domestically) is utilized in its elemental form (*i.e.* as red phosphorus or white phosphorus) or used to produce all other phosphorus chemicals including sodium hypophosphite and hypophosphorous acid. Therefore, this proposed regulation will only affect the distribution of less than 2% of the industry at the end user level. It is believed that there are few firms handling these regulated forms (*i.e.* red phosphorus, white phosphorus and hypophosphorous acid and its salts.) Additionally, it appears that these chemicals have only industrial uses. The DEA has not been able to identify any 'household' uses for red phosphorus, white phosphorus, or hypophosphorous acid (and its salts).

In an effort to better estimate the potential impact of this proposed action, the DEA conducted an analysis of various data sources relating to the manufacture, distribution, and use of phosphorus, hypophosphorous acid, and the hypophosphites. This included an analysis of current chemical producers and marketing directories (to identify companies listing themselves as sources of these chemicals). In addition, Material Safety Data Sheets (MSDSs) were collected. Companies creating MSDSs for chemicals are likely to manufacture or distribute the chemicals.

DEA also examined Environmental Protection Agency (EPA) reporting requirements pertaining to phosphorus, hypophosphorous acid, and the hypophosphites. Of the three chemicals subject to this proposed rule, only phosphorus is regulated under programs that require reporting to EPA. Phosphorus is covered by the Toxic Release Inventory (TRI) program, which requires an annual report to EPA listing the maximum quantity on site, the uses of the chemical, releases to the environment, and transfers offsite. The TRI data have the advantage that they provide information on the quantity of a chemical transferred offsite as a waste, and the name of the offsite treatment facility. The last element is important because, while there are few manufacturers of the chemical, there are users who may come under the proposed regulations because they distribute the chemical to waste treatment facilities.

Phosphorus is also subject to Department of Transportation (DOT) hazardous material ("hazmat") regulations so that interstate and intrastate transportation require shipping papers. Additionally, hypophosphorous acid is covered in interstate commerce. The MSDSs located for the hypophosphites indicate

that they are not covered by the DOT hazmat rules.

The analysis concluded that there are only two bulk manufacturers of phosphorus, most of whose product is sold to chemical manufacturers or exported. A limited number of other facilities manufacture phosphorus as a by-product or import phosphorus. The hypophosphites are similarly produced by very few facilities. The analysis identified two main producers of the hypophosphites. Additionally, two producers of hypophosphorous acid were identified. One of the two producers recently acquired the other. Therefore, only five manufacturers are likely to be affected by this proposed regulation.

A review of chemical marketing directories identified at least 39 companies, other than the manufacturers, that claim to sell these substances.

In 1998, 53 facilities reported to EPA for phosphorus. Most of these companies would not be required to register with DEA unless they sell phosphorus or transfer it offsite. Twenty-one of the 53 facilities reporting phosphorus under TRI sent phosphorus offsite to 30 separate places for treatment as waste. Many of the transfers were for recovery or recycling and a few were for disposal in landfills. A few reported releasing the substance to publicly owned treatment works (*i.e.*, wastewater treatment).

This waste material would likely be considered a chemical mixture containing phosphorus. While chemical mixtures are currently exempt from CSA chemical regulatory requirements, the DEA is preparing regulations pertaining to such mixtures.

This proposed regulation is not considered to have an impact upon a substantial number of firms, given the limited distribution of these three chemicals. Additionally, it is likely that the CSA recordkeeping requirements are already being met as part of normal business practice. For phosphorus, compliance with EPA and DOT regulations should document distributions to customers and offsite waste transfers. Hypophosphorous acid shipments should be documented, but shipments of the hypophosphites may not be. Nonetheless, it is likely that chemical distributors do maintain records of shipments and customers even if shipping papers are not required.

#### How Many Importers and Exporters Are Potentially Affected?

According to 1999 maritime data (as reported by the Pier Import Export Reporting Service), imports of

phosphorus chemicals into the U.S. totaled 101 shipments for a total of 2,500 metric tons to 36 different firms. U.S. exports totaled approximately 180 shipments of 4,300 metric tons by 32 firms.

Prior to preparing this proposal the DEA also solicited information directly from importers. This data indicated that most all the material appeared to be for large industrial uses.

#### As Part of This Proposed Rulemaking, the DEA Again Invites Input Regarding the Legitimate Uses for These Chemicals

This notice solicits input regarding: (1) The nature of the legitimate phosphorus industry; (2) the legitimate uses of phosphorus at all levels of distribution (including industrial uses and use by individual end-users at the retail level of distribution); (3) the potential impact such regulatory controls may have on legitimate industry (particularly with respect to the impact on small businesses); (4) the potential number of individuals/firms which may be affected by increased regulatory requirements; and (5) any other information on the manner of manufacturing, distribution, consumption, storage, disposal, and uses of phosphorus by industry and others. Comments must be submitted on or before November 24, 2000.

The Deputy Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It will not have a significant economic impact on a substantial number of small business entities.

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not

significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

#### List of Subjects in 21 CFR Part 1310

Drug Traffic Control, Reporting and Recordkeeping Requirements.

For reasons set out above, it is proposed that 21 CFR Part 1310 be amended as follows:

#### PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

**Authority:** 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is proposed to be amended by adding a new paragraph (a)(25) through (27) to read as follows:

#### § 1310.02 Substances covered.

\* \* \* \* \*

(a) \* \* \*

(25) Red phosphorus—6795

(26) White phosphorus (Other names: Yellow Phosphorus)—6796

(27) Hypophosphorous acid and its salts (Including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite and sodium hypophosphite)—6797

3. Section 1310.04 is proposed to be amended by adding new paragraphs (g)(1)(ii) to (g)(1)(iv) to read as follows:

#### § 1310.04 Maintenance of Records.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(ii) Red phosphorus

(iii) White phosphorus (Other names: Yellow Phosphorus)

(iv) Hypophosphorous acid and its salts

\* \* \* \* \*

Dated: August 30, 2000.

**Julio F. Mercado,**

*Deputy Administrator.*

[FR Doc. 00-24553 Filed 9-22-00; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 926

[SPATS No. MT-021-FOR]

#### Montana Abandoned Mine Land Reclamation Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Montana abandoned mine land reclamation (AMLR) plan (hereinafter, the "Montana plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposes revisions to a statute about AMLR reclamation, proposes deletion of the AMLR rules in the Administrative Rules of Montana (ARM), and proposes a plan of reorganization of the AMLR program. Montana intends to revise its AMLR plan to be consistent with SMCRA, meet the requirements of the Federal regulations, and improve operational efficiency.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.d.t., October 25, 2000. If requested, we will hold a public hearing on the amendment on October 20, 2000. We will accept requests to speak until 4 p.m., m.d.t., October 10, 2000.

**ADDRESSES:** You should mail, hand deliver, or e-mail written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the Montana plan, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 261-6550.

Vic Anderson, Chief, Mine Waste Cleanup Bureau, Remediation Division, Montana Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 20091, Helena, MT 59620-0901, Telephone: (406) 444-4972.

Steve Welch, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, MT 59620-0901, Telephone: (406) 444-4964.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (307) 261-6550, Internet address: gpadgett@osmre.gov.

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the Montana Plan.
- II. Description of the Proposed Amendment.
- III. Public Comment Procedures.
- IV. Procedural Determinations.

#### **I. Background on the Montana Plan**

On November 24, 1980, the Secretary of the Interior conditionally approved the Montana plan as administered by the Department of State Lands. You can find general background information on the Montana plan, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Montana plan in the October 24, 1980, **Federal Register** (45 FR 70445). You can also find later actions concerning Montana's plan and plan amendments at 30 CFR 926.21 and 926.25.

#### **II. Description of the Proposed Amendment**

By letter dated August 15, 2000, Montana sent us a proposed amendment to its plan (SPATS No. MT-021-FOR, Administrative Record No. MT-18-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to the required plan amendment at 30 CFR 926.21(a) and at its own initiative. The full text of the plan amendment is available for you to read at the locations listed above under **ADDRESSES**.

Montana proposes to delete its AMLR rule definitions of "abandoned mine land reclamation fund," "emergency," and "extreme danger" at ARM 26.4.301 and its definitions of "abandoned mine land reclamation fund," "emergency," "expended," "extreme danger," "fund," "left or abandoned in either an unreclaimed or inadequately reclaimed condition," "Montana abandoned mine

reclamation program," and "reclamation activities" at ARM 26.4.1231.

Montana proposes to delete the AMLR rules at ARM 26.41232 through 26.41242, which concern the AMLR fund, eligible lands and water, reclamation objectives and priorities, reclamation project evaluation, consent to enter lands, land eligible for acquisition, procedures for acquisition, acceptance of gifts of land, management of acquired lands, disposition of reclaimed lands, and reclamation on private land.

In lieu of the deleted rules, Montana intends to rely on the requirements of its AMLR plan and on the statutory provisions at Montana Code Annotated (MCA) 82-4-239, 82-4-371, and 82-4-445. Montana proposes to revise MCA 82-4-239 to reflect the reorganized duties of the Board of Environmental Review and Department of Environmental Quality. Montana has changed the wording to delete "Board" and insert "Department" as appropriate. These proposed revisions are the same as those proposed by Montana on May 16, 1995 (SPATS No. MT-017-FOR, Administrative Record No. MT-14-01). At that time, OSM found no problems with the revisions to MCA 82-4-239 but deferred a decision on it due to a lack of information concerning the 1995 Montana reorganization and its impact on the AMLR plan. (For more information, see final rule **Federal Register** notice, 64 FR 3604, dated January 22, 1999.)

Lastly, in this amendment, Montana presents its 1995 reorganization moving the AMLR program from the Department of State Lands to the Department of Environmental Quality.

#### **III. Public Comment Procedures**

Under the provisions of 30 CFR 884.15(a), OSM requests your comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Montana plan.

#### *Written Comments*

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Casper Field Office.