

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[FRL-5847-9]

**National Oil and Hazardous Substances Pollution Contingency Plan; Involuntary Acquisition of Property by the Government****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of congressional reinstatement of regulations.

**SUMMARY:** On September 30, 1996, the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act ("Asset Conservation Act" or "Act"), 110 Stat. 3009-462 (1996), reinstated regulations pertaining to liability under the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA), for the involuntary acquisition of property by governmental entities. The regulations were codified at 40 CFR 300.1105 in 1992, but were subsequently vacated by the U.S. Court of Appeals for the District of Columbia.

**EFFECTIVE DATE:** September 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Laura Bulatao, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency, 401 M St., SW (mail code 2273-A), Washington, DC 20460 (202-564-6028).

**SUPPLEMENTARY INFORMATION:** In 1992, EPA issued its "Final Rule on Lender Liability Under CERCLA" ("CERCLA Lender Liability Rule" or "Rule"), 57 FR 18344 (April 29, 1992). In addition to addressing lender liability, the rule clarified the language of Section 101(20)(D) of CERCLA, 42 U.S.C. 9601(20)(D), which provides an exemption from the definition of "owner or operator" for certain government entities that involuntarily acquire property, and Section 101(35)(A) of CERCLA, 42 U.S.C. 9601(35)(A), which pertains to the "third-party" defense potentially available to government entities that involuntarily acquire property. The Rule was codified at 40 CFR 300.1100 and 300.1105.

In 1994, the U.S. Court of Appeals for the District of Columbia Circuit vacated the rule. *Kelley v. EPA*, 15 F.3d 1100 (D.C. Cir. 1994), reh'g denied, 25 F.3d 1088 (D.C. Cir. 1994), cert. denied, *American Bankers Ass'n v. Kelley*, 115 S. Ct. 900 (1995). Consequently, in 1995,

EPA removed the Rule from the Code of Federal Regulations. "Final Rule on Removal of Legally Obsolete Rules," 60 FR 33912, 33913 (June 29, 1995).

In 1996, Section 2504 of the Asset Conservation Act reinstated, effective September 30, 1996, the portion of the rule that addresses involuntary acquisitions by government entities. Additionally, Section 2504 of the Act provides that any reference in the now reinstated portion of the rule (40 CFR 300.1105) to the remaining portion of the vacated rule (40 CFR 300.1100) shall be deemed to be a reference to CERCLA's secured creditor exemption as amended by the Asset Conservation Act. See 42 U.S.C. 9601(20) (E)-(G).

This document also corrects a typographical error in the Rule as published on April 29, 1992. In 40 CFR 300.1105(a)(1), the word "virtue" appeared incorrectly as "virture."

**List of Subjects in 40 CFR Part 300**

Environmental protection, Hazardous substances, Intergovernmental relations, Superfund.

Dated: June 19, 1997.

**Steven A. Herman,**

*Assistant Administrator, Office of Enforcement and Compliance Assurance.*

For the reasons set forth in the preamble, 40 CFR part 300 is amended as follows:

**PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. By adding subpart L to read as follows:

**Subpart L—National Oil and Hazardous Substances Pollution Contingency Plan; Involuntary Acquisition of Property by the Government**

Sec.

300.1105 Involuntary acquisition of property by the government.

**Subpart L—National Oil and Hazardous Substances Pollution Contingency Plan; Involuntary Acquisition of Property by the Government****§ 300.1105 Involuntary acquisition of property by the government.**

(a) Governmental ownership or control of property by involuntary

acquisitions or involuntary transfers within the meaning of CERCLA section 101(20)(D) or section 101(35)(A)(ii) includes, but is not limited to:

(1) Acquisitions by or transfers to the government in its capacity as a sovereign, including transfers or acquisitions pursuant to abandonment proceedings, or as the result of tax delinquency, or escheat, or other circumstances in which the government involuntarily obtains ownership or control of property by virtue of its function as sovereign;

(2) Acquisitions by or transfers to a government entity or its agent (including governmental lending and credit institutions, loan guarantors, loan insurers, and financial regulatory entities which acquire security interests or properties of failed private lending or depository institutions) acting as a conservator or receiver pursuant to a clear and direct statutory mandate or regulatory authority;

(3) Acquisitions or transfers of assets through foreclosure and its equivalents (as defined in 40 CFR 300.1100(d)(1)) or other means by a Federal, state, or local government entity in the course of administering a governmental loan or loan guarantee or loan insurance program; and

(4) Acquisitions by or transfers to a government entity pursuant to seizure or forfeiture authority.

(b) Nothing in this section or in CERCLA section 101(20)(D) or section 101(35)(A)(ii) affects the applicability of 40 CFR 300.1100 to any security interest, property, or asset acquired pursuant to an involuntary acquisition or transfer, as described in this section.

Note to paragraphs (a)(3) and (b) of this section: Reference to 40 CFR 300.1100 is a reference to the provisions regarding secured creditors in CERCLA sections 101(20)(E)-(G), 42 U.S.C. 9601(20)(E)-(G). See Section 2504(a) of the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act, Public Law, 104-208, 110 Stat. 3009-462, 3009-468 (1996).

[FR Doc. 97-16756 Filed 6-25-97; 8:45 am]

BILLING CODE 6560-50-P