8-10-82
Vol. 47 No. 154
Pages 34509-34768

federal register

Tuesday
August 10, 1982

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Federal Grain Inspection Service

Air Pollution Control
Environmental Protection Agency

Alcohol and Alcoholic Beverages
Defense Department

Animal Drugs
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Presidential Documents

Title 3—

The President

Executive Order 12377 of August 6, 1982

Joint Mexican-United States Defense Commission

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to add a member of the Marine Corps to the Joint Mexican-United States Defense Commission, it is hereby ordered that the third paragraph of Executive Order No. 9080 of February 27, 1942, as amended by Executive Order No. 10692 of December 22, 1956, is further amended to read as follows:

"The United States membership of the Commission shall consist of an Army member, a Navy member, an Air Force member, and a Marine Corps member, each of whom shall be designated by the Secretary of Defense and serve during the pleasure of the Secretary. The Secretary shall designate from among the United States members the chairman thereof and may designate alternate United States members of the Commission.".

Ronald Reagan

THE WHITE HOUSE,
August 6, 1982.

[FR Doc. 82-21772
Filed 8-6-82; 4:17 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12378 of August 6, 1982

President's Committee on the Arts and the Humanities

By the authority vested in me as President by the Constitution of the United States of America, and in order to increase the membership of the President's Committee on the Arts and the Humanities by one, it is hereby ordered that the last sentence of Section 1(a) of Executive Order No. 12367 of June 15, 1982, is amended by substituting a comma for "and" immediately after "Smithsonian Institution" and by adding "and the Chairman of the Board of Trustees of the John F. Kennedy Center for the Performing Arts" immediately after "National Gallery of Art".

Ronald Reagan

THE WHITE HOUSE,
August 6, 1982.

[FR Doc. 82-21773
Filed 8-6-82; 4:18 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Kiwifruit [1]

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes voluntary U.S. Standards for Grades of Kiwifruit. This action has been taken at the request of the Kiwifruit Growers of California and California Kiwifruit Commission. These standards will provide industry with a uniform basis for trading which will assist in the promotion of orderly, efficient marketing.

EFFECTIVE DATE: September 9, 1982.

FOR FURTHER INFORMATION CONTACT: Francis J. O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2188.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as a non-major rule.

Effect on Small Entities

Eddie F. Kimbrell, Deputy Administrator, Commodity Services, Agricultural Marketing Service, has determined this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because it reflects current marketing practices.

Background

For many years the only kiwifruit available in this country was imported, primarily from New Zealand. Within the last few years commercial production began in this country. California, presently the leading producer, has over 3,000 acres under cultivation. A substantial part of this crop is being marketed internationally. Grade standards will provide this rapidly growing industry with standards similar to those used extensively by the fresh produce industry to assist in the orderly marketing of many commodities.

In February 1980 the Kiwifruit Growers of California and the California Kiwifruit Commission formally requested the Department to develop grade standards for kiwifruit. A "Market Survey To Consider Issuance of United States Standards for Grades of Kiwifruit" was developed in cooperation with industry and distributed for comment to interested persons in November of 1980. Comments received were generally favorable.

The proposed rule for establishing voluntary grade standards for kiwifruit was published in the **Federal Register** on November 20, 1981 (46 FR 57023). Copies of the proposed rule were widely distributed to interested persons for comment.

Comments

Seventeen responses were received during the period for comment which ended February 25, 1982. The comments were in general agreement with the requirements of the standards as proposed. Except for a few minor changes, editorial and those mutually agreed upon, the proposed rule remains essentially unchanged.

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products (Inspection, Certification and Standards).

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

Accordingly, United States Standards for Grades of Kiwifruit are established and codified as 7 CFR 51.2335 through 2340 and read as follows:

* * * * *

Subpart—United States Standards for Grades of Kiwifruit

Sec.

51.2335 Grades.
51.2336 Tolerances.
51.2337 Application of tolerances.
51.2338 Standard pack.
51.2339 Definitions.
51.2340 Classification of defects.

§ 51.2335 Grades.

(a) "U.S. Fancy" consists of kiwifruit which meet the following requirements:
(1) Basic Requirements:
(i) Similar varietal characteristics;
(ii) Mature;
(iii) Not soft, overripe, or shriveled;
(iv) Carefully packed;
(v) Clean; and,
(vi) Well formed.
(2) Free From:
(i) Worm holes;
(ii) Broken skins which are not healed;
(iii) Sunscald;
(iv) Freezing injury;
(v) Internal breakdown; and,
(vi) Decay.
(3) Free From Injury By:
(i) Bruises;
(ii) Leaf or limbrubs;
(iii) Discoloration;
(iv) Hail;
(v) Growth cracks;
(vi) Scab;
(vii) Scars;
(viii) Heat, sprayburn, or sunburn;
(ix) Scale;
(x) Insects;
(xi) Other diseases; and,
(xii) Mechanical or other means.
(4) Tolerances. (See § 51.2336):
(b) "U.S. No. 1" consists of kiwifruit which meet the following requirements:
(1) Basic Requirements:
(i) Similar varietal characteristics;
(ii) Mature;
(iii) Not soft, overripe, or shriveled;
(iv) Carefully packed;
(v) Clean; and,
(vi) Fairly well formed.
(2) Free From:
(i) Worm holes;
(ii) Broken skins which are not healed;
(iii) Sunscald;
(iv) Freezing injury;
(v) Internal breakdown; and,
(vi) Decay.
(3) Free From Damage By:

[1] Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

(i) Bruises;
(ii) Leaf or limbrubs;
(iii) Discoloration;
(iv) Hail;
(v) Growth cracks;
(vi) Scab;
(vii) Scars;
(viii) Heat, sprayburn, or sunburn;
(ix) Scale;
(x) Insects;
(xi) Other diseases; and,
(xii) Mechanical or other means.
(4) Tolerances. (See § 51.2336):
(c) "U.S. No. 2" consists of kiwifruit which meet the following requirements:
(1) Basic Requirements:
(i) Similar varietal characteristics;
(ii) Mature;
(iii) Not soft, overripe, or shriveled;
(iv) Carefully packed;
(v) Fairly clean; and,
(vi) Not badly misshapen.
(2) Free From:
(i) Worm holes;
(ii) Broken skins which are not healed;
(iii) Sunscald;
(iv) Freezing injury;
(v) Internal breakdown; and,
(vi) Decay.
(3) Free From Serious Damage By:
(i) Bruises;
(ii) Leaf or limbrubs;
(iii) Discoloration;
(iv) Hail;
(v) Growth cracks;
(vi) Scab;
(vii) Scars;
(viii) Heat, sprayburn, or sunburn;
(ix) Scale;
(x) Insects;
(xi) Other diseases; and,
(xii) Mechanical or other means.
(4) Tolerances. (See § 51.2336)

§ 51.2336 Tolerances.

In order to allow for variations incident to proper grading and handling, the following tolerances by count, shall be permitted in any lot:

(a) U.S. Fancy and U.S. No. 1.

(1) For defects at shipping point.[2] 8 percent for fruit which fail to meet the requirements of the specified grade: *Provided,* That included in this amount not more than 4 percent shall be allowed for defects causing serious damage, including in this latter amount not more than 1 percent for fruit affected by internal breakdown or decay.

(2) For defects en route or at destination. 12 percent for fruit which fail to meet the requirements of the specified grade: *Provided,* That included in this amount not more than the following percentages shall be allowed for defects:

(i) 8 percent for permanent defects;

(ii) 6 percent for defects causing serious damage, including therein not more than 4 percent for serious damage by permanent defects and not more than 2 percent for fruit affected by internal breakdown or decay.

(b) U.S. No. 2

(1) For defects at shipping point.[2] 8 percent for fruit which fail to meet the requirements of this grade: *Provided,* That included in this amoung not more than 4 percent shall be allowed for sunscald, insects, internal breakdown or decay, including in this latter amount not more than 1 percent for fruit affected by internal breakdown or decay.

(2) For defects en route or at destination. 12 percent for fruit which fail to meet the requirements of this grade: *Provided,* That included in this amount not more than the following percentages shall be allowed for defects:

(i) 8 percent for permanent defects including therein not more than 4 percent for sunscald, or insects; and,

(ii) 2 percent for internal breakdown or decay.

§ 51.2337 Application of tolerances.

The contents of individual containers in a lot, based on sample inspection, are subject to the following limitations:

(a) A cotainer may contain not more than double any specified tolerance except that at least two defective specimens may be permitted in any container: *Provided,* That the averages for the lot are within the tolerances specified for the grade.

§ 51.2338 Standard pack.

(a) Fruit shall be fairly uniform in size and shall be packed in boxes, flats, lugs, or cartons and arranged according to approved and recognized methods. Containers shall be well filled; contents tightly packed but not be excessively or unnecessarily bruised by overfilling or oversizing. Fruit in the shown face of the container shall be reasonably representative in size and quality of the contents.

(b) When packed in closed containers the size shall be indicated by marking the container with the numerical count.

(c) Boxes, flats, lugs, or cartons:

(1) Fruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed, and conform to the marked count.

(2) In order to allow for variations incident to proper packing in other types of containers, for example, lugs, cartons, or boxes, the number of fruit shall not vary more than two from the marked count.

(d) "Fairly uniform in size" means the fruit in any container may not vary more than ¼ inch (6.4 mm) in diameter.

(e) "Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

(f) In order to allow for variations incident to proper sizing and packing, not more than 10 percent, by count, of containers in any lot may fail to meet these requirements.

§ 51.2339 Definitions.

"Similar varietal characteristics" means the fruit in any lot and container are similar in shape, color of skin and flesh.

"Mature" means the fruit has reached the stage of development which will ensure the proper completion of the ripening process. The minimum average soluble solids, unless otherwise specified, shall be not less than 6.5 percent.

"Clean" means the fruit is practically free from dirt, dust, or other foreign material.

"Fairly clean" means the fruit is reasonably free from dirt, dust, or other foreign material.

"Well formed" means the fruit has the shape characteristic of the variety and slight bumps or other roughness are permitted providing they do not detract from appearance.

"Fairly well formed" means the fruit has the shape characteristic of the variety but slight bumps or other roughness are permitted providing they do not materially detract from appearance.

"Badly misshapen" means the fruit is so decidely deformed that its appearance is seriously affected.

"Carefully packed" means the fruit shows no evidence of rough handling.

"Injury" means any defect described in § 51.2340, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which more than slightly detracts from the appearance, or the edible or marketing quality.

"Damage" means any defect described in § 51.2340 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality.

"Serious damage" means any defect described in § 51.2340 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously

[2] Shipping point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

detracts from the appearance, or the edible or marketing quality.

"Permanent defects" means those which are not subject to change during shipment or storage, for example, shape, scars, or growth cracks.

"Condition defects" means those defects which are subject to change during shipment or storage, for example, decay, soft, shriveling, discoloration, or bruises.

§ 51.2340 Classification of defects.

Defects	Injury	Damage	Serious damage
Bruises	When any slight indentation of the fruit or discoloration of the flesh extends more than 1/16 inch (1.6 mm) in depth.	When surface of fruit is indented and discoloration of the flesh extends deeper than 1/8 inch (3.2 mm), or causing slight discoloration exceeding the area of a circle 3/8 inch (9.5 mm) in diameter, or lesser bruises aggregating an area of a circle 3/8 inch (9.5 mm) in diameter which materially detract from the appearance, edible or shipping quality.	When surface of the fruit is indented and discoloration of the flesh extends deeper than 1/4 inch (6.4 mm), or causing discoloration exceeding the area of a circle 1/2 inch (12.7 mm) in diameter, or lesser bruises which seriously detract from the appearance, edible or shipping quality.
Leaf or Limbrubs	When not smooth, or not light colored, or aggregating more than the area of a circle 3/8 inch (9.5 mm) in diameter.	When not smooth, or not light colored, or aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter.	When smooth and light colored and aggregating more than the area of a circle 1-1/2 inches (38.1 mm) in diameter, or dark or slightly rough and barklike scars aggregating more than the area of a circle 3/4 inch (19.1 mm) in diameter.
Discoloration	When color and pattern causes a distinct noticeable appearance (except for water staining) affecting more than 5% of surface.	When color and pattern causes an unattractive appearance (except for water staining) affecting more than 10% of surface.	When color and pattern causes a distinct unattractive appearance (except for water staining) affecting more than 25% of surface.
Hail Injury	When unhealed or deep, or aggregating more than the area of a circle 1/4 inch (6.4 mm) in diameter.	When unhealed or deep, or aggregating more than the area of a circle 1/4 inch (6.4 mm) in diameter.	When unhealed or deep, or aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter.
Growth Cracks	When not healed, or more than one in number, or more than 1/8 inch (3.2 mm) in length or depth.	When not healed, or more than one in number, or more than 1/8 inch (3.2 mm) in depth, or more than 3/8 inch (9.5 mm) in length if within the stem cavity, or more than 1/4 inch (6.4 mm) in length if outside the stem cavity.	When not healed and more than 1/8 inch (3.2 mm) in length or depth, or healed and more than 3/16 inch (4.8 mm) in depth, or healed and aggregating more than 1/8 inch (15.9 mm) in length if within the stem cavity, or healed and aggregating more than 1/2 inch (12.7 mm) in length if outside the stem cavity.
Scab	When cracked, or the aggregate area exceeds that of a circle 1/8 inch (3.2 mm) in diameter.	When cracked, or the aggregate area exceeds that of a circle 1/4 inch (6.4 mm) in diameter.	When the aggregate area exceeds that of a circle 1/2 inch (12.7 mm) in diameter.
Scars	When not smooth, or surface of the fruit is depressed more than 1/32 inch (.8 mm), or not light in color, or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle 1/8 inch (3.2 mm) in diameter; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle 1/4 inch (6.4 mm) in diameter; (3) Light colored, smooth scars when the area exceeds that of a circle 1/2 inch (12.7 mm) in diameter.	When not smooth, or surface of the fruit is depressed more than 1/16 inch (1.6 mm), or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle 1/4 inch (6.4 mm) in diameter; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle 1/2 inch (12.7 mm) in diameter; (3) Light colored, smooth scars when the area exceeds that of a circle 3/4 inch (19.1 mm) in diameter.	When the surface of the fruit is depressed more than 3/16 inch (4.8 mm), or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle 3/4 inch (19.1 mm) in diameter; (2) Not dark or rough when the area exceeds one-fourth of the fruit surface.
Heat, Sprayburn and Sunburn.	When the normal color of the skin or flesh is more than slightly changed, or any indentation is present.	When the skin is blistered, cracked or decidedly flattened, or the normal color of the skin or flesh has materially changed, or more than one indentation, or indentation exceeds 3/16 inch (4.8 mm) in diameter.	When the skin is blistered, cracked or decidedly flattened, or causing any dark discoloration of the flesh, or more than two indentations are present, or the aggregate area of indentations exceeds that of a circle 3/8 inch (9.5 mm) in diameter, or when causing a noticeable brownish or darker discoloration over more than one-fourth of surface.
Scale or Scale Marks.	When more than one large scale or scale mark or more than three scales or scale marks of any size are present.	When the aggregate area exceds that of a circle 1/4 inch (6.4 mm) in diameter.	When the aggregate area exceeds that of a circle 3/8 inch (9.5 mm) in diameter.
Insects	When feeding injury is evident on fruit or any insect is present in fruit.	When feeding injury materially detracts from appearance or any insect is present in fruit.	When feeding injury seriously detracts from appearance or any insect is present in fruit.

Classification of defects guidelines are based on fruit 2 inches or smaller in diameter. Accordingly, *larger fruit* are permitted to have defects relative to their size.

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended (7 U.S.C. 1622, 1624))

Done at Washington, D.C. on: August 4, 1982.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 82-21637 Filed 8-9-82; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

7 CFR Part 68

Miscellaneous Reference Changes

AGENCY: Federal Grain Inspection Service[1], USDA.

ACTION. Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending references in certain sections of this Part to reflect changes in organizational structure and responsibility, changes in titles of FGIS handbooks, and deletion of other related obsolete information.

EFFECTIVE DATE: September 9, 1982.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Regulations and Directives Unit, Resources Management Division, FGIS, USDA, Room 1636 South Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250, telephone (202) 382-0231.

SUPPLEMENTARY INFORMATION: This final action updates references in the regulations to reflect changes in organizational structure and responsibility, titles of FGIS handbooks, and deletion of other related obsolete information. For this reason the administrative procedure provisions of the Administrative Procedures Act (5 U.S.C. 533), the Secretary's Memorandum 1512-1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

[1] Authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1621-1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a, 7 CFR 68.2(e)).

The Federal Grain Inspection Service was established by the United States Grain Standards Act, as amended (USGSA) (7 U.S.C. 71 *et seq.*) effective November 20, 1976. As authorized by Section 3A of the USGSA (7 U.S.C. 75a), the Secretary of Agriculture delegated to the Administrator of FGIS, authority to perform functions under the Agricultural Marketing Act of 1946 (AMA), in addition to responsibilities under the USGSA. As a result of this delegation, changes as to references in the applicable sections of the Part 68 (7 CFR Part 68) regulations under the AMA are being made to reflect the transfer of responsibility from the Agricultural Marketing Service (AMS) to FGIS. In some instances references to AMS had been deleted by previous rulemaking and references to FGIS included. However, because FGIS has been reorganized, some changes are necessary in the title of the applicable divisions responsible for implementation of the Part 68 regulations, and a reference to regional offices, which no longer exist, has been deleted. Other changes include deletion of reference to Service and Regulatory Announcements not used by FGIS, deletion of effective dates of various handbooks because they are routinely updated and revised, and changes to reflect current titles of handbooks.

List of Subjects in 7 CFR Part 68

Administrative practices and procedures-FGIS, Agricultural commodities, Export.

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND PRODUCTS THEREOF

Accordingly, various sections of the Part 68 regulations under the Agricultural Marketing Act of 1946, as amended, are revised or amended as follows:

Subpart A—Regulations

§68.2 [Amended]

1. 7 CFR 68.2(f) is amended by removing the words "Inspection Division" and inserting, in their place, the words "Field Management Division."

§§68.2 and 68.43 [Amended]

2. 7 CFR 68.2 and 7 CFR 68.43 are amended by removing the words "Inspection Division" and inserting, in their place, the word "Division" in the following places:

(a) 7 CFR 68.2(u)

(b) 7 CFR 68.43 (a)(2), (a)(3), and (a)(4).

§68.14 [Amended]

3. 7 CFR 68.14(f)(1)(iv) is amended by removing the words "and a copy of each document is on file in the Regional Office."

§68.49 [Amended]

4. 7 CFR 68.49 is amended by removing the words "the Service and Regulatory Announcements of the Federal Grain Inspection Service."

Subpart B—U.S. Standards for Beans

§68.132 [Amended]

1. 7 CFR 68.132 is amended by removing the words "Agricultural Marketing Service" and inserting, in their place, the words "Federal Grain Inspection Service."

Subpart C—United States Standards for Rough Rice

Subpart D—U.S. Standards for Brown Rice for Processing

Subpart E—United States Standards for Milled Rice

§§68.204 and 68.254 [Amended]

1. 7 CFR 68.204 and 7 CFR 68.254 are amended by removing the words "Inspection Division" and inserting, in their place, the words "Federal Grain Inspection Service."

§§68.202, 68.203, 68.207, 68.252, 68.253, 68.255, and 68.258 [Amended]

2. 7 CFR Part 68 is further amended by removing the words "Inspection Handbook HB 918–11" and inserting, in their place, the words "the Rice Inspection Handbook" in the following sections:

(a) 7 CFR 68.202(m)

(b) 7 CFR 68.203 (lines 21 and 22, and lines 28 and 29)

(c) 7 CFR 68.207

(d) 7 CFR 68.252(o)

(e) 7 CFR 68.253

(f) 7 CFR 68.255

(g) 7 CFR 68.258.

§§68.208, 68.259, 68.302, 68.303, 68.305, and 68.308 [Amended]

3. 7 CFR Part 68 is further amended by removing the words "Inspection Handbook HB 918–11" and inserting, in their place, the words "Rice Inspection Handbook" in the following sections:

(a) 7 CFR 68.208

(b) 7 CFR 68.259

(c) 7 CFR 68.302(m)

(d) 7 CFR 68.303

(e) 7 CFR 68.305

(f) 7 CFR 68.308.

Footnote No. 2 [Revised]

4. Footnote No. 2, applicable to 7 CFR 68.202(m), 7 CFR 68.203, 7 CFR 68.207, 7 CFR 68.208, 7 CFR 68.252(o), 7 CFR 68.253, 7 CFR 68.255, 7 CFR 68.258, 7 CFR 68.259, 7 CFR 68.302(m), 7 CFR 68.303, 7 CFR 68.305, and 7 CFR 68.308, is revised wherever it appears, to read as follows:

"[2] Publications referenced in these standards will be made available upon request to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250."

Footnote No. 3 [Amended]

5. Footnote No. 3, applicable to 7 CFR 68.203, 7 CFR 68.207, 7 CFR 68.208, and 7 CFR 68.308, is amended wherever it appears by removing the words "Standardization Division."

§§68.205, 68.256, and 68.306 [Amended]

6. 7 CFR 68.205, 7 CFR 68.256, and 7 CFR 68.306 are amended by removing the words "Standardization Division."

Subpart F—United States Standards for Whole Dry Peas

Subpart G—United Standards for Split Peas

Subpart H—United States Standards for Lentils

§ 68.402 [Amended]

1. 7 CFR 68.402(f) and (1) are amended by removing the word "Manual" and inserting, in its place, the word "Handbook."

Footnote No. 2 [Revised]

2. Footnote No. 2, applicable to 7 CFR 68.402(f) and (1), is revised to read as follows:

"[2] Publications referenced in these standards will be made available upon request to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250."

Footnote No. 3 [Amended]

3. Footnote No. 3, applicable to sections 68.402(f) and 68.402(1) is amended by removing the words "Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 6525 Belcrest Road, Hyattsville, Maryland 20782" and inserting, in their place, the words "Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250."

§§ 68.402, 68.504, 68.604, and 68.611 [Amended]

4. 7 CFR Part 68 is further amended by removing the words "Inspection Handbook HB–1" and inserting in their place, the words "the Inspection

Handbook for Dry Peas, Split Peas, and Lentils" in the following places:

(a) 7 CFR 68.402(f) and (1)

(b) 7 CFR 68.504

(c) 7 CFR 68.604

(d) 7 CFR 68.611.

§ 68.404 [Amended]

5. 7 CFR 68.404 is amended by removing the words "Grain Division" and inserting in their place, the words "Federal Grain Inspection Service."

§ 68.406 [Amended]

6. 7 CFR 68.406, Footnote No. 5, is amended by removing the words "Chapter 3 of the Inspection Handbook HB–1.2" and inserting, in their place, the words "the Inspection Handbook for Dry Peas, Split Peas, and Lentils."

§§ 68.503 and 68.603 [Amended]

7. 7 CFR 68.503 and 7 CFR 68.603 are amended by removing the words "Equipment Manual, GR Instruction 916–6" and inserting in their place, the words "Equipment Handbook."

§ 68.601 [Amended]

8. 7 CFR 68.601(d) is amended by removing the words "Inspection Handbook" and inserting, in their place, the words "Inspection Handbook for Dry Peas, Split Peas, and Lentils."

§§ 68.505 and 68.605 [Amended]

9. 7 CFR 68.505 and 7 CFR 68.605 are amended by removing the words "Grain Divison, Agricultural Marketing Service" and inserting in their place, the words "Federal Grain Inspection Service."

10. 7 CFR 68.506 and 7 CFR 68.606 are revised to read as follows:

§ 68.506 References.

§ 68.606 References.

The following publications are referenced in these standards and copies will be made available upon request to the Federal Grain Inspection Service, U.S. Department of Agriculture.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Inspection Handbook for Dry Peas, Split Peas and Lentils, U.S. Department of Agriculture, Federal Grain Inspection Service.

(Secs. 203, 205, 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622–1624))

Dated: August 4, 1982.

Kenneth A. Gilles,

Administrator.

[FR Doc. 82–21742 Filed 8–9–82; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS–RM–80–118]

Energy Conservation Program for Consumer Products Test Procedures for Refrigerators and Refrigerator-Freezers, and Freezers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule

SUMMARY: The Department of Energy amends its test procedures for refrigerators and refrigerator-freezers, and freezers to lessen the test burden associated with the testing procedures. Test procedures are part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act. Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

EFFECTIVE DATE: September 9, 1982.

FOR FURTHER INFORMATION CONTACT:

Thomas S. Gutmann, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–113.1, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–33, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9510

SUPPLEMENTARY INFORMATION:

A. Background

On October 1, 1977, the Department of Energy (DOE) assumed the authority of the Federal Energy Administration (FEA) for the Energy Conservation Program for Consumer Products under Section 301 of the Department of Energy Organization Act. (Pub. L. 95–91). The Energy Conservation Program for Consumer Products was established by FEA pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA). (Pub. L. 94–163, 89 Stat. 917). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA). (Pub. L. 95–619, 92 Stat. 3266). References in this notice to "the Act" or to sections of the Act, refer to EPCA, as amended by NECPA.

The Act requires DOE to prescribe standardized test procedures to measure the energy consumption of certain refrigerators and refrigerator-freezers, and freezers. Test procedures were proposed for refrigerators and refrigerator-freezers, and freezers by notice issued April 21, 1977. (42 FR 21576, April 27, 1977). A public hearing on the proposed test procedures was held on June 14, 1977. Final test procedures were prescribed on September 8, 1977. (42 FR 46140, September 14, 1977).

Subsequently, a Petition for Rulemaking was submitted by the Association of Home Appliance Manufacturers (AHAM). This petition requested that DOE examine shortened test procedures for refrigerators and refrigerator-freezers, and freezers. AHAM stated that the alternate test procedures being proposed were much less burdensome and would give results that would differ by less than four percent from those obtained under the existing DOE testing program. Upon the request of DOE, the National Bureau of Standards (NBS) experimentally evaluated the alternate test procedures suggested by AHAM. After study, NBS recommended to DOE revised test procedures which incorporated many of the AHAM suggestions. On July 14, 1980, DOE proposed these revised test procedures as an amendment to the existing procedures. (45 FR 47396).

Information received by DOE during the public hearing on September 9, 1980, and in written comments in response to the July 14 proposal revealed certain inadequacies with the definition of steady state conditions and with the requirements for the test chamber ambient air temperature gradient. Insufficient information was available in the rulemaking record to address these areas satisfactorily. Therefore, on October 14, 1981, DOE proposed an amended version of the revised test procedures (46 FR 50544) which addressed these deficiencies. No public hearing was held. Corrections of an editorial nature to the proposed rule were published December 17, 1981. (46 FR 61485).

B. Discussion

1. *All-Refrigerator.* The "all-refrigerator" is a relatively new refrigerator product available in the marketplace. All-refrigerators are characterized by either a freezer compartment sized for only a very small load or the lack of a freezer compartment altogether. The freezer compartments of all-refrigerators so equipped are designed to maintain a temperature only slightly below 32°F (0°C). As a result, they are suitable only

for making and storing ice cubes or the short term storage of frozen food. Currently, under the existing test procedure, this product falls under the definition of a refrigerator.

Recognizing that the utility of an all-refrigerator is associated almost solely with its fresh food storage capability, DOE and NBS determined that the existing test procedures are not appropriate for this product. DOE and NBS found that the energy consumption of an all-refrigerator should be based on the fresh food compartment temperature and not the freezer compartment temperature as the current test procedures require.

(a) *Definition.* The July 14, 1980, proposed rule defined an all-refrigerator as a refrigerator with either no freezer compartment or one with a capacity no greater than 0.25 cubic feet. A manufacturer requested that this definition be changed to include models with freezer compartment capacities of up to 0.30 cubic feet. The company manufactures a refrigerator with a freezer compartment capacity greater than 0.25 cubic feet but less than 0.30 cubic feet. The commenter remarked that even the freezer compartment of this unit is still too small to permit a proper arrangement of frozen food packages as a test load. (The existing test procedures require that all-refrigerators since they are classified as refrigerators be tested with a load of frozen food packages in the freezer compartment.) Another commenter similarly was concerned with the difficulty of arranging a load of frozen food packages in the freezer compartment of an all-refrigerator. This commenter requested that all-refrigerators be tested with no load in the freezer compartment.

NBS analyzed these comments and concluded that the small size and differing configurations of all-refrigerator freezer compartments make specifying the amount and location of a load of frozen food packages subject to varying interpretations. This could lead to interlaboratory test repeatability problems that would be contrary to the purpose of a standard test procedure. Further, NBS determined that freezer compartments of 0.50 cubic feet capacity or less would not offer sufficient space to permit the proper arrangement of a test load.

Thus, the definition included in the October 14, 1981 proposal specified an all-refrigerator as a refrigerator with either no freezer compartment or one with a capacity of 0.50 cubic feet or less. This proposed rule further specified that all-refrigerators be tested without a test load in the freezer compartment. Today's final rule includes these provisions.

(b) *Determination of Energy Consumption Based on Fresh Food Compartment Temperature.* Since the temperature in the freezer compartment of an all-refrigerator is not a critical operating parameter, the July 14, 1980 proposal called for the determination of energy consumption to be based on the temperature in the fresh food compartment. The "standardized" fresh food compartment temperature, proposed on July 14, 1980, was 38°F (3.3°C). The July 14 notice also proposed that no temperature measurements be made in the freezer compartment. No comments were received regarding the proposed changes. Today's final rule incorporates these changes. The provisions for testing all-refrigerators are the same as those for testing single control device refrigerators (described in Section 2, *infra)* with the exception that only fresh food compartment temperature is used in determining per cycle energy consumption.

(c) *Calculation of Adjusted Total Volume.* While the July 14, 1980, proposal broke out all-refrigerators as a type of refrigerator, it did not provide for calculating the adjusted total volume of an all-refrigerator differently from that of a refrigerator. Adjusted total volume is a measure of useful output of services for refrigerators and refrigerator-freezers, and freezers and is necessary for computing Energy Factor (EF), the measure of the overall efficiency of the product. The adjusted total volume is divided by the per cycle energy consumption of the unit to determine the EF. (Per cycle energy consumption is a calculated value equivalent to the amount of energy that would be consumed by a unit over a 24 hour period.) After actual freezer compartment and fresh food compartment volume have been determined, the adjusted total volume of the unit is calculated by multiplying the freezer compartment volume by an adjustment factor and adding the result to the fresh food compartment volume.

Included in the July 14 comments relating to all-refrigerators were recommendations to change the adjustment factor from 1.44 (as provided for refrigerators) to either 1.12 or 1.0. The 1.12 factor was based on the assumption that all-refrigerator freezer compartments would be at a temperature of 32°F (0°C) when the fresh food compartment temperature was 38°F (3.3°C). The adjustment factor of 1.0 was recommended on the basis that the volume of the freezer compartment of an all-refrigerator, being small and of limited utility, should not be "adjusted." In other words, this commenter recommended that the adjusted total volume of an all-refrigerator be equal to its actual total volume. DOE had no information to substantiate either claim. Lacking such data and considering that use of a 1.12 adjustment factor instead of a 1.0 adjustment factor will make a difference of only 0.06 cubic feet at the most in the adjusted total volume of an all-refrigerator, DOE believed that the adjustment factor should be 1.0. Thus, this value was proposed in the October 14, 1981, notice as the adjustment factor for calculating the adjusted total volume of an all-refrigerator. No comments were received in response to the October 14 proposal relating to this issue. Today's final rule prescribes an adjustment factor of 1.0 for calculating the adjusted total volume of an all-refrigerator.

(d) *Calculation of Per Cycle Energy Consumption.* Equations for calculating per cycle energy consumption are included in today's final rule. These equations replace the graphical evaluation process of the existing procedure. When straight lines are used to connect test data points, the equations mathematically determine energy use in exactly the same way as does a graphical procedure. In many cases, industry members already calculate these energy values because the calculated results are more accurate, less time consuming, and easily done with simple computers or calculators. For all-refrigerators, per cycle energy consumption is calculated by using one of the two formulas found in section 6.2.1 of Appendix A1. If the fresh food compartment temperature cannot be set at or above 38°F (3.3°C), the first formula selects the lowest actual test-measured energy consumption value. In all other cases, per cycle energy consumption is calculated as if the fresh food compartment were at 38°F (3.3°C).

2. *Single Control Refrigerators and Refrigerator-Freezers, and Freezers.* The existing DOE test procedures for refrigerators and refrigerator-freezers, and freezers with single temperature control devices specify that the units be tested at the warmest, midpoint, and coldest temperature positions of the control device. AHAM proposed that an alternate test procedure be allowed which requires that the units be tested at two rather than three control settings. AHAM proposed that one test be conducted by selecting a temperature control position such that the freezer compartment temperature falls within 3°F (1.7°C) above the standardized freezer compartment temperature. The other test is conducted with the freezer compartment temperature within 3°F

(1.7°C) below the standardized freezer compartment temperature.

DOE and NBS analyzed this proposal and found it an acceptable test method with the exception of the test point temperature specification. DOE and NBS determined that a test which requires such precise adjustment of the temperature control could potentially be as burdensome as the existing procedure which requires three test points. Typically, temperature control devices on refrigerators and refrigerator-freezers, and freezers are not graduated in degrees of temperature and, further, are not precisely calibrated such that the same compartment temperature is attained when units of the same basic model are operated with their temperature control knobs at identical settings. It might take several attempts at temperature control knob adjustment before a compartment temperature within 3°F (1.7°C) above the standardized temperature is attained; similarly, it might take several attempts to attain a compartment temperature within 3°F (1.7°C) below the standardized temperature. Since it could take several hours or more for a unit to achieve steady state conditions each time its temperature control knob is adjusted to a new setting, misadjustment of the knob could lead to costly testing delays. Because of the potential for testing delays, this test point temperature specification has not been adopted.

The test procedures prescribed today require that single control products be tested at two temperature control settings. The procedure requires a first set of energy consumption and compartment temperature test values to be measured with the temperature control set at the midpoint of the control range and a second set of energy consumption and compartment temperature test values be measured with the control set either at the warmest or the coldest setting so that the freezer compartment temperatures bound, i.e., one is above and one is below, the standardized freezer compartment temperature.[1] If the unit has an anti-sweat heater switch, this procedure is performed twice, with the switch set first in one and then in the other position.

Energy consumption values and freezer compartment temperature values are then used to calculate per cycle energy consumption at the standardized freezer compartment temperature. For refrigerators and refrigerator-freezers, a second calculation is made using the energy consumption values and the fresh food compartment temperature values to determine per cycle energy consumption at 45°F (7.2°C) in the fresh food compartment. The higher of the two per cycle energy consumption values calculated is taken as the per cycle energy consumption of the unit tested.

In reviewing the July 14 proposal, NBS identified two special cases of product performance where the above described test procedures should not apply. Although the likelihood of these cases occurring is small, the October 14, 1981, proposal included provisions to accommodate them.

The first case would be a product for which the freezer compartment temperature cannot be set above the standardized temperature and, in the case of refrigerators and refrigerator-freezers (excluding all-refrigerators), the fresh food compartment temperature cannot be set above 45°F (7.2°C). Today's final rules stipulates that, in this case, the per cycle energy consumption of the unit shall be determined by testing the unit with all temperature controls set at their warmest position. Today's final rule also incorporates an alternate test method that allows the first test to be run with all controls set at their warmest position. If this test results in a freezer compartment temperature below the standardized temperature, and a fresh food compartment temperature below 45°F (7.2°C), no further testing is required. The per cycle energy consumption of the unit tested is calculated from the results of this one test.

The second case would be a product for which the freezer compartment temperature cannot be set below the standardized temperature. This condition would usually characterize a product with an underdesigned refrigeration system. For such a product, the compartment temperature and energy consumption test values measured with all temperature controls at their midpoint setting can be nearly equal to those values measured with all controls at their coldest setting since the compressor could be running almost constantly at both settings. If per cycle energy consumption were to be determined by extrapolating the results of these two test points, small variations in the test results within the tolerance of the test procedure could result in large errors in the extrapolated result. Consequently, in order to impove accuracy, testing at the two extreme control settings is required by today's final rule in cases where a freezer compartment temperature below the standardized temperature cannot be achieved. Today's final rule also incorporates an alternate test method that allows first test to be run with all controls set at their coldest position. If this test results in a freezer compartment temperature above the standardardized temperature, a second test is run with all controls set at their warmest position. These two tests will permit calculation of per cycly energy consumption.

(a) *Calculation of Per Cycle Energy Consumption.* Equations for calculating per cycle energy consumption are included in today's final rule. These equations replace the graphical evaluation process of the existing procedure.

For refrigerators and refrigerator-freezers (excluding all-refrigerators), per cycle energy consumption is calculated by using one of three formulas described in section 6.2.2 of Appendix A1. If the fresh food compartment temperature cannot be set at or above 45°F (7.2°C) and the freezer compartment cannot be set at or above its standardized temperature (15°F (−9.4°C) for refrigerators, excluding all-refrigerators, and 5°F (−15°C) for refrigerator-freezers) with any control setting, the first formula selects the lowest actual test-measured energy consumption. In all other cases, per cycle energy consumption is calculated using two formulas, one of which determines energy consumption as if the fresh food compartment were at 45°F (7.2°C) and the other which determines energy consumption as if the freezer compartment were at its standardized temperature. These conditions may or may not be attainable in a particular test unit. If not attainable, the formula extends the line passing through the two actual measured conditions so that per cycle energy consumption may be calculated for both of these conditions. The reported value of per cycle energy consumption is then selected as the higher of the two calculated values.

For freezers, per cycle energy consumption is calculated by using one of the two formulas found in section 6.2 of Appendix B1. If the compartment temperature cannot be set at or above 0.0°F (−18°C), the first formula selects the lowest actual test-measured energy consumption value. In all other cases, per cycle energy consumption is calculated as if the compartment were at 0.0°F (−18°C).

3. *Multiple Control Refrigerator-Freezers.* The existing DOE test procedures require that multiple control refrigerators and refrigerator-freezers, those with a freezer compartment

[1] In the case of an all-refrigerator, it is the fresh food compartment temperature that is used in the determination of per cycle energy consumption.

temperature control and a fresh food compartment temperature control, be tested four times; once at each of the combinations of the extreme position settings of the controls (warm/warm, warm/cold, cold/warm, and cold/cold). The test values obtained are: the average freezer compartment temperature, the average fresh food compartment temperature and the energy consumed during the test. If the unit has an anti-sweat heater switch, it must be tested another four times with the switch set in its other position.

Under existing procedures, the first step in determining per cycle energy consumption after testing is completed is to plot two graphs, one above the other. The lower graph is a plot of freezer compartment temperature test values versus fresh food compartment temperature test values. The upper graph is a plot of energy consumption test values versus fresh food compartment temperature test values. (The axes of the two graphs are oriented such that the freezer compartment temperature axis (lower graph) and the energy consumption axis (upper graph) lie on the same vertical line.)

The freezer compartment and fresh food compartment temperature values of each test become the coordinates of the points to be plotted on the freezer compartment temperature versus fresh food compartment temperature graph. Once plotted, these four points are connected by four straight lines to form a quadrilateral figure or envelope. (These lines denote the boundaries of attainable freezer compartment and fresh food compartment temperatures for all possible combinations of settings of the temperature controls.) A horizontal line is then drawn through the envelope at the appropriate standardized freezer compartment temperature for the product being tested (15°F (−9.4°C) for refrigerators, excluding all-refrigerators, and 5°F (−15°C) for refrigerator-freezers). The two points where this line intersects the boundary of the envelope represent the lowest and highest fresh food compartment temperatures attainable with the freezer compartment at the standardized temperature.

The next step in the determination of per cycle energy consumption is to plot the energy consumption values from each test as a point on the energy consumption versus fresh food compartment temperature graph. These four points are connected by four straight lines to form an energy use envelope. Vertical lines are projected upwards from the two points on the lower graph, that represent the highest and lowest fresh food compartment temperatures attainable with the freezer compartment at the standardized temperature, to intersect the corresponding boundary lines of the energy use envelope in the upper graph. These two points of intersection correspond to the maximum and minimum energy consumption values associated with the freezer compartment at the standardized temperature. The average of these two values is taken as the per cycle energy consumption value.

AHAM petitioned that a two point test rather than the existing four point test be used for testing multiple control automatic defrost refrigerator-freezers. In accordance with the AHAM proposal, a first test shall be conducted with each temperatures control set at the midpoint of its range (mid/mid). Fresh food and freezer compartment temperature and energy consumption are to be measured. If the midpoint control positions (mid/mid) result in an average freezer compartment temperature greater than 5°F (−15°C), the standardized freezer compartment temperature for a refrigerator-freezer, the controls are to be reset to their coldest positions (cold/cold) for the second test. If the midpoint controls positions (mid/mid) result in an average freezer compartment temperature less than 5°F (−15°C), the control are to be reset to their warmest positions (warm/warm) for the second test. The resulting compartment temperature test values and the energy consumption test values are plotted on a graph and the per cycle energy consumption of the unit is determined at the 5°F (−15°C), standardized freezer compartment temperature. AHAM contended that the results of the two point test would differ but slightly from the results of the four point test run on the same units.

DOE and NBS carefully analyzed this request for a change in the test procedure and find it an acceptable approach that will reduce the burdensomeness of the testing process. On the freezer compartment temperature versus fresh food compartment temperature graph used in the current procedure, a midpoint setting of the temperature controls (mid/mid) as AHAM proposed, would produce a point on the graph located near the center of the envelope previously described. A line can be drawn from this mid/mid setting data point to either the cold/cold setting data point or the warm/warm setting data point which will cross a horizontal line corresponding to a freezer compartment temperature of 5°F (−15°C). The point of intersection of these two lines will be about half way between the earlier described maximum and minimum fresh food compartment temperature values with the freezers compartment at 5°F (−15°C). Similarly, a mid/mid setting data point will produce a point near the center of the four point energy use envelope on the energy consumption versus fresh food compartment temperature graph. By projecting a vertical line upward from the 5°F (−15°C) freezer compartment temperature intersection point on the lower graph to intersect a line connecting the mid/mid setting data point and the cold/cold or the warm/warm setting data point on the upper graph, the energy that the unit would consume to attain this temperature can be found.

In analyzing the AHAM proposal, NBS determined that the approach of conducting a two point test instead of a four point test could be applied to all multiple control refrigerators and refrigerator-freezers and was not just applicable to multiple control automatic defrost referigerator-freezers. NBS confirmed that both the graphical and the mathematical method for determining per cycle energy consumption using only two tests gave test results which varied no more than four percent from the existing test procedure. Part of this variation may be due to inaccuracies in setting the mid/mid position on controls that have widely separated control setting markings. Some of these controls also have detents at these markings that can result in large differences between the midpoint setting and the nearest marked or detent setting. Consequently, today's final rule prescribes a two-point test for mutiple control refrigerators and refrigerator-freezers but requires that the controls be set at the midpoint of their range for testing even if detents have to be mechanically overridden. Also, the provisions for calculating per cycle energy consumption and for accommodating special cases of product performance discussed in the preceding section dealing with single control device products are applicable here.

One industry member submitted data to NBS which indicated that a two point test procedure using the cold/cold and warm/warm settings rather than a mid/mid setting would produce more consistent results with less deviation from test to test. DOE and NBS believe that this conclusion need not apply for all manufacturers.

4. *Freezer Compartment Load in Automatic Defrost Refrigerator-Freezers.* The existing DOE test procedures specify that refrigerators and refrigerator-freezers be tested with the

freezer compartment loaded to 75 percent of its capacity with frozen food packages. AHAM proposed that the test procedures be revised to permit testing of automatic defrost refrigerator-freezers under the following conditions:

a. No thermal load in the freezer compartment,

b. Freezer compartment temperature to be measured using weighted thermocouples as specified in American National Standard Institute (ANSI) Standard B–38.1–1970, and

c. Freezer compartment thermocouples to be located in positions previously occupied by the packaged test load.

NBS carefully analyzed the AHAM-suggested procedure. The provision for no load in the freezer is a change from the existing test procedure which specifies no load in the fresh food compartment and a 75 percent freezer compartment load of standard sized packages of frozen food. The change was requested by industry to reduce the burdensomeness of the test related to selecting and maintaining the packages, constantly relocating them, arranging them in the freezer compartment of the unit under test, and assuring that the imbedded thermocouples are correctly positioned. The load increases the length of time a test takes since a large thermal mass requires considerable time to reach equilibrium conditions. Industry submitted data to support their contention that there is no appreciable difference in the results of tests conducted with and without a freezer compartment load. It was noted that the Canadian Standards Association has been testing freezers without a thermal load and has obtained results equivalent to those from the existing DOE test procedure. NBS ran tests on automatic defrost refrigerator-freezers both with and without loads to assess the acceptability of the proposal. The NBS tests showed that as the load is presently specified, many different arrangements of the frozen food packages can result when identical automatic defrost refrigerator-freezer freezer compartments are loaded by different persons. The exact placement of each package cannot be specified due to the variety of freezer compartment configurations of today's refrigerator-freezer models. The placement of the first few food packages affects the final arrangement of the remaining packages, the location of the thermocouples, and the total number of packages finally placed in the compartment. Consequently, the specified 75 percent load is actually a variable.

NBS also found that air circulation around the packages is a very important parameter. An air gap of ½ to 1½ inches (1.5 to 4 cm) between the packages and the freezer walls is specified in the existing test procedure and the use of insulating spaces is permitted to maintain this gap. Even with spacers, it is very difficult to arrange the load packages in a manner such that the gap is maintained. Also, normal vibrations such as those caused by the compressor motor starting and stopping can cause the food packages to shift position and the air gap to change. NBS concluded that tests with and without a load in the freezer compartment will produce essentially the same test results if the load is arranged according to specifications. Blocking any of the air gaps affects the results by producing different energy usage figures. The elimination of the test load should not only reduce the burdensomeness of the test but should also provide a more repeatable test. Consequently, today's final rule does not require a load in the compartment of automatic defrost refrigerator-freezers.

As a result of this change, the existing method of measuring freezer compartment temperature had to be modified since the temperature sensors are specified to be located in the load packages. AHAM requested that freezer temperatures be measured in accordance with an existing industry method in which a thermal mass (with a heat capacity not to exceed that of 20 grams of water) is attached to the temperature sensor. These sensors are then located in the freezer compartment in the positions previously occupied by the instrumented frozen food packages. NBS determined that the physical dimensions of the thermal mass can affect the measured freezer compartment temperature. A thermal mass is desirable on temperature sensors in the freezer because of the large cyclic temperature variation and sharp changes which make temperature averaging difficult. Today's final rule requires the use of weighted temperature sensors and specifies the thermal mass dimensionally, in order to reduce differences due to (1) the effects of the thermal mass on the air circulation in the compartment, (2) the locations of the sensors, and (3) the variation of measured temperatures. The metallic material used and its thermal mass are not critical since neither actually affect the average temperature measured. Therefore, a broad dimensional tolerance is permitted and any metal material is allowed.

5. *Non-time Initiated (Demand) Defrost.* Many commenters objected to the inclusion in the July 14, 1980, proposed rule of a procedure for measuring the energy consumption of refrigeration products with non-time initiated (demand) defrost. They stated that this type of system, although technologically feasible, is not currently marketed in the United States. After publication of the July 14, 1980, proposed rule, the "Provisions for the Waiver of Consumer Product Test Procedures," which allow the Assistant Secretary for Conservation and Renewable Energy temporarily to waive test procedures for a particular covered product, became effective. (45 FR 64108, September 26, 1980). Consequently, DOE has concluded that test procedures for non-time initiated defrost products are not currently needed. If such products are produced in the future and the then existing test procedures do not accurately measure the true energy consumption of these products, the manufacturer may petition for a waiver from the test procedures. (10 CFR 430.27). Accordingly, today's rule does not include test procedures for non-time initiated defrost products.

6. *Long-time Automatic Defrost.* One commenter, when reviewing the July 14, 1980, proposed non-time initiated defrost procedures, noted that these procedures could be adapted very easily for testing newly-designed automatic defrost products which operate for unusually long time periods, i.e., greater then 24 hours, between defrost periods. NBS investigated this recommendation and found that such a procedure could greatly reduce test time for such product designs, since a test point that may currently require four days of testing might be obtained in less than 24 hours of testing with almost no loss of accuracy. Consequently, an optional procedure for testing long-time automatic defrost products, patterned after the non-time initiated defrost test procedure proposed on July 14, 1980, was incorporated into the October 14, 1981, proposed rule. As proposed, this optional test method would only apply for testing automatic defrost refrigerator-freezers and freezers designed such that defrost cycles are separated by 14 hours or more of compressor-operating time. Using this compressor-operating time criteria, the total test time required to arrive at a test data point should be less than 24 hours in most cases. In no case will the total test time exceed 28 hours. A longer test period could be burdensome and would not result in significantly increased accuracy since units which operate for more than 14 hours of compressor-operating time between defrost cycles use only about 1.5 percent of their

electrical energy consumption to perform the defrost function.

Today's final rule incorporates this optional procedure for testing automatic defrost refrigerator-freezers and freezers designed such that defrost cycles are separated by 14 hours or more of compressor-operating time. DOE has made changes, however, to the definition found at section 1.9 of Appendix A1 and section 1.8 of Appendix B1. As proposed, the definition read, '"Long-time Defrost" means an automatic defrost system where the timed interval between defrosts is always greater than 14 hours.' This definition did not clearly stipulate that the 14 hour time period criteria applied to compressor-operating hours and not simply elapsed time. However, in the discussion of the long-time defrost optional test procedure found in the preamble to the October 14, 1981, proposed rule, DOE's intent was made clear in the statement, "Today's proposal incorporates an alternate procedure for testing of automatic defrost refrigerator-freezers and freezers which require more than 14 hours of compressor-operating time between defrost periods." Since no comments were received regarding this proposed optional test procedure, DOE assumes that its intent was clearly understood. In order to avoid possible confusion over its intent in the future, however, the definition found at section 1.9 of Appendix A1 and section 1.8 of Appendix B1 of today's final rule reads, '"Long-time Automatic Defrost" means an automatic defrost system where successive defrost cycles are separated by 14 hours or more of compressor-operating time.'

7. *Definition of "Steady State" Conditions.* The July 14, 1980, proposal required that a test period could not start until the unit being tested reached steady state temperature conditions. However, a precise definition of steady state conditions was not included. Commenters requested that DOE incorporate the definition used in AHAM Standard HRF–1–1979. NBS and DOE evaluated this suggestion but found that the AHAM definition would not completely specify steady state conditions for all products under all circumstances. Therefore, in the October 14, 1981, proposal, DOE included its own specification for steady state conditions. This specification was modeled after AHAM Standard HRF–1–1979.

A number of comments were received regarding the proposed specification for steady state conditions. Commenters requested a change in the proposed temperature rate-of-change specification at or below which a unit could be considered to be operating at steady state conditions. The commenters requested that the proposed specification of 0.1°F (0.056°C) per hour in section 2.5 of Appendix A1 and section 2.5 of Appendix B1 be changed to 1.0°F (0.56°C) per 24 hours.

The 0.1°F (0.056°C) per hour specification was proposed by DOE as an acceptable balance between the 0.1°F (0.56°C) in two hours specification for refrigerator fresh food compartments and the 1.0°F (0.56°C) in 24 hours specification for freezer compartments found in the existing test procedures for refrigerators and refrigerator-freezers, and freezers. The commenters, however, want to assure test unit stabilization prior to testing even though it would increase the time necessary to assure that the 1.0°F (0.56°C) per 24 hour temperature rate-of-change specification had been attained. DOE has adopted this recommendation. Consequently, today's final rule contains a 0.042°F (0.023°C) per hour temperature rate-of-change specification in section 2.5 of Appendix A1 and section 2.3 of Appendix B1. This is equivalent to a 1.0°F (0.56°C) per 24 hour temperature rate-of-change specification.

Commenters also requested that section 2.5A. of Appendix A1 be changed to specify that test unit stabilization be determined as satisfying the rate-of-change temperature requirement by comparing the averages of the temperature measurements taken during each complete compressor motor cycle of the test unit over a period of not less than two hours. DOE has not adopted this recommendation because it conflicts with the to be enacted steady state temperature rate-of-change specification. A two hour period is an insufficient time interval over which to evaluate a 0.042°F (0.023°C) per hour temperature rate-of-change with the ±0.5F (0.28°C) instrumentation accuracy required by the test procedures. DOE is amending section 2.5A. in response to this comment, however. Section 2.5A. of Appendix A1 of today's final rule requires that there be two temperature averaging periods of two or more hours duration each with a three hour interval between them. This change provides a sufficient time period to determine if the temperature rate-of-change specification has been satisfied using temperature measurement instrumentation of the minimum required accuracy. Section 2.3A. of Appendix B1 has been changed to read the same as section 2.5A. of Appendix A1 for this same reason.

Commenters suggested that a separate condition be applied to determine steady state conditions for refrigerator and refrigerator-freezer products requiring a packaged food load in the freezer compartment. This condition would be the same as section 2.5A. of Appendix A1 as proposed except that the temperature measurement period would be no less than eight hours. Since DOE has already made changes to this section which require less than eight hours of testing and since this time period is sufficient to detect the temperature rate-of-change specification of 0.042°F (0.023°C) per hour, this additional condition is not necessary and has not been adopted. Similarly, the AHAM recommendation that section 2.3A. of Appendix B1 be changed to specify that the temperature measurement period to determine stabilization for freezers be not less than eight hours has not been adopted.

Commenters recommended that section 2.3B. of Appendix B1 be the only applicable criteria to determine stabilization of automatic defrost freezers and that 2.3A. of Appendix B1 be designated to apply to all types of freezers except automatic defrost units. DOE has not adopted this recommendation for the reason that unnecessarily long test periods to determine stabilization for automatic defrost freezers with long defrost-to-defrost times can occur. As a result of the changes made to section 2.3A. of Appendix B1 that have already been discussed, i.e. the requirement for a three hour period between the two 2-hour temperature measurement periods and the more stringent temperature rate-of-change specification of 0.042°F (0.023°C) per hour, any type of freezer unit which meets the conditions specified in section 2.3A. will be in a steady state condition.

Commenters provided identical recommended wording to sections 2.5B. of Appendix A1 and section 2.3B. of Appendix B1 to clarify the requirements of these sections without altering their intent. DOE has evaluated the recommended wording and has no objections to the revised wording. DOE has adopted the recommended wording for section 2.5B. of Appendix A1 and section 2.3B. of Appendix B1 with slight editorial change that the recommended measurement period duration of "two hours or more" for non-cycling units has been changed to "two hours."

8. *Test Chamber Ambient Temperature Gradient.* Commenters noted that the July 14, 1980, proposal did not contain a requirement that the test chamber vertical ambient air temperature gradient be maintained

when tests are in progress. DOE and NBS agree this reguirement is advisable.

The vertical ambient air temperature conditions during the testing process can affect the measured energy use during the test. The existing DOE test procedure requires that the operational conditions of the AHAM standard apply. This standard in turn refers to ANSI B38.1–1970 which, in section 6.2.1, specifies the maximum allowed vertical ambient temperature gradient to be 0.5°F per foot (0.9°C per meter). The standard does not specifically state that this limit prevails during the test. The commenters pointed this out and requested that this be stated in the final rule. Thus, in today's rule a requirement that the vertical gradient be maintained during the test is included and the temperature measurement sensor locations are explicitly defined.

9. *Freezer Two-point Test.* One commenter contended that the two-point freezer test procedure proposed on July 14, 1980, would cause a decrease in intralaboratory repeatability of test results, which due to the statistical sampling plan, would increase the number of tests required to maintain the same statistical confidence level. Data from a single test of a single product was provided by the commenter and was reviewed by NBS and DOE. The data was found to be insufficient to support the commenter's contention. For example, the commenter supplied an energy consumption versus freezer compartment temperature graph displaying the test results for the test he conducted but did not identify the temperature control knob settings corresponding to the data points displayed. Also, it appeared that the "cold" test point was made with the temperature control device short-circuited to cause the compressor to run continuously. Testing in such a manner does not conform to the DOE test procedures. Finally, any attempt to draw conclusions from a single test of a single product is unwise since no statistical confidence can be assigned to the test results. Thus, no change was made to the DOE test procedure.

10. *Freezer Performance.* Storage volume and estimated annual operating cost are the only measures of performance for freezers in the existing test procedures. One manufacturer requested that DOE include another measure of performance in the freezer test procedure. That measure would be the rate of freezing. It would quantify the time it takes a freezer to lower the temperature of a load. The commenter noted that the proposed test procedure tends to direct manufacturers towards smaller, lower cost refrigeration compressors to achieve favorable test results (high efficiency ratings and low estimated annual operating cost figures). Such units would be characterized by low freezing rates. The commenter was concerned that such units would not perform satisfactorily and may pose a health hazard since a large room temperature load placed in the unit might result in the thawing of the existing frozen load during the extended time period that a freezer with a low freezing rate would take to stabilize the entire load at a subfreezing temperature. By including a measure of freezing rate performance in the test procedure, the commenter hopes to discourage manufacturers from pursuing such a design option. DOE acknowledges that such freezer designs are technically possible but has no knowledge that such freezer designs currently exist. Therefore, DOE has not opted to include a measure of freezing performance in the freezer test procedure prescribed today.

11. *Accuracy of Test Measurements.* While analyzing public comments to the July 14, 1980, proposal, NBS discovered that the new AHAM standard (AHAM–HRF–1–1979) referenced did not clearly define the required accuracy of temperature measurements. Section 7.3.1 of this standard states, "Temperature readings are to be accurate within 1°F (0.5°C)." It is unclear whether this requirement means that the accuracy of temperature measurements should be ±0.5°F (0.28°C) or ±1.0°F (0.5°C). Consequently, for the October 14, 1981, proposed rule, DOE added a temperature measurement accuracy requirement (sections 5.1, Appendices A1 and B1) to specify the same accuracy as that specified in the existing test procedure, i.e., ±0.5°F (0.28°C).

In response to this proposed rule, one commenter requested that this accuracy specification be changed to ± 1.0°F (0.5°C). The commenter interpreted the temperature accuracy requirement of AHAMHRF–1–1979 to be ± 1.0°F (0.5°C). He asserted that even "Special Type "T" thermo-couple wire has a limit of error of ± 0.75°F (0.42°C) and that recorders with a scale range of 150°F (83°C) have a limit of error of ± 0.375°F (0.21°C). It was claimed that these factors combine to limit the accuracy of temperature measurement to ± 1.13°F (0.63°C) which makes the proposed accuracy requirement of ± 0.5°F (0.28°C) unduly burdensome. It is true that the conditions stated will not provide the accuracy specified by the proposed test procedure. However, there are steps which can be taken to overcome this problem. The first step is to qualify, i.e. to determine the limit of error associated with, the thermocouple wire used for the test. This can be done to greater accuracy than a thermocouple wire manufacturer can guarantee for large quantities of thermocouple wire. The next step is to use recorders with scale ranges of less than 150°F (83°C). The limit of error associated with recorders with scale ranges less than 150°F (83°F) is less than for those with scale ranges of 150°F (83°C) or more. Following these two steps, DOE and NBS find that temperature measurements can be made with an accuracy of ± 0.5°F (0.28°C).

12. *Three-Year Period.* The July 14, 1980, proposal would have eliminated the existing test procedures for refrigerators and refrigerator-freezers, and freezers. Since the proposed and existing test procedures give almost identical results, several commenters requested that a three-year period be allowed during which the use of either test procedure would be allowed. The commenters stated that manufacturers should have the option to test their products under either test procedure during this three-year period so they will not have to retest immediately all models which are currently labeled. Since there will be little difference in test results between the two test procedures, DOE has provided for the use of either procedure during a three-year period in today's final rule. After the three-year period, only the alternative uniform test methods for measureing the energy consumption of refrigerators and refrigerator-freezers, and freezers (Appendices A1 and B1) may be used.

13. *Miscellaneous.* After careful consideration of all comments and further consultation with NBS, DOE has incorporated into the final rule some editorial and minor technical changes that were not discussed above. For example, section 6.1.3 of Appendix A1 as proposed is the method for calculating the adjusted total volume of an all-refrigerator. However, an all-refrigerator is a special case of a refrigerator and the methods for determining the adjusted total volumes of these products differ only by the adjustment factors used in the calculations. Therefore, section 6.1.3 has been deleted and section 6.1.1, the method for calculating the adjusted total volume of a refrigerator has been modified to include the adjustment factor for an all-refrigerator and to specify that this particular adjustment factor be used when calculating the adjusted total volume of a refrigerator

which is also an all-refrigerator. Another example is the change made to section 5.1 of Appendix B1 which, as proposed, read, "Temperature measurements shall be made in accordance with HFR–1–1979 section 7.4.3.3 and shall be accurate within ± 0.5°F (0.3°C) of true value." In today's final rule this section has been clarified to read, "Temperature measurements shall be made at the locations prescribed in Fugure 7–2 of HRF–1–1979 and shall be accurate to within ± 0.5°F (0.3°C) of true value."

C. Environmental, Regulatory Impact, and Small Entity Impact Reviews

1. *Environmental Review.* The Department has reviewed today's final rule in accordance with the National Environmental Policy of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations implementing the procedural provisions of NEPA (40 CFR Part 1500 *et seq.*), and the Department's own NEPA guidelines (45 FR 20694, March 28, 1980, as amended by 47 FR 7976, Feb. 23, 1982) to determine if an environmental impact statement (EIS) or an environmental assessment (EA) is required.

Today's final rule serves only to standardize the measurement of energy usage for refrigerators and refrigerator-freezers, and freezers. The action of prescribing these revised test procedures will not result in any environmental impacts. Because it is clear that today's final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, DOE has determined that neither an EA nor an EIS is required.

2. *Regulatory Impact Review.* The final rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules". The Executive Order defines a major rule as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule would only make minor changes in the test procedures for refrigerators and refrigerator-freezers, and freezers to lessen the test burdens associated therewith. Therefore, DOE has determined that this final rule does not come within the definition of a major rule.

In accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the final rule was submitted to OMB for review without a regulatory impact analysis. OMB has concluded its review in accordance with section 3(e)(2)(C) of the Executive Order.

3. *Small Entity Review.* The Regulatory Flexibility Act (Pub. L. 96–354) requires that an agency prepare a final regulatory analysis to be available at the time the final rule is published. This requirement does not apply if the agency "certifies that the rule will not * * * have a significant economic impact on a substantial number of small entities."

This rule only affects manufacturers of refrigerators and refrigerator-freezers, and freezers. There are not a substantial number of small entities that manufacture refrigerators and refrigerator-freezers, and freezers. Moreover, the changes made would not have significant economic impacts, but rather would reduce the testing burdens on all entities.

Therefore, pursuant to Section 605(b), DOE certifies that this final rule would not have a "significant economic impact on a substantial number of small entities."

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below, effective September 9, 1982.

Issued in Washington, D.C., July 19, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Provisions of 10 CFR Part 430, Subparts A and B are amended and Appendices A1 and B1 are added to read as follows:

Subpart A—General Provisions

1. The authority citation for Part 430 reads as follows:

Authority: Sec. 323, Pub. L. 94–163, 89 Stat. 917, as amended by Pub. L. 95–619, 92 Stat. 3266 (42 U.S.C. 6293).

2. Section 430.2 definitions of "electric refrigerator," "electric refrigerator-freezer," "freezer," "refrigerator," and "refrigerator-freezer" are revised to read as follows:

§ 430.2 [Amended]

* * * * *

"Electric refrigerator" means a cabinet designed for the refrigerated storage of food at temperatures above 32° F., and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32° F., but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8° F.

* * * * *

"Electric refrigerator-freezer" means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food at temperatures above 32° F. and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8° F. which may be adjusted by the user to a temperature of 0° F. or below. The source of refrigeration requires single phase, alternating current electric energy input only.

* * * * *

"Freezer" means a cabinet designed as a unit for the freezing and storage of food at temperatures of 0° F. or below, and having a source of refrigeration requiring single phase, alternating current electric energy input only.

* * * * *

"Refrigerator" means an electric refrigerator.

* * * * *

"Refrigerator-freezer" means an electric refrigerator-freezer.

Subpart B—Test Procedures

3. Section 430.22 paragraphs (a) and (b) are revised and (a)(6) and (b)(6) are added to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

(a) *Refrigerators and refrigerator-freezers.* (1) The estimated annual operating cost for electric refrigerators and electric refrigerator-freezers without an anti-sweat heater switch shall be the product of the following three factors: (i) The representative average-use cycle of

365 cycles per year, (ii) the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 4.1 of Appendix A or 6.2 of Appendix A1 of this subpart, and (iii) the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) The estimated annual operating cost for electric refrigerators and electric refrigerator-freezers with an anti-sweat heater switch shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just prior to shipping, each in kilowatt-hours per cycle, determined according to 4.1 of Appendix A or 6.2 of Appendix A1 of this subpart, and (iii) the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(3) The estimated annual operating cost for any other specified cycle type for electric refrigerators and electric refrigerator-freezers shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) the average per-cycle energy consumption for the specified cycle type, determined according to 4.1 of Appendix A or 6.2 of Appendix A1 to this subpart, and (iii) the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(4) The energy factor for electric refrigerators and electric refrigerator-freezers, expressed in cubic feet per kilowatt-hour per cycle, shall be—

(i) For electric refrigerators and electric refrigerator-freezers not having an anti-sweat heater switch, the quotient of (A) the adjusted total volume in cubic feet, determined according to 4.2 of Appendix A or 6.1 of Appendix A1 of this subpart, divided by (B) the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 4.1 of Appendix A or 6.2 of Appendix A1 of this subpart, the resulting quotient then being rounded off to the second decimal place, and

(ii) For electric refrigerators and electric refrigerator-freezers having an anti-sweat heater switch, the quotient of (A) the adjusted total volume in cubic feet, determined according to 4.2 of Appendix A or 6.1 of Appendix A1 of this subpart, divided by (B) half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just prior to shipping, each in kilowatt-hours per cycle, determined according to 4.1 of Appendix A or 6.2 of Appendix A1 of this subpart, the resulting quotient then being rounded off to the second decimal place.

(5) Other useful measures of energy consumption for electric refrigerators and electric refrigerator-freezers shall be those measures of energy consumption for electric refrigerators and electric refrigerator-freezers which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix A or Appendix A1 of this subpart.

(6) The alternative uniform test method for measuring the energy consumption of electric refrigerators and electric refrigerator-freezers set forth in Appendix A1 of this subpart may be used instead of the procedure set forth in Appendix A of this subpart until 36 months from the effective date of this amendment. After that date, Appendix A of this subpart may not be used and only Appendix A1 (alternative uniform test method) may be used.

(b) *Freezers.* (1) The estimated annual operating cost for freezers without an anti-sweat heater switch shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 4.1 of Appendix B or 6.2 of Appendix B1 of this subpart, and (iii) the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) The estimated annual operating cost for freezers with an anti-sweat heater switch shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just prior to shipping, each in kilowatt-hours per cycle, determined according to 4.1 of Appendix B or 6.2 of Appendix B1 of this subpart, and (iii) the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(3) The estimated annual operating cost for an other specified cycle type for freezers shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) the average per-cycle energy consumption for the specified cycle type, determined according to 4.1 of Appendix B or 6.2 of Appendix B1 of this subpart and (iii) the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(4) The energy factor for freezers, expressed in cubic feet per kilowatt-hour per cycle, shall be—

(i) For freezers not having an anti-sweat heater switch, the quotient of (A) the adjusted net refrigerated volume in cubic feet, determined according to 4.2 of Appendix B or 6.1 of Appendix B1 of this subpart, divided by (B) the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 4.1 of Appendix B or 6.2 of Appendix B1 of this subpart, the resulting quotient then being rounded off to the second decimal place, and

(ii) For freezers having an anti-sweat heater switch, the quotient of (A) the adjusted net refrigerated volume in cubic feet, determined according to 4.2 of Appendix B or 6.1 of Appendix B1 of this subpart, divided by (B) half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat switch in the position set at the factory just prior to shipping, each in kilowatt-hours per cycle, determined according to 4.1 of Appendix B or 6.2 of Appendix B1 of this subpart, the resulting quotient then being rounded off to the second decimal place.

(5) Other useful measures of energy consumption for freezers shall be those measures of energy consumption for freezers which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix B or Appendix B1 of this subpart

(6) The alternative uniform test method for measuring the energy consumption for freezers set forth in Appendix B1 of this subpart may be used instead of the procedure set forth

in Appendix B of this subpart until 36 months from the effective date of this amendment. After that date, Appendix B of this subpart may not be used and only Appendix B1 (alternative uniform test method) may be used.

* * * * *

4. Subpart B of Part 430 is amended by adding after Appendix A, Appendix A1, as follows:

Appendix Al (Alternative) To Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

1. Definitions

1.1 "HRF–1–1979" means the Association of Home Appliance Manufacturers standard for household refrigerators, combination refrigerator-freezers, and household freezers, also approved as an American National Standard as a revision of ANSI B 38.1–1970.

1.2 "Adjusted total volume" means the sum of (i) the fresh food compartment volume as defined in HRF–1–1979 in cubic feet, and (ii) the product of an adjustment factor and the net freezer compartment volume as defined in HRF–1–1979, in cubic feet.

1.3 "Anti-sweat heater" means a device incorporated into the design of a refrigerator or refrigerator-freezer to prevent the accumulation of moisture on exterior surfaces of the cabinet under conditions of high ambient humidity.

1.4 "all-refrigerator" means an electric refrigerator which does not include a compartment for the freezing and long time storage of food at temperatures below 32°F (.0.0°C). It may include a compartment of 0.50 cubic feet capacity (14.2 liters) or less for the freezing and storage of ice.

1.5 "Cycle" means the period of 24 hours for which the energy use of an electric refrigerator or electric refrigerator-freezer is calculated as though the consumer activated compartment temperature controls were set so that the desired compartment temperatures were maintained.

1.6 "Cycle type" means the set of test conditions having the calculated effect of operating an electric refrigerator or electric refrigerator-freezer for a period of 24 hours, with the consumer activated controls other than those that control compartment temperatures set to establish various operating characteristics.

1.7 "Standard cycle" means the cycle type in which the anti-sweat heater control, when provided, is set in the highest energy consuming position.

1.8 "Automatic defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of the defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.9 "Long-time Automatic Defrost" means an automatic defrost system where successive defrost cycles are separated by 14 hours or more of compressor-operating time.

1.10 "Stabilization Period" means the total period of time during which steady-state conditions are being attained or evaluated.

2. Test Conditions

2.1 Ambient temperature. The ambient temperature shall be 90.0 ± 1°F (32.3±0.6°C) during the stabilization period and during the test period.

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3, except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative and the anti-sweat heater switch is to be "on" during one test and "off" during a second test. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

2.3 Conditions for automatic defrost refrigerator-freezers. For automatic defrost refrigerator-freezers, the freezer compartments shall not be loaded with any frozen food packages. Cylindrical metallic masses of dimensions 1.12 ± 0.25 inches (2.9±0.6 cm) in diameter and height shall be attached in good thermal contact with each temperature sensor within the refrigerated compartments. All temperature measuring sensor masses shall be supported by nonthermally conductive supports in such a manner that there will be at least one inch (2.5 cm) of air space separating the thermal mass from contact with any surface. In case of interference with hardware at the sensor locations specified in section 5.1, the sensors shall be placed at the nearest adjacent location such that there will be a one inch air space separating the sensor mass from the hardware.

2.4 Conditions for all-refrigerators. There shall be no load in the freezer compartment during the test.

2.5 Steady State Condition. Steady state conditions exist if the temperature measurements in all measured compartments taken at four minute intervals or less during a stabilization period are not changing at a rate greater than 0.042°F (0.023°C) per hour as determined by the applicable condition of A or B.

A. The average of the measurements during a two hour period if no cycling occurs or during a number of complete repetitive compressor cycles through a period of no less than two hours is compare to the average over an equivalent time period with three hours elapsed between the two measurement periods.

B. If A above cannot be used, the average of the measurements during a number of complete repetitive compressor cycles through a period of no less than two hours and including the last complete cycle prior to a defrost period, or if no cycling occurs, the average of the measurements during the last two hours prior to a defrost period; are compared to the same averaging period prior to the following defrost period.

3. Test Control Settings

3.1 Model with no user operable temperature control. A test shall be performed during which the compartment temperatures and energy use shall be measured. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously.

3.2 Model with user operable temperature control. Testing shall be performed in accordance with one of the following sections using the standardized temperatures of:

All-refrigerator: 38°F (3.3°C) fresh food compartment temperature
Refrigerator: 15°F (−9.4°C) freezer compartment temperature
Refrigerator-freezer: 5°F (−15°C) freezer compartment temperature

3.2.1 A first test shall be performed with all compartment temperature controls set at their median position midway between their warmest and coldest settings. Knob detents shall be mechanically defeated if necessary to attain a median setting. A second test shall be performed with all controls set at either their warmest or their coldest setting (not electrically or mechanically bypassed), whichever is appropriate, to attempt to achieve compartment temperatures measured during the two tests which bound (i.e., one is above and one is below) the standardized temperature for the type of product being tested. If the compartment temperatures measured during these two tests bound the appropriate standardized temperature, then these test results shall be used to determine energy consumption. If the compartment temperature measured with all controls set at their coldest setting is above the standardized temperature, a third test shall be performed with all controls set at their warmest setting and the result of this test shall be used with the result of the test performed with all controls set at their coldest setting to determine energy consumption. If the compartment temperature measured with all controls set at their warmest setting is below the standardized temperature; and the fresh food compartment temperature is below 45°F (7.22°C) in the case of a refrigerator or a refrigerator-freezer, excluding an all-refrigerator, then the result of this test alone will be used to determine energy consumption.

3.2.2 Alternatively, a first test may be performed with all temperature controls set at their warmest setting. If the compartment temperature is below the appropriate standardized temperature, and the fresh food compartment temperature is below 45°F (7.22°C) in the case of a refrigerator or a refrigerator-freezer, excluding an all-refrigerator, then the result of this test alone will be used to determine energy consumption. If the above conditions are not met, then the unit shall be tested in accordance with 3.2.1 above.

3.2.3 Alternatively, a first test may be performed with all temperature controls set at their coldest setting. If the compartment temperature is above the appropriate

standardized temperature, a second test shall be performed with all controls set at their warmest control setting and the results of these two tests shall be used to determine energy consumption. If the above condition is not met, then the unit shall be tested in accordance with 3.2.1 above.

4. Test Period

4.1 Test Period. Tests shall be performed by establishing the conditions set forth in Section 2, and using control settings as set forth in Section 3, above.

4.1.1 Nonautomatic Defrost. If the model being tested has no automatic defrost system, the test time period shall start after steady state conditions have been achieved and be of not less than three hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles (a compressor cycle is a complete "on" and a complete "off" period of the motor). If no "off" cycling will occur, as determined during the stabilization period, the test period shall be three hours. If incomplete cycling (less than two compressor cycles) occurs during a 24 hour period, the results of the 24 hour period shall be used.

4.1.2 Automatic Defrost. If the model being tested has an automatic defrost system, the test time period shall start after steady state conditions have been achieved and be from one point during a defrost period to the same point during the next defrost period. If the model being tested has a long-time automatic defrost system, the alternative provisions of 4.1.2.1 may be used.

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost period is manually initiated during a compressor "on" cycle and terminate at the second turn "on" of the compressor motor or after four hours, whichever comes first.

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figures 7.1 and 7.2 of HRF–1–1979 and shall be accurate to within ± 0.5°F. (0.3°C) of true value. No freezer temperature measurements need be taken in an all-refrigerator model.

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.1 and 7.2 of HRF–1–1979, measurements shall be taken at selected locations chosen to represent approximately the entire refrigerated compartment. The locations selected shall be a matter of record.

5.1.1 Measured Temperature. The measured temperature of a compartment is to be the average of all sensor temperature readings taken in that compartment at a particular time. Measurements shall be taken at regular intervals not to exceed four minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken in a compartment during a complete cycle or several complete cycles of the compressor motor (one compressor cycle is one complete motor "on" and one complete motor "off" period). For long-time automatic defrost models, compartment temperatures shall be those measured in the first part of the test period specified in 4.1.3.

5.1.2.1 The number of complete compressor motor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings, rounded up to the next whole minute or a number of complete cycles over a time period exceeding one hour. One of the cycles shall be the last complete compressor motor cycle during the test period.

5.1.2.2 If no compressor motor cycling occurs, the compartment temperature shall be the average of the measured temperatures taken during the last thirty-two minutes of the test period.

5.1.2.3 If incomplete cycling occurs, the compartment temperatures shall be the average of the measured temperatures taken during the last three hours of the last complete "on" period.

5.2 Energy Measurements

5.2.1 Per-day Energy Consumption. The energy consumption in kilowatt-hours per day for each test period shall be the energy expended during the test period as specified in section 4.1 adjusted to a 24 hour period. The adjustment shall be determined as follows:

5.2.1.1 Nonautomatic and automatic defrost models. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = EP \times 1440/T$

where

ET = test cycle energy expended in kilowatt-hours per day,

EP = energy expended in kilowatt-hours during the test period,

T = length of time of the test period in minutes, and

1440 = conversion factor to adjust to a 24 hour period in minutes per day.

5.2.1.2 Long-time Automatic Defrost. If the two part test method is used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = (1440 \times EP1/T1) + ((EP2 - (EP1 \times T2/T1)) \times 12/CT)$

where

ET and 1440 are defined in 5.2.1.1,

EP1 = energy expended in kilowatt-hours during the first part of the test,

EP2 = energy expended in kilowatt-hours during the second part of the test,

T1 and T2 = length of time in minutes of the first and second test parts respectively,

CT = Defrost timer run time in hours required to cause it to go through a complete cycle, to the nearest tenth hour per cycle, and

12 = factor to adjust for a 50% run time of the compressor in hours per day.

5.3 Volume measurements. The electric refrigerator or electric refrigerator-freezer total refrigerated volume, VT, shall be measured in accordance with HRF–1–1979, section 3.20 and sections 4.2 through 4.3 and be calculated equivalent to:

$VT = VF + VFF$

where

VT = total refrigerated volume in cubic feet,

VF = freezer compartment volume in cubic feet, and

VFF = fresh food compartment volume in cubic feet.

6. Calculation of Derived Results from Test Measurements

6.1 Adjusted Total Volume.

6.1.1 Electric refrigerators. The adjusted total volume, VA, for electric refrigerators under test shall be defined as:

$VA = (VF \times CR) + VFF$

where

VA = adjusted total volume in cubic feet,

VF and VFF are defined in 5.3, and

CR = adjustment factor of 1.44 for refrigerators other than all-refrigerators, or 1.0 for all-refrigerators, dimensionless,

6.1.2 Electric refrigerator-freezers. The adjusted total volume, VA, for electric refrigerator-freezers under test shall be calculated as follows:

$VA = (VF \times CRF) + VFF$

where

VF and VFF are defined in 5.3 and VA is defined in 6.1.1,

CRF = adjustment factor of 1.63, dimensionless,

6.2 Average Per-Cycle Energy consumption.

6.2.1 All-refrigerator Models. The average per-cycle energy consumption for a cycle type is expressed in kilowatt-hours per cycle to the nearest one hundredth (0.01) kilowatt-hour and shall depend upon the temperature attainable in the fresh food compartment as shown below.

6.2.1.1 If the fresh food compartment temperature is always below 38.0 °F (3.3 °C), the average per-cycle energy consumption shall be equivalent to:

$E = ET1$

where

E = Total per-cycle energy consumption in kilowatt-hours per day,

ET is defined in 5.2.1, and Number 1 indicates the test period during which the highest fresh food compartment temperature is measured.

6.2.1.2 If one of the fresh food compartment temperatures measured for a test period is greater than 38.0 °F (3.3 °C), the average per-cycle energy consumption shall be equivalent to:

$E = ET1 + ((ET2 - ET1) \times (38.0 - TR1)/(TR2 - TR1))$

where

E is defined in 6.2.1.1,

ET is defined in 5.2.1,

TR = Fresh food compartment temperature determined according to 5.1.2 in degrees F,

Number 1 and 2 indicates measurements taken during the first and second test period as appropriate, and

38.0 = Standardized fresh food compartment temperature in degrees F.

6.2.2 Refrigerators and refrigerator-freezers. The average per-cycle energy consumption for a cycle type is expressed in kilowatt-hours per-cycle to the nearest one hundredth (0.01) kilowatt-hour and shall be defined in the applicable following manner.

6.2.2.1 If the fresh food compartment temperature is always at or below 45°F (7.2°C) in both of the tests and the freezer compartment temperature is always at or below 15°F (−9.4°C) in both tests of a refrigerator or at or below 5°F (−15°C) in both tests of a refrigerator-freezer, the per-cycle energy consumption shall be:

E=ET1

where

E is defined in 6.2.1.1,

ET is defined in 5.2.1, and

Number 1 indicates the test period during which the highest freezer compartment temperature was measured.

6.2.2.2 If the conditions of 6.2.2.1 do not exist, the per-cycle energy consumption shall be defined by the higher of the two values calculated by the following two formulas:

$E=ET1+((ET2-ET1)\times(45.0-TR1)/(TR2-TR1))$

and

$E=ET1+((ET2-ET1)\times(k-TF1)/(TF2-TF1))$

where

E is defined in 6.2.1.1,

ET is defined in 5.2.1,

TR and number 1 and 2 are defined in 6.2.1.2,

TF=Freezer compartment temperature determined according to 5.1.2 in degrees F,

45.0 is a specified fresh food compartment temperature in degree F, and

k is a constant 15.0 for refrigerators or 5.0 for refrigerator-freezers each being standardized freezer compartment temperature in degrees F.

5. Subpart B of Part 430 is amended by adding after Appendix B, Appendix B1, as follows,

Appendix B1 (Alternative) to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers.

1. Definitions.

1.1 "HRF-1-1979" means the Association of Home Appliance Manufacturers standard for household refrigerators, combination refrigerators-freezers, and household freezers, also approved as an American National Standard as a revision of ANSI B38.1-1970.

1.2 "Anti-sweat heater" means a device incorporated into the design of a freezer to prevent the accumulation of moisture on exterior surfaces of the cabinet under conditions of high ambient humidity.

1.3 "Cycle" means the period of 24 hours for which the energy use of a freezer is calculated as though the consumer-activated compartment temperature controls were preset so that the desired compartment temperatures were maintained.

1.4 "Cycle type" means the set of test conditions having the calculated effect of operating a freezer for a period of 24 hours with the consumer-activated controls other than the compartment temperature control set to establish various operating characteristics.

1.5 "Standard cycle" means the cycle type in which the anti-sweat heater switch, when provided, is set in the highest energy consuming position.

1.6 "Adjusted total volume" means the product of, (1) the freezer volume as defined in HRF-1-1979 in cubic feet, times (2) an adjustment factor.

1.7 "Automatic Defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.8 "Long-time Automatic Defrost" means an automatic defrost system where successive defrost cycles are separated by 14 hours or more of compressor-operating time.

1.9 "Stabilization Period" means the total period of time during which steady-state conditions are being attained or evaluated.

2. Test Conditions.

2.2 Operational conditions. The freezer shall be installed and its operating conditions maintained in accordance with HRF-1-1979, section 7.2 through section 7.4.3.3, except that the vertical ambient gradient at locations 10 inches (25.4 cm) out from the the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative and the anti-sweat heater switch is to be "on" during one test and "off" during a second test.

2.1 Ambient temperature. The ambient temperature shall be 90.0±1.0°F (32.±0.6°C) during the stabilization period and during the test period.

2.3 Steady State Condition. Steady state conditions exist if the temperature measurements taken at four minute intervals or less during a stabilization period are not changing at a rate greater than 0.042°F (0.023°C) per hour as determined by the applicable condition of A or B.

[Note.—Change format of 2.3A to match format of 2.3B.]

A—The average of the measurements during a two hour period if no cycling occurs or during a number of complete repetitive compressor cycles through a period of no less than two hours is compared to the average an equivalent time period with three hours elapsed between the two measurement periods.

B—If A above cannot be used, the average of the measurements during a number of complete repetitive compressor cycles through a period of no less than two hours and including the last complete cycle prior to a defrost period, or if no cycling occurs, the average of the measurements during the last two hours prior to a defrost period; are compared to the same averaging period prior to the following defrost period.

3. Test Control Settings.

3.1 Model with no user operable temperature control. A test shall be performed during which the compartment temperature and energy use shall be measured. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously.

3.2 Model with user operable temperature control. Testing shall be performed in accordance with one of the following sections using the standardized temperature of 0.0° F (−17.8° C).

3.2.1 A first test shall be performed with all temperature controls set at their median position midway between their warmest and coldest settings. Knob detents shall be mechancially defeated if necessary to attain a median setting. A second test shall be performed with all controls set at either their warmest or their coldest setting (not electrically or mechanically bypassed), whichever is appropriate, to attempt to achieve compartment temperatures measured during the two tests which bound (i.e., one is above and one is below) the standardized temperature. If the compartment temperatures measured during these two tests bound the standardized temperature, then these test results shall be used to determine energy consumption. If the compartment temperature measured with all controls set at their coldest setting is above the standardized temperature, a third test shall be performed with all controls set at their warmest setting and the result of this test shall be used with the result of the test performed with all controls set at their coldest setting to determine energy consumption. If the compartment temperature measured with all controls set at their warmest setting is below the standardized temperature; then the result of this test alone will be used to determine energy consumption.

3.2.2 Alternatively, a first test may be performed with all temperature controls set at their warmest setting. If the compartment temperature is below the standardized temperature, then the result of this test alone will be used to determine energy consumption. If the above condition is not met, then the unit shall be tested in accordance with 3.2.1 above.

3.2.3 Alternatively, a first test may be performed with all temperature controls set at their coldest setting. If the compartment temperature is above the standardized temperature, a second test shall be performed with all controls set at their warmest setting and the results of these two tests shall be used to determine energy consumption. If the above condition is not met, then the unit shall be tested in accordance with 3.2.1 above.

4. Test Period.

4.1 Test Period. Tests shall be performed by establishing the conditions set forth in Section 2 and using control settings as set forth in Section 3 above.

4.1.1 Nonautomatic Defrost. If the model being tested has no automatic defrost system, the test time period shall start after steady state conditions have been achieved, and be of not less than three hours' duration. During the test period the compressor motor shall complete two or more whole cycles (a compressor cycle is a complete "on" and a complete "off" period of the motor). If no "off" cycling will occur, as determined during the stabilization period, the test period shall

be three hours. If incomplete cycling (less than two compressor cycles) occurs during a 24 hour period, the results of the 24 hour period shall be used.

4.1.2 Automatic Defrost. If the model being tested has an automatic defrost system, the test time period shall start after steady state conditions have been achieved and be from one point during a defrost period to the same point during the next defrost period. If the model being tested has a long-time automatic defrost system, the alternate provisions of 4.1.2.1 may be used.

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost period is manually initiated during a compressor "on" cycle and terminate at the second turn "on" of the compressor motor or after four hours, whichever comes first.

5. Test Measurements.

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figure 7–2 of HRF–1–1979 and shall be accurate to within ±0.5° F (0.3°C) of true value.

5.1.1 Measured Temperature. The measured temperature is to be the average of all sensor temperature readings taken at a particular time. Measurements shall be taken at regular intervals not to exceed four minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken during a complete cycle or several complete cycles of the compressor motor (one compressor cycle is one complete motor "on" and one complete motor "off" period). For long-time automatic defrost models, compartment temperature shall be that measured in the first part of the test period specified in 4.1.3.

5.1.2.1 The number of complete compressor motor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings rounded up to the next whole minute or a number of complete cycles over a time period exceeding one hour. One of the cycles shall be the last complete compressor motor cycles during the test period.

5.1.2.2 If no compressor motor cycling occurs, the compartment temperature shall be the average of the measured temperatures taken during the last thirty-two minutes of the test period.

5.1.2.3 If incomplete cycling occurs (less than one cycle) the compartment temperature shall be the average of all readings taken during the last three hours of the last complete "on" period.

5.2 Energy Measurements:

5.2.1 Per-day Energy Consumption. The energy consumption in kilowatt-hours per day for each test period shall be the energy expended during the test period as specified in section 4.1 adjusted to a 24 hour period. The adjustment shall be determined as follows:

5.2.1.1 Nonautomatic and automatic defrost models. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET=(EP\times1440\times k)/T$ where

ET = test cycle energy expended in kilowatt-hours per day,

EP = energy expended in kilowatt-hours during the test period.

T = length of time of the test period in minutes,

1440 = conversion factor to adjust to a 24 hour period in minutes per day, and

K = correction factor of 0.7 for chest freezers and 0.85 for upright freezers to adjust for average household usage, dimensionless.

5.2.1.2 Long-time Automatic Defrost. If the two part test method is used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET=(1440\times EP1/T1)+((EP2-(EP1\times T2/T1))\times K\times 12/CT)$

where

ET, 1440, and K are defined in 5.2.1.1

EP1 = energy expended in kilowatt-hours during the first part of the test.

EP2 = energy expended in kilowatt-hours during the second part of the test,

CT = Defrost timer run time in hours required to cause it to go through a complete cycle, to the nearest tenth hour per cycle,

12 = conversion factor to adjust for a 50% run time of the compressor in hours per day, and

T1 and T2 = length of time in minutes of the first and second test parts respectively.

5.3 Volume measurements. The total refrigerated volume, VT, shall be measured in accordance with HRF–1–1979, section 3.20 and section 5.1 through 5.3.

6. Calculation of Derived Results From Test Measurements.

6.1 Adjusted Total Volume. The adjusted total volume, VA, for freezers under test shall be defined as:

$VA=VT\times CF$

where

VA = adjusted total volume in cubic feet,

VT = total refrigerated volume in cubic feet, and

CF = Correction factor of 1.73, dimensionless.

6.2 Average Per Cycle Energy Consumption:

6.2.1 The average per-cycle energy consumption for a cycle type is expressed in kilowatt-hours per cycle to the nearest one hundredth (0.01) kilowatt-hour and shall depend upon the compartment temperature attainable as shown below.

6.2.1.1 If the compartment temperature is always below 0.0°F (−17.8°C), the average per-cycle energy consumption shall be equivalent to:

$E=ET1$

where

E = Total per-cycle energy consumption in kilowatt-hours per day.

ET is defined in 5.2.1, and

Number 1 indicates the test period during which the highest compartment temperature is measured.

6.2.1.2 If one of the compartment temperatures measured for a test period is greater than 0.0°F (17.8°C), the average per-cycle energy consumption shall be equivalent to:

$E=ET1+((ET2-ET1)\times(0.0-TF1)/TF2-TF1))$

where

E is defined in 6.2.1.1

ET is defined in 5.2.1

TF = compartment temperature determined according to 5.1.2 in degrees F.

Numbers 1 and 2 indicate measurements taken during the first and second test period as appropriate, and

0.0 = Standardized compartment temperature in degrees F.

[FR 82–21600 Filed 8–9–82; 8:45 am]

BILLING CODE 6450–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies; Eligibility Requirements for Certified Development Companies

AGENCY: Small Business Administration.

ACTION: Final rules.

SUMMARY: The Small Business Administration is publishing its final rules for the certification requirements of its Section 503 Certified Development Company program. These rules eliminate the regulation requiring 503 development companies operating on a statewide basis to be authorized by a special act of the state legislature. In addition, the final rules establish a standardized membership requirement for 503 development companies.

EFFECTIVE DATE: August 10, 1982.

FOR FURTHER INFORMATION CONTACT: Alan B. Abraham, Financial Analyst, Office of Lender Relations and Certification, Small Business Administration, 1441 L Street N.W., Room 804, Washington, D.C. 20416 (202) 653–9181.

SUPPLEMENTARY INFORMATION: On May 24, 1982, SBA published its proposed regulation (47 FR 22374). Public comments were invited on or before June 23, 1982. A total of 11 comments were received.

Most comments addressed the requirement that a 503 development company's board of directors contain representation from the appropriate level of governmental, and from private lending institutions. Many indicated that such a requirement could lead to a conflict of interest because city or government officials are not permitted to serve on boards of organizations which receive city funds. After due consideration, this requirement has been modified to only require representation on the Board of Directors from private lending institutions.

The proposed provision regarding elimination of the regulation that 503 companies operating on a statewide basis be authorized by a special act of the state legislature was generally accepted. This provision was adopted by the Agency. The Agency has also determined to permit 503 companies to operate beyond State borders where a city is bisected by a State line, and under certain limitations where an economic area crosses a State line.

Two comments were received concerning the membership requirements for 503 development companies. One objected to the standardization of 25 members for all development companies and the other objected to requiring governmental membership for multi-county 503 development companies. The provision requiring at least 25 members provides wide participation and will be adopted by the Agency. The requirement for governmental membership, specifically in multi-county 503 development companies, has been modified to permit more flexibility in meeting this provision.

SBA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small businesses. In addition this rule is not a major rule within the meaning of Executive Order 12291.

List of Subjects in 13 CFR Part 108

Loan programs—Business (503 Programs).

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Pursuant to authority contained in section 308(c) of the Small Business Investment Act of 1958 (SBI Act), 15 U.S.C. 687, Chapter I, Part 108 of Title 13, Code of Federal Regulations is being amended as follows: Section 108.503–1 is amended by revising the introductory paragraph, paragraph (b) and paragraph (c) to read as follows:

§ 108.503–1 Eligibility requirements.

SBA is authorized to guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified development company. The full faith and credit of the United States is pledged to the payments of all amounts so guaranteed. Such debentures (herein sometimes referred to as 503 debentures) will be issued within certain limits solely for the purpose of assisting identifiable small business concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. For the purpose of this section, development companies qualified to participate in this program (herein sometimes referred to as "503 companies") shall be formally certified by SBA on the terms and conditions contained herein, consistent with the intent of Congress. To qualify, a development company must demonstrate to the satisfaction of SBA, the following:

(a) * * *

(b) *Area of Operations.* A 503 company shall not be certified to operate in more than one state, except that a 503 company may operate within two States if (i) a State line bisects a city, in which case the 503 company may operate city-wide or (ii) the 503 company has obtained prior written approval to operate within a contiguous economic area, as determined by SBA, which crosses a State line.

(c) *Membership.* The 503 company must be representative of the state, or subdivision thereof, in which the company operates. Evidence of a 503 company representation shall include the following:

(1) The 503 company must have at least 25 individual members or stockholders that are representative of its area of operation. No member or stockholder may own or control more than ten percent of the development company's stock or voting membership.

(2) The membership must include representation from each of the following four groups, except that government representation may be by other than membership.

(i) *Government.* Representation from the appropriate level of government that reflects the 503 development company's area of operation. For example, 503 development companies operating on a statewide basis must have representation from an economic development agency of the state government. Countywide or multi-county 503 companies must have government representation that ensures that each county is represented. Citywide 503 development companies must have representation from the city government.

(ii) Private Lending Institutions;

(iii) Community Organizations;

(iv) Business Organizations;

(3) At least one private lending institution must be represented on the board of directors.

(4) Any 503 development companies which do not meet the above requirements shall do so on or before one year from August 10, 1982.

(Catalog of Federal Domestic Assistance No. 59.013 State and Local Development Company Loans)

Dated: August 5, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82–21770 Filed 8–9–82; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 81F–0405]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *o*-phthalic acid modified hydrolyzed soy protein isolate as a component of coatings for paper and paperboard that contact dry foods. This action is in response to a petition filed by the Ralston Purina Co.

DATES: Effective August 10, 1982; objections by September 9, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James B. Lamb, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 12, 1982 (47 FR 10907), FDA announced that a petition (FAP OB3531) had been filed by the Ralston Purina Co., Checkerboard Square, St. Louis, MO 63188, proposing that the food additive regulations be amended to provide for the safe use of phthalate modified hydrolyzed soy isolate as a binder-adhesive component of coatings for paper and paperboard that contact foods.

FDA has evaluated the data in the petition and other relevant material and concludes that the food additive is more properly identified as *o*-phthalic acid modified hydrolyzed soy protein isolate, that its proposed use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will remove from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

PART 176—INDIRECT FOOD ADDITIVES; PAPER AND PAPERBOARD COMPONENTS

Therefore under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 176 is amended in § 176.180(b)(2) by alphabetically inserting a new item in the list of substances to read as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

§ 176.180 Components of paper and paperboard in contact with dry food.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
o-Phthalic acid modified hydrolyzed soy protein isolate.	
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before September 9, 1982 submit to the Dockets Management Branch written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on the objection. Each number objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective August 10, 1982.

((Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348).)

Dated: August 3, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-21636 Filed 8-9-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulation for lincomycin to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co. providing for use of a currently approved 50-gram-per-pound lincomycin premix for the manufacture of a complete broiler feed. The feed is used for increase in rate of weight gain, improved feed efficiency, and control of necrotic enteritis.

EFFECTIVE DATE: August 10, 1982.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV–147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplemental NADA (97–505V) providing for the addition of broiler use to the 50-gram-per-pound lincomycin premix. The firm currently holds approval for use of the premix for swine feeds. The firm also holds approval for use of a 4-gram-per-pound lincomycin premix and a 20-gram-per-pound lincomycin premix for the manufacture of broiler feeds and swine feeds for the same indications of use provided for by this supplement.

The supplement is approved and the regulations are amended accordingly.

This approval does not change the approved conditions of use of the drug. Consequently, approval of this supplemental NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the safety and effectiveness data in the original approval. Approval of this supplement does not require the generation of new effectiveness or safety data in support of this use. Therefore, a freedom of information summary is not required for this action. A summary of safety and effectiveness data and information submitted previously may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) and (iii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary

Medicine (21 CFR 5.83), Part 558 is amended in § 558.325 by revising paragraph (b)(3) to read as follows:

§ 558.325 Lincomycin.

* * * * *

(b) * * *

(3) Premix level of 50 grams per pound has been granted to No. 000009 in § 510.600(c) of this chapter for use as provided in paragraph (f)(1) and (2) of this section.

* * * * *

Effective date. This regulation is effective *August 10, 1982.*

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: August 4, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-21635 Filed 8-9-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 610 and 660

[Docket No. 80N-0049]

Leukocyte Typing Serum; Revocation of Additional Standards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the additional standards for Leukocyte Typing Serum. The agency has determined that Leukocyte Typing Serum should be delicensed and regulated under the 1976 Medical Device amendments to the Federal Food, Drug, and Cosmetic Act. Accordingly, the agency is revoking the additional standards for Leukocyte Typing Serum that were codified under §§ 660.10 through 660.15 (21 CFR 660.10 through 660.15) of the biologic regulations.

EFFECTIVE DATES: Effective September 9, 1982. Labeling requirements for currently licensed Leukocyte Typing Serum products shall become effective September 12, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, National Center for Drugs and Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306; or William C. Dierksheide, Bureau of Medical Devices (HFK–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7114.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 1980 (45 FR 51226), FDA proposed to revoke the additional standards for Leukocyte Typing Serum. Leukocyte Typing Serum, prepared from blood or plasma of human donors or lower animals and containing antibodies for identification of human leukocyte antigens, is an in vitro diagnostic product as defined under § 809.3(a) (21 CFR 809.3(a)) of the medical device regulations. The agency proposed to revoke the additional standards for Leukocyte Typing Serum, described under §§ 660.10 through 660.15, on the basis that the product is appropriately regulated under the Federal Food, Drug, and Cosmetic Act as amended by the Medical Device Amendments of 1976 (21 U.S.C. 301 et seq.) and that the product should no longer be subject to the biologics licensing requirements of the Public Health Service Act (42 U.S.C. 262).

Interested persons were given until September 30, 1980, to submit written comments regarding the proposed rule. Three letters were received, each of which supported the proposed rule change.

Accordingly, the agency is removing Leukocyte Typing Serum (Dried) from the dating period requirements under § 610.53 (21 CFR 610.53), revoking the additional standards regulations for Leukocyte Typing Serum under §§ 660.10 through 660.15, and revoking the establishment and product licenses for Leukocyte Typing Serum. The 1977 FDA guideline for the production, testing, and lot release of Leukocyte Typing Sera is no longer in effect. Manufacturers of Leukocyte Typing Serum will be subject to the labeling requirements for in vitro diagnostic reagents under § 809.10 (21 CFR 809.10) and the applicable good manufacturing practice regulations under Part 820 (21 CFR Part 820).

FDA has reconsidered its intention stated in the preamble to the August 1, 1980 proposal that the Bureau of Medical Devices be the lead bureau for regulating these products. In a **Federal Register** notice of April 9, 1982 (47 FR 15412), FDA announced the availability of a new working agreement among the FDA's Bureaus of Medical Devices, Radiological Health, and Biologics. The agreement outlines the division among these Bureaus of certain regulatory responsibilities for medical devices. The Bureau of Biologics is designated as the lead Bureau in FDA for regulating certain medical devices, including Leukocyte Typing Serum. In a subsequent **Federal Register** notice of June 22, 1982 (47 FR 26913), FDA announced the merger of the Bureaus of Drugs and Biologics into the National Center for Drugs and Biologics (NCDB). Under this merger the former Bureau of Biologics is now the Office of Biologics within NCDB.

Because the expertise on Leukocyte Typing Serum is in the Office of Biologics, the agency believes that the Office of Biologics should continue the lead in regulating these products. Therefore, although manufacturers will be required to register with the Bureau of Medical Devices, all questions on regulatory matters should continue to be addressed to the Office of Biologics.

Manufacturers should register and list Leukocyte Typing Sera under Part 807 (21 CFR Part 807) rather than Part 607 (21 CFR Part 607). Manufacturers have 30 days from the effective date of this regulation in which to register under Part 807. See 21 CFR 807.20. Premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) is not required for the continued distribution of Leukocyte Typing Sera that is currently marketed under licensure. Distribution of currently licensed products bearing labeling required under §§ 660.14 and 610.60 through 610.62 (21 CFR 660.14 and 610.60 through 610.62) may continue for up to 12 months after the effective revocation date of the product licenses. In addition, submission of samples and protocols for lot release is no longer required.

The economic impact of this rule has been assessed in accordance with Executive Order 12291. The rule will relieve manufacturers of all current licensing restrictions for Leukoycte Typing Serum. Two manufacturers will need to make minor labeling changes, but will have 1 year after the effective date of the rule to make these revisions. The rule is not expected to increase the cost of the products. Marketing of these products, and perhaps introduction of these products by additional manufacturers, will be facilitated because current licensing restrictions are being revoked. Therefore, the agency concludes that the rule does not warrant designation as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291.

The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

List of Subjects in 21 CFR Parts 610 and 660

Biologics, Labeling.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 610 and 660 are amended as follows:

§ 610.53 [Amended]

1. Part 610 is amended in § 610.53 *Dating periods for specific products,* in paragraph (a), by removing the listing for "Leukocyte Typing Serum (Dried)."

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

§§ 660.10–660.15 [Removed]

2. Part 660 is amended by removing Subpart B—Leukocyte Typing Serum, consisting of § 660.10 Leukocyte typing serum; § 660.11 *Potency tests;* § 660.12 *Specificity test;* § 660.13 *Processing;* § 660.14 *Labeling;* and § 660.15 *Samples, protocols; official release,* and reserving it for future use.

Effective dates. This regulation is effective September 9, 1982. Labeling requirements for currently licensed Leukocyte Typing Serum products shall become effective September 12, 1982.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: July 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-21634 Filed 8-9-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 261

[DOD Directive 1015.3]

Armed Services Military Clubs and Package Stores

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DOD) has revised its regulations on alcoholic beverage control to provide policy and assign responsibilities to heads of DOD Components and DOD commanders for the operation of military clubs and package stores of the Army, Navy, Air Force, and Marine Corps. This rule incorporates regulatory requirements mandated by Congress and provides uniformity with related rules.

EFFECTIVE DATE: This rule [DOD Directive 1015.3] was approved and signed by the Deputy Secretary of Defense on May 14, 1982, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Major Arpad A. Spurgyi, Office of the Deputy Assistant Secretary of Defense (Military Personnel and Force Management), Washington, D.C. 20301, telephone 202–697–9525.

SUPPLEMENTARY INFORMATION: In FR Doc. 73–10682, appearing in the **Federal Register** (38 FR 14167) on May 30, 1973, this Office of the Secretary of Defense (OSD) published Part 261 of this title, under "Alcoholic Beverage Control." OSD has revised this Part and is reissuing it under the new subject title indicated above. Incorporated in § 261.4, below, is an excerpt from DOD 1015.3–R[1] that deals specifically with DOD cooperation with local, state, and federal officials.

List of Subjects in 32 CFR Part 261

Alcohol and alcoholic beverages, Armed Forces.

Accordingly, Chapter 1, 32 CFR Part 261, is revised to read as follows:

PART 261—ARMED SERVICES MILITARY CLUB AND PACKAGE STORES

Sec.

261.1 Purpose.
261.2 Applicability.
261.3 Policy.
261.4 Procedures.
261.5 Responsibilities.
261.6 Information requirements.

Authority: 50 U.S.C. Appendix, Section 473, section 6.

§ 261.1 Purpose.

This Part incorporates DOD Directive 1330.15, "Alcoholic Beverage Control," May 4, 1964, (which is hereby cancelled), provides policy and assigns responsibilities for the operation of military clubs and package stores of the Army, Navy, Air Force, and the Marine Corps; and authorizes the development, publication, and maintenance of DOD 1015.3–R, "Armed Services and Military Club and Package Store Regulations."

§ 261.2 Applicability.

The provisions of this P A R T apply to the Office of the Secretary of Defense and the Military Departments, including DOD activities with clubs and package stores designated as a service (executive agent) responsibility, and Defense Agencies (hereinafter referred to as "DOD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 261.3 Policy.

It is the policy of the Department of Defense that Armed Services military clubs and package stores be established as an essential part of the DOD Morale, Welfare and Recreation (MWR) program. In addition, the Department of Defense shall establish controls and procedures governing the sale of alcoholic beverages in these clubs and package stores. Affirmative measures shall be taken to provide character guidance, emphasizing the harmful effects of the immoderate use of alcohol. Chaplains and local community and national organizations shall assist in this effort. Military clubs shall provide dining, essential feeding (where required), and social programs, services, and facilities to eligible patrons. Package stores shall provide the sale of alcoholic beverages purchased for off-premise consumption by authorized patrons, and also provide a resale source of alcoholic beverages for all other authorized activities under 50 U.S.C., Appendix, Section 473. The establishment, management, and control of club and package store nonappropriated fund instrumentalities (NAFIs) shall be in accordance with DOD Directive 1015.1, "Establishment, Management, and Control of Nonappropriated Fund Instrumentalities (NAFIs)," August 19, 1981.

§ 261.4 Procedures.

Procedures and guidance are prescribed in DOD 1015.3–R, "Armed Services Military Club and Package Store Regulations." Chapter 4, section C., of this guidance reads as follows:

"C. *COOPERATION.* The Department of Defense shall cooperate with local, state, and federal officials to the degree that their duties relate to the provisions of this chapter. However, the purchase of all alcoholic beverages for resale at any camp, post, station, base, or other DOD installation within the United States shall be in such a manner and under such conditions as shall obtain for the government the most advantageous contract, price and other considered factors. These other factors shall not be construed as meaning any submission to state control, nor shall cooperation be construed or represented as an admission of any legal obligation to submit to state control, pay state or local taxes, or purchase alcoholic beverages within geographical boundaries or at prices or from suppliers prescribed by any state."

§ 261.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs,* and Logistics) (ASD(MRA&AL)) shall:

(1) Provide guidance and direction in carrying out the provisions of this Part; and shall establish, maintain, and disestablish clubs and package stores in accordance with DOD Directive 1015.1.

(2) Delegate executive agent responsibilities consistent with DOD Directive 1015.1.

[1] Copies may be obtained from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

(3) Develop, publish, and maintain DOD 1015.3–R, consistent with DOD 5025.1–M.

(b) The *Secretaries of the Military Departments* shall:

(1) Act as executive agents for the administration of clubs and package stores, consistent with DOD Directive 1015.1.

(2) Establish a Fund Council whose composition and membership are provided at Chapter 1 of DOD 1015.3–R.

(c) The *Director of Defense Agencies* shall coordinate with the Military Service concerned in the preparation of a memorandum of understanding detailing Defense Agency responsibilities for the operation of clubs and package stores under the direction, regulation, and administration of the Military Service concerned.

§ 261.6 Information requirements.

(a) This Part establishes a reporting requirement that is prescribed in Chapter 4 of DOD 1015.3–R for a triennial review of each package store.

(b) Report Control Symbol DD–M(TRI)1593 has been assigned to this information requirement.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

August 4, 1982.

[FR Doc. 82–21599 Filed 8–9–82; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

33 CFR Part 207

Puget Sound Area, Washington

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending the regulations which establish the Carr Inlet Naval Restricted Area due to changes in warning lights and communications. The Army is also amending the Hood Canal regulations for clarification and all of the regulations which establish naval restricted areas in the Puget Sound Area to reflect the disestablishment of the 13th Naval District and subsequent transfer of certain enforcement authorities and responsibilities to the Commander, Naval Base, Seattle, Washington.

EFFECTIVE DATE: August 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Baxter at (206) 764–3495 or Mr. Ralph T. Eppard at (202) 272–0200.

SUPPLEMENTARY INFORMATION: The Commander, Puget Sound Naval Shipyard has requested the regulations in 33 CFR Part 207.750(n) be amended. The proposed changes are minor and reflect changes primarily to signal towers, the hydrophone cable connection house and radio contact. These proposed changes were published in the **Federal Register** on April 14, 1982 with the comment period expiring on May 14, 1982 (47 FR 16046–16047). We received no comments.

1. The changes to § 207.750(n) are summarized below:

a. In subparagraph (1) *The Area* delete reference to the Warren Dock and substitute the Fox Island Bridge for restricted area boundary line.

b. Delete references to the hydrophone cable connection house in subparagraph (2)(ii) and in (2)(v)(c).

c. Add subparagraph (2)(iii) *Buoy Testing Area* and renumber the existing (iii) and (iv) to be (iv) and (v) respectively.

d. Revise subparagraphs (2)(iv) and (2)(iv)(b) by deleting the table, changing the operation of the beacon lights and deleting the specific holidays.

e. In subparagraph (2)(v)(d) delete point (3) and replace with 1500 yards east of Wyckoff Shoal and add radio marine band #14, 13, 12 and 6. In this subparagraph and in (e) delete reference to visual flag hoist.

f. In subparagraph (2)(v) (d) and (e) delete references to the range instrument vessel.

g. In subparagraph (2)(v)(3) delete reference to the Commandant, Thirteenth Naval District and add "Commander, Naval Base, Seattle," to reflect a recent U.S. Navy reorganization.

Accordingly the regulations in 33 CFR 207.750(n) are amended as set forth below. The entire paragraph (n) is reprinted for clarity.

2. We are taking this opportunity to correct the regulations which establish all other naval restricted areas in the Puget Sound area to reflect the transfer of enforcement authority from the Commandant, 13th Naval District to the Commander, Naval Base, Seattle, Washington, as set forth below.

Section 207.750(a)(3)(iii), (c)(2)(ii), (e)(3) (i) and (ii)(f), (j)(2)(ii), (k)(3)(iii), (o)(2)(ii), and (p)(2).

3. We are also amending the regulations in paragraph (e) Hood Canal, Bangor; naval restricted areas, subparagraph (3) the regulations (i) *Area No. 1* by inserting the words "person or" as follows: "No person or vessel shall enter this area without permission from the Commander, Naval Base, Seattle, or his/her authorized representative." The regulations as written are ambiguous and require this clarification. Since these additional changes are editorial in nature we have determined that Notice of Proposed Rulemaking and public procedures thereto are unnecessary.

Note.—This regulation is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply. The Department of the Army has determined that this regulation will not have a significant economic impact on a substantial number of entities and thus does not require preparation of a regulatory flexibility analysis.

List of Subjects in 33 CFR Part 207

Navigation (water), Waterways.

Dated: August 2, 1982.

William R. Gianelli,

Assistant Secretary of the Army.

PART 207—NAVIGATION REGULATIONS

33 CFR Part 207 is amended by revising paragraphs (a)(3)(iii), (c)(2)(ii), (e)(3)(i), (j)(2)(ii), (k)(3)(iii), (n), (o)(2)(ii) and (p)(2) and by adding a new paragraph (f) as follows:

§ 207.750 Puget Sound Area, Washington.

(a) *Strait of Juan de Fuca, eastern end; off of the westerly shore of Whidbey Island; naval restricted areas—* * *

(3) *The regulations.* * *

(iii) The regulations in this paragraph shall be enforced by the Commander, Naval Base, Seattle, and such agencies as he/she may designate.

* * * * *

(c) *Admiralty Inlet, entrance; naval restricted area—* * *

(2) *The regulations.* * *

(ii) The regulations in this paragraph shall be enforced by the Commander, Naval Base, Seattle, and such agencies as he/she may designate.

* * * * *

(e) *Hood Canal, Bangor; Naval restricted areas—* * *

(3) *The regulations—* * *

(i) *Area No. 1.* No person or vessel shall enter this area without permission from the Commander, Naval Base, Seattle, or his/her authorized representative.

* * * * *

(f) The regulations in this paragraph shall be enforced by the Commander, Naval Base, Seattle, and such agencies as he/she may designate.

* * * * *

(j) *Port Orchard; naval restricted area—* * *

(2) *The regulations—* * *

(ii) The regulations in this paragraph shall be enforced by the Commander,

Naval base, Seattle, and such agencies as he/she may designate.

(k) *Sinclair Inlet; naval restricted areas.* * * *

(3) *The regulations—* * *

(iii) The regulations in this paragraph shall be enforced by the Commander, Naval Base, Seattle, and such agencies as he/she may designate.

* * * * * *

(n) *Carr Inlet, Naval Restricted Areas.* (1) *The Area.* The Waters of Carr Inlet bounded on the southeast by a line running from Gibson Point on Fox Island to Hyde Point on McNeil Island, on the northwest by a line running from Green Point (at latitude 47°16'54"N, longitude 122°41'33"W) to Penrose Point; plus that portion of Pitt Passage extending from Carr Inlet to Pitt Island, and that portion of Hale Passage extending from Carr Inlet southeasterly to a line drawn perpendicular to the channel 500 yards northwesterly of the Fox Island Bridge.

(2) *The Regulations.* (i) The area shall be used as an acoustic range for research studies and special noise trials. No explosive shall be used.

(ii) No marine craft of any type shall at anytime approach or remain within one hundred yards of the hydrophone buoys. The hydrophone buoys will be anchored in Carr Inlet on a line perpendicular to the course line opposite Ketner's Point, and about one mile from the Fox Island shore. The course line, or range, will bear 134°38'21" (314°38'21") true, and will be marked by range beacons erected near the shoreline approximately one mile north-northeast of of Steilacoom and approximately two miles north-northeast of Home.

(iii) Buoy Testing Area. No vessel shall, at anytime, anchor or tow a drag of any kind within 1,000 yards of the buoy testing area.

(iv) The remainder of the area shall be open to navigation at all times except when the range is in use or when hydrophones are being calibrated. When the range is in use or hydrophones are being calibrated, quick flashing beacon lights will be displayed on signal towers located at Gibson Point, Green Point, Penrose Point, Pitt Island and Hyde Point. These beacon lights will be either red or green. The beacon lights will show quick flashing every two seconds. The ranging of vessels or calibration of hydrophones requiring retrictions will be conducted 24 hours per day for up to 5 days consecutively, and will total approximately 150 days spread throughout the year. Shutting off of beacon lights will indicate termination of use of the range. Insofar as possible, the schedule of operations giving the days the range will be in use for each forthcoming month will be published in local newspapers and in the local U.S. Coast Guart Notice to Mariners.

(v) When the red beacon lights are displayed, indicating that the range is in use or hydrophones are being calibrated, navigation within the area will be restricted as follows:

(*a*) As used in this section, the words "operate, power vessel, and non-power vessel" are defined as follows:

(*1*) "Operate": To be physically present in the designated area.

(*2*) "Power vessel": A vessel propelled principally by a mechanical propulsion system (i.e., gasoline, diesel, steam or electric drive to a propeller, pump jet, paddle wheel or other device), and being propelled by that means.

(*3*) "Non-power vessel": A vessel not equipped with a mechanical propulsion system, such as a rowboat, canoe, or sailboat propelled by oars, paddles, or sails, respectively.

(*b*) Power vessels shall not operate within the area, except that traffic in either direction between Hale Passage and upper Carr Inlet, within 200 yards of the low water mark off Green Point, will be cleared by signal for approximately 15 minutes total time within this area at the termination of individual ranging runs, while the vessel being ranged takes position for the next run. Clearance to traverse the area around Green Point will be indicated by extinguishing the red flashing beacon lights and displaying the green flashing beacon lights on all signal towers.

(*c*) Non-powered marine craft shall not operate within one mile of the course line bearing 134°38'21" (314°38'21") true, and within two miles to the southeast and two miles to the northwest of the hydrophone buoys situated in Carr Inlet opposite Ketner's Point; provided, however, non-powered craft may operate within four hundred yards of the low water mark on the northeast side of McNeil Island, within two hundred yards of the low water mark at Green Point, and within two hundred yards of the low water mark on the southwest shore of Fox Island.

(*d*) Towboats shall have free access and egress to designated tow havens within Carr Inlet, as follows: The Navy will establish and maintain suitable mooring buoys for the use of tugs and their tows at the following points: (*1*) approximately 1,500 yards northwest of Gibson Point Light and approximately 400 yards offshore from the low water mark on the Fox Island shore; (*2*) approximately 1,500 yards northwest of Hyde Point, and approximately 400 yards offshore from the low water mark on McNeil Island shore; and (*3*) approximately 1,500 yards east of Wyckoff Shoal. Towboats will signal by radio (Marine Band Channel 14, 13, 12, or 6) or telephone as far in advance as possible of the time they enter the tow haven, such signals to be directed to "Carr Inlet Range Control" at the range instrument laboratory building located on Fox Island. The Navy shall promptly suspend operations when necessary to permit the access and egress of such tow traffic, and Carr Inlet Range Control shall signal the tows when the area is clear.

(*e*) Through commercial traffic, including tows, to points within Carr Inlet, and through Carr Inlet, Pitt Passage, and Hale Passage to adjacent waters will be permitted free access and egress, as follows: Such traffic will signal by radio (Marine Band Channel 14, 13, 12, or 6) or telephone as far in advance as possible of the time they enter the area, such signals to be directed to "Carr Inlet Range Control" at the range instrument laboratory located on Fox Island. The Navy shall promptly suspend operations when necessary to permit the passage of such traffic, and Carr Inlet Range Control shall signal when the area is clear for passage.

(*f*) The Warden of the McNeil Island penitentiary and his authorized representatives shall be permitted to operate within the area at any time, as may be necessary, for the patrol and search of escaped convicts.

(*g*) Red or green signal flags will be displayed on the signal towers in case of failure of the red or green beacon lights. The display or the signal flags at the top of the flag masts will have the same significance as the beacon lights.

(3) The regulations in this paragraph shall be enforced by the Commander, Naval Base, Seattle, and such agencies as he/she may designate.

* * * * * *

(o) *Dabob Bay, Whitney Point, Naval Restricted Area.* * * *

(2) *The regulations.* * * *

(ii) The regulations in this paragraph shall be enforced by the Commander, Naval Base, Seattle, or his/her authorized representative.

(p) Port Townsend, Indian Island, Walan Point, Naval Restricted Area— * * *

(2) No vessel shall enter this area without permission from the Commander, Naval Base, Seattle, or his/her authorized representative. This restriction shall apply during periods when ship loading and/or pier operations preclude safe entry. These periods will be identified by flying a red flag from the ship and/or pier. A yellow flag will be displayed 24 hours in advance of the restricted periods.

(33 U.S.C 1)

[FR Doc. 82-21764 Filed 8-9-82; 8:45 am]
BILLING CODE 3710-GB-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 901

Bylaws of the Corporation

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Final rules.

SUMMARY: The document published here is a revision of the Bylaws of the Pennsylvania Avenue Development Corporation ("PADC"). PADC was created by the Pennsylvania Avenue Development Corporation Act of 1972 as a wholly owned corporation of the United States Government, with authority to create and amend Bylaws to govern the manner in which it carries out its functions. (40 U.S.C. 875(5)). In the course of operating pursuant to the existing Bylaws, it has become clear that changes were required. In late 1979 following the death of the Chairman of the Board of Directors and President of PADC, there was no mechanism for any other Director or Officer of PADC to assume his powers and duties. The amendment to § 901.4(b) was enacted by the Board of Directors on June 18, 1980 to permit the Vice Chairman to assume the powers and duties of Chairman in the event of incapacity or vacancy in the position of Chairman.

In recent years reorganization was required due to reduction in personnel and change in responsibilities assigned to various Officers of PADC. The reorganization resulted in deletion of the position of Assistant Director/Finance and the responsibilities associated with that position were delegated to other members of the staff. The increased activity relating to implementation of The Pennsylvania Avenue Plan—1974, as amended, added to the level of responsibility and importance of the position of Development Director. As a result, the Board of Directors determined that it was appropriate to establish the Assistant Director's position as the Assistant Director/Development. The change to § 901.4(f) accurately reflects the reorganization of the staff and the level of responsibility associated with the development of Pennsylvania Avenue.

DATE: 36 CFR 901.4(b) effective June 18, 1980. 36 CFR 901.4(f) effective July 14, 1982.

FOR FURTHER INFORMATION CONTACT: Jonathan L. Kempner, General Counsel (202) 566-1078 or Mary Schneider Chyun, Attorney (202) 566-1078, Pennsylvania Avenue Development Corporation, 425 13th Street, NW., Washington, D.C. 20004.

SUPPLEMENTARY INFORMATION: The Corporation has determined that, since this document is not a rule, and is published in the **Federal Register** and Code of Federal Regulations for information purposes only, it is, therefore, not a major rule, and does not require a regulatory impact analysis under Executive Order 12291, "Federal Regulations." (46 FR 13193, February 19, 1981). It will not result in any of the effects described in Section 1(b) of the Executive Order. In addition, the Chairman of the Corporation's Board of Directors has determined, and hereby certifies, that this document will not have a significant economic impact on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980, 5 U.S.C. 603, 604 and 605).

List of Subjects in 36 CFR Part 901

Bylaws.

For the reasons set out in the preamble, Part 901, Chapter IX of Title 36, Code of Federal Regulations, is amended as set forth below.

PART 901—BYLAWS OF THE CORPORATION

§ 901.4 [Amended]

36 CFR Part 901 is amended by redesignating § 901.4(b) as § 901(b)(1) and by adding a new § 901.4(b)(2) immediately thereafter to read as follows:

(b)(2) Assumption of powers and duties by Vice Chairman. In the event that the position of Chairman becomes vacant, the Vice Chairman shall promptly notify the President of the United States in writing to the effect and upon giving such notice, shall assume the Chairman's powers and duties as President and Chief Executive Officer of the Corporation, including specific powers and duties delegated to the Chairman by the Board of Directors. Such assumption of the Chairman's powers and duties shall cease upon the appointment or designation of a new Chairman or Acting Chairman by the President of the United States. The Vice Chairman shall also assume the powers and duties of the Chairman in the event of the latter's incapacity, if the Chairman so requests in writing, or if a majority of the voting members of the Board of Directors finds by resolution that the Chairman is unable to exercise the powers and duties of his office. Such assumption of the Chairman's powers and duties shall cease upon the Vice Chairman's receipt of a letter from the Chairman stating that he or she is able to resume the exercise of the powers and duties of his office.

* * * * *

36 CFR Part 901 is further amended by revising § 901.4(f) to read as follows:

* * * * *

(f) Powers and duties of the Assistant Director/Development. The Assistant Director/Development shall advise the Board of Directors, officers and staff of the Corporation on all development activities to accomplish the goals of the development plan. He shall:

(a) Manage development activities in accordance with the development plan.

(b) Function as a key management official performing a wide range of duties required to accomplish the rebuilding of Pennsylvania Avenue.

(c) Provide managerial responsibility for the work of all project managers and consultants relating to development projects.

(d) Coordinate the tasks of other staff professionals as required for accomplishment of projects.

(e) Be liaison between the Corporation and other governmental agencies that review projects in the development area.

(f) Perform such other duties as may be prescribed by the Board of Directors, the President, or the Executive Director.

* * * * *

(Pub. L. 92-578; 86 Stat. 1266 et seq.; 40 U.S.C. 873, 875(5))

Dated: July 29, 1982.

Max N. Berry,

Chairman.

[FR Doc. 82-21536 Filed 8-9-82; 8:45 am]
BILLING CODE 7630-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PH-FRL 2185-4; PP 9F2190/R424A]

Norflurazon; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule; correction.

SUMMARY: EPA issued a regulation which established tolerances for residues of the herbicide norflurazon in or on rotational and follow-up crops and for other indirect or inadvertent residues for the herbicide and its metabolite in or on certain agricultural follow-up crops from direct application to cotton. This

correction is to include residues of the desmethyl metabolite.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a regulation published in the **Federal Register** of April 21, 1982 (47 FR 17057) which established tolerances for residues of the herbicide norflurazon [4-chloro-5-(methylamino)2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] and its desmethyl metabolite [4-chloro-5-amino-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] in or on rotational and follow-up crops and for other indirect or inadvertent residues for norflurazon and its metabolite in or on certain agricultural follow-up crops from direct application to cotton.

§ 180.356 [Corrected]

In the FR Doc. 82–10689 appearing at page 17058, second column, under the regulatory text "§ 180.356 Norflurazon; tolerances for residues.", paragraph (b), the reference to the "desmethyl metabolite" was inadvertently omitted. Paragraph (b) is corrected by adding the words "and its desmethyl metabolite" following the chemical "norflurazon", third line of paragraph (b).

Dated: July 29, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82–21632 Filed 8–9–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[KY–003; a–4–FRL 2172–1]

Approval and Promulgation of State Implementation Plans; Kentucky: Particulate Standard for Existing Primary Aluminum Reduction Plants

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving Kentucky's particulate standard for existing Primary aluminum reduction plants. Kentucky Regulation 401 KAR 61:165, Existing primary Aluminum Reduction Plants, at Section 5, establishes a particulate emission standard for any subject source. The National Southwire Aluminum Company plant in Hancock County, Kentucky is the only affected plant. This regulation grants some relief from previously applicable requirements of the Clean Air Act.

EFFECTIVE DATE: This action will be effective on October 12, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Melvin Russell of EPA, Region IV's Air Management Branch (see EPA, Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Library, Office of the Federal Register, 1100 L Street N.W., Room 8401, Washington, D.C. 20005

Air Management Branch, Environmental Protection Agency, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Kentucky Department for Natural Resources and Environmental Protection, Division of Air Pollution Control, 18 Reilly Road, Bldg. #2 Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Melvin Russell of the EPA Region IV Air Management Branch at the above address, telephone 404/881–3286 (FTS 257–3286).

SUPPLEMENTARY INFORMATION:

Background.

The Commonwealth of Kentucky has submitted to EPA a State Implementation Plan (SIP) revision which provides for the control of particulate emissions from existing primary aluminum reduction plants. This change in State Regulation 401 KAR 61:165, Existing Primary Aluminum Reduction Plants, was subjected to public hearing on November 5, 1980, approved by Kentucky's Legislative Research Commission on January 7, 1981, and submitted to EPA on March 4, 1982.

Section 5 of 401 KAR 61:165 is the affected section of the regulation. The only source affected is the wet scrubbing plant at Southwire Aluminum Company in Hawesville, Kentucky (Hancock County). Hancock County is attainment for the total suspended particulate (TSP) National Ambient Air Quality Standards (NAAQS).

Discussion

The particulate emissions standard in Section 5 of 401 KAR 61:165 applies only to existing primary aluminum reduction plants. Section 5 establishes a particular standard of 0.010 grains per standard cubic foot (gr/scf) for wet scrubbing plant primary control systems. This regulation grants some relief from the previously applicable requirements of 401 KAR 61:020, Existing Process Operations. Section 3 of 401 KAR 61:020 requires pollution control equipment of at least ninety-seven (97) percent actual efficiency, and limits particulate emissions to a concentration of 0.02 gr/scf.

Regulation 401 KAR 61:165, Section 5, requires that the concentration of particulate emissions not exceed 0.010 gr/scf. This emission standard requires that control equipment achieve 95 percent actual efficiency. The source employs multiple cyclones, wet scrubbers, and electrostatic precipitators.

There will be no appreciable change in air quality or violation of the TSP NAAQS as a result of implementing Section 5 of 401 KAR 61:165; increment consumption is not an issue, as the PSD baseline has not been triggered for this area.

Action. Based on the foregoing, EPA today approves the SIP revision submitted by Kentucky. EPA is approving this SIP revision without a prior proposal because the conditions in the affected Kentucky regulation are straightforward and the source is meeting them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C., Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particular matter, Carbon monoxide, Hydrocarbons.

(Section 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: July 27, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION

Part 52 of Chapter, Title 40, Code of Federal Regulations, is amended as follows:

Subpart S—Kentucky

In § 52.920, paragraph (c) is amended by adding subparagraph (33) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(33) Addition of Kentucky Regulation 401 KAR 61:165, Section 5, Particulate Standard for Existing Primary Aluminum Reduction Plants, submitted on March 4, 1982, by the Kentucky Department for Natural Resources and Environmental Protection.

[FR Doc. 82-21678 Filed 8-9-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL 2171-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rulemaking.

SUMMARY: The EPA announces today final rulemaking on a revision to the Ohio State Implementation Plan (SIP) for Volatile Organic Compounds (VOC) for the Presto Adhesive Paper Company in Montgomery County, Ohio, a primary nonattainment area for ozone. This revision consists of a variance from the April 1, 1982 SIP deadline for achieving final compliance with the emission limits applicable to Presto, as owner of paper coating lines at its Miamisburg facility. The SIP revision allows the company additional time to research and test alternative water-based paper coating, and specifically extends the final compliance date to April 1, 1983 for water-based adhesive coatings and April 1, 1984 for water-based silicone coatings. EPA's action is based upon a revision which was submitted by the State to satisfy the requirements of Part D. of the Clean Air Act (the Act).

EPA has reviewed this variance and has determined that the State has demonstrated that it is technologically infeasible for Presto Adhesive Paper Company to meet the limitations for paper coating operations by April 1, 1982. In addition, the compliance extension will not interfere with the attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS) because the Ohio approved Part D SIP for ozone contains an adequate growth margin. Therefore, a time extension is warranted. EPA will proceed with final action approving this variance to the Ohio SIP.

DATE: This action will be effective October 12, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20460.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine McMahan at (312) 353-0396 before visiting the Region V Office).

Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Board Street, Columbus, Ohio 43216

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine McMahan, Air Programs Branch, Region V, Environmental Protection Agency, Chicago, Illinois 60604, (312) 353-0396.

SUPPLEMENTARY INFORMATION: Under section 107 of the Act, EPA has designated certain areas in each State as not attaining NAAQS. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). For these areas, Part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS by December 31, 1982 (in certain cases, by December 31, 1987 for O_3 and/or CO). These SIP revisions must also provide for attaining the secondary NAAQS as soon as practicable. The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

On April 16, 1982, the Ohio Environmental Protection Agency submitted a revision to its ozone SIP for Presto Adhesive Paper Company. The April 16, 1982, SIP revision is in the form of a variance from Ohio Rule 3745-21-04(C)(5), which requires a final compliance deadline of April 1, 1982 for owners or operators of paper coating to lines comply with the VOC emission limitations set forth in Rule 3745-21-09(F). According to rule 3745-21-09(F) VOC emissions from each paper coating lines are not to exceed 2.9 pounds of VOC per gallon (2.9 lbs/gal) of coating as applied, excluding water, as measured as a daily volume-weighted average.

Presto Adhesive Paper Company has been evaluating water-based coatings since 1980 and has experienced several operating problems. These include: (1) Leaking through the edges of the coating box when using low viscosity materials, (2) Improper drying of the coating with the current oven design and (3) uneven coating thickness, when using high viscosity materials. Because of these difficulties, Presto Adhesive Paper Company believes that additional time is warranted to comply with the emissions limitations contained in Rule 3745-21-09(F).

The SIP revision requests a compliance date extension to April 1, 1983 for waterbased adhesive coating operations and April 1, 1984 for water-based silicone coating operations, located at the Presto Adhesive Paper

Company in Montgomery County (Dayton Urban Area), Ohio, a primary nonattainment area for ozone. Ohio's ozone SIP for this county was approved on October 31, 1980 (45 FR 72122). According to the approved ozone SIP, Montgomery County will attain the ozone NAAQS by December 31, 1982.

The variance contains an enforceable compliance schedule, quarterly interim reporting requirements describing the progress of the solvent/water replacement program, additional recordkeeping to determine final compliance, and a final compliance date of April 1, 1983 and April 1, 1984 for water-based adhesives and water-based silicones, respectively.

EPA has reviewed this variance, and the existing ozone SIP for Montgomery County which, at the time of submission, showed a growth margin of 2761 tons. Since that time, the growth margin has been affected by new sources, variance requests and plant shutdowns. With all three factors taken into account, the growth margin is presently 2520 tons. If this variance is approved for Presto Adhesive Paper Company, that growth margin at the end of 1982 will be 2250 tons, thus the attainment and maintenance of the standard will not be jeopardized. Additionally, EPA believes that due to the technical difficulties experienced by the source, the compliance date extensions are as expeditious as practicable.

Because EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on October 12, 1982. If, however, we receive notice by September 9, 1982 that someone wishes to submit critical comments, then EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit October 12, 1982. This action may not be challenged later in proceedings to enforce the requirements. (See sec. 307(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.–Incorporation by reference of the State Implementation Plan for the State of Ohio approved by the Director of the Federal Register on July 1, 1982.

(Sec. 110 and 172 of the Act as amended (42 U.S.C. 7410 and 7502))

Dated: July 27, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATON PLANS—OHIO

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. Section 52.1870 is amended by adding paragraph (c)(44) as follows:

§ 52.1870 Identification of the Plan.

* * * * *

(c) * * *

* * * * *

(44) On April 16, 1981, the Ohio EPA submitted a variance which would extend for Presto Adhesive Paper Company in Montgomery County, Ohio the deadline for complying with applicable Ohio VOC emission limitations from April 1, 1982 to April 1, 1983 for water-based adhesive paper coatings and to April 1, 1984 for water-based silicone paper coatings.

* * * * *

[FR Doc. 82-21626 Filed 8-9-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 52 and 81

[A-10-FRL 2164-6]

Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes: Idaho

Corrections

In FR Doc. 82-20423 appearing on page 32530 in the issue of Wednesday, July 28, 1982; on page 32535, first column § 52.687(a), sixth and seventh lines, "(9 months from publication date)" should have been computed to read "April 28, 1983.", and in § 52.688(a), fourth line, "(9 months from publication date)" should have been computed to read "April 28, 1983."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6311

[C-23653]

Colorado; Withdrawal of Fravert Administrative Site for Forest Service Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order closes 4.78 acres of public land to surface entry and mining and reserves it for use by the Forest Service as an administrative site. The land has been and will remain open to mineral leasing. This withdrawal is for a period of 20 years.

EFFECTIVE DATE: August 10, 1982.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–837–2535.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land, which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location or entry, under the general land laws, including the mining laws, 30 U.S.C. Ch. 2, as a Forest Service administrative site.

Sixth Principal Meridian

Fravert Administrative Site

T. 6 S., R. 93 W.,

Beginning at the corner common to Sections 4, 5, 8, and 9 of T. 6 S., R. 93 W., 6th P.M., bear S. 89° 52' W. for 1,329.6 feet to ⅛ corner marker. This corner is Corner No. 1 and is the northeast corner of the tract. From Corner No. 1, by metes and bounds:

S. 89°52' W., 366.93 ft., to Corner No. 2;
S. 16°16' E., 216.51 ft., to Corner No. 3;
S. 35°53' E., 232.85 ft., to Corner No. 4;
S. 17°19' E., 257.19 ft., to Corner No. 5;
S. 2°59' W., 389.19 ft., to Corner No. 6;
S. 15°58' E., 300.20 ft., to Corner No. 7;
N. 89°51' E., 30.92 ft., to Corner No. 8;
N. 1,320.00 ft., to Corner No. 1;

The place of beginning which is the NE corner of the west half of the NE ¼, Section 8, T. 6 S., R. 93 W., 6th P.M.

The area described contains 4.78 acres in Garfield County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws. This withdrawal does

not affect oil and gas lease C–20829 which presently exists on this site.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Inquiries concerning this land should be directed to the Chief, Withdrawal Section, Bureau of Land Management, 1307—20th Street, Denver, Colorado 80202.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 30, 1982.

[FR Doc. 82–21562 Filed 8–9–82; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; Florida, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated in the table below.

ADDRESS: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappel, National Flood Insurance Program, (202) 287–0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determination of flood elevations for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The final base (100-year) flood elevations for selected locations are:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county (docket No.)	Source of flooding	Location	*Elevation in meters
Florida	Broward County (Unincorporated Areas), FEMA–6262	Atlantic Ocean—Open Coast	Approximately 550 fet east of the intersection of South Ocean Boulevard and SE 19th Street.	*11
		Atlantic Ocean—Intracoastal Waterway.	Intersection of Fiesta Way and Terra Mar Drive East	*8
			Intersection of SE 17th Street and SE 19th Avenue	*7
		Inland Flooding	Intersection of Andrews Avenue and NW 67th Street	*8
			Approximately 500 feet north along U.S. Highway 441 from its intersection with NW 76th Place.	#1
Maps available for inspection at Building and Zoning Department, 201 SE 6th Street, Ft. Lauderdale, Florida				
Florida	Deerfield Beach (City), Broward County, FEMA–6262	Atlantic Ocean—Open Coast	Eastern end of SE 6th Street	*11
			Eastern end of NE 2nd Street	*9
		Inland Flooding	SW 36th Avenue over Hillsboro Canal	#1
			Seaboard Coast Line Railroad over Hillsboro Canal	*8
Maps available for inspection at Building Department, 150 NE 2nd Avenue, Deerfield Beach, Florida.				
Florida	Ft. Lauderdale (City), Broward County, FEMA–6262	Atlantic Ocean—Open Coast	Approximately 300 feet east along Oakland Park Boulevard from its intersection with North Atlantic Boulevard.	*11
			Eastern end of NE 21st Street	*9
			Eastern side of the intersection of East Sunrise Boulevard and North Atlantic Boulevard.	*9
		Atlantic Ocean—Port Everglades	Southern side of the intersection of SE 25th Avenue and SE 21st Street.	*8
		Atlantic Ocean—Intracoastal Waterway.	Intersection of Bay View Drive and NE 26th Place	*6
		Atlantic Ocean—Sunrise Bay/Coral Bay.	Intersection of Yacht Club Boulevard and Seminole Drive.	*6
		Atlantic Ocean—Middle River/New River.	Approximately 150 feet east of the intersection of NE 7th Street and NE 20th Avenue.	*8
		Atlantic Ocean—Lake Sylvia/New River/Stranahan/River/New River Sound.	Intersection of Poinciana Drive and Idlewyld Drive	*9
			Intersection of West Lake Drive and Mercedes Drive	*9
			Intersection of SE 33rd Street and SE 6th Avenue	*8
			Eastern end of SE 14th Street	*9
		Inland Flooding	Northeast side of intersection of West Broward Boulevard and NW 24th Avenue.	*7
Maps available for inspection at Building Department, 100 N. Andrews Avenue, Ft. Lauderdale, Florida.				

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county (docket No.)	Source of flooding	Location	*Elevation in meters
Florida	Hillsboro Beach (Town), Broward County, FEMA-6262.	Altlantic Ocean—Open Coast	Along the shoreline within the corporate limits	*11
		Atlantic Ocean—Hillsboro Inlet	Approximately 200 feet east of the point where State Highway A1A crosses the eastern shore of Hillsboro Inlet.	*8
		Atlantic Ocean—Intracoastal Waterway.	Approximately 500 feet west of the State Road A1A at northern corporate limits.	*6
Maps available for inspection at City Hall, 1210 Hillsboro Beach, Pompano Beach, Florida.				
Florida	Lauderdale by the Sea (City), Broward County, FEMA-6262.	Atlantic Ocean—Open Coast	Approximately 250 feet east along Washington Avenue from its intersection with El Mar Drive.	*11
			Eastern end of Hibiscus Avenue	*9
		Atlantic Ocean—Intracoastal Waterway.	Allenwood Drive	*6
			Intersection of Tradewinds Avenue West and Oceanic Avenue.	*6
Maps available for inspection at City Hall, 4501 Ocean Drive, Lauderdale by the Sea, Florida.				
Florida	Pompano Beach (City), Broward County, FEMA-6262.	Atlantic Ocean—Open Coast/Hillsboro Inlet.	Approximately 400 feet northeast along North Ocean Boulevard from its intersection with Bay Drive.	*8
			Eastern end of NE 16 Street	*11
			Eastern end of SE 2 Street	*9
		Atlantic Ocean—Intracoastal Waterway.	Dixie Highway East over Cypress Creek Canal	*8
		Atlantic Ocean—Lake Santa Barbara.	*Approximately 150 feet south of the intersection of SE 7 Drive with SE 25 Avenue.	*9
		Ponding	Approximately 650 feet south along NW 15 Avenue from its intersection with NW 17 Court.	*13
Maps available for inspection at Planning Department, 101 SW 1st Avenue, Pompano Beach, Florida.				
Florida	Sea Ranch Lakes (Village), Broward County, FEMA-6262.	Atlantic Ocean—Open Coast	Approximately 600 feet east of the intersection of State Highway A1A with Gate House Road.	*9
Maps available for inspection at Village Hall, 1 Gatehouse Road, Sea Ranch Lakes, Florida.				
Florida	Vero Beach (City), Indian River County, FEMA-6246	Atlantic Ocean—Open Coast	Eastern end of Hibiscus Lane	*9
		Atlantic Ocean—Indian River	Intersection of Greytwig Road and Indian River Drive	*5
			Intersection of 5th Avenue and Royal Palm Boulevard	*5
			Intersection of Lantana Lane and Avenue K	*6
Maps available for inspection at Planning Department, 1036 20th Street, 2nd Floor, Vero Beach, Florida.				
Iowa	(C) Cedar Rapids, Linn County (Docket No. FEMA-6262).	Cedar River	About 1.1 miles downstream of confluence of Indian Creek.	*710
			About 3.3 miles upstream of Edgewood Road	*736
		Dry Creek	At downstream corporate limit (about 1.4 miles downstream of C Avenue).	*791
			Just downstream of Northbrook Drive	*820
			Just upstream of Boyson Road	*826
			About 1.1 miles upstream of Boyson Road	*830
		Indian Creek	Just upstream of East Post Road	*735
			Just upstream of Cottage Grove Avenue	*745
			Just upstream of 29th Street	*758
			About 1.4 miles upstream of 30th Street Drive	*768
			About 1.1 miles downstream of U.S. Highway 151	774
		Prairie Creek	At mouth	*719
			Just upstream of 6th Street	*727
			About 3000 feet upstream of Edgewood Road	*740
Maps available for inspection at the City Engineer's Office, City Hall, Cedar Rapids, Iowa.				
Iowa	(C) Central City, Linn County (Docket No. FEMA-6262).	Wapsipinicon River	About 1900 feet downstream of Illinois Central Gulf Railroad.	*828
			Just downstream of Dam	*830
			Just upstream of Dam	*836
			Just downstream of State Highway 13	*836
Maps available for inspection at the City Hall, Central City, Iowa.				
Iowa	(Uninc.) Linn County (Docket No. FEMA-6262)	Cedar River	About 2,000 feet upstream of confluence of Clear Creek.	*693
			About 2.4 miles upstream of confluence of Indian Creek.	*716
			About 2.8 miles downstream of confluence of Morgan Creek.	*730
			At western county boundary	*759
		Big Creek	At mouth at Cedar River	*707
			Just upstream of County Highway E48	*728
			About 1.4 miles upstream of confluence of Crabapple Creek.	*784
		Indian Creek	Just upstream of Chicago and North Western Railroad	*712
			About 0.7 mile upstream of Cottage Grove Avenue	*747
			About 1.3 miles downstream of confluence of Berrys Run.	*793
			At confluence of East Indian Creek	*833
			Just downstream of County Highway E28	*882
			About 400 feet upstream of County Highway E28	*887
			About 1.4 miles upstream of County Highway E28 (just downstream of County Road).	*905
		Squaw Creek	At mouth at Indian Creek	*712

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county (docket No.)	Source of flooding	Location	*Elevation in meters
			Just upstream of County Road (about 1,500 feet downstream of County Highway E44).	*750
			About 1.0 mile upstream of County Highway E45	*789
		Morgan Creek	At mouth at Cedar River	*735
			Just downstream of County Highway E40	*802
		Otter Creek	At mouth at Cedar River	*740
			At confluence of East Otter Creek	*776
		West Otter Creek	About 400 feet upstream of County Highway E16	*863
			About 2,200 feet downstream of County Highway D66	*891
		East Otter Creek	Just upstream of State Highway 150	*786
			Just downstream of Illinois Central Gulf Railroad	*829
			About 500 feet upstream of Illinois Central Gulf Railroad.	*835
			About 0.5 mile downstream of County Highway E16	*893
		Blue Creek	At mouth at Cedar River	*759
			At confluence of East Blue Creek	*765
		East Blue Creek	Just downstream of Illinois Central Gulf Railroad	*778
			About 1,500 feet downstream of County Highway W35 (downstream crossing).	*823
			About 2,000 feet upstream of County Highway W35 (upstream crossing).	*849
		Wapsipinicon River	At eastern county boundary	*805
			About 0.7 mile downstream of State Highway 13	*828
			Just upstream of State Highway 13	*836
			At northern county boundary	*860
		East Indian Creek	About 0.5 mile upstream of mouth	*835
			Just downstream of State Highway 13	*849
			Just upstream of State Highway 13	*854
			About 2.5 miles upstream of State Highway 13	*876
		Simmons Creek	At mouth at Big Creek	*760
			Just upstream of County Highway E45	*771
			Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad (upstream crossing).	*825
		Martins Creek	At mouth at Big Creek	*737
			Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*791
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*800
		Buffalo Creek	At eastern county boundary	*823
			Just downstream of County Highway E16	*854
			About 0.8 mile downstream of confluence of Nugents Creek.	*882
			Just downstream of State Highway 13	*894
			At northern county boundary	*911
		Hoosier Creek	At southern county boundary	*710
			Just downstream of County Highway W54	*789
		South Hoosier Creek	At mouth at Hoosier Creek	*734
			About 1,200 feet downstream of Interstate 380	*791
		Prairie Creek	Just upstream of Edgewood Road	*740
			About 400 feet upstream of Chicago and North Western Railroad.	*749
			About 1.4 miles upstream of Chicago and North Western Railroad.	*755
			Just downstream of County Highway E40 (at western county boundary).	*766
		Tissel Hollow	At mouth at Prairie Creek	*743
			About 300 feet downstream of County Highway E66	*764
			About 400 feet upstream of County Highway E66	*772
			About 2,900 feet upstream of County Highway E66	*779
		Dry Creek	About 3.9 miles downstream of Boyson Road	*795
			About 2.3 miles downstream of Boyson Road	*807
			About 1.8 miles upstream of Illinois Central Gulf Railroad.	*836
			About 0.8 mile downstream of County Highway W56	*846
			About 1.4 miles upstream of County Highway W58	*880
Maps available for inspection at the County Building and Zoning Department, Linn County Administrative Building, 930 First Street, S.W., Cedar Rapids, Iowa.				
Kansas	(C) Moundridge, McPherson County (Docket No. FEMA-6262).	Black Kettle Creek	About 560 feet downstream of Missouri Pacific Railroad.	*1,471
			Just upstream of Missouri Pacific Railroad	*1,473
			Just upstream of Cole Street	*1,474
			About 1,600 feet upstream of Durst Street	*1,475
		Black Kettle Creek Tributary No. 1	At confluence with Black Kettle Creek	*1,475
			About 1,200 feet upstream of confluence with Black Kettle Creek.	*1,475
Maps available for inspection at the City Hall, 216 South Christian, Moundridge, Kansas				
Massachusetts	Bellingham, Town, Norfolk County (Docket No. FEMA-6218).	Charles River	Downstream Corporate Limits	*184
			Approximately 2,320 feet upstream of Carryville Dam	*192
			Upstream of Maple Street	*200
			Downstream of Interstate 495 Southbound	*207
			Downstream of High Street	*209
			Approximately 3,280 feet downstream of North Main Street (downstream of Depot Street).	*213
			Approximately 5,080 feet upstream of Depot Street	*224
			Upstream of Hartford Avenue	*236
			Upstream of Corporate Limits	*239
		Peters River	Downstream Corporate Limits	*187
			Downstream of Wrentham Road	*187

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county (docket No.)	Source of flooding	Location	*Elevation in meters
			Upstream of Pulaski Street	*197
			Downstream of Park Street	*200
			Approximately 3,830 feet upstream of Cross Street	*213
		Beaver Brook	Confluence with Charles River	*221
			Upstream of Beaver Pond Dam	*238
		Arnolds Brook	Confluence with Peters River	*191
			Approximately 455 feet upstream of Lizotte Drive	*203
		Bungay Brook	Confluence with Peters River	*191
			Approximately 1,315 feet upstream of Wrentham Road (2nd crossing).	*204
		Hopping Brook	Confluence with Charles River	*184
			Upstream Corporate Limits	*188
Maps available for inspection at the Office of the Planning Board, 1 Mechanic Street, Bellingham, Massachusetts.				
Massachusetts	Hanover, Town, Plymouth County (Docket No. FEMA-6218).	Indian Head River	Confluence with North River	*18
			DAM (upstream side)	*26
			Cross Street (upstream side)	*39
			Winter Street (upstream side)	*45
			Factory Dam (downstream side)	*45
		Drinkwater River	Confluence with Indian Head River	*50
			Confluence of Drinkwater River Tributary	*53
			Access Road (upstream side)	*64
			Confluence of French Stream	*69
			King Street (upstream side)	*76
			Cedar Street (upstream side)	*80
			Confluence of Longwater Brook	*81
		Drinkwater River Tributary	Confluence of Drinkwater River	*53
			Inlet of culvert for Industrial Way	*61
			Confluence with Drinkwater River	*69
		French Stream	Confluence with Drinkwater River	*69
			Corporate Limits	*71
		Longwater Brook	Confluence with Drinkwater River	*81
			Footbridge (downstream side)	*84
			DAM (downstream side)	*94
Maps available for inspection at the Office of the Planning Department, Town Hall, Hanover, Massachusetts.				
Michigan	(Cht. Twp.) Allendale, Ottawa County (Docket No. FEMA-6278).	Grand River	About 3,000 feet downstream of Lake Michigan Drive	*600
			About 6,100 feet upstream of Lake Michigan Drive	*602
		Ottawa Creek	At mouth	*601
			About 150 feet upstream of 40th Avenue	*606
			About 100 feet downstream of Lake Michigan Drive	*633
			About 300 feet upstream of Radcliff Drive	*641
			About 4,350 feet upstream of Radcliff Drive	*657
Maps available for inspection at the Town Hall, 6676 Lake Michigan Avenue, Allendale, Michigan.				
Michigan	(Twp.) Milan, Monroe County (Docket No. FEMA-6262).	Saline River	About 1.4 miles downstream of U.S. Highway 23	*678
			About 2,800 feet upstream of U.S. Highway 23	*686
Maps available for inspection at the Town Hall, Milan, Michigan.				
Michigan	(C) Traverse City, Grand Traverse County (Docket No FEMA-6262).	Kid's Creek	Mouth at Boardman River	*585
			Just upstream of Front Street (at Oak Street)	*591
			About 100 feet upstream of Division Street	*597
			Confluence of Tributary A	*604
		Tributary A	Just upstream of Elmwood Avenue	*607
			About 280 feet downstream of Madison Street	*616
			About 320 feet upstream of Madison Street	*626
		Boardman River	Mouth at West Arm Grand Traverse Bay	*584
			Just downstream of Boardman Lake Dam	*586
		West Arm Grand Traverse Bay	Shoreline	*584
		East Arm Grand Traverse Bay	Shoreline	*584
		Boardman Lake	Shoreline	*592
		Mitchell Creek	About 1,500 feet downstream of divergence with East Branch Mitchell Creek.	*596
			About 300 feet upstream of Three Mile Road	*601
		East Branch Mitchell Creek	About 150 feet upstream of Chessie System	*590
			Just downstream of divergence with Mitchell Creek	*597
Maps available for inspection at the City Hall, 400 Boardman Avenue, Traverse City, Michigan.				
Minnesota	(C) Argyle, Marshall County (Docket No. FEMA-6218).	Middle River	About 3,600 feet downstream of Pacific Avenue (at western corporate limits).	*841
			About 9,800 feet upstream of County Highway 4 (at eastern corporate limits).	*851
Maps available for inspection at the City Hall, Argyle, Minnesota.				
Mississippi	Town of Flowood, Rankin County (FEMA-5979)	Pearl River	Approximately 0.25 mile upstream of Woodrow Wilson Rd.	*275
			Just downstream of State Highway 25 (Lakeland Ave.)	*290
		Hog Creek	Just downstream of State Highway 475	*281
		Neely Creek (Main Channel-Left Channel).	Just downstream of State Highway 468 (Flowood Drive).	*269
			Just upstream of State Highway 468 (Flowood Drive)	*271
		Neely Creek (Right Channel)	Just upstream of State Highway 468 (Flowood Drive)	*271
			Just upstream of the Illinois Central Gulf Railroad (downstream most crossing).	*271

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county (docket No.)	Source of flooding	Location	*Elevation in meters
		Neely Creek Tributary 2	Just upstream of confluence with Neely Creek (Left Channel).	*271
		Pearl River Tributary 1	Just upstream of North Flowood Drive	*281
		Prairie Branch Canal	Just upstream of Mangum Drive	*279
		Prairie Branch Tributary 1	Just upstream of Mangum Drive	*279
			Just downstream of State Highway 475	*281
Maps available for inspection at Town Hall, Corner of First and Oak Streets, Flowood, Mississippi 39208.				
Mississippi	City of Pearl, Rankin County (FEMA 6012)	Conway Slough	Just upstream of U.S. Highway 49	*266
			Just downstream of Old Brandon Road	*269
		Neely Creek (Right Channel)	Approximately 300 feet upstream of confluence of Praire Branch Canal.	*288
		Neely Creek (Left Channel)	Just upstream of North Bierdeman Road	*275
			Just downstream of U.S. Highway 80	*276
			Just downstream of Old Brandon Road	*281
		Neely Creek Tributary 2	Just upstream of North Bierdeman Road	*273
			Just downstream of Illinois Central Gulf Railroad Spur	*274
		Praire Branch Canal	Just downstream of confluence with Neely Creek (Right Channel).	*286
		Richland Creek	Just upstream of Pearson Road	*283
			Just upstream of Richland Avenue extended	*284
		Richland Creek Tributary 1	Just downstream of Ilinois Central Gulf Railroad	*289
			Just upstream of Old Whitfield Road	*304
Maps available for inspection City Hall, P.O. Box 5948, Pearl, Mississippi 39208.				
Mississippi	Unincorporated Areas of Rankin County (FEMA 6005).	Butler Creek	Just upstream of Williams Street	*305
			Just upstream of Williams Mill Road	*319
		Indian Creek	Just downstream of the downstream County Road crossing.	*320
			Approximately 100 feet upstream of the upstream County Road crossing.	*328
		Indian Creek Tributary 1	Approximately 130 feet at downstream of County Road located immediately at downstream of the railroad.	*335
			Approximately 130 feet downstream of U.S. Highway 49.	*341
		Pearl River	Just downstream of Old Byram Road	*263
			Just downstream of Interstate Highway 20	*272
			At the confluence of Pelahatchie Creek (approximately 1000 feet at downstream of State Highway 468).	*283
		Pelahatchie Creek	Just downstream of U.S. Highway 80	*349
		Pierce Creek	Just upstream of Heslip Street	*355
			Approximately 460 feet downstream of Illinois Central Gulf Railroad.	*358
			Just downstream of Lockwood Street	*365
		Richland Creek	Just downstream of Old Pearson Road	*282
			Just downstream of State Highway 469	*305
			Just upstream of State Highway 468	*322
			Just downstream of State Highway 18	*349
			Just downstream of Interstate Highway 20 (East Bound).	*366
		Steen Creek	Just upstream of U.S. Highway 49	*297
		Terrapin Skin Creek	Just upstream of State Highway 468	*303
			Just upstream of Illinois Central Gulf Railroad	*330
Maps available for inspection at Rankin County Courthouse, 110 Timber Street, Brandon, Mississippi 39042.				
New Jersey	Barnegat, Township, Ocean County (Docket No. FEMA-6278.	Barnegat Bay	Entire shoreline within community	*7
Maps available for inspection at the Municipal Building, 900 West Bay Avenue, Barnegat, New Jersey.				
New Jersey	Hackensack Meadowlands District, Bergen and Hudson Counties (Docket No. FEMA-6262).	Newark Bay	Newark Avenue over the Hackensack River (downstream side).	*10
			New Jersey Turnpike over the Hackensack River (downstream crossing, downstream side).	*9
			New Jersey Turnpike over the Hackensack River (upstream crossing, downstream side).	*9
			Upstream corporate limits over the Hackensack River	*9
		Hackensack River	Penhorn Creek confluence with the Hackensack River	*9
			County Road over Penhorn Creek (downstream side)	*6
			Secaucus Road over Penhorn Creek (upstream side)	*5
			Entire shoreline of Sawmill Creek	*9
			New Jersey Turnpike over Kingsland Creek (upstream side).	*9
			Valley Brook Avenue over Kingsland Creek (upstream side).	*8
			New Jersey Turnpike over Berrys Creek (upstream side).	*9
			U. S. Route 3 over Berrys Creek (upstream side)	*8
			Patterson Plank Road over Berrys Creek (upstream side).	*8
			Moonachie Avenue over Berrys Creek (upstream side)	*5
			Entire shoreline of Berrys Creek Canal	*9
			Entire shoreline of Peach Island Creek	*8
			New Jersey Turnpike over Moonachie Creek (upstream side).	*9
			Meadow Lane (extended) next to Moonachie Creek	*8
			Washington Avenue over Moonachie Creek (upstream side).	*5

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county (docket No.)	Source of flooding	Location	*Elevation in meters
			Entire shoreline of Mill Creek	*9
			Entire shoreline of Bellmans Creek	*9
			Entire shoreline of Cromakill Creek	*9
			Entire shoreline of Losen Slote	*9
			Entire shoreline of Overpeck Creek	*9
Maps available for inspection at the District Office, 200 Murray Hill Road, East Rutherford, New Jersey.				
New Jersey	Lakehurst, Borough, Ocean County (Docket No. FEMA-6262).	Union Branch	Confluence of Manapaqua Brook/downstream corporate limits.	*50
			State Route 37 (upstream side)	*51
			Wranglebrook Road (upstream side)	*53
			Brook Street (upstream side)	*58
			Lake Street (upstream side)	*64
		Blacks Branch	Entire shoreline within community	*64
		Manapaqua Brook	Confluence with Union Branch	*50
			Corporate limits, approximately 250 feet downstream of State Route 70.	*53
			Corporate limits, approximately 1,100 feet upstream of State Route 70.	*57
			Conrail (upstream side)	*58
			Center Street	*60
			Approximately 1,500 feet upstream of Center Street	*64
		Old Hurricane Brook	Entire shoreline within community	*64
Maps available for inspection at the Municipal Building, Five Union Avenue, Lakehurst, New Jersey.				
New Jersey	Little Silver, Borough, Monmouth County (Docket No. FEMA-6246).	Parker Creek	Shoreline from western corporate limits to approximately 100 feet south of Breezy Point extended.	*9
			Shoreline from approximately 100 feet south of Breezy Point extended to confluence with Shrewsbury River.	*10
		Shrewsbury River	Entire shoreline within community	*12
		Little Silver Creek	Shoreline from confluence with Shrewsbury River to approximately 175 feet east of Borden Place extended.	*12
			Shoreline from approximately 175 feet east of Borden Place extended to approximately 240 feet northwest of Borden Place extended.	*10
			Shoreline from approximately 240 feet northwest of Borden Place extended to upstream side of Willow Drive.	*9
		Little Silver Tributary 2	Shoreline from confluence with Little Silver Creek to upstream side of Seven Bridges Road.	*9
		Town Neck Creek	Shoreline from confluence with Shrewsbury River to approximately 220 feet south of Battle Row extended.	*11
			Shoreline from approximately 220 feet south of Battle Row extended to the end of Town Neck Creek.	*9
		Little Silver Tributary 1	Shoreline from confluence with Little Silver Creek to downstream side of Prospect Avenue.	*9
Maps available for inspection at the Municipal Building, 480 Prospect Avenue, Little Silver, New Jersey.				
New Jersey	Pennsville, Township, Salem County (Docket No. FEMA-6262).	Delaware River	Entire shoreline within corporate limits	*9
		Salem River	Entire shoreline within corporate limits	*9
Maps available for inspection at the Municipal Building, 90 North Broadway, Pennsville, New Jersey.				
New Jersey	Roxbury, Township, Morris County (Docket No. FEMA-6278).	Lamington River	Downstream corporate limits	*694
			Approximately 5,000 feet upstream of downstream corporate limits.	*696
			Upstream of Righter Road	*700
			Approximately 200 feet upstream of American Legion Memorial Highway (State Route 50).	*706
			Approximately 4,700 feet upstream of American Legion Memorial Highway (State Route 50).	*707
		Musconetcong River	Downstream corporate limits	*862
			Upstream of Conrail	*871
			Approximately 2,550 feet upstream of Conrail	*877
		Rockaway River	Downstream corporate limits	*673
			Upstream corporate limits	*675
			Approximately 2,800 feet upstream of upstream corporate limits.	*686
			Approximately 4,500 feet upstream of upstream corporate limits.	*689
		Drakes Brook	Downstream corporate limits	*686
			Upstream of Emmans Road	*719
			Upstream of Access Road	*724
		Succasunna Brook	Confluence with Lamington River	*697
			Upstream side of Eyland Avenue	*700
Maps available for inspection at the Municipal Building, 72 East Eyland Avenue, Succasunna, New Jersey.				
New Jersey	Rumson, Borough, Monmouth County (Docket No. FEMA-6246).	Navesink River	Eastern Corporate Limits to upstream side of Oceanic Bridge.	*12
			Upstream side of Oceanic Bridge to western Corporate limits.	*11
		Shrewsbury River	Confluence with Navesink River to Holly Tree Lane extended.	*11
			Holly Tree Lane extended to Rumson Road extended	*9
			Rumson Road extended to approximately 1,100 feet east of Two Rivers Avenue extended.	*10

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county (docket No.)	Source of flooding	Location	*Elevation in meters
			Approximately 1,100 feet east of Two Rivers Avenue extended to approximately 750 feet west of Two Rivers Avenue extended.	*11
			Approximately 750 feet west Two Rivers Avenue extended to approximately 1,125 feet west of Clubway extended.	*12
			Approximately 1,125 feet west of Clubway extended to approximately 300 feet east of Wardell Avenue extended.	*10
			Approximately 300 feet east of Wardell Avenue extended to western corporate limits.	*9
Maps available for inspection at the Municipal Building, East River Road, Rumson, New Jersey.				
New York	Chatham, Town, Columbia County (Docket No. FEMA-6262).	Stony Kill	Downstream corporate limits	*439
			Upstream of Conrail	*503
			Upstream of Columbia Corp Drive	*529
			Upstream of Percy Hill Road	*592
			Upstream of Rock City Road	*628
			Upstream corporate limits	*654
		Valatie Kill	Downstream corporate limits	*299
			Upstream of Dorn Road	*331
			Upstream corporate limits	*352
Maps available for inspection at the Chatham Town Hall, Valatie, New York.				
New York	Chatham, Village, Columbia County (Docket No. FEMA-6262).	Stony Kill	Downstream corporate limits	*382
			Upstream of State Route 66	*407
			Upstream of Dam	*433
			Upstream corporate limits	*439
Maps available for inspection at the Village Hall, 77 Main Street, Chatham, New York.				
New York	Fort Edward, Town, Washington County (Docket No. FEMA-6262).	Hudson River	Downstream corporate limits	*112
			Upstream of Crocker Reef Dam	*128
			Upstream corporate limits	*141
		Tributary A	Confluence with Champlain Canal	*112
			Approximately 400 feet upstream of Blodgett Road	*140
		Tributary B	Confluence with Tributary A	*122
			Approximately 270 feet upstream of Blodgett Road	*127
		Tributary C	Confluence with Tributary B	*122
			Approximately 150 feet upstream of Blodgett Road	*129
Maps available for inspection at the Town Hall, 118 Broadway, Fort Edward, New York.				
New York	Manlius, Town, Onondaga County (Docket No. FEMA-4151).	Limestone Creek	Approximately 850 feet downstream of State Route 115.	*395
			State Route 115 upstream	*397
			New York State Thruway (Eastbound) Upstream	*401
			State Route 290 upstream	*418
			High Bridge Road Downstream	*485
			High Bridge Road Upstream	*496
			Confluence of West Branch Limestone Creek	*547
			Whetstone Road Upstream	*611
			Pompey Center Road Upstream	*724
			Upstream Corporate Limits	*739
		West Branch Limestone Creek	Confluence with Limestone Creek	*547
			Upstream Corporate Limits	*600
		Butternut Creek	Confluence with Limestone Creek	*399
			New York State Thruway (Eastbound) Upstream	*403
			Upstream Corporate Limits	*409
		Sweet Road Tributary	Confluence with West Branch Limestone Creek	*548
			Confluence with Sweet Road Tributary No. 1	*674
			Upstream Corporate Limits	*873
		Sweet Road Tributary No. 1	Confluence with Sweet Road Tributary	*674
			State Route 173 Upstream	*787
			Upstream Corporate Limits	*912
		Bishop Brook	Approximately 170 feet downstream of State Route 257.	*438
			Conrail Upstream	*474
			Upstream Corporate Limits	*486
		Erie Canal	Erie Canal Aqueduct	*428
			Upstream Corporate Limits	*428
Maps available for inspection at the Office of the Town Clerk, 301 Brooklea Drive, Fayetteville, New York. Send comments to Honorable Keith M. Morgan, Town Supervisor of Manlius, 301 Brooklea Drive, Fayetteville, New York 13066.				
New York	Northumberland, Town, Saratoga County (Docket No. FEMA-6262).	Hudson River	At downstream corporate limits	*95
			Downstream of Fort Miller dam	*112
			At upstream corporate limits	*129
Maps available for inspection at the Town Hall, Ballstonspa, New York. Send comments to Honorable Ann Eastman, Catherine Street, Gansevoort, New York 12831.				
Ohio	(V) Hebron, Licking County (Docket No. FEMA-6262)	Hebron Tributary	About 1,225 feet downstream of Greenbriar Village entrance.	*878
			Just downstream of Broadway	*882
			About 160 feet downstream of Fifth Street	*884
			Just upstream of State Route 79	*887
			About 1,550 feet upstream of State Route 79	*888

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county (docket No.)	Source of flooding	Location	*Elevation in meters
		South Fork Licking River	About 1,300 feet upstream of State Route 79	*884
			About 1,900 feet upstream of State Route 79	*884
Maps available for inspection at the Mayor's Office, Town Hall, 116 West Main Street, Hebron, Ohio.				
Ohio	(V) Utica, Licking and Knox Counties (Docket No. FEMA-6262).	North Fork Licking River	About 1,700 feet downstream of State Route 13	*946
			Just upstream of Torrens Road	*959
Maps available for inspection at the Mayor's Office, Town Hall, Spring Street, Utica, Ohio.				
Pennsylvania	South Abington, Township, Lackawanna County (Docket No. FEMA-6033).	Leggetts Creek	Downstream Corporate Limits	*982
			(Upstream side) Routes 6 and 11	*1,013
			Upstream of downstream dam	*1,032
			Bucherman Avenue (upstream side)	*1,055
			Upstream of confluence of Lackawanna Trail Tributary	*1,067
			Approximately 1,250 feet upstream of confluence of Lackawanna Trail Tributary.	*1,081
			Approximately 2,400 feet upstream of confluence of Lackawanna Trail Tributary.	*1.097
		Summit Lake	Approximately 3,300 feet downstream of Pennsylvania Turnpike (northeast extension).	*1,253
			Approximately 1,700 feet downstream of Pennsylvania Turnpike (northeast extension).	*1,262
			Approximately 150 feet downstream of Pennsylvania Turnpike.	*1,288
		Lackawanna Trail Tributary	Confluence with Leggetts Creek	*1,066
			Interstate 6-11 Ramp (downstream crossing)	*1,087
			Approximately 1,300 feet downstream of Pennsylvania Turnpike (northeast extension).	*1,100
			Pennsylvania Turnpike (northeast extension)	*1,121
			Corporate Limits	*1,142
Maps available for inspection at the South Abington Township Building, 104 Shady Lane Road, Chinchilla, Pennsylvania.				
Texas	City of Burkburnett, Wichita County (FEMA-6262)	Gilbert Creek	Approximately 220 feet upstream of Sheppard Road (State Highway 240).	*988
			Just downstream of Highways 277-281 4 Bridges (First bridge from the left side).	*994
Maps available for inspection at City Hall, 415 Avenue C, Burkburnett, Texas 76354.				
Texas	City of Iowa Park, Wichita County (FEMA-6262)	Buffalo Creek Tributary	Just downstream of West Smith Avenue	*1,013
		Gordon Creek	Just upstream of North Atlantic Street	*1,016
			Approximately 200 feet downstream of North Penn Street (extended).	*1,020
Maps available for inspection at City Hall, 103 North Wall Street, Iowa Park, Texas 76367				
Texas	City of Mont Belvieu, Chambers County (FEMA-6262)	Smith Gully	Just downstream of State Road 207	*24
			Approximately 100 feet upstream of Winfree Road	*54
Maps available for inspection at City Hall, 1111 Avenue A, Mont Belvieu, Texas 77580.				
Virginia	Southampton County (Docket No. FEMA-6262)	Nottoway River	Downstream corporate limits	*11
			Approximately 7,000 feet downstream of U.S. Route 258.	*12
			Approximately 2,300 feet downstream of Seaboard Coast Line Railroad.	*17
			State Route 671 (upstream)	*19
			Approximately 5,800 feet downstream of U.S. Route 58 bypass (under construction).	*21
			U.S. Route 58 bypass (under construction) (upstream)	*23
			Norfolk, Franklin, and Danville Railway (upstream)	*25
			Approximately 11,600 feet upstream of Norfolk, Franklin, and Danville Railway.	*27
		Blackwater River	State Route 189 (upstream)	*13
			Approximately 2,000 feet upstream of U.S. Route 58 bypass (under construction).	*14
			Approximately 5,750 feet downstream of State Route 619.	*22
			Approximately 3,980 feet upstream of State Route 619	*23
		Tarrara Creek	Approximately 3,570 feet downstream of Seaboard Coast Line Railroad.	*31
			Seaboard Coast Line Railroad (downstream)	*33
			State Route 35 (downstream)	*36
			Approximately 4,100 feet upstream of State Route 35	*40
Maps available for inspection at the Southampton County Courthouse, Courtland, Virginia.				
Wisconsin	(C) Beloit, Rock County (Docket No. FEMA-5979)	Rock River	At downstream corporate limits	*737
			Just upstream Grand Avenue	*742
			About 160 feet downstream of Wisconsin Power and Light Dam and Spillway.	*744
			Just upstream of Wisconsin Power and Light Dam and Spillway.	*747
			At upstream corporate limits	*749
			About 2.8 miles upstream Henry Avenue	*750
		Turtle Creek	About 400 feet downstream Chicago, Milwaukee, St. Paul, and Pacific Railroad (near confluence with Rock River).	*738
			About 400 feet downstream State Street	*744
			Just upstream Prospect Street	*746
			Just upstream of Park Avenue	*749
			About 0.59 mile upstream East Grand Avenue	*760

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county (docket No.)	Source of flooding	Location	*Elevation in meters
			About 0.15 mile downstream Milwaukee Road	*770
			Just upstream Milwaukee Road	*774
			Just upstream Cranston Road	*785
			At Shopiere Road	*794
		Spring Brook	About 0.5 mile downstream Chicago, Milwaukee, St. Paul and Pacific Railroad road (railroad crossing located about 0.75 mile upstream Townhall Road.	*829
			About 220 feet upstream Chicago, Milwaukee, St. Paul and Pacific Railroad.	*847
		Shallow Flooding (overflow from Turtle Creek).	At intersection Broad Street and State Street	#2
Maps available for inspection at the Office of the City Manager, City Hall, 220 W. Grand, Beloit, Wisconsin.				
Wisconsin	(V) West Salem, LaCrosse County (Docket No. FEMA-6262).	LaCrosse River	About 250 feet upstream of County Highway M (near downstream corporate limits).	*689
			At upstream corporate limits	*692
		Lake Neshonoc	Shoreline	*702
Maps available for inspection at the Office of the Village Clerk, Village Hall, 902 E. Garland, West Salem, Wisconsin.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: July 14, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-21477 Filed 8-9-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287–0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The final base (100-year) flood evaluations for selected locations are:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Clarkdale (town), FEMA-5966	Verde River	At the center of the Tuzigoot National Monument Road crossing of Verde River.	*3,350
		Deception Wash	20 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing.	*3,375
			At the center of the State Highway 279 crossing of Deception Wash.	*3,655
			At intersection of western corporate limits and center of Deception Wash.	*3,888
		Bitter Creek	40 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing (downstream crossing).	*3,393
			110 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing (upstream crossing).	*3,523
		Bitter Creek—south fork	30 feet upstream from center of State Highway 279 crossing.	*3,691
	Maps available for inspection at Town Hall, Ninth Street, Clarkdale, Arizona.			
Colorado	La Junta (city), Otero County, FEMA-6061	Arkansas River	Intersection of Lewis Avenue and First Street (U.S. Route 50 and State Route 109).	*4,056
		Anderson Arroyo	30 feet upstream of intersection of Third Street and Anderson Arroyo.	*4,078
			40 feet upstream of intersection of Fifth Street and Anderson Arroyo.	*4,082
		King Arroyo	10 feet downstream of intersection of Sixth Street and King Arroyo.	*4,068
	Maps available for inspection at Utility Room, City Hall, 6th and Colorado, La Junta, Colorado.			
Colorado	Morrison (town), Jefferson County, FEMA-6262	Bear Creek	Intersection of Canon Avenue and South Park Avenue	*5,780
		Mount Vernon Creek	85 feet upstream from the center of State Highway 8	*5,770
		Bear Creek tributary No. 7	35 feet downstream from the center of State Highway 74.	*5,815
	Maps available for inspection at Town Office, 110½ Stone Street, Morrison, Colorado.			
Connecticut	Westbrook (town), Middlesex County (Docket No. FEMA-6278).	Long Island Sound	Westbrook coastline	*11
		Patchogue River	At Boston Post Road	*11
			At Interstate Route 95	*11
		Mennunketesuck River	Upstream of Conrail	*7
			Downstream of Boston Post Road	*11
			Dam approximately 0.26 mile upstream of Interstate Route 95 (upstream).	*14
			Upstream of Breakneck Hill Road	*19
	Maps available for inspection at the Office of the Town Clerk, Town Hall, Boston Post Road, Westbrook, Connecticut.			
Florida	Indian River County (unincorporated areas), FEMA-6246.	Atlantic Ocean—open coast	Eastern side of State Highway A1A over Sebastian Inlet.	*12
			Approximately 650 feet east along Sandlewood Lane from its intersection with State Highway A1A.	*9
			Approximately 700 feet east along Sandlewood Lane from its intersection with State Highway A1A.	*11
			Eastern end of Sunset Drive	*9
		Atlantic Ocean—Indian River	Approximately 50 feet northeast of the intersection of Palm Lane and North Indian River Drive.	*11
			Intersection of Trout Lane and North Indian River Drive.	*9
			Approximately 700 feet east of the intersection of Woodmere Street and Old Dixie Highway.	*8
			Intersection of Jungle Trail and State Highway A1A	*8
			Approximately 100 feet east of intersection of North Tropicana and South Tropicana.	*7
			Intersection of Fleet Road and Indian River Boulevard	*6
			Morningside Drive	*6
			Western end of South Pebble Bay Circle	*5
			Intersection of 3rd Court and Harbor Drive	*6
			Cutlass Cove Drive	*6
			Regatta Drive	*6
		Atlantic Ocean—Sebastian Creek	Western side of U.S. Highway 1 over Sebastian Creek	*10
			Intersection of 142nd Street and 81st Avenue	*7
			Northwestern side of the intersection of Sebastian Bay Street and Josie Street.	*6
	Maps available for inspection at County Administrator's Office, 2345 14th Avenue, Vero Beach, Florida.			
Georgia	City of Columbus, Muskogee County (FEMA-6262)	Chattahoochee River	Just downstream of U.S. Highway 80	*230
			Just upstream of Southern Railway	*239
			Just upstream of Oliver Dam	*337
			Approximately 500 feet downstream of Goat Rock Dam.	*348
		Upper Bull Creek	At Chattsworth Road	*333
			Just upstream of Beaver Run Road	*353
		Lower Bull Creek	Just downstream of Buena Vista Road	*241
			Just upstream of Lindsey Creek bypass	*250
			Just upstream of Forrest Road	*265
			Approximately 400 feet upstream of Cargo Drive	*291
		Cooper Creek	Just upstream of Forrest Road	*262
			Just downstream of Fairview Drive	*300

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Columbus-Manchester Expressway	*336
			Just upstream of Warm Springs Road	*379
		Cooper branch	Just upstream of Warm Springs Road	*359
			Just upstream of Randall Drive	*377
		Dram branch	Just downstream of Lindsey Creek bypass	*255
			Just downstream of Reynolds Drive	*285
		Flatrock Creek	Just upstream of Macon Drive	*302
			Just upstream of Gateway Road	*365
			Just upstream of Warm Springs Road	*424
		Lindsey Creek	Just upstream of Macon Road	*271
			Just upstream of Columbus-Manchester Expressway	*327
			Just upstream of Runway of Muskogee County Airport	*367
			Just upstream of Vultee Drive	*388
		Lindsey branch	Just upstream of Peachtree Mall	*329
		Mill branch	Just downstream of Floyd Road	*280
			Just upstream of Amber Drive	*320
		Roaring branch	Just upstream of New River Road	*350
			Just upstream of Whitesville Road	*415
			Just upstream of Whittlesey Road	*426
		Tributary to Roaring branch	Just upstream of Bradley Park Road	*350
		St. Marys branch	Just upstream of Claradon Drive	*262
			Just upstream of Lindsey Creek bypass	*275
			Just upstream of McCartha Drive	*305
		Weracoba Creek	Just upstream of 17th Street	*280
			Just upstream of Southern Railway	*310
			Approximately 100 feet upstream of Warm Springs Road.	*323
Maps available for inspection at Department of Engineering, Government Center, East Wing, Columbus, Georgia 31993.				
Indiana	(C) Hartford City, Blackford County (Docket No. FEMA-6254).	Little Lick Creek	About 850 feet downstream of Walnut Street	*872
			Just upstream of Norfolk and Western Railway	*878
			About 4,350 feet upstream of Water Street at the eastern corporate limits.	*880
Maps available for inspection at the Mayor's Office, City Hall, 217 North High Street, Hartford City, Indiana.				
Indiana	(C) Marion, Grant County (Docket No. FEMA-6254)	Mississinewa River	About 2,000 feet downstream of State Routes 9 and 37.	*785
			*Just downstream of Pennsylvania Street	*803
Maps available for inspection at the City Engineer's Office, City Hall, 301 South Branson Street, Marion, Indiana.				
Indiana	(T) Roanoke, Huntington County (Docket No. FEMA-6254).	Cow Creek	About 400 feet downstream of High Street at the eastern corporate limits.	*753
			About 1,800 feet upstream of Seminary Street at the western corporate limits.	*759
		McPherren ditch	About 500 feet downstream of Second Street at the eastern corporate limits.	*753
			About 1,400 feet upstream of Seminary Street	*766
Maps available for inspection at the Town Hall, P.O. Box 328, Roanoke, Indiana.				
Indiana	(Uninc.) Rush County (Docket No. FEMA-6254)	Big Blue River	Just upstream of County Road 1000 West	*851
			About 450 feet upstream of State Route 140	*892
		Flatrock River	Just upstream of County Road 350 South	*937
			Just upstream of State Route 3	*955
			Just downstream of County Road 300 North	*967
		Six Mile Creek	At County Road 1000 West (about 3,900 feet downstream of County Road 800 North).	*858
			Just upstream of County Road 1000 West (about 2,550 feet upstream of County Road 900 North).	*883
			About 6,900 feet upstream of County Road 1100 North (upstream county boundary).	*927
		Goose Creek	At confluence with Big Blue River	*875
			Just downstream of Big Blue Dam No. 2	*910
			Just upstream of Big Blue Dam No. 2	*935
		Three Mile	At confluence with Big Blue River	*861
			Just downstream of Big Blue Dam No. 3	*884
			Just upstream of Big Blue Dam No. 3	*928
			Just upstream of Campground Dam	*930
			About 2,900 feet upstream of County Road 250 West	*988
		Charlottes Brook	At confluence with Six Mile Creek	*914
			At upstream county boundary	*951
Maps available for inspection at the Area Planning Commission Office, Rush County Courthouse, 1st and Main Street, Rushville, Indiana.				
Maryland	Gaithersburg City, Montgomery County (Docket No. FEMA-6153).	Muddy branch	Downstream corporate limits	*316
			Approximately 80 feet upstream of confluence of Muddy branch tributary 1.	*330
			Upstream of Muddy Branch Road	*359
			Upstream of Brighton west storm water retention structure.	*375
			Upstream of Interstate Route 270 culvert	*410
			Downstream of State Route 355	*435
		Whetstone Run	Downstream corporate limits	*322
			124 feet upstream of confluence with Watkins Mill Run	*330
			Downstream of Watkins Mill Road	*333

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 2,360 feet upstream of Watkins Mill Road.	*341
			Upstream of Goshen Road	*389
			Approximately 320 feet upstream of confluence with left branch Whetstone Run.	*398
			Upstream corporate limits	*435
		Muddy branch tributary 1	Confluence with Muddy branch	*330
			Approximately 130 feet upstream of Muddy Branch Road.	*351
			Upstream corporate limits	*371
		Long Draught branch	Upstream of Long Draught Road culvert	*348
			Confluence of Long Draught branch tributary 1	*360
			Approximately 80 feet upstream of Quince Orchard Clusters II water retention structure.	*384
			Upstream of Clopper Road	*401
			Upstream of Quince Orchard Road culvert	*422
			Downstream of West Diamond Avenue culvert	*429
		Left branch Whetstone Run	Confluence with Whetstone Run	*398
			Upstream of Victory Farm storm water retention structure.	*434
			Upstream of Brooks Avenue culvert	*448
			Approximately 860 feet upstream of Brook Avenue culvert.	*452
Maps available for inspection at the Code Enforcement Office, City Building, 31 South Summit Avenue, Gaithersburg, Maryland.				
Michigan	(C) Keego Harbor, Oakland County (Docket No. FEMA-6262).	Sylvan Lake	Within the community	*931
		Cass Lake	Within the community	*932
		Dollar Lake	Within the community	*932
		Clinton River	Just downstream of Cass Lake Road	*931
			Just upstream of Cass Lake Road	*932
Maps available for inspection at the City Hall, 2025 Beechmont, Keego Harbor, Michigan.				
Michigan	(Twp.) Oakland, Oakland County (Docket No. FEMA-6262).	Paint Creek	Just upstream of Dutton Road	*797
			Just upstream of Orion Road (near Snell Road)	*829
			About 80 feet upstream of Gunn Road	*849
			About 100 feet upstream of Adams Road	*883
			About 375 feet upstream of Conrail (near upstream corporate limit).	*928
		West branch Stony Creek	About 500 feet downstream of Park Drive	*807
			Just downstream of Snell Road	*847
			Just upstream of Snell Road	*853
			Just downstream of Gunn Road	*890
			Just upstream of Gunn Road	*898
			Just upstream of Stony Creek Road	*938
			About 1.1 miles upstream of Tamarack Lane	*942
		McClure drain	About 600 feet downstream of Park Drive	*806
			Just upstream of Gunn Road	*841
			About 400 feet downstream of Hixon Road	*888
			About 600 feet upstream of Hixon Road	*895
			About 1,800 feet upstream of Inwood Road	*899
Maps available for inspection at the Town Hall, 4393 Collins Road, Rochester, Michigan.				
Montana	Fergus County (unincorporated areas), FEMA-6262	Big Spring Creek	100 feet upstream from center of Joyland Road	*3,638
			75 feet upstream from center of U.S. Highway 91 (Kendal Road).	*3,896
		Boyd Creek	Intersection of creek and the upstream (northeast) side of Elm Street.	*3,919
		Little Casino Creek	Intersection of creek and the upstream side of Casino Creek Drive.	*3,941
		Big Casino Creek	80 feet upstream from confluence with Big Spring Creek.	*3,952
		East Fork of Big Spring Creek	150 feet upstream from center of State Highway 466 (Hatchery Road).	*4,066
		Castle Creek	Intersection of creek and the upstream side of State Highway 466 (Hatchery Road).	*4,166
		Hansen Creek	Intersection of creek and the upstream side of State Highway 466 (Hansen Creek Road).	*4,176
Maps available for inspection at Fergus County Planning Office, Fergus County Courthouse, Lewistown, Montana.				
Montana	Grass Range (town), Fergus County, FEMA-6262	South fork McDonald Creek	South side of the intersection of Main Street and 1st Street.	*3,490
			Area along 3rd Street at the western corporate limits	#1
		Cruse irrigation ditch	Intersection of ditch and center of 2nd Street	*3,492
		Unnamed tributary	Area along the east side of Kenna Avenue from approximately 50 feet to 300 feet south of 4th Street.	*3,493
		Overflow area	Intersection of Main Street and 4th Street	*3,481
			Intersection of Main Street and 7th Street	*3,479
Maps available for inspection at Town Clerk's Office, Grass Range, Montana.				
New Jersey	Commercial, township, Cumberland County (Docket No. FEMA-6262).	Delaware Bay	Entire shoreline of Maurice River	*9

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Commercial Township Hall, 101 East Main Street, Port Norris, New Jersey.				
New Jersey	East Greenwich, township, Gloucester County (Docket No. FEMA-6262).	Mantua Creek	Entire shoreline within the community	*10
		Edwards Run	At confluence with Mantua Creek	*10
			Approximately 760' upstream New Jersey Turnpike	*11
Maps available for inspection at the Municipal Building, 21 East Cohawkin Road, Clarksboro, New Jersey.				
New Jersey	Gloucester, township, Camden County (Docket No. FEMA-5778).	Big Timber Creek	100' upstream of State Route 41 (Clements Bridge Road).	*10
		South branch Big Timber Creek	100' upstream of State Route 42	*10
			50' upstream of Almonesson Road	*10
			Approximately 3,600' upstream of Almonesson Road	*10
			50' upstream of Good Intent Road	*18
			100' upstream of West Church Street	*24
			Approximately 125' upstream of Lakeland Road	*29
			Approximately 25' downstream of Central Avenue	*35
			Approximately 25' upstream of State Route 168 (Black Horse Pike).	*47
			Approximately 30' upstream of Turnersville-Sicklerville Road.	*53
			Downstream of Lake Access Road	*56
			Approximately 75' upstream of Lake Access Road	*68
			Downstream of private road	*76
			Approximately 60' upstream of Atlantic City Expressway.	*87
			Approximately 1,700' upstream of Atlantic City Expressway.	*92
			Confluence of Slab Bridge branch	*103
			Dam (downstream side)	*118
			Redwood Street (upstream side)	*125
		North branch Big Timber Creek	100' upstream of confluence with south branch of Big Timber Creek.	*10
			Approximately 50' upstream of abandoned railroad	*12
			Upstream of Black Horse Pike	*14
			Upstream of second crossing of Chews Landing on Clementon Road.	*16
			25' upstream of confluence of Signey Run	*17
			Confluence of Mason Run (corporate limits)	*19
		Signey Run	Approximately 1,100' upstream with north branch Big Timber Creek.	*17
			Approximately 2,500' upstream of confluence with north branch Big Timber Creek.	*26
			Approximately 40' downstream of corporate limits	*32
		Mason Run	Approximately 25' upstream of confluence with north branch Big Timber Creek.	*19
			1,750' upstream of confluence with north branch Big Timber Creek.	*20
		Pines Run	Upstream of Lower Landing Road	*10
			Upstream of Lakeview Drive	*14
			Downstream of abandoned railroad	*18
			50' upstream of abandoned railroad	*23
			Approximately 70' upstream of State Route 168 (Black Horse Pike).	*25
			50' downstream of Golf Course Access Road	*35
			50' upstream of Golf Course Access Road	*42
			Upsteam of fourth footbridge crossing	*45
			40' upstream of Little Gloucester Road	*52
			50' upstream of Hinder Lane	*54
			20' downstream of private road	*56
Maps available for inspection at the Gloucester Township Building, Blackwood, New Jersey.				
New Jersey	Hackensack, city, Bergen County (Docket No. FEMA-6254).	Hackensack River	Entire shoreline within community	*9
		Coles Brook	Confluence with Hackensack River	*9
			Kinderkamack Avenue (upstream side)	*10
			Main Street (downstream side)	*15
Maps available for inspection at the City Hall, 65 Central Avenue, Hackensack, New Jersey.				
New Jersey	Hazlet, township, Monmouth County (Docket No. FEMA-6262).	Waackaack Creek	Downstream corporate limits	*5
			Upstream corporate limits	*10
		East Creek	Downstream corporate limits	*12
			Virginia Avenue (upstream side)	*16
			Approximately 1,550' upstream of Middle Road	*27
		Flat Creek	Downstream corporate limits	*12
			Middle Road (upstream side)	*23
			Upstream corporate limits	*44
		Monascunk Creek	Confluence with Flat Creek	*17
			State Route 35 (upstream side)	*44
			Upstream corporate limits	*61
Maps available for inspection at the Municipal Building, 319 Middle Road, Hazlet, New Jersey.				

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Hunter, village, Greene County (Docket No. FEMA-6262):	Schoharie Creek	Downstream corporate limits	*1,544
			Bridge Street bridge (upstream)	*1,589
			Greene County Route 83 (upstream)	*1,612
			Upstream corporate limits	*1,620
			Approximately 1,600' upstream corporate limits	*1,629
Maps available for inspection at the Village Hall, Main Street, Hunter, New York.				
New York	Kinderhook, town, Columbia County (Docket No. FEMA-6262).	Kinderhook Creek	Approximately 5,900' upstream of the downstream corporate limits.	*191
			Approximately 3,200' upstream of State Route 9H	*212
		Valatie Kill	Corporate limits with the Village of Valatie	*248
			Upstream corporate limits	*299
Maps available for inspection at the Kinderhook Town Hall, Church Street, Niaverville, New York.				
New York	Kinderhook, village, Columbia County (Docket No. FEMA-6262).	Kinderhook Creek	Downstream corporate limits	*192
			Upstream corporate limits	*207
Maps available for inspection at the Village Hall, Chatham Street, Kinderhook, New York.				
New York	McGraw, village, Cortland County (Docket No. FEMA-6262).	Trout Brook	Downstream corporate limits	*1,125
			Hollow Road	*1,154
			Upstream corporate limits	*1,159
		Mosquito Creek	At confluence with Trout Brook	*1,149
			Upstream Highlane Avenue	*1,178
			Upstream corporate limits	*1,206
		Smith Brook	At confluence with Trout Brook	*1,153
			Upstream corporate limits	*1,172
Maps available for inspection at the Village Office, Cemetary Street, McGraw, New York.				
New York	New Scotland, town, Albany County (Docket No. FEMA-6262).	Normans Kill	Downstream corporate limits	*120
			Upstream corporate limits	*127
		Onesquethaw Creek	Approximately 1,900' downstream of Powell Hill Road	*597
			Upstream of Powell Hill Road	*627
			Upstream of Clarksville South Road	*764
		Vly Creek	Approximately 375' upstream of Wolf Hill Road	*933
			Downstream corporate limits	*127
			Upstream of abandoned dam	*147
			Upstream of Krum Kill Road	*296
			Upstream of first private drive	*342
			Downstream of Picard Road	*365
Maps available for inspection at the Town Hall, New Scotland Road, Slingerlands, New York.				
New York	Riverhead, town, Suffolk County (Docket No. FEMA-6262).	Long Island Sound	Shoreline from the confluence of Wading River to eastern corporate limits (approximately 0.83 mile northeast of Herricks Lane (extended).	*15
		Great Peconic Bay	Shoreline from Bay Avenue to Indian Point	*8
		Peconic River	Shoreline from Indian Point to a point 0.06 mile west of Riverside Drive (extended).	*8
			Shoreline from a point 0.06 mile west of Riverside Drive (extended) to a point 0.04 mile west of Mills Road (extended).	*9
Maps available for inspection at the Town Hall, 200 Howell Avenue, Riverhead, New York.				
New York	Valatie, village, Columbia County (Docket No. FEMA-6262).	Kinderhook Creek	Downstream corporate limits	*207
			Upstream of downstream dam	*236
			Upstream corporate limits	*251
		Valatie Kill	Confluence with Kinderhook Creek	*215
			Upstream corporate limits	*248
Maps available for inspection at the Village Hall, Valatie, New York.				
New York	Voorheesville, village, Albany County (Docket No. FEMA-6262).	Vly Creek	Downstream corporate limits	*307
			Upstream Conrail (1st crossing)	*318
			Upstream corporate limits	*339
Maps available for inspection at the Village Hall, 29 Voorheesville Avenue, Vorheesville, New York.				
Oregon	McMinnville (city), Yamhill County, FEMA-6262	South Yamhill River	25 feet upstream from center of McMinnville Spur Highway.	*119
		North Yamhill River	100 feet upstream from center of U.S. Highway 99	*113
		Baker Creek	At the intersection of creek and downstream corporate limit.	*116
		Cozine Creek	25 feet upstream from center of Hilary Street	*120
		North fork Cozine Creek	150 feet upstream from center of 11th Street	*130
Maps available for inspection at the City Hall, 230 2nd Street, McMinnville, Oregon.				

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Springfield, township, Erie County (Docket No. FEMA-6254).	Turkey Creek	State Line Road (upstream side)	*612
			Childs Road (upstream side) (downstream crossing)	*627
			Childs Road (downstream side) (upstream crossing)	*648
			Norfolk and Western Railway (upstream side)	*665
			Interstate Route 90 (upstream side)	*686
		Tributary A to Turkey Creek	At confluence with Turkey Creek	*669
			U.S. Route 20 (upstream side)	*690
			Interstate Route 90 (upstream side)	*701
		Raccoon Creek	Approximately 950 feet downstream of Conrail	*620
			Elmwood Road (upstream side)	*659
			U.S. Route 20 (upstream side)	*682
			Approximately 700 feet upstream of Sanford Road	*724
		Tributary A to Raccoon Creek	Confluence with Raccoon Creek	*668
			Nye Road (upstream side)	*671
			Approximately 2,900 feet upstream of Nye Road	*682
		Tributary B to Raccoon Creek	At confluence with Raccoon Creek	*682
			Approximately 4,300 upstream of Coon Creek Road	*708
		Tributary C to Raccoon Creek	At confluence with tributary B to Raccoon Creek	*682
			Approximately 3,400 feet upstream of confluence with tributary B to Raccoon Creek.	*698
		Crooked Creek	At confluence with Lake Erie	*577
			Conrail (upstream side)	*627
			Norfolk & Western Railway upstream side)	*661
			U.S. Route 20 (upstream side)	*678
			Approximately 1,600 feet upstream of Tubbs Road	*730
		Tributary A to Crooked Creek	At confluence with Crooked Creek	*588
			Approximately 3,700 feet upstream of confluence with Crooked Creek.	*616
		Tributary B to Crooked Creek	At confluence with Crooked Creek	*662
			Academy Street (upstream side)	*716
			Approximately 300 feet upstream of Main Street	*733
Maps available for inspection at the Springfield Town House, Route 20 and Nye Road, West Springfield, Pennsylvania.				
Pennsylvania	Yoe, borough, York County (Docket No. FEMA-6181)	Mill Creek	Downstream corporate limits	*669
			Church Street (upstream side)	*694
			Upstream corporate limits	*701
Maps available for inspection by contacting the Borough Secretary, Ms. Kay Wise at (717) 244-5904.				
Texas	Town of Colleyville, Tarrant County (FEMA-6122)	Bear Creek	Approximately 500 feet downstream of State Highway 26 (Colleyville Boulevard).	*572
			Approximately 1300 feet upstream of State Highway 26 (Colleyville Boulevard).	*575
			Just downstream of White Chapel Road	*592
		Little Bear Creek	Approximately 300 feet downstream of Jackson Road	*561
			Approximately 200 feet upstream of Jackson Road	*562
			Approximately 200 feet downstream of Oak Knoll Road.	*565
		Tributary Little Bear 1	Just downstream of Glade Road	*564
			Approximately 120 feet upstream of Glade Road	*565
		Tributary Little Bear 2	Just downstream of St. Louis Southwestern Railroad	*620
			Just upstream of St. Louis Southwestern Railroad	*628
Maps available for inspection at Town Hall, 5400 Bransford Road, Colleyville, Texas 76034.				
Texas	City of Sweeny, Brazoria County (FEMA-6262)	Stevenson Slough	Just upstream of Stevenson Street	*27
			Just downstream of Elm Street	*30
			Just downstream of Ashley Wilson Road	*33
			Just upstream of Ashley Wilson Road	*37
		Shallow flooding	At the intersection of McKinney Street and Brockman Street.	*(1)
Maps available for inspection at City Hall, 111 West Third Street, Sweeny, Texas 77480.				
Washington	Thurston County (unincorporated areas), FEMA-6262	Deschutes River	100 feet upstream of intersection of Deschutes River and Henderson Boulevard.	*118
			150 feet upstream of intersection of Deschutes River and Vail Road Southeast.	*416
		Skookumchuck River	200 feet downstream of intersection of Skookumchuck River and Tyrrell Road.	*260
		Scatter Creek	40 feet downstream of intersection of Scatter Creek and Morningside Drive.	*257
		Scatter Creek tributary	Intersection of Scatter Creek and Mull Street Southeast.	*282
		Chehalis River	200 feet upstream of intersection of Chehalis River and Prather Road Southwest.	*143
		Black River	100 feet upstream of intersection of Black River and 128th Avenue.	*128
		Outlet of Black Lake	25 feet downstream of intersection of outlet of Black Lake and Black Lake Road.	*129
		Percival Creek	50 feet downstream of intersection of Percival Creek and 54th Avenue Southwest.	*157
		Woodland Creek	75 feet downstream of intersection of Woodland Creek and Draham Street Northeast.	*63
		Nisqually River	Intersection of Nisqually River and Old Pacific Highway	*20

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			25 feet downstream of intersection of Nisqually River and State Highway 507.	*301
		Long Lake	Intersection of Long Lake outlet and Burlington Northern and Union Pacific Railroad.	*153
		Capitol Lake	At Interstate Highway 5	*11
		Budd Inlet	At entrance to Puget Sound	*11
		Nisqually Beach	At mouth of Nisqually River	*10
Maps available for inspection at Public Works Department, 2000 Lake Ridge Drive, SW., Building No. 1, 2nd Floor, Olympia, Washington.				
West Virginia	Chester, city, Hancock County (Docket No. FEMA-6254).	Ohio river	Downstream corporate limits	*687
			Upstream corporate limits	*689
Maps available for inspection at the City Building, 375 Carolina Avenue, Chester, West Virginia.				
Wisconsin	(V) East Troy, Walworth County (Docket No. FEMA-6262).	Honey Creek Lake	Shoreline	*834
		Honey Creek	About 1 mile downstream of Church Street	*824
			Just upstream of Church Street	*827
Maps available for inspection at the Village Hall, 2106 Church Street, East Troy, Wisconsin.				
Wisconsin	(V) Hartland, Waukesha County (Docket No. FEMA-6197).	Bark River	Just upstream of State Highway 83	*902
			About 200 feet downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*907
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*912
			Just upstream of East Capitol Drive	*920
			About 1,800 feet upstream of Hartbrook Drive	*923
Map available for inspection at the Village Engineer's Office, Village Hall, 210 Cottonwood Avenue, Hartland, Wisconsin.				
Wisconsin	(C) Lake Geneva, Walworth County (Docket No. FEMA-6254).	White River	About 200 feet upstream of State Highway 12	*836
			About 100 feet downstream of Chicago and North Western Railroad.	*849
			Just upstream of Lake Shore Drive	*858
			Just downstream of Lake Geneva spillway	*859
		Lake Geneva	Shoreline	*865
Maps available for inspection at the City Hall, 626 Geneva Street, Lake Geneva, Wisconsin.				
Wisconsin	(V) Lannon, Waukesha County (Docket No. FEMA-6254).	Fox River	About 2,900 feet downstream of Good Hope Road	*838
			About 900 feet downstream of Custer Lane	*855
			About 2,000 feet upstream of Custer Lane	*860
Maps available for inspection at the Village Hall, Box 225 Lannon, Wisconsin.				
Wisconsin	(D) Monroe, Green County (Docket No. FEMA-6254)	Honey Creek	About 2,100 feet downstream of 4th Avenue West	*986
			Just upstream of Meadow Green Court	*1,010
			Just upstream of 18th Avenue	*1,036
			About 1,200 feet upstream of 20th Avenue	*1,043
		Thunder Creek	Mouth at Honey Creek	*993
			Just upstream of 11th Sreet	*1,004
			About 1,300 feet upstream of State Highway 69	*1,015
Maps available for inspection at the Office of the City Clerk, City Hall, Box 200, Monroe, Wisconsin.				
Wisconsin	(C) Muskego, Waukesha County (Docket No. FEMA-6262).	Little Muskego Lake	Shoreline	*794
		Muskego Lake	Shoreline	*774
		Lake Denoon	Shoreline	*781
		Jewel Creek	Mouth at Little Muskego Lake	*794
			Just downstream of College Avenue	*810
		Muskego Canal	About 1,000 feet downstream of State Highway 36	*774
			Just upstream of Riese Road	*779
			Just downstream of Little Muskego Lake Dam	*787
		Unnamed tributary of Muskego Canal.	Mouth at Muskego Canal	*777
			Just upstream of North Racine Avenue	*786
			About 1.1 miles upstream of North Racine Avenue	*800
		Lake Denoon tributary	Mouth at Lake Denoon	*781
			Just upstream of Kelsey Drive	*804
		Tess Corners Creek	About 1,500 feet downstream of confluence of Tess Corners Creek Tributary South.	*772
			About 200 feet upstream of Woods Road	*780
			Just upstream of Tess Corners Drive near Belmont Drive.	*794

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Tess Corners Creek tributary north	Just downstream of College Avenue	*815
			Just upstream of Janesville Road culvert	*806
			About 1,700 feet upstream of Janesville Road culvert	*829
		Unnamed tributary to Wind Lake	About 7,000 feet upstream of mouth at Wind Lake	*775

Maps available for inspection at the Office of the Building Inspector, City Hall, Box 25, Muskego, Wisconsin.

[1] Average depth 1 foot.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: June 22, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-21402 Filed 8-9-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6247]

Final Flood Elevation Determination; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Deletion of final rule for the Village of McHenry Shores, McHenry County, Illinois.

SUMMARY: The Federal Emergency Management Agency has erroneously published the final flood elevation determination for the Village of McHenry Shores, McHenry County, Illinois. This notice will serve to delete that publication. Following revisions to the City of McHenry, McHenry County, Illinois' Flood Insurance Study (FIS) incorporating the annexed Village of McHenry Shores, a revised notice of final flood elevation determination will be issued for the City of McHenry showing the annexed area.

EFFECTIVE DATE: AUGUST 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287–0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: As a result of a court order annexing the Village of McHenry Shores to the City of McHenry, the Federal Emergency Management has determined that the notice of final flood elevation determination for the Village of McHenry Shores, McHenry County, Illinois, published at 45 FR 28953, on July 2, 1982, should be deleted. After incorporating McHenry Shores on the maps and FIS of the City of McHenry, a revised notice of final flood elevations for the City of McHenry will be issued with a six-month compliance period specified for enacting ordinances and regulations.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Emergency Management Agency)

Issued: July 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-21579 Filed 8-9-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6254]

Final Flood Elevation Determination; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Deletion of final rule.

SUMMARY: The Federal Emergency Management Agency has erroneously published the final flood elevation determination for the Township of Kennett, Chester County, Pennsylvania. This notice will serve to delete that publication. Following an engineering analysis and review, a revised notice of proposed flood elevation determination will be issued.

EFFECTIVE DATE: August 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287–0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Emergency Management Agency has determined that the notice of final flood elevation determination for the Township of Kennett, Chester County, Pennsylvania, published at 47 FR 30770, on July 15, 1982, should be deleted. After a technical evaluation, a revised notice of proposed flood elevations will be issued, with a ninety-day period specified for comments and appeals.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: July 20, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-21598 Filed 8-9-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 531 and 536

[General Orders 13 and 38; Docket No. 81-51]

Time Limit for Filing of Overcharge Claims

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This amends the Commission's tariff filing requirements to prohibit carriers from imposing certain time limits on shippers' overcharge claims filed with the carriers. The final rule proscribes limits on claims to a period of less than two years after accrual of the cause of action. The two-year period is intended to coincide with the period prescribed in

section 22 of the Shipping Act, 1916 for reparations awarded for injuries from violations of the Act. The final rule also prohibits tariff provisions requiring that overcharge claims based on alleged errors in weight, measurement, or description of cargo be filed with the carrier before the cargo leaves the carrier's custody. The effect of the amendment will be to prevent unnecessary administrative proceedings where there is no dispute among the parties, to avoid the unfair and unreasonable burdens imposed on shippers as a result of such rules; and to ensure that violations of section 18(b)(3) of the Shipping Act, 1916 do not go unredressed because of limitations in carriers' tariffs.

DATES: Effective November 8, 1982.

FOR FURTHER INFORMATION CONTACT: Francis C., Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by Notice of Proposed Rulemaking published in the **Federal Register** on August 28, 1981 (46 FR 43472) to amend the Commission's tariff filing regulations to prohibit carriers from barring shippers' filing of overcharge claims with the carriers less than two years after accrual of the cause of action. The amendments was intended to obviate unnecessary administrative proceedings before this agency and to further various objectives of the Shipping Act, 1916, *i.e.*, the section 14 Fourth (46 U.S.C. 812) proscription of unfair treatment of shippers in the adjustment and settlement of claims; the section 15 (46 U.S.C. 814) requirement that conferences adopt to maintain reasonable procedures for promptly and fairly hearing and considering shipprs' requests and complaints; and the prevention of uncorrected violations by carriers of section 18(b)(3)'s (46 U.S.C. 817) prohibition against freight overcharges.

Thirty-five comments to the proposed rule have been received.[1] Of the 23 responses from shippers, shipper organizations and an attorney, all but one expressed full and unqualified support for the proposed rule. Of the twelve responses from carriers and conferences, nine were in opposition to the proposed rule and three were partially supportive.

Positions of the Parties

The shippers and parties representing shipper interests generally submitted brief comments of full support for the proposed rule, citing the reasons set forth in the Notice: avoidance of unnecessary administrative proceedings; preventing would-be claimants from becoming discouraged and letting violations go uncorrected; conformity with the two-year statute of limitations in the Shipping Act, 1916; and correction of unfair or unreasonable limitations which conflict with provisions in the Shipping Act.

Additional comments included that abolition of the six-month rule was necessary because audits—both those performed internally and those contracted out to professional auditors—are time-consuming undertakings which often cannot be completed within the six-month period provided in tariffs. One commentator, CPC International, Inc., alleged that the six-month rule rewards carriers who purposely "drag their feet" in providing information which may give rise to overcharge claims. Another shipper commentator, Emerson Electric Co., requested that the Commission go further in its rules by requiring that the carrier acknowledge receipt of overcharge claims within ten days and dispose of the claims within an additional 120 days.

Emerson also emphasized its opposition to tariff rules requiring that errors in weight or measurement be brought to the carrier's attention before the cargo leaves the carrier's custody. Emerson argues that these types of claims are easily settled between shipper and carriers because they generally consist of computation errors and are easily supported by export packing lists or other data, and that as a practical matter, inland shippers in particular cannot comply with this tariff rule.

Caterpillar Tractor Co., although supporting a proscription of the six-month rule, favors the weight/measurement tariff restrictions, arguing that they deter rebating and encourage shippers to provide accurate weight/measurement data.

Carriers and conferences opposing the proposed rule generally take note of the Commission's previous endeavors in this area, none of which resulted in the complete proscription of the six-month rule. They argue that there is no reason for the Commission to be trying again; that the tariff rules are reasonable, fair, and nondiscriminatory; and that they do not violate any provisions of the Shipping Act. A few carrier commentators argue that the Commission is without authority or jurisdiction to promulgate the proposed rule in the absence of evidentiary findings of Shipping Act violations. Other points made by some carrier interests include that the six-month rule prevents rebating because it avoids informal, unsupervised settlement of claims; that abolition of the six-month rule will impose administrative recordkeeping burdens on carriers; that the Commission's policy of awarding "high" interest on grants of reparation already works a significant hardship on carriers and encourages delay on the part of shippers with overcharge claims; that abolition of the six-month rule will "invite excessive audits"; and that section 18(b)(4) of the Shipping Act authorizes the Commission to reject

[1] Parties filing comments were: Ocean Freight Consultants, Inc.; Emerson Electric Co.; Transportation Committee of the Rubber Manufacturers Association; The National Industrial Traffic League; Australia-Eastern U.S.A. Shipping Conference, The "8900" Lines Agreement, Greece/U.S. Atlantic Agreement, Iberian/U.S. North Atlantic Westbound Freight Conference, Italy, South France, South Spain, Portugal/U.S. Gulf and the Island of Puerto Rico (Med-Gulf) Conference, Marseilles North Atlantic U.S.A. Freight Conference, Mediterranean-North Pacific Coast Freight Conference, North Atlantic Mediterranean Freight Conference, U.S. Atlantic & Gulf/Australia-New Zealand Conference, U.S. North Atlantic Spain Rate Agreement, U.S. South Atlantic/Spanish, Portuguese, Moroccan and Mediterranean Rate Agreement, and the West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference (WINAC); Pacific Westbound Conference, Pacific-Straits Conference, Pacific/Indonesian Conference and Malaysia-Pacific Rate Agreement; United States Atlantic & Gulf-Haiti Conference, United States Atlantic & Gulf-Jamaica Conference, and Southeastern Caribbean Conference, of the Associated Latin American Freight Conferences; Atlantic & Gulf-West Coast of South America Conference and East Coast Colombia Conference, of the Associated Latin American Freight Conferences; Japan/Korea Atlantic and Gulf Freight Conference, Japan-Puerto Rico & Virgin Islands Freight Conference, New York Freight Bureau, Philippines North America Conference, Thailand Pacific Freight Conference, Thailand-U.S. Atlantic & Gulf Conference, Trans-Pacific Freight Conference of Japan/Korea, Trans-Pacific Freight Conference (Hong Kong) and Agreement Nos. 10107 and 10108; the Far East Conference and Inter-American Freight Conference; the Motor Vehicle Manufacturers Association; the Latin America Pacific Coast Steamship Conference and Pacific Coast River Plate Brazil Conference; E. I. du Pont de Nemours & Company; The Society of the Plastics Industry, Inc.; Gulf United Kingdom Conference, Gulf European Freight Association, Continental/U.S. Gulf Freight Association, U.K./U.S.A. Gulf Westbound Rate Agreement (the "Gulf-Europe Carrier Associations"); United States Lines, Inc.; Sea-Land Service, Inc.; American West African Freight Conference; FMC Corporation; Merck Chemical Manufacturing Division; Uniroyal, Inc.; Hooker International Division; Pacific Coast European Conference, North Europe-U.S. Pacific Freight Conference, and Pacific/Australia-New Zealand Conference; Monsanto Company; Traffic Service Bureau, Inc.; CPC International Inc.; Caterpillar Tractor Co.; William Levenstein, Esq.; Joy Manufacturing Co.; Singer Products Co., Inc.; Johnson & Johnson International; Grain Processing Corporation; Exxon Chemical Supply Company, Inc.; Union Carbide Corporation; and The Shippers National Freight Claim Council, Inc.

tariffs only if they fall short of statutory technical or ministerial requirements.

Several carrier commentators express particular opposition to the explanation in the Notice that the amended rule is intended to prohibit tariff rules allowing claims of weight/measurement errors only when the cargo is in the carrier's custody. These carriers argue that errors of this kind are impossible to verify once the cargo has left the carrier's custody, and that carriers would be left at the mercy of potentially unscrupulous shippers and shippers' auditors.

Some carriers suggest amendments to the proposed rule, as an alternative to outright adoption. These include specifying when the cause of action begins to accrue (some suggest the date of sailing as opposed to date of payment of freight charges); allowing a time limit for filing of overcharge claims of something less than two years; exempting claims alleging weight, measurement or description errors from any rule restricting carrier-imposed time limits on claims; including any intended restriction on carrier-custody requirements or administration fees in the final rule itself; modifying and streamlining the Commission's regulations concerning overcharge claims; eliminating awards of interest on reparation when an overcharge claim is resolved within the statutory period; and establishing certain required standards by which a claimant must adduce its case. One group of conferences which supports the proposed rule [2] specifically inquires as to whether the rule will be effective prospectively or whether potential claimants who may already be time-barred by a six-month rule will now be able to file their complaint with the carrier if the two-year period has not yet passed. The "Gulf-Europe Carrier Associations," which support the proposed rule in part, request oral argument.

Discussion

The Commission is not unmindful of previous proceedings which addressed the subject of the six-month rule. The Commission's determination in those proceedings not to promulgate rules similar to that proposed in the instant rulemaking does not preclude it from doing so at this time. In those decisions,[3] the Commission determined that the proposed rules were not supported by either the facts or law. At any rate, the Commission in rulemaking is not confined to the redress of demonstrated evils as distinct from the prevention of potential ones.[4] Thus, it is not necessary for the Commission to make specific findings of Shipping Act violations prior to adopting substantive rules, providing that the rules are in furtherance of general Shipping Act objectives. *New York Freight Forwarders and Brokers Assn. v. Federal Maritime Commission,* 385 F.2d 981 (D.C. Cir. 1967); *Pacific Coast European Conference v. Federal Maritime Commission,* 350 F.2d 197, 203–204 (9th Cir. 1965); *Austasia Container Express—Possible Violations of Section 18(b)(1) and General Order 13,* 19 F.M.C. 512, 521 (1977), *rev'd on other grounds, Austasia Container Express v. Federal Maritime Commission,* 580 F.2d 642 (D.C. Cir. 1978). The comments received pursuant to the Notice of Proposed Rulemaking have convinced the Commission that proscription of carrier-imposed time limits is necessary to meet several Shipping Act objectives. At the same time, the arguments against the proposed rule have not been persuasive.

It is not the case, as argued by United States Line, Inc., that section 18(b)(4) of the Act would prohibit the Commission's proposed exercise of rulemaking power. That statutory provision and the court opinion cited [5] state that only technical defects constitute proper grounds for *rejecting* a tariff. The Commission's proposed action does not involve administrative rejection of newly-filled tariffs; it would proscribe certain tariff provisions as contrary to Shipping Act objectives. The Commission's statutory mandate to implement rules and regulations to carry out the provisions of the Act is not obstructed by section 18(b)(4). *See* 46 U.S.C. 841a.

The Commission disagrees with the argument that evidentiary hearings would be required prior to adoption of the proposed rule. All interested parties have been given sufficient opportunity to provide facts and arguments by commenting on the proposed rule. Moreover, the parties advocating evidentiary hearings have not indicated that there were indeed any factual matters which they have offered to adduce in opposition to the proposed rule. The parties have not raised any issues in their comments which would require or even be served by evidentiary hearings. Under these circumstances, hearings would only delay the process of proscribing tariff rules found to be inconsistent with Shipping Act objectives. This proceeding has been conducted in a procedurally correct manner.

Several carrier commentators indicate that because adoption of the rule will result in more claims being decided by the carriers themselves as opposed to the Commission, there will be a greater likelihood of ill will, discrimination, conflict, prejudice, and rebating. The Commission does not believe that reliance on carriers and shippers to resolve disputes will necessarily result in unlawful activity, either in the form of false shipper claims or unwarranted reparations by carriers. It rejects the proposition that both carriers and shippers need as much supervision as possible because they will act in bad faith at every opportunity, or at least will be tempted to yield to pressure to do so. The Commission expects parties subject to the Shipping Act to comply with it, and will vigorously make use of the statutory remedies for violations of the Act.

Moreover, the argument for continued Commission resolution of claims after six months appears to be inconsistent with the accusation of a few of the same commentators that the proposed rule constitutes unnecessary government regulation. The proposed rule reflects an awareness that the business community is capable of handling its own affairs within the confines of the law and without unnecessary government supervision.

The alleged recordkeeping and administrative burden that would be imposed on carriers if the proposed rule is adopted is not readily discernible. The documents which a carrier would need to respond to an overcharge claim filed with the carrier do not appear likely to differ from those the carrier would rely upon in defending the claim before the Commission. Nor would the administrative burden of responding to direct claims be likely to exceed that of being a respondent in an informal docket proceeding before the Commission. The real administrative burden is imposed on the Commission as a result of the time-limit rules, for they impede the orderly operation of Commission business by unnecessarily diverting Commission resources from other regulatory functions of the agency.

The "excessive audits" alleged to result from abolition of the six-month rule would cause no hardship to

[2] United States Atlantic & Gulf-Haiti Conference, United States Atlantic & Gulf-Jamaica Conference, and Southeastern Caribbean Conference.

[3] *Proposed Rule Covering Time Limit on the Filing of Overcharge Claims,* 12 F.M.C. 298 (1969), 10 F.M.C. 1 (1966); *Carrier-Imposed Time Limits on Presentation of Claims for Freight Adjustments,* 4 F.M.B. 29 (1952)

[4] *Pacific Coast European Conference v. Federal Maritime Commission,* 376 F.2d 785, 790 (D.C. Cir. 1967).

[5] *Pennsylvania v. Federal Maritime Commission,* 392 F.Supp. 795 (D.D.C. 1975).

carriers. Shipper audits would have a significant effect on carriers only to the extent they result in successful overcharge claims, in which event they must be viewed as an appropriate means by which section 18(b)(3) violations are corrected.

The Commission's policy of granting interest on awards of reparations is beyond the scope of this proceeding. It should be pointed out, however, that award of interest is intended to make whole the shipper for the carrier's use of the shipper's money; it is neither intended to be nor does it actually constitute a hardship or penalty on the carrier. There is, therefore, no merit to one commentator's suggestion that carriers be exempted from the interest requirement if a claim is resolved within the statutory period. Nor is award of interest an incentive to shippers to delay filing their overcharge claims. Interest rates are computed on the basis of six-month U.S. Treasury bill monthly rates for the period in question,[6] and interest is therefore no boon to shippers.

A few commentators claim that the proposed rule would more easily enable a carrier to "stonewall" a claim until the two-year statute of limitations has expired, because claims transmitted just prior to the expiration of the two-year period would be subject to potentially time-consuming consideration by the carrier instead of automatic rejection on the basis of a time-limit rule. Emerson Electric Co. requests that the Commission establish requirements that carriers acknowledge receipt of claims within 10 days and dispose of claims within 120 days. Again, the Commission is not persuaded that the perceived threat of unscrupulous carriers justifies the rejection of the proposed rule, nor are additional safeguards against such abuses necessary. Since 1979, Commission regulations have required carriers to acknowledge written overcharge claims within 20 days of receipt and inform claimants of their rights under the Shipping Act, including section 22's two-year statute of limitations. *See* 46 CFR 531.5(b)(8)(xvi) and 536.5(d)(20).

Some commentators request the Commission to specify a date certain at which the cause of action will accrue under the proposed rule. Sea-Land notes that for purposes of overcharge claims, the Commission has found section 22's statute of limitations to begin to run from the date of delivery of cargo to the carrier, the date of shipment, or the date of payment of freight charges, whichever is later. A few commentators request that, in the interest of uniformity and clarity, a date certain be established, such as the date the ship sails. These commentators appear particularly concerned that use of date of payment of freight charges as a criterion encourages late payment and discriminates in favor of late payors by providing them an expanded period in which to file claims with the Commission.

Although the Commission does not wish to encourage late payment of freight charges, the basis for payment as a factor in determining when a cause of action accrues is a rational one: a shipper is not injured until it has paid the unlawful charges. *See Fiat-Allis France Materiels de Travaux Publics, S.A. v. Atlantic Container Line*, 19 S.R.R. 1335, at 1341 (1980). Although the formulas for determining when a cause of action accrues under section 22 have included date of delivery of the cargo to the carrier,[7] date of time of shipment,[8] and even the date of billing,[9] all have included the date of payment of freight charges. The Commission will not, however, issue a definition on the matter in this particular rulemaking. The bases for determining accrual of a cause of action under section 22 have derived from Commission decisions, not only in the context of section 18(b)(3) proceedings, but in other matters arising out of the statutes the Commission administers. The Commission will continue to let this matter develop through the adjudicatory processes.

A related question raised by one commentator is whether "potential claimants who may already be time-barred by a six-month rule" will be able to file claims directly with a carrier. Once this final rule takes effect, shippers with overcharge claims which have already been rejected on the basis of a six-month rule but which are not yet barred by the two-year statutory limit can still be submitted directly to the carrier.[10]

Several carrier commentators oppose the abolition of carrier-custody rules, and emphasize the difficulty in verifying the weight, measurement or description of cargo after it has left their custody. A few suggest that if the Commission proscribes carrier-custody rules, it should at least establish minimum standards of documentary proof necessary for shippers to meet their burden in asserting this type of claim.

The variations on claims of this nature, and the different means by which weight, measurement and description can be proven, render prohibitive the establishment of specific, enumerated standards of proof. Any such list of documents would, on the one hand, be likely to omit means of proof which in certain circumstances would suffice to make a shipper's case, while on the other hand, include standards which in certain circumstances would be insufficient. Because of the carrier's difficulty in satisfying itself of the validity of claims of this nature, it is incumbent on shippers to document their claims with original or certified documents such as bills of lading, packing lists and weight or measurement certificates. Proscription of carrier-custody rules is not tantamount to a *carte blanche* to shippers to submit and expect payment on all and any weight/measurement/description claims; a claim unsupported by convincing documentation should be denied. Claims are not to be honored on the basis of trust or good will. Documentation must be of sufficient credibility to avoid rebates or inaccurate claims. Shippers can expect carriers to require them to meet the same heavy standard of proof which the Commission would apply.[11]

A survey of the 189 informal docketed proceedings which were noticed for filing or assignment during calendar year 1981 also reveals the impact of the operation of the six-month rule. In 94 of those proceedings (or 49.7% of the time), the records reflect that the shipper claimants were denied their initial claim filed directly with the carrier on the basis of a six-month rule.[12] Of those 94 proceedings, 56 (or 59.6%) were cases in which the respondent carriers offered no defense on the merits; in most cases the carrier concurred that there was no erroneous assessment of freight charges. Additionally, in another 20 proceedings (10.6% of the 189), the shipper's initial claim with the carrier was apparently

[6] 46 U.S.C. 502.253.

[7] *See Sun Company, Inc. v. Lykes Bros. Steamship Co., Inc.*, 20 F.M.C. 68 at 69, n. 7 (1977); *see also* 46 CFR 502.302, in the Commission's Rules of Practice and Procedure for the informal adjudication of small claims.

[8] *See Fiat-Allis France Materiels de Travaux Publics, supra*, at 1341.

[9] *See United States v. Hellenic Lines, Ltd.*, 14 F.M.C. 254, 260 (1971).

[10] As heretofore discussed, however, shippers should be aware that a claim filed directly with the carrier does not toll the statute of limitations, and claims should be filed with the Commission if the carrier's processing of the claim is likely to extend to the termination of the two-year period.

[11] The proposed rule referred to carrier-custody rules only in the Supplementary Information section. In the interest of clarity, the final rule adopted herein specifically proscribes carrier-custody rules. The final rule also incorporates a suggestion of the Gulf-Europe Carrier Associations, by adding the words "for private settlement" to distinguish between claims filed with the carrier and those filed with the Commission.

[12] Or a carrier-custody rule or "administrative fee" requirement.

but not expressly denied on the basis of a time-limit rule (either by a general denial of the claim or the claim being ignored), and an informal docketing proceeding was then initiated in which again the carrier did not dispute the merits of the claim.[13]

The percentage of *undisputed* informal docketed proceedings before the Commission as a result of six-month or carrier-custody rules is therefore at least 39.7 percent.[14] This requires a considerable expenditure of Commission resources at a time when budgetary restrictions have caused a reduction in Commission staffing and the Commission's other regulatory demands remain pressing. Avoidance of the waste of these resources is hardly an abdication of the agency's regulatory responsibilities, as suggested by some carriers. Rather, it constitutes a recognition that carriers should meet their responsibility where possible to correct freight overcharges without requiring initiation of federal proceedings on the matter, especially where there is no dispute between the parties on the merits of the overcharge claim. Time-limit rules effectively and prematurely transform what is essentially a commercial activity—*i.e.*, resolution of overcharge claims—into a governmental function. It is significant that in addition to shipper support for the proposed rule, there were also favorable comments received from some carriers and conferences.[15]

Conclusion

The Commisison is satisfied that the operation of carrier-imposed time limitations on overcharge claims discourages and deters the exercise by shippers of their right to seek reparation pursuant to section 18(b)(3) of the Act. Comments from carriers explaining that six-month rules do not alter shippers' right to seek reparations prompt the Commission to express its cognizance that while not *per se* contrary to section 22's two-year time limit, the rules have the *de facto* effect of restricting shippers' rights under section 22. Despite some commentators' claims that time-limit rules are intended to encourage potential claimants to file their claims more promptly, the rules are unlikely to have this effect. Shipper commentators have noted that weight/measurement/description errors are rarely detected before the cargo has left the carrier's custody, and audits are time-consuming exercises, perhaps hindered at times by slow carrier response to inquiries, and cannot often be completed in time for a claim filing in conformity with a six-month rule. As noted in one comment and confirmed by a review of the 1981 proceedings, most claims are filed with the Commission well toward the latter end of the two-year statute of limitations. Thus, the sole object of these rules would appear to be for the convenience of the carriers themselves, not the operation of the claim system as a whole.

Moreover, the alleged benefit to the carriers is not readily apparent. Whatever difficulties carriers might have in evaluating the merits of non-prompt overcharge claims are not abated when shippers are forced to pursue those claims before the Commission, and do not justify rejecting those substantial number of claims in which there is agreement on the merits. It is difficult to comprehend why a carrier would construct grounds for rejecting a claim when the same claim will require a carrier defense in another forum—unless the carriers are relying on shippers not to pursue the matter to that other forum. When this occurs, the overpayment of any freight charges goes uncorrected, and the time-limit rules thereby provide the opportunity for violations of section 18(b)(3) to continue unredressed. Adoption of the proposed rule is therefore necessary to meet the objectives of section 18(b)(3).

Six-month and carrier-custody rules are also found to conflict with the objectives of section 14 Fourth of the Act, which states that a carrier shall not "unfairly treat * * * any shipper in the matter of * * * the adjustment and settlement of claims." As heretofore noted, the time-limit rules impose unnecessary burdens on shippers to file their claims with the Commission. Concomitant with this burden are the expenditures such filings entail. The rules preclude without justification the commercial or private resolution of some claims, and result in the initiation of more costly governmental proceedings instead. The Commission concludes that these unjustified impositions constitute unfair treatment to shippers in the adjustment and settlement of claims, contrary to section 14 Fourth of the Act.

Section 15 of the Act (46 U.S.C. 814) requires that conferences "adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints." The carriers commenting on the proposed rule have offered no reasonable justification for their time-limit tariff provisions. The burden of filing overcharge claims with the Commission when the carrier does not contest the substance of the shipper's complaint is particularly unfair and unreasonable. And it is uncontrovertible that the rules have the effect, if not also the design, of precluding the prompt consideration of complaints by carriers in many instances. Thus, the rules contravene the objectives of section 15 as well.

The proposed rule indicated the Commission's intention to prohibit the assessment of an "administrative charge" for the processing of overcharge claims. At least one uncontested claim was brought before the Commission last year because of the invocation of this "modified six-month rule." Although a less severe sanction than an outright bar on acceptance of claims, the assessment of a claim fee constitutes a penalty upon seeking corrrection of a statutory violation. An administrative fee was defended by virtually none of the commentators to the proposed rule. The Commission concludes that such fees, like the other time-limit tariff provisions, and for the same reasons, are contrary to sections 14 Fourth, 15 and 18(b)(3). In the interest of clarity, administrative fees have been specifically proscribed in the rule adopted herein.[16]

Finally, the Commission finds that this rulemaking is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of that Act excepts from its coverage any "rule of particular applicability relating to rates * * * or practices relating to such rates * * *." As the proposed rule clearly relates to rates and rate practices, the Regulatory

[13] The remainder of the proceedings were those in which the initial claim filed with the carrier was denied because there was some dispute on the merits of the claim; those in which the initial claim was filed too late in the 2-year period for the carrier to respond to or resolve the claim or else the claim was ignored; and those in which the record does not reflect whether an initial claim was ever filed with the carrier.

[14] This figure is a conservative one because it probably underrepresents the number of undisputed cases attributable to the rule. Many of the proceedings regarded for the purposes of this study as "disputed" were those in which the carrier offered only a *pro forma* argument to the settlement officer—usually extolling the wisdom of its time-limit tariff provisions and complaining about shippers not fulfilling their responsibility to ensure that cargo is described accurately—without ever addressing the evidence presented by the claimant in support of its claim. Also excluded from the tally of undisputed claims attributable to the six-month rule were a dozen proceedings in which the carrier did not contest the merits of the claim but in which the record did not indicate with certainty whether a claim was initially filed with the carrier.

[15] Several commentators have suggested changes in overcharge claim regulations which are outside the scope of this rulemaking. The Commission has referred these matters to its staff for consideration in connection with possible future rulemakings.

[16] The Gulf-Europe Carrier Associations' request for oral argument is denied.

Flexibility Act requirements are determined to be inapplicable.

List of Subjects in 46 CFR Parts 531 and 536

Maritime carriers, Tariffs, Reporting requirements.

Therefore, it is ordered, That pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553) and sections 14 Fourth, 15, 18(b)(3) and 43 of the Shipping Act, 1916 (46 U.S.C. 812, 814, 817, and 841a), Parts 531 and 536 of 46 CFR are amended as follows:

PART 531—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE

1. In §531.5(b)(8)(xvi), add the following new language immediately after the subdivision heading.

§ 531.5 Contents of tariffs.

(b) * * *

(8) * * *

(xvi) *Overcharge Claims.* No tariff in the domestic offshore commerce shall limit the filing of overcharge claims with a carrier for private settlement to a period of less than two years after accrual of the cause of action, nor shall the acceptance of any overcharge claim be conditioned upon the payment of a fee or charge. No tariff in the domestic offshore commerce shall require that overcharge claims based on alleged error in weight, measurement or description of cargo be filed before the cargo has left the custody of the carrier. * * *

* * * * *

PART 536—PUBLISHING AND FILING TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

2. In §536.5(d)(20), add the following new language immediately after the subparagraph heading.

§ 536.5 Contents of tariffs.

* * * * *

(d) * * *

(20) *Overcharge Claims.* No tariff in the foreign commerce shall limit the filing of overcharge claims with a carrier for private settlement to a period of less than two years after accrual of the cause of action, nor shall the acceptance of any overcharge claim be conditioned upon the payment of a fee or charge. No tariff in the foreign commerce shall require that overcharge claims based on alleged error in weight, measurement or description of cargo be filed before the cargo has left the custody of the carrier.* * *

* * * * *

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-21640 Filed 8-9-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 80-189; File No. 23083-CD-P-1-81; FCC 82-342]

Certain MHz Frequency Bands To Be Used for One-way Paging on an Exclusive Basis in the Domestic Public Land Mobile Radio Service and; Applications of Various Entities for Authority to Construct New One-way Paging Stations in the Continental United States

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Commission affirms in most major respects the earlier *Report and Order* in this proceeding, which made available 35 and 43 MHz frequencies for common carrier paging services. The changes were the result of Petitioners for Reconsideration that were filed. The Commission's action, which relaxes a technical restriction that was imposed on the use of these frequencies, will make these frequencies available in more market areas.

EFFECTIVE DATE: September 9, 1982.

FOR FURTHER INFORMATION CONTACT: Steven A. Weiss, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22.

Communications common carriers, Mobile radio service.

Adopted July 22, 1982

Released: July 30, 1982.

In the matter of amendment of § 22.501(a) of the rules to allow the 35 and 43 MHz frequency bands to be used for one-way paging on an exclusive basis in the Domestic Public Land Mobile Radio Service, CC Docket No. 80-189; applications of various entities for authority to construct new one-way paging stations in the Domestic Public Land Mobile Radio Service on 35 MHz and 43 MHz frequencies in the continental United States, File No. 23083-CD-P-1-81. *et al.*[1]

1. On June 30, 1981, the Commission adopted the *Report and Order* in CC Docket No. 80-189, thereby amending § 22.501(a) of the rules (47 CFR 22.501(a)) to allow certain 35 and 43 MHz frequencies to be used for one-way paging on an exclusive basis in the Domestic Public Land Mobile Radio Service (DPLMRS).[2] The new rules became effective on September 11, 1981, and applications for these new paging frequencies have been filed with the Commission since that date.[3] We now have before us Petitions for Reconsideration of the *Report and Order* filed by Jan David Jubon, a licensed professional engineer, Telocator Network of America, the trade organization for the radio common carrier industry, and the law firm of Becker, Gurman, Lukas, Meyers & O'Brien, P.C. (Becker). These petitioners request the Commission to eliminate or modify the technical restrictions that were imposed in the *Report and Order*. The Special Industrial Radio Service Association (SIRSA), the frequency advisory committee for the Special Industrial Radio Service (SIRS), filed an Opposition to the Becker petition. In addition, while American Telephone and Telegraph Company (AT&T) did not file a petition for reconsideration of the Commission's decision, it did file a general comment addressing many of the pending applications that were filed requesting authority to use the new 35 and 43 MHz paging frequencies.[4] Because AT&T's Comment raises issues that are integrally related to the overall policies established for these new frequencies, we will examine those issues here.

2. After reviewing the arguments raised in the petitions and in the AT&T Comment, we have determined the public interest would best be served by modifying some aspects of our *Report and Order*. The pleadings and our conclusions are more fully discussed below.

Background

3. The proceeding was initiated on April 24, 1980, when the Commission adopted a *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 78 FCC 2d 438 (1980) (NPRM), proposing to amend Section 22.501(a) of the Rules to allow certain 35

[1] A list of these applications is contained in Appendix A.

[2] One-way Signaling on the 35 MHz Frequency Band, CC Docket No. 80-189, Report and Order, 49 RR 2d 1541, 46 FR 38509 (July 28, 1981).

[3] More than 2,500 applications have been filed thus far. The staff has begun processing these applications.

[4] The applicants for these frequencies have all filed Oppositions to AT&T's Comment.

MHz frequencies to be used for one-way paging in the DPLMRS. Old Section 22.501(a) of the Rules made available to the wireline telephone companies ten frequency pairs to provide two-way mobile telephone service. Base station transmitters operated on the 35 MHz frequencies and mobile transmitters operated on the 43 MHz frequencies. These frequencies were allocated in accordance with a zone allocation plan to minimize the possibility of skip interference to co-channel stations.[5] Under the plan, only one or two frequency pairs were available for two-way service within each state. In the NPRM the Commission proposed to make the 35 MHz frequencies available for paging to all existing and proposed communications common carriers, both the wireline carriers and radio common carriers (RCCs); to allow existing two-way stations to continue their operation on these frequencies; and to make these frequencies available without a geographic zone allocation plan. The Commission requested comments on various technical and policy issues, including whether there was a need for a zone allocation plan to minimize harmful skip interference, whether to allow new two-way systems on these frequencies, and whether there are alternative uses of the 43 MHz frequencies.[6] In addition, the Commission questioned whether there were procedural alternatives to oral comparative hearings that should be used in the case of mutually exclusive applications.

4. In the *Report and Order*, the Commission allocated both the 35 MHz and the 43 MHz frequencies for paging, subject to several technical restrictions in order to protect existing co-channel two-way licensees from harmful skip interference. These technical restrictions were imposed because the Commission was concerned that the new paging stations could cause significant harmful skip interference to existing two-way systems. However, the Commission was also concerned that the current zone allocation plan would overly restrict the availability of these frequencies for paging. Consequently, we adopted engineering criteria establishing an annular (doughnut-shaped) region to protect existing two-way systems from Sporadic E interference,[7] but declined to prescribe any protection scheme for F2 interference [8] because it was not considered to be feasible. *See* Appendix C of the *Report and Order*. According to the annualr ring plan, paging applications in the 35 MHz frequency band may be authorized only if there are no co-channel two-way stations located between 1200 kilometers (746 miles) and 2400 kilometers (1492 miles) from the proposed paging station. For applications in the 43 MHz frequency band, paging facilities may be authorized only if there are no co-channel two-way stations located between 1500 kilometers (932 miles) and 2000 kilometers (1243 miles).

5. The Commission also examined the issue of whether, because of potential adjacent channel interference,[9] there should be geographic separation criteria between the new DPLMRS paging stations and adjacent channel stations providing paging in the Special Emergency Radio Service (SERS) and providing two-way simplex service [10] in the Special Industrial Radio Service (SIRS). The question of adjacent channel interference was examined because the § 22.501(a) allocation for common carrier two-way service was interleaved with the allocations for the SIRS and SERS. In the *Report and Order* in the instant docket, the Commission carefully considered the potential for adjacent channel interference. While we recognized that, without any geographic separation, interference between the common carrier and private radio stations operating on adjacent channels was possible, we declined to adopt a specific rule to govern this situation because the benefits of such a rule would be outweighed by the extreme burden it would place on licensees and the detrimental impact it would have on our administrative resources. Instead, the Commission strongly encouraged applicants and licensees to cooperate in the coordination of the use of these frequencies. In the event that the adjacent channel problem could not be resolved on an informal basis, the Commission adopted a presumption of harmful interference for future paging stations proposing to locate within six miles of an existing licensee.

6. Finally, the Commission considered the feasibility and effectiveness of alternatives to oral comparative hearings in cases of mutually exclusive applications. After examining this issue, the Commission decided to adopt a streamlined hearing approach for this proceeding similar to that which was adopted earlier in the *Cellular* proceeding.[11]

Summary of Arguments on Reconsideration

7. Jubon's petition requests a modification of the Commission's annular ring plan so that a new paging station would be allowed within the annular ring of an existing two-way station, if the new paging station reduced its power in the direction of the existing co-channel two-way station.[12] Telocator and Becker urge the Commission to eliminate the annular ring protection plan completely. They argue that the protection plan is unnecessary because there are technical means available to guard against skip interference, and because this restriction has the effect of unduly limiting the availability of the 35 MHz frequencies for paging in order to protect a relatively small number of existing two-way systems.

8. Becker also seeks reconsideration of the approach adopted for resolving adjacent channel interference problems. Becker argues that the Commission's approach is unfair to common carriers because it appears, based on the language in the *Report and Order*, that these procedures would only apply to common carriers and not to private radio applicants. In its Opposition to Becker's petition, SIRSA responded that

[5] Skip interference is the interference caused by the portion of radio waves that reflect off the ionosphere back to earth. As will be discussed in notes 7 and 8, *infra*, there are two types of skip interference that can effect DPLMRS systems—F2 skip interference and sporadic E skip interference.

[6] The Commission did not originally propose to make the 43 MHz frequencies available for paging because of the potential problem of interference to TV reception (TVI) from base stations providing paging on 43 MHz. *See* Interim Procedures for One-Way Signaling Service, 77 FCC 2d 94 (1980), *recon. granted in part*, 85 FCC 2d 925 (1981).

[7] "Sporadic E interference" is a type of skip interference due to a reflection from the E-layer of the ionosphere caused by an occasional intense ionization of the atmosphere. This phenomenon is apparently due to meteorological forces and can occur throughout the year.

[8] "F2 interference" is a type of skip interference due to a reflection from the F2 ionospheric layer. This phenomenon is apparently related to sunspot activity and is most likely to occur in the winter months during the peak of the 11-year sunspot cycle.

[9] Adjacent channel interference occurs when the sidebands of radio transmissions degrade the performance of base station receivers on adjacent channels.

[10] In simplex service, the base and mobile transmitters operate on the same frequency.

[11] Cellular Communications Systems, CC Docket No. 79-318, 86 FCC 2d 469 (1981), *recon. granted in part*, 89 FCC 2d 58, 90-94 (1982). By this procedure, parties whose applications were designated for hearing would submit briefs and written evidence to establish their superiority over other applicants. In most instances, all testimony would be in written form.

[12] Jubon also requests final disposition of an earlier paging proceeding, Docket No. 19327. In the Notice of Proposed Rulemaking, Docket No. 19327, 36 FR 19916 (October 13, 1971), the Commission proposed, among other things, to make eight new paging frequencies available in the DPLMRS. However, in the First Report and Order, 35 FCC 2d 492 (1972), the Commission deferred making the frquencies available for DPLMRS until certain issues could be further examined. In a companion action today, we are making the Docket No. 19327 frequencies available for DPLMRS paging.

the procedure does apply to both private radio and DPLMRS applicants. SIRSA further argues that the informal six-mile arrangement between adjacent channel applicants and licensees on these frequencies which now exists has served to minimize adjacent channel problems in the past, and that it should continue to be effective in minimizing problems in the future.

9. In its Comment AT&T argues that the proposed one-way paging facilities will cause substantial F2 skip interference to its existing two-way operations. AT&T requests the Commission to condition new authorizations of 35 and 43 MHz paging stations so that they will have to cease operation if they cause skip interference. Telocator and all of the affected applicants oppose AT&T's Comment. They argue that AT&T failed to analyze the interference potential for any specific proposed facility and point out several possible inaccuracies in AT&T's general engineering analysis. They contend that a conditional grant would deter carriers from providing service, but they state that they are willing to cooperate to solve any interference problem that might arise.

Discussion

10. We have considered the arguments raised in the petitions and the AT&T Comment. For the reasons stated below, we conclude that the annular ring protection plan should be eliminated for the 43 MHz frequencies and modified in accordance with Jubon's proposal for the 35 MHz frequencies. We have decided, however, that it is in the public interest to require the gradual termination of two-way common carrier service in the 35 and 43 MHz band in favor of exclusive paging service. In addition, we decline to condition new paging authorizations granted for these frequencies, as requested by AT&T, or to eliminate the adjacent channel interference protection requirements, as suggested by Becker.

Skip Interference

11. *Sporadic E interference/Annular Protection Plan.* Jubon proposes to allow 35 MHz paging stations to locate within the annular ring of an existing two-way station, if the paging stations reduce their power in the direction of the existing co-channel two-way station. Jubon suggests that the paging stations reduce their power in accordance with a power reduction curve which, in turn, is based on recommendations of the CCIR (International Radio Consultative Committee).[13] Jubon contends that, by using the annular ring plan, as refined by the power reduction curve, the Commission can make additional 35 MHz frequencies available for paging, while still adequately protecting the remaining existing two-way systems from sporadic E skip interference.

12. Telocator and Becker argue that the annular ring plan should be eliminated for both 35 and 43 MHz stations. Telocator urges the Commission to balance the need for paging service by "potentially hundreds of thousands of new paging customers" against the interests of a relatively small number of existing two-way users on these frequencies.[14] They contend that, based on this balancing, the public interest would be better served by eliminating the annular protection zone because a greater number of persons would receive important communication services, and because the annular plan would frustrate the implementation of new paging systems on these frequencies. Telocator also argues that the protection criteria are unnecessary because there are technical means available to guard against sporadic E skip interference.

13. We have examined both the technical and policy arguments raised with respect to the need for the annular ring plan. In addition, our engineering staff has reevaluated its previous engineering analysis dealing with this issue. As a result of our engineering reevaluation, we have found that, by using slightly more accurate approximations of two factors used in evaluating the interference potential,[15] there is no need for sporadic E interference protection for the 43 MHz frequencies. Due to the different propagation characteristics of the 35 MHz frequencies, some technical restrictions are still necessary for the 35 MHz frequencies. Otherwise, these channels would be unusable for two-way service. Jubon's proposal would provide sufficient protection against harmful sporadic E interference to existing two-way subscribers, while still permitting additional paging stations to be located within the annular ring of an existing station. Thus, we conclude that Jubon's proposed modifications are an improvement over the existing annular ring plan and will best serve the public interest. Accordingly, we have eliminated the annular ring plan for the 43 MHz frequencies and we have modified the plan for the 35 MHz frequencies to incorporate Jubon's modifications, as further refined by our own engineering analysis.[16]

14. Telocator argues that there are other less restrictive technical means available, such as an idle channel tone, to guard against skip interference on the 35 MHz frequencies. An idle-channel tone is a tone transmitted continuously when a base station is not busy with traffic. In the *Report and Order*, the Commission concluded that an idle-channel tone may be used by paging licensees to prevent false pages caused by skip interference. False pages would be avoided because paging receivers would lock onto the stronger idle-channel tone rather than the weaker skip signal from the distant paging station. Telocator suggests that the idle-channel tone could help two-way service as well as paging. However, Telocator is only partically correct. While an idle-channel tone may help to minimize the false triggering of a pager or two-way unit,[17] an idle-channel tone will not prevent the disruption of an ongoing two-way conversation, another serious problem caused by incoming skip interference.[18] Consequently, the annular ring plan, as modified, is still necessary for the 35 MHz frequencies in order to prevent the disruption of existing two-way service due to skip interference.

15. We have also considered the argument of Telocator and Becker that the annular ring plan should be eliminated because it has the effect of unduly restricting the availability of the 35 MHz frequencies for paging in order to protect a relatively small number of existing two-way systems. Although the use of these frequencies for two-way

[13] *See* Recommendations and Reports of the CCIR, 1978, 14th Plenary Assembly, Kyoto, Recommendation 534.

[14] Telocator estimates that fewer than 1,000 customers are receiving two-way service over these frequencies. Based on calculations from FCC reports and an examination of outstanding licenses, this estimate appears reasonable.

[15] We have used more exact determinations of the isotropically radiated power (EIRP) factor used for both the 35 and 43 MHz frequencies, and the ionospheric attentuation curve used for the 43 MHz frequencies.

[16] These refinements, which are minor for the most part and further improve the accuracy of the function, include:

(1) the adoption of a power reduction table, while Jubon suggested a more conservative linear approximation;

(2) measurement of the effective radiated power over an arc of 15 degres in either side of the true bearing of the existing two-way station, as opposed to a 30 degree arc proposed by Jubon; and

(3) minor differences in the interpretation of the CCIR Recommendations.

[17] There are no present restrictions in our rules on the use of idle-channel tones. Therefore, if false calls are a problem, the two-way licensee may use an idle-channel tone to prevent false calls.

[18] This is because the idle-channel tone is only transmitted when the channel is not in use, rather than during an ongoing conversation.

service is indeed declining, that there are still approximately 1,000 subscribers on these frequencies. If we eliminated the annular ring plan, these channels would be unusable for two-way service. This result would be particularly unfair to subscribers who own their own two-way units and to licensees for which there are no other immediate alternative frequencies for two-way service. Consequently, we conclude that the immediate elimination of the annular ring plan would not be in the public interest. In addition, our elimination of the annular ring plan for the 43 MHz frequencies and our modification of it for the 35 MHz frequencies will make many more frequencies available for paging.[19]

16. We emphasize that our concern here is with immediate disruption of existing two-way service. However, we have decided that eventual termination of two-way service in the lowband will serve the public interest. In reaching this decision, we have balanced the declining use of this frequency band for two-way common carrier mobile telephone service with the growing demand for paging service, given the needs of existing two-way subscribers and the propagation characteristics and technical constraints of this band. The two-way common carrier use of this frequency band has been declining because this band has poor propagation characteristics and provides limited capacity for two-way service. In addition, the available mobile telephone equipment is awkward and inconvenient to use. Cellular telephone systems in the 800 MHz band will be operational as early as next year and may displace many two-way systems in the other bands in the future. At the very least, much of the existing two-way service in the 150 and 450 MHz bands in the larger markets will be shifted to cellular service, which will allow the transfer of two-way subscribers from 35 MHz to 150 and 450 MHz. Accordingly, while we are protecting existing two-way subscribers from immediate termination, we find that the public interest would best be served by the elimination of two-way service at 35 and 43 MHz over the next five years. This action constitutes our recognition that market conditions have changed over the years to the degree that far more efficient use of the lowband can be made by paging services. By making this decision now, we hope to reduce any hardship on individual subscribers that might arise, and to provide ample opportunity for these two-way subscribers and the telephone companies now operating in the 35 MHz-43 MHz frequency band to convert to alternative service. We intend to accomplish the transition by revising the Note to Section 22.501(a), which deals with two-way service on the 35–43 MHz frequencies, to indicate that two-way authority will be expired in 1988.

17. Finally, in view of our modification of the annular ring plan, we will clarify what information must be submitted with the application to demonstrate interference-free operation. According to new Rule § 22.501(a)(2), 35 MHz paging facilities located between 1190 and 2360 kilometers from an existing two-way system must reduce their power below 500 watts by a factor in decibels (dB) based on the distance from the two-way station. In order to assure compliance with the plan, applicants for 35 MHz frequencies will be required to explicitly identify whether there are any two-way systems within the annular ring and, if so, provide a study listing the distance from the two-way station and the paging station's power along the radial between the two-way and one-way station. This information will enable the staff to expedite the processing of the large number of applications that we expect will be filed, thereby allowing service to be provided to the public as quickly as possible.[20]

18. *AT&T's Comments/F2 Skip Interference.* As discussed in note 8, *supra*, F2 interference is a type of skip interference caused by reflection from the F2 ionospheric layer. F2 skip interference is different from sporadic E interference, discussed in paragraphs 11–16, above. F2 interference is caused by a different phenomenon and has different propagation paths.[21] In addition, F2 interference occurs only during the winter months of the peak of the 11-year sunspot cycle, while sporadic E interference can occur at various times throughout the year. In the *Report and Order*, the Commission established the annular ring plan to protect existing two-way systems from sporadic E interference, but declined to prescribe any protection scheme for F2 interference because it was not considered to be feasible. *See* Appendix C of the *Report and Order*. In its Comment, AT&T provided a general engineering analysis to support its claim of harmful F2 interference which indicates that, based on theoretical calculations, F2 interference will occur two to four hours per day on 50 percent of the days between October 1982 and February 1983; that by March 1983 there should only be erratic interference; and that F2 interference should resume during the next sunspot cycle in 1988. Based on the foregoing analysis, AT&T requests the Commission to condition the new 35 and 43 MHz authorizations so that if it is determined that a new paging station is causing skip interference, the station will have to cease operation. Alternatively, AT&T requests that we delay issuing licenses until the end of this sunspot cycle (March 1983) or that the new paging stations be required to use cardioid (directionalized) antennas.

19. Telocator and all of the affected applicants opposed AT&T's Comments on both procedural and substantive grounds. They argue that AT&T's pleading is actually a late-filed Petition for Reconsideration of the *35 MHz Paging* rulemaking and, thus, is barred on procedural grounds. They also contend that the AT&T arguments are general in nature and rely on a single engineering statement which failed to analyze the prospects of interference taking into consideration the specific paging facility and its effect on AT&T's operations. They further argue that AT&T's general engineering analysis is faulty because: (a) by the time 35 MHz paging stations are on the air, the *timing* would be such that the level of skip interference will be almost zero; (b) AT&T has not made *any* analysis of 43 MHz interference but has nonetheless protested both 35 and 43 MHz applications; (c) AT&T's prediction of interference was inflated because it did not consider the specific distances of the proposed stations from the two-way stations (the level of interference is related to the specific distances); and (d) even using AT&T's assumptions and methodology, the desired to undesired signal ratio comes within 1 dB of AT&T's 6 dB protection ratio when the 31 dBu contour is considered. They finally argue against imposing a condition on their applications because such a condition would deter the carriers from providing service by virtue of the potential unpredictable termination of service. They indicate, however, that they are willing to cooperate to solve any interference problem that arises.

20. As a preliminary matter, we conclude that A.T. & T.'s pleading was in reality a late-filed Petition for

[19] A complete list of the new frequencies appears in Appendix B.

[20] Similarly, we have clarified Section 22.501(a)(3) (now Section 22.501(a)(5)) dealing with intermediate-range interference for 43 MHz frequencies. *See* Appendix D of the Report and Order, *supra*. This revised section will require applicants for 43 MHz paging frequencies to explicitly state whether there are any two-way systems within 125 miles of the proposed station, in addition to the interference study that is already required.

[21] *See* notes 7 and 8, *supra*.

Reconsideration and thus, is procedurally defective. Although A.T. & T.'s arguments are styled as comments against the various new paging applications, the substance of these comments more closely resembles a request for reconsideration of the rulemaking. The comments were general in nature and did not specifically address the engineering aspects of any of these applications. It appears, therefore, that A.T. & T. filed its argument as a comment, rather than a reconsideration petition, because the time period for reconsideration had elapsed. *See* Section 1.429(d) of the Commission's Rules. Although we view this procedure with disfavor, we have examined the substance of A.T. & T.'s pleading and we decline to place a condition on the grant of applications for the new § 22.501(a) paging authorizations or take the other steps requested by A.T. & T. The period between October 1982 to April 1983 will be the last period that we can expect substantial F2 interference until 1988, and the level of interference during this period will be relatively low as compared to the previous years. Thus, by the time that most of the new paging stations are constructed and ready for operation, the skip interference problem should be minimal. Furthermore, A.T. & T.'s engineering overview falls far short of demonstrating that any particular paging facility will adversely affect any A.T. & T. facility. Consequently, the record will not support imposition of the type of general condition proposed by A.T. & T. Therefore, our intervention into this matter is unnecessary at this time. We expect that the new paging applicants and licensees and the existing two-way licensees will cooperate to resolve any interference problem that might arise during the brief period F2 interference is still possible.

21. In reaching this decision, we have considered whether it is inconsistent to adopt a rule to protect two-way licensees from sporadic E interference, while at the same time relying on the voluntary cooperation of licensees to protect the same two-way licensees from F2 interference. We believe that our approach is the best alternative for the overall public interest. We are relying on voluntary cooperation to resolve any F2 interference problems because the F2 interference problem will end very shortly, and because it is not feasible to design a scheme which would protect against F2 interference while still providing a sufficient number of paging frequencies to meet the growing demand for paging services. On the other hand, we are adopting a rule for sporadic E interference because this type of interference can occur at various times throughout the year, and because the propagation characteristics of sporadic E interference permit us to design the annular ring protection plan to help prevent interference.

Adjacent Channel Interference

22. Becker seeks reconsideration of the procedure established to resolve adjacent channel interference problems, arguing that this procedure is unfair and places an impossible burden on DPLMRS licensees. Adjacent channel interference occurs when the sidebands of a base station transmission degrade the performance of a receiving unit operating on an adjacent channel. As discussed at paragraph 5, above, we declined to adopt a specific rule to govern adjacent channel interference, but instead strongly encouraged non-regulatory solutions. Our approach was, in part, predicated on our current procedures under which common carrier applications appear on public notice when they are filed, affording SIRSA or SIRS licensees the opportunity to comment on the possibility of adjacent channel interference. Becker argues that, because SIRS applications do *not* appear on public notice, DPLMRS applicants and licensees will not have an opportunity to comment on harmful adjacent channel interference from a SIRS station prior to the authorization of such facilities. Thus, Becker argues that this procedure is a one-sided burden and that, consequently, the six-mile separation requirement is unenforceable. Becker also alleges that since SIRS facilities are available for itinerant use[23] it would be impossible for DPLMRS applicants to protect SIRS facilities from interference from DPLMRS facilities. Becker concludes that, rather than presuming adjacent channel interference, the Commission should add a note to Section 22.501(a)(1) of the Rules indicating that adjacent channel licensees are expected to cooperate to resolve any interference problems.

23. SIRSA filed an Opposition to Becker's pleading. SIRSA responded that the procedure is fair because, while there is no public notice of SIRS applications, DPLMRS applicants do have the opportunity to review the Commission's files or request SIRSA to provide a list of adjacent channel licensees and outstanding frequency recommendations prior to filing a DPLMRS application. SIRSA further argues that the six-mile presumption has in the past served to minimize adjacent channel problems and that it will not derogate the mutual responsibility of all adjacent channel licensees to take all reasonable steps to minimize harmful adjacent channel interference. In response to Becker's itinerant operation claim, SIRSA argues that there are very few itinerant operations and that, in accordance with an existing procedure for co-channel interference between itinerant and permanent SIRS licensees, the itinerant licensee is expected to take all necessary steps to minimize adjacent interference with DPLMRS facilities.

24. We have decided to affirm the adjacent channel interference procedure that we established in the *Report and Order*. Applicants and licensees of both services are strongly encouraged to cooperate in the coordination of their use of these frequencies to minimize adjacent channel interference. However, we will clarify the policy that will be applied in the instances where the adjacent channel interference problem is not resolved informally. In theory, there should be no adjacent channel interference problem whatsoever because most modern equipment is capable of operating within the authorized bandwidth without receiving or causing adjacent channel interference. Nevertheless, as a practical matter, we recognize that this type of interference can be a problem for two-way service. This may be explained by the fact that the low-powered mobile-to-base communication of a two-way system can receive interference from a higher powered adjacent channel base station. While there may be instances when paging systems receive adjacent channel interference, for the most part this problem is not serious.[24] Consequently, this presumption of harmful interference will only take effect when an applicant for DPLMRS paging facilities proposes to locate within six miles of an existing two-way SIRS licensee.[25] There will be not such presumption when a SIRS licensee locates within six miles of an existing DPLMRS paging licensee, or when a SERS or DPLMRS paging applicant locates within six miles of another paging station.

[23] Itinerant is defined as "Operation of radio station at unspecified location for varying periods of time." Section 90.7 of the Rules.

[24] For example, when a paging subscriber is near the transmitting site of an adjacent channel base station, interference may occur.

[25] This presumption will operate in favor of the SIRS facility only if the SIRS application is filed earlier than the DPLMRS application. In addition, in the event that both applications are filed on the same day, there will be no presumption of harmful interference. These applicants will have to resolve their interference problem between themselves without our intervention.

25. We will also clarify that DPLMRS applicants do not have to protect itinerant SIRS licensees from adjacent channel interference. Rather, we agree with SIRSA's suggestion that, analogous to the procedure for resolving co-channel interference between permanent and itinerant SIRS licensees, the itinerant licensee has the burden to minimize interference problems with DPLMRS stations. There are very few itinerant stations in operation on these channels, and it would be burdensome, if not impossible, for DPLMRS licensees to protect these temporary stations.

Miscellaneous Matters

26. *Comparative Consideration of Mutually Exclusive Applications.* In the *Report and Order,* the Commission adopted streamlined hearing procedures for the 35 and 43 MHz frequencies. This decision basically relied on all evidence being submitted in writing. After reviewing this approach, we are not convinced that a particular rule to govern comparative hearings is necessary for these frequencies. The new § 22.36 did not actually provide for any procedures that are not presently available to the Administrative Law Judges in comparative hearing cases. In addition, we recently declined to adopt special hearing procedures to resolve mutually exclusive applications for the new *900 MHz Paging* frequencies.[26] In view of the 20 frequencies being allocated here, in addition to the allocation of 40 paging frequencies in *900 MHz Paging* and 8 additional paging frequencies in Docket No. 19327,[27] we believe we have minimized the likelihood of receiving large numbers of mutually exclusive application for these frequencies. Furthermore, hearing procedures and alternatives to comparative hearings are presently under Commission-wide review, and Congress may enact new lottery legislation in the coming months. Consequently, in the event that mutually exclusive applications do arise, we intend to use the procedures for dealing with mutually exclusive applications that are in effect at that time. Accordingly, we are deleting §§ 22.36 and 22.32(e)(6) dealing with comparative evaluation of mutually exclusive applications for the new 35 and 43 MHz paging frequencies.

27. *Section 22.31(e)(2) Issue.* Telocator has requested that the Commission clarify whether a frequency change made pursuant to § 22.31(e)(2) of the Rules restarts the 60-day cut-off period for the new frequency. Because issues pertaining to the interpretation of this rule are under consideration in a pending licensing proceeding, we believe it is more appropriate to resolve questions concerning the rule's meaning in the context of that proceeding. See the petitions for reconsideration of the Common Carrier Bureau's grant of the application of Airsignal International, Inc., File No. 21090-CD-P-80 and dismissal of the application of Robert E. Franklin, File No. 20610-CD-P-80. Accordingly, Telocator's request for a clarifying ruling is denied. See 47 CFR 1.2.

28. We remind applicants of the Common Carrier Bureau's *Order,* Mimeo 3289, released April 9, 1982, which temporarily suspended the applicability of § 22.31(e)(2) for amendments involving the new 35 and 43 MHz frequencies until 60 days after the Commission's decision on the Petitions for Reconsideration at issue. In accordance with that *Order,* we will resume accepting § 22.31(e)(2) amendments for the 35 and 43 MHz frequencies to resolve frequency conflicts 60 days after this *Report and Order* is published in the **Federal Register.**

Conclusion

29. Accordingly, it is ordered, That pursuant to the authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended [47 U.S.C. 154(i), 303(r)], Part 22 of the Commission's Rules and Regulations is amended as specified in Appendix B. These amendments shall become effective September 9, 1982. We will accept applications filed pursuant to the new rule as of the effective date of these amendments. *See* Section 1.427 of the Commission's Rules.

30. It is further ordered, That the Petitions for Reconsideration filed by Jan David Jubon, Telocator Network of America, and Becker, Gurman, Lukas, Meyers & O'Brien are granted to the extent indicated above, and denied in all other respects.

31. It is further ordered, That the requests made in the Comment filed by American Telephone and Telegraph Company against the various applications listed in Appendix A are denied.

32. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Applications at Issue Resulting From AT&T's "Comment"

A-1 Metro Communications, Inc.
23005-CD-P-5-81, Mesa, AZ
Air Beep of Florida, Inc.
20322-CD-P-1-82, Miami, FL
Airsignal International, Inc.
20146-CD-P-4-82, Seattle, WA
20305-CD-P-1-82, Milwaukee, WI
20307-CD-P-3-82, Baltimore, MD
20380-CD-P-1-82, St. Louis, MO
20315-CD-P-1-82, Oregon, OH
20316-CD-P-1-82, Indianapolis, IN
20322-CD-P-1-82, Miami, FL
22977-CD-P-3-81, Portland, OR
20216-CD-P-6-82, New York, NY
Airsignal International of Philadelphia, Pennsylvania, Inc.
22985-CD-P-81, Phoenixville, PA
Airsignal of California, Inc.
20250-CD-P-6-82, Los Angeles, CA
All Florida Communications Company, Joy A. Miller, dba
23017-CD-P-7-82, Goulds, FL
20269-CD-P-6-82, Miami, FL
23177-CD-P-2-81, West Palm Beach, FL
Associated Communications of America, Inc.
20273-CD-P-1-82, Alpine, NJ
20274-CD-P-1-82, Budd Lake, NJ
20275-CD-P-1-82, Hainesville, NJ
20276-CD-P-1-82, Fort Lee, NJ
20277-CD-P-1-82, Oakland Twp., NJ
20278-CD-P-1-82, Jersey City, NJ
20281-CD-P-1-82, Union City, NJ
20284-CD-P-1-82, West Paterson, NJ
20343-CD-P-1-82, Cumberland, RI
20345-CD-P-1-82, Erie, PA
20347-CD-P-2-82, Cohasset, MA
20346-CD-P-1-82, Atlanta, GA
Associated Communications of America, Inc.
22970-CD-P-1-81, Sarasota, FL
22942-CD-P-1-81, Melbourne, FL
22949-CD-P-1-81, Temple Terrace, FL
22971-CD-P-1-81, West Palm Beach, FL
22969-CD-P-1-81, Orlando, FL
22968-CD-P-1-81, Jacksonville, FL
22966-CD-P-1-81, Ft. Lauderdale, FL
22967-CD-P-1-81, Daytona Beach, FL
22945-CD-P-1-81, Rochester, NY
22947-CD-P-1-81, Philadelphia, PA
23180-CD-P-1-81, Philadelphia, PA
22972-CD-P-1-81, Steubenville, OH
22946-CD-P-1-81, West Seneca, NY
22948-CD-P-1-81, Reserve Township, PA
20344-CD-P-1-82, Miami, FL
20271-CD-P-1-82, Bolton Notch, CT
20272-CD-P-1-82, Meriden, CT

[26] First Report and Order, General Docket No. 80-183, FCC 82-202, released May 14, 1982.

[27] *See* note 12, *supra.*

23181–CD–P–12–81, Atlanta, GA
Associated Communications of New York, Inc.
20270–CD–P–1–82, Selden, NY
20279–CD–P–1–82, New York, NY
20280–CD–P–1–82, New York, NY
20282–CD–P–1–82, Half Hollow Hills, NY
20283–CD–P–1–82, Fishkill, NY
Austin Paging Service, Inc.
23148–CD–MP–2–81, Austin, TX
Beepercall
23004–CD–P–2–81, San Mateo, CA
Constant Communications, Inc.
23270–CD–P–1–81, Pompano Beach, FL
Florida Radio-Phone Co.
23107–CD–P–1–81, Fort Lauderdale, FL
Gabriel Communications Corporation
20334–CD–P–3–82, Fort Lauderdale, FL
20339–CD–P–1–82, Boca Raton, FL
20340–CD–P–1–82, West Palm Beach, FL
Georgia Mobile/Comm, Inc.
23181–CD–P–12–81, Atlanta, GA
Gencom Incorporated
23083–CD–P–1–81, Sarasota, FL
23086–CD–P–3–81, Dallas, TX
23055–CD–P–1–81, Pinellas Park, FL
23057–CD–P–1–81, Clearwater, FL
23104–CD–P–3–81, Tucson, AZ
23105–CD–P–2–81, Youngtown, AZ
23078–CD–P–1–81, Lawrenceville, GA
23056–CD–P–1–81, Bradenton, FL
22961–CD–P–1–81, Fernandina Beach, FL
22060–CD–P–5–81, Sanford, FL
23054–CD–P–1–81, New Port Richey, FL
23081–CD–P–5–81, Phoenix, AZ
23007–CD–P–1–81, South Tucson, AZ
23103–CD–P–1–81, Apache Junction, AZ
20102–CD–P–2–82, Conyers, GA
20195–CD–P–4–82, Tampa, FL
Madera Radio Dispatch, Inc.
23191–CD–P–1–81, Oakhurst, CA
23279–CD–P–1–81, Madera, CA
Miami Valley Radiotelephone
22990–CD–P–1–81, Dayton, OH
22988–CD–P–7–81, Hooven, OH
23013–CD–P–1–81, Dayton, OH
23011–CD–ML–81, Columbus, OH
23104–CD–ML–81, Hooven, OH
22989–CD–P–1–81, Columbus, OH
20325–CD–P–1–82, Xenia, OH
Missouri Paging Service, Inc.
20353–CD–P–1–82, St. Louis, MO
Mobile/Comm of D.C., Inc.
23189–CD–P–6–81, Washington, D.C.
Pacific Paging, Inc.
22998–CD–P–1–81, Portland, OR
Page America Communications, Inc.
20083–CD–P–2–82, Corpus Christi, TX
20086–CD–P–2–82, Austin, TX
20107–CD–P–2–82, Orlando, FL
20109–CD–P–2–82, Miami, FL
20110–CD–P–2–82, Fort Lauderdale, FL
20115–CD–P–2–82, San Antonio, TX
Page Communications, Inc.
22976–CD–P–2–81, Fort Worth, TX
Peninsula Telephone and Telegraph Company
20139–CD–P–2–82, Lookout Mt. Elliz, WA
Pocono Mobile Radio Telephone Company
20314–CD–P–1–82, Tannersville, PA
Radiofone, Inc.
22981–CD–P–3–81, New Orleans, LA
20068–CD–P–1–82, Slidell, LA
23003–CD–P–1–81, Covington, LA
Radiofone, Empire Paging Corporation, dba
20308–CD–P–2–82, Cumberland, Twp., RI
20310–CD–P–2–82, Boston, MA
20311–CD–P–8–82, Lower Alsage Twp., NJ
20338–CD–P–4–82, Atlantic City, NJ
20332–CD–P–6–82, Trenton, NJ
20352–CD–P–14–82, N. Greenbush Twp., NY
20337–CD–P–6–82, Greenbrook Twp., NJ
Radio Page Communications, J. M., Blodgett, dba
23272–CD–P–7–81, Cape May Court House, NJ
23262–CD–P–2–81, New York, NY
Rockford Telephone Answering Exchange, Inc.
22974–CD–P–1–81, Rockford, IL
Rogers Radio Communications Services, Inc.
20251–CD–P–15–82, Chicago, IL
Selective Radio Paging, Inc.
22982–CD–P–1–81, New Orleans, LA
St. Louis Mobilfone, Inc.
20178–CD–P–1–82, Clayton, MO
Susquehanna Mobile Communications, Inc.
23036–CD–P–3–81, Harrisburg, PA
23037–CD–P–1–81, Harrisburg, PA
Sylacauga Paging Service, Gordon C. Olgletree, dba
22987–CD–P–1–81, Sylacauga, AL
Westside Communications of Tampa, Inc.
20143–CD–P–1–82, St. Petersburg, FL
20145–CD–P–1–82, Port Richey, FL
20243–CD–P–1–82, Zephyrhills, FL

APPENDIX B

PART 22—PUBLIC MOBILE RADIO SERVICES

Part 22, Title 47 of the Code of Federal Regulations is amended as follows:

§ 22.32 [Amended]

(1) Section 22.32 is amended by removing paragraph (e)(6).

§ 22.36 [Reserved]

(2) Section 22.36 is removed and reserved.

(3) Section 22.501(a) is revised to read as follows:

§ 22.501 Frequencies.

* * * * *

(a)(1) For assignment, subject to the limitations in subsections (a)(2) and (a)(3), to stations of communication common carriers for use exclusively in providing a one-way paging service:

MHz	MHz
35.26	35.46
35.30	35.50
35.34	35.54
35.38	35.62
35.42	35.66

(2) *Maximum effective radiated power* (e.r.p.). The e.r.p. reduction table below applies if there are any two-way stations between 1190 and 2360 kilometers from the proposed paging station. In such cases, maximum e.r.p. must be reduced below 500 watts as provided in the table below. Distances for this subsection shall be computed in accordance with the Third Method of FCC Report R6501 (Distance, Bearing and Intersection Computer Program). Values not found in the table may be determined by linear interpolation. The e.r.p. must be reduced over an arc of 15 degrees either side of the co-channel radial to the two-way station(s).

The general antenna-height power limits of § 22.505 also apply.

Distance in Km	Reduction in dB	Distance in Km	Reduction in dB
1,190	0.00	1,750	10.00
1,200	0.54	1,850	10.00
1,225	1.72	1,875	9.51
1,250	2.69	1,900	9.12
1,275	3.50	1,925	8.83
1,300	4.16	1,950	8.60
1,325	4.72	1,975	8.41
1,350	5.20	2,000	8.25
1,375	5.64	2,025	8.09
1,400	6.08	2,050	7.90
1,425	6.67	2,075	7.67
1,450	7.20	2,100	7.37
1,475	7.67	2,125	7.16
1,500	8.09	2,150	6.79
1,525	8.46	2,175	6.28
1,550	8.78	2,200	5.66
1,575	9.05	2,225	4.94
1,600	9.28	2,250	4.13
1,625	9.47	2,275	3.26
1,650	9.62	2,300	2.33
1,675	9.73	2,325	1.37
1,700	9.81	2,350	0.40
1,725	9.86	2,360	0.00

(3) *Co-channel statement required.* The application shall explicitly state whether or not there are any existing co-channel two-way facilities between 1190 and 2360 kilometers from the proposed station. If so, applicants shall furnish the following information:

(i) Name(s), call sign(s), and coordinates of the two-way licensee(s);

(ii) Distance in kilometers between the proposed paging station and the two-way station(s); and

(iii) E.r.p. of the proposed paging station in accordance with paragraph (a)(2) of this section.

(4) For assignment, subject to the limitation in subsection (a)(5), to stations of communication common carriers for use exclusively in providing a one-way paging service:

MHz	MHz
43.26	43.46
43.30	43.50
43.34	43.54
43.38	43.62
43.42	43.66

(5) *43 MHz applications (Interference study required).* Applicants which request 43 MHz applications listed in (a)(4) shall explicitly state whether or not there are any existing co-channel two-way facilities within 125 miles (201 km) of the proposed paging station and shall include an engineering study of the potential interference to these two-way stations. The predicted undesired field strength at the existing base station antenna shall not exceed 14 dB above one microvolt per meter. The predicted value shall be calculated by the Bullington method (Kenneth Bullington, "Radio Propagation at frequencies above 30 Megacycles", Proceedings of the I.R.E., October, 1947). Applicants may assume that the two-way base station receiving antenna is the same as that of the base transmitting antenna as filed with the Commission.

Note.—Prior to September 11, 1982, these frequencies were available for assignment for two-way services. Existing operations of this nature on these frequencies will be permitted to continue until June 30, 1988. Applications to modify existing facilities will be accepted as long as at least fifty percent (50%) of the proposed service area is already covered by the existing service area. No applications for new two-way facilities on these frequencies will be accepted.

* * * * *

[FR Doc. 82-21645 Filed 8-9-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 22

[Docket No. 19327; RM-1069; FCC 82-343]

Allocation of Frequencies in Certain MHz Frequency Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Second Report and Order* makes available certain 35 and 43 MHz frequencies for common carrier paging services. This action was made in response to a petition filed by the Special Industrial Radio Service Association, Inc. These new paging frequencies will help accommodate the heavy demand for paging services.

EFFECTIVE DATE: September 9, 1982.

FOR FURTHER INFORMATION CONTACT: Steven A. Weiss, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Communications common carrier, Mobile radio service.

Second Report and Order (Proceeding Terminated)

Adopted: July 22, 1982.

Released: July 30, 1982.

1. In this proceeding, the Commission proposed the allocation of additional frequencies in the 35 and 43 MHz frequency bands[1] to be used for one-way paging in the Domestic Public Land Mobile Radio Service (DPLMRS) and the Special Emergency Radio Service (SERS) and for two-way simplex service in the Special Industrial Radio Service (SIRS).[2] Notice of Proposed Rulemaking, FCC 71-1016, 36 FR 19916 (October 13, 1981). The Notice proposed to create these additional channels by reducing the spacing between frequencies allocated for DPLMRS two-way service in this frequency range and by combining certain unused "guard bands" or splinter frequencies at the band edges.

2. The comments were generally in favor of the proposed allocation. In its Comments, Telocator Network of America (Telocator), formerly the National Association of Radiotelephone Systems, argued that, in order to prevent "ruinous competition", the frequencies allocated for common carrier use should be only available to existing radio common carriers. Telocator urged the Commission to exclude both wireline telephone companies and new entrants from being eligible for these frequencies.

3. In the *First Report and Order*, 35 FCC 2d 492 (1972), the Commission adopted the necessary amendments to Parts 2, 89 and 91 to make the new channels available for immediate use in the SIRS and SERS, but deferred action on the revision to Part 21 of the Rules (now Part 22 of the Rules) until the "complex competitive issues affecting the common carrier channels" could be resolved. 35 FCC 2d at 494.

4. On July 24, 1982, Telocator filed a Petition for Partial Reconsideration of the technical rules for the new frequencies that were adopted in the *First Report and Order*. Telocator requested the Commission to adopt more stringent adjacent channel interference protection criteria. On August 17, 1981, Telocator withdrew its pending petition, claiming that recent technological developments in mobile communications have mooted its previous concerns. On November 25, 1981, Telocator further acknowledged the competitive issues that it initially raised in this proceeding have been subsequently resolved in other Commission proceedings. Consequently, Telocator urges the Commission to make these frequencies available under the same rules and policies that govern the existing lowband paging frequencies.

5. After reviewing the record in this proceeding, we conclude that the public interest will be served by making eight 35 and 43 MHz frequencies available for one-way paging service in the DPLMRS. Aside from Telocator's argument advocating restrictive entry policies, which has since been withdrawn, there was little support for a "closed entry" policy in the DPLMRS.[3] The tremendous growth of common carrier paging and the overwhelming demand for this service convince us that unrestricted entry will not result in "ruinous competition" that will be injurious to the public interest.[4] In addition, this issue has been subsequently resolved in other commission proceedings. *See Land Mobile Use of TV Channels 14 through 20,* Docket No. 18261, *Second Report and Order,* 30 FCC 2d 221, 234 (1971), *recon. denied,* Docket Nos. 18261 and 21039, 63 FCC 2d 126, 129 (1977), *recon, denied,* 69 FCC 2d 1555, 1562-64 (1978), *recon. granted in part as other grounds,* 77 FCC 2d 201, 218-21, *recon. denied,* 82 FCC 2d 159 (1980), *appeal pending sub nom. Telocator Network of America v. FCC,* Case 78-2218 (D.C. Cir., filed November 27, 1978). Accordingly, we conclude that, overall, the public interest will best be served by not restricting entry for these new paging frequencies.

6. We shall, however, address two technical issues. The 35 and 43 MHz frequencies that we are allocating here are 20 KHz removed from frequencies allocated for two-way service and paging service in the DPLMRS and two-way simplex service in the Business

[1] The 35 and 43 MHz frequency bands are commonly known in this industry as the "lowband" frequencies.

[2] In simplex service, the mobile and base transmitters operate on the same frequency.

[3] Radio Relay Corporation and Aircall New York Corp. were the only other commenters to support "closed entry."

[4] "That an existing carrier might be affected adversely by the entry of a competing carrier is not our chief concern. Injury to the overall public interest and the public's ability to receive adequate communications services are the circumstances to be avoided." Commonwealth Telephone Company, 61 FCC 2d 246, 253 (1976).

Radio Service. As a result, we have considered the potential for adjacent channel interference, an issue that was also examined in the *First Report and Order* in this proceeding and in the *35 MHz Paging* Proceeding.[5] Adjacent channel interference occurs when the sidebands of a radio signal degrade the performance of a unit operating on an adjacent channel. In these earlier proceedings, we declined to adopt a specific rule to govern adjacent channel interference, but instead strongly encouraged applicants and licensees to cooperate in the coordination of the use of the frequencies. We adopted this approach because a rule would have been overly burdensome on our licensees and our administrative resources. In addition, in theory, there should be no adjacent channel interference problems because modern equipment is capable of operating within the authorized bandwidth without receiving or causing adjacent channel interference. However, we recognized that adjacent channel interference can cause problems to two-way service when low-powered mobile-to-base communications of a two-way system receive interference from a higher powered adjacent channel base station.[6] Thus, in the event that the adjacent channel interference question could not be resolved informally, we adopted a presumption that harmful interference would be caused where a DPLMRS one-way paging applicant proposed to locate within six miles of an existing two-way facility. *See 35 MHz Paging, supra* note 5.

7. We have decided to follow the same informal coordination approach for adjacent channel interference for these frequencies that we have adopted in the past. With respect to DPLMRS two-way service, the potentially problematic mobile-to-base communication takes place on the 43 MHz frequencies. Thus, paging applicants for the 43 MHz frequencies are expected to coordinate their use of these frequencies with the adjacent channel DPLMRS two-way licensees. For two-way simplex service in the Business Radio Service, the mobile operates on the same frequency as the base station. Therefore, paging applicants for frequencies 35.20 and 43.20 MHz should coordinate with licensees in the Business Radio Service operating on frequencies 35.18 and 43.18 MHz.[7] In the event that an adjacent channel interference problem is not resolved informally, there will be a presumption in favor of the two-way licensee if a DMPMRS paging applicant proposes to locate within six miles of the licensee. *See 35 MHz Paging, supra* note 5.

8. The second technical area of concern involves the Commission's policy with respect to 43 MHz paging. In *Interim Procedures for One-Way Signaling Service,* 85 FCC 2d 925 (1981), the Commission instituted a developmental grant policy for new 43 MHz paging stations in order to effectively manage the potential problem of interference to TV reception (TVI) from base stations providing paging in 43 MHz. This policy, which applied to the 43 MHz frequencies being made available in *35 MHz Paging, supra* note 5, shall also apply to the 43 MHz frequencies being made available in this proceeding. The terms of the developmental grant, pursuant to Section 22.404(a) of the Rules, are for one year, and the grant is subject to cancellation without hearing by the Commission upon notice to the grantee of TVI problems. Development reports are required under Section 22.406(a)(1), including, but not necessarily limited to, surveys of the TV viewing public within a few miles of the base station to ascertain whether their viewing is being impaired substantially by the operation of the one-way station. In addition, grantees are required to work closely with field personnel in investigating and solving interference problems which may occur.

9. Finally, consistent with the Common Carrier Bureau's *Order,* Mimeo 3289, released April 9, 1982, we will not allow applications to be amended to these new 35 and 43 MHz pursuant to Section 22.31(e)(2) until 60 days after this *Order* is published in the **Federal Register.** We think that potential entrants should have an opportunity to file applications for all of these new frequencies; this will allow the new entrants this opportunity. *See also First Report and Order,* General Docket No. 80-183, FCC 82-202, released May 14, 1982.

10. Accordingly, it is ordered, That pursuant to the authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i), 303(r)), § 22.501(d) of the Commission's rules and regulations is amended as specified in Appendix A. This amendment shall become effective September 9, 1982. We shall begin accepting applications for these frequencies as of the effective date of these amendments. *See* § 1.427 of the Commission's Rules.

11. It is further ordered, That this proceeding is terminated.

12. The Secretary shall cause a copy of this *Order* in the **Federal Register.**

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 22—PUBLIC MOBILE RADIO SERVICES

Section 22.501 in Part 22, Title 47 of the Code of Federal Regulations is amended by revising paragraph (d) as follows:

§ 22.501 Frequencies.

* * * * *

(d) For assignment to base stations of communication common carriers for use exclusively in providing a one-way paging service.

MHz	MHz
35.20	43.20
35.22	43.22
35.24	43.24
35.56	43.56
35.58	43.58
35.60	43.60

Whenever feasible, the frequencies 35.22 MHz, 35.24 MHz, 35.56 MHz, 35.58 MHz and 35.60 MHz shall be assigned for use in any area prior to assignment of the frequencies 35.20 MHz, 43.20 MHz, 43.22 MHz, 43.24 MHz, 43.56 MHz, 43.58 MHz and 43.60 MHz.

* * * * *

[FR Doc. 82-21644 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-175; RM-4036]

Radio Broadcast Services; FM Broadcast Station in Copperopolis, California; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

[5] One-Way Signaling on the 35 MHz Frequency Band, CC Docket No. 80-189, Report and Order, 49 RR 2d 1541, 46 FR. 38509 (July 28, 1981), *recon. granted in part,* FCC 82-342, adopted July 22, 1982.

[6] While there may be instances when paging stations can receive adjacent channel interference, for the most part this is not a serious problem.

[7] Since the Business Radio Service does not have a coordinating committee, like the Special Industrial Radio Service Association (SIRSA), it may be difficult for DPLMRS applicants to coordinate with users in the Business Radio Service. Consequently, we urge paging aplicants to apply for frequencies 35.20 and 43.20 MHz only after the other frequencies in this allocation are no longer available.

SUMMARY: This action dismisses a petition filed by ZIDO Corporation proposing the assignment of Channel 288A to Copperopolis, California. Petitioner failed to file comments showing a continuing interest in the assignment.

DATE: Effective September 21, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order

(Proceeding Terminated)

Adopted: July 19, 1982.

Released: July 22, 1982.

1. Before the Commission is a Notice of Proposed Rule Making, 47 FR 15377, published April 9, 1982, proposing the assignment of Channel 288A to Copperopolis, California, in response to a petition filed by ZIDO Corporation ("petitioner").

2. The Commission did not receive comments from the petitioner (or any other interested parties), and consistent with our policy and procedures set forth in the Appendix to the Notice, we have dismissed the request for lack of continuing interest.

3. In view of the foregoing, it is ordered, That the petition of ZIDO Corporation, proposing the assignment of Channel 288A to Copperopolis, California, is hereby dismissed.

4. For further information concerning this proceeding, contact D. David Weston, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-21643 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-76; RM-3933]

Radio Broadcast Services, TV Broadcast Station in Salem and Bend, Oreg.; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action reassigns noncommercial educational television Channel *3 from Salem, Oregon, to Bend, Oregon, at the request of the Oregon Educational and Public Broadcasting Service, the licensee of Station KVDO-TV, Channel *3, Salem. This action also modifies the license of Station KVDO-TV to specify Bend as its city of license. Reassigning Channel *3 to Bend removes a short-spacing between Station KVDO-TV and Station KATU, Channel 2, Portland, Oregon. The channel change will also provide a first noncommercial educational service to a significant portion of the state.

DATE: Effective: October 13, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Salem and Bend, Oregon); BC Docket No. 82-76, RM-3933.

Memorandum Opinion and Order; Proceeding Terminated

Adopted: July 29, 1982.
Released: August 4, 1982.

1. Pursuant to Section 1.108 of the Commission's Rules, the Commission herein reconsiders on its own motion the dismissal of this proceeding by *Report and Order* on July 13, 1982, Mimeo No. 31790. The proceeding was initiated by the Oregon Educational and Public Broadcasting Service (OEPBS), licensee of Station KVDO-TV (Channel *3), Salem, Oregon. [1] OEPBS requested that Channel *3 be reassigned from Salem to Bend, Oregon, and the *Notice of Proposed Rule Making* proposed that action. However, OEPBS indicated it was unwilling to pursue the proposal without a modification of its license to specify Bend. We held in the *Report and Order* that although there were valid public interest reasons for the reassignment, the modification could not be granted consistent with existing law derived from the cast of *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945), and followed by Commission decision in the case of *Riverside and Santa Ana, California*, 65 F.C.C. 2d 920 (1977), *recons. denied*, 68 F.C.C. 2d 557 (1978). Thus, we terminated the proceeding without reaching the merits of the reassignment and without considering other options that could provide noncommercial educational service in the central portion of Oregon where Bend is located.

2. Upon further consideration, we believe there are clearly desirable public interest benefits in the allocation of Channel *3 to Bend. Furthermore, in light of the significant special circumstances present in this case, we feel that an exception to our usual policy against license modifications is warranted.

3. As set forth in the *Notice*, there are two extraordinary public interest reasons in support of the reassignment.[2] First, Station KVDO-TV presently operates with a 17.4 mile short-spacing to Station KATU (Channel 2), Portland.[3] The reallocation to Bend would eliminate the short-spacing and provide both stations with an interference free service to a larger area. Secondly, the five existing noncommercial television stations are so situated that coverage is presently provided to only certain portions of the state: Station KTVR, LaGrande, covers northeast Oregon; Station KSYS, Medford, is viewed in southwest Oregon; Station KOAC-TV, Corvallis, Oregon, and Station KVDO-TV, Salem, serve west central Oregon, and almost completely overlap each other, while Station KOAP-TV, Portland, covers northwest Oregon. The result of this arrangement is a large unserved area throughout the central and southeast portion of Oregon. The proposed move of Station KVDO-TV to Bend would provide coverage to the central portion of the state which is almost entirely unserved by noncommercial educational television stations while depriving virtually no one of noncommercial service in western Oregon since service to this area is provided by OEPBS's stations in Corvallis (KOAC-TV) and in Portland (KOAP-TV). These two goals of eliminating an existing short-spacing and of covering unserved and underserved areas are of the highest priority in the Commission's allocation scheme. Thus, we feel compelled to examine any and all options for bringing

[1] OEPBS also operates Stations KOAC-TV (Channel *7), Corvallis, KTVR (Channel *13), LaGrande, and KOAP-TV (Channel *10), Portland. The only other noncommercial educational television station in Oregon is KSYS (Channel *8), Medford.

[2] Comments in support of the proposal were submitted by petitioner and by Fisher Broadcasting, Inc., licensee of Station KATU (Channel 2), Portland, Oregon.

[3] We have in other instances initiated proceedings in order to eliminate existing short spacings. *See, e.g., Miami, Florida, et. al. (Notice of Proposed Rule Making)* 43 F.R. 30841 (1978).

noncommercial educational television service to central Oregon.

4. We have long recognized and attempted to accommodate state educational authorities in their objectives of obtaining a geographic distribution of stations that could reach a maximum of state residents. *See Television Expansion, Fourth Report and Order*, 41 F.C.C. 1082 (1965). We have generally accommodated statewide plans where an interest in a particular place is expressed.[4] In this regard, we often defer to the wisdom of the state's authorities in their efforts to reach the maximum number of state residents with its facilities. *See, e.g., Royston and Warm Springs, Georgia*, 44 F.R. 42693 (1979). Such examples are numerous involving many states throughout the country. The need for the state authority to have a degree of flexibility in arranging its statewide plan is implicit in such allocations decisions.

5. Here, the effort of OEPBS to provide educational service to more state residents is clearly superior to the present situation. Currently, Station KVDO–TV's Grade B contour extends 54 miles, covering 9,200 square miles, but provides the only noncommercial educational service in just 35 square miles, less than 1 percent of its Grade B service area. It provides no first or second television service. By contrast, a Bend station with comparable facilities could offer a first noncommercial educational service to 8,500 square miles or 93 percent of its Grade B coverage area. It could also provide a first television service to 5,100 square miles or 56 percent of its Grade B service area. A second Grade B television service could be offered to an additional 2,500 square miles or 27 percent of that service area. These figures are very impressive and compel us to reconsider our previous decision in a manner that will achieve the aforementioned public interest objectives.

6. In recent years, the Commission has modified existing television station licenses in rule making proceedings in basically two types of cases. First, where the modification of a station's operating frequency would permit, through the elimination of a short-spacing, the assignment of additional channels and the inauguration of new services. *See, e.g., Albany, New York*, 23 F.C.C. 358 (1957). Second, modification has been permitted when, for technical reasons, the substitution of one channel for another in a given market allows a licensee to provide improved service. *See, e.g., Las Vegas, Nevada*, 7 R.R. 2d 1589 (1966); *Vallejo-Fairfield and Sacramento, California*, 25 R.R. 3d 1684 (1972); *Altoona, Pennsylvania*, 41, R.R. 2d 1304 (Broadcast Bur. 1977).

7. However, for at least the past ten years, we have consistently been of the view that modifications of licenses should not be permitted when a channel was being made available to a different community than the one in whch it was licensed. *See, e.g., Nogales-Tucson, Arizona*, 32 F.C.C. 2d 885 (1972); *Riverside and Santa Ana, California, 65 F.C.C., 2d 920 (1977), reconsid. denied*, 68 F.C.C. 2d 557 (1978); *Riverside and Santa Ana, California*, 81 F.C.C. 2d 218 (1980). The Commission's policy regarding modification of existing licenses to specify operation in a new community is based on principles established in *Ashbacker* v. *FCC*, 326 U.S. 327 (1945). *Ashbacker* states that comparative consideration must be given to mutually exclusive applications. Thus, we have held that, whenever a channel is made available for use in a new community, other interested parties should be allowed to apply so that the Commission may determine which applicant is best qualified to serve the new city.[5]

8. As explained above, we believe that the public interest benefits compel us to give further consideration to petitioner's proposal. Furthermore, there are other important considerations which convince us that modification is the proper vehicle to accomplish the desired public interest objectives. Permitting modification in this case will afford an opportunity for OEPBS to obtain funding for its proposed station at Bend, Oregon. Absent such action, it appears that OEPBS would be unable to obtain necessary funding for its proposed venture.[6] Also, allowing modification in this case gives the state authority the flexibility to reach unserved or underserved areas of the state without jeopardizing its license in a comparative hearing. No other parties have expressed any interest in providing a noncommercial service in Bend either in this rule making or by the fact that Channel *15 has been assigned and unoccupied at Bend for some time without any expression of interest in its activation. Finally, modification in this instance comports with our continuing policy of providing noncommercial broadcasters with a regulatory atmosphere conducive to the encouragement and preservation of their unique and valuable service to the public. *See, e.g, Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, 86 F.C.C. 2d 141 (1981); *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, 46 F.R. 43190 *(Notice of Proposed Rule Making*, 1981); *Subscription Television Authorization for Noncommercial Educational Television Station Licensees*, adopted July 15, 1982, *(Notice of Proposed Rule Making*, 1982). Thus, by virtue of the extraordinary public interest reasons for the shift of Channel *3 from Salem to Bend, we shall make the requested reassignment and modify the license of Station KVDO–TV to specify Bend, Oregon, as its city of license.

9. Accordingly, effective October 13, 1982, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended, as follows for the communities listed:

City	Channel No.
Bend, Oregon	*3+, *15, 21+
Salem, Oregon	22, 32

10. It is further ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, and § 1.87 of the Commission's Rules, the license of Station KVDO–TV, Salem, Oregon, is modified to specify Bend, Oregon, as its city of license, subject to the following conditions:

(a) The licensee shall file with the Commission an application, which will be treated as a minor change, for a construction permit (Form 340) specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

11. Authority for the action taken herein is contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as

[4] This view is reflected in the Commission's rules at 73.502. This rule pertains only to FM since there is no table of assignments for noncommercial educational FM stations (except for cities near Mexico). Although no similar rule exists for television, the same premise applies. The premise is that state authorities have a valuable contribution to make in assessing the overall needs of the residents and in suggesting assignments to meet those needs. Both in FM and television noncommercial educational assignments, the plans are reflected in the Tables.

[5] However, there are exceptions to this policy. *See, e.g., Lebanon-Lancaster, Pennsylvania*, 24 R.R. 1564 (1962) (license modified in rule making to specify new city of license); *Akron and Canton, Ohio*, 7 R.R. 2d 1750 (1966) (license modified in rule making in absence of showing that additional parties interested in applying for channel).

[6] *See Park Falls, Wisconsin*, 41 F.R. 33560 (1976).

amended, and §§ 0.204(b) and 0.281 of the Commission's Rules.

12. It is further ordered, That this proceeding is terminated.

13. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Laurence E. Harris,

Chief, Broadcast Bureau.

[FR Doc. 82–21741 Filed 8–9–82; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[BC Docket No. 82–125; RM–3985]

Radio Broadcast Services; FM Broadcast Station in Breezy Point, Minn.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 237A to Breezy Point, Minnesota, in response to a petition filed by Thomas A. DeWinter and Allen Gray. The assignment could provide Breezy Point with a first local aural service.

DATE: Effective: September 21, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Breezy Point, Minnesota); BC Docket No. 82–125, RM–3985.

Report and Order; Proceeding Terminated

Adopted: July 19, 1982.

Released: July 22, 1982.

1. The Commission has before it for consideration a *Notice of Proposed Rule Making*, 47 FR 11728, published March 18, 1982, in response to a petition filed by Thomas A. DeWinter and Allen Gray ("petitioners") proposing the assignment of FM Channel 237A to Breezy Point, Minnesota, as the community's first FM assignment. Supporting comments were filed by petitioners in which they reaffirmed their intent to apply for the channel, if assigned. No oppositions to the proposal were received.

2. In support of their proposal, petitioners have submitted information with respect to Breezy Point as to its need for a first FM channel assignment. However, in view of the action taken in *Revision of FM Assignment Policies and Procedures*, 47 FR 26624, published June 21, 1982, this information is no longer relevant.

3. The Commission has obtained Canadian concurrence in the proposed assignment of Channel 237A to Breezy Point since that community is located within 320 kilometers (200 miles) of the border. We believe that the public interest would be served by the assignment of Channel 237A to Breezy Point in order to provide a first local aural service.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and sections 0.204(b) and 0.281 of the Commission's Rules, it is ordered, That effective September 22, 1982, the FM Table of Assignments, section 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Breezy Point, Minn.	237A

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact D. David Weston, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–21743 Filed 8–9–82; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 47, No. 154
Tuesday, August 10, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1004 and 1013

[Docket Nos. AO-160-A59, and AO-286-A30]

Milk in the Middle Atlantic and Southeastern Florida Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider industry proposals to amend the Southeastern Florida and Middle Atlantic Federal milk orders. One proposal would ensure that the Class I price adjusted for plant location under the Southeastern Florida order for bulk milk transferred to a plant regulated under another Federal order would not be lower than the Class I price at the same location under the other Federal order. The proponent contends that the change is necessary to assure equity among competing milk handlers.

Another proposal would increase the minus location adjustment rate under the Southeastern Florida order from the present 1.5 cents per each 10-mile zone to at least 2.5 cents. The proponent states that such an increase would cause location adjustment rates to more closely reflect the average current long-haul transportation costs.

The third proposal would increase the amount of producer milk that may be diverted to nonpool plants during September through February by pool handlers under the Middle Atlantic order from 30 to 40 percent of the handler's producer milk supply. The proponent states that such amendment is necessary to assure that producer milk long associated with the market will remain pooled in Federal Order 4. Testimony will also be taken with respect to the suspension of the limits on diversions of producer milk under the Middle Atlantic milk order until such time as amendatory action can be made effective.

DATE: August 24, 1982.

ADDRESS: Holiday Inn—Center City, 1800 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6273.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn—Center City, 1800 Market Street, Philadelphia, Pennsylvania 19103, beginning at 9:30 a.m. on August 24, 1982, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Middle Atlantic and Southeastern Florida marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to Proposal No. 1.

Beginning January 1, 1981, actions under the Federal milk order program became subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Proposed by Inter-State Milk Producers' Cooperative

Proposal No. 1

§ 1004.12 [Amended]

Revise paragraphs (d)(2)(i) and (d)(2)(ii) of § 1004.12 to read as follows:

* * * * *

(d) * * *

(2) * * *

(i) All of the diversions of milk of members of a cooperative association to nonpool plants are for the account of such cooperative association and the amount of member milk so diverted does not exceed 40 percent of the volume of milk of all members of such cooperative association received at all pool plants during such month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 40 percent of the total of such nonmember milk delivered to such handler during the month.

Proposal No. 2

Suspend paragraphs (d)(2)(i) and (d)(2)(ii) of § 1004.12 pending completion of proceedings on Proposal No. 1.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

Proposed by The Southland Corporation

Proposal No. 3

§ 1013.52 [Amended]

Revise the introductory text of § 1013.52(a) to read as follows:

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida or within the State of Florida but outside of the defined marketing area shall be adjusted at the rates set forth in the following schedule: *Provided*, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location of the transferor plant:

* * * * *

Proposed by Cumberland Farms Food Stores, Inc.

Proposal No. 4

Revise paragraph (a) of § 1013.52 so that the location adjustments contained therein with respect to plants located outside of the State of Florida would be increased from the present 1.5 cents per each 10-mile zone to at least 2.5 cents, and probably closer to 3.0 cents.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 5

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be obtained from the Market Administrator, P.O. 710, Alexandria, Virginia 22313; from the Market Administrator, P.O. Box 11368, Ft. Lauderdale, Florida 33339; or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Middle Atlantic and Southeastern Florida Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Parts 1004 and 1013

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on: August 4, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-21595 Filed 8-9-82; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 105

[Docket No. 80N-0314]

Food Labeling; Declaration of Sodium Content of Foods and Label Claims for Foods on the Basis of Sodium Content; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its proposal to amend the food labeling regulations to provide for the inclusion of sodium information on labels both voluntarily and as a part of nutrition labeling and to provide for the voluntary inclusion of potassium information as part of nutrition labeling. FDA is granting this extension in response to five requests.

DATE: Comments by November 15, 1982.

ADDRESS: Written comments to Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Bureau of Foods (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 18, 1982 (47 FR 26580), FDA proposed to amend the food labeling regulations to (1) Establish definitions for the terms "sodium free," "low sodium," "moderately low sodium," and "reduced sodium," (2) provide for the proper use of these terms in the labeling of foods, (3) provide for the inclusion of potassium content information in the nutrition labeling format on a voluntary basis, (4) provide for the appropriate use of such terms as "without added salt," "unsalted," and "no salt added," and (5) specify that sodium content of foods be included in nutrition labeling information whenever nutrition labeling appears on food labels. FDA also issued a statement of policy on the appropriate use of comparative labeling statements. Written comments were to be submitted on or before August 17, 1982.

FDA has received five requests for an extension of the comment period—from the Grocery Manufacturers of America Inc., the National Soft Drink Association, the National Food Processors Association, Kraft, Inc. and the American Butter Institute, National Cheese Institute. The requests are on file with the Dockets Management Branch, FDA.

After carefully evaluating the requests, FDA concludes that an extension is appropriate. Because FDA recognizes the public health importance of excessive sodium in the diet and the potential impact of the agency's initiatives on sodium, the agency wishes to ensure that all interested parties have a full opportunity to comment on the proposed definitions and on any other issue related to the sodium proposal. Therefore, FDA is extending the comment period an additional 90 days until November 15, 1982. The agency is aware that the National Soft Drink Association requested a 120-day extension so that it could submit to FDA the results of an ongoing study. Because the details of the agency's sodium program have been generally known since April 1981, FDA believes that, along with the 60 days provided by the proposal, the additional 90 days allow adequate time for public comment. Should the National Soft Drink Association find it impossible to complete its study and to submit it to FDA by the close of the comment period, the Association may, of course, request that the agency accept the data into the administrative record after the close of the comment period. If time permits, the agency will grant the request and will include FDA's response to the data and any related comments in the preamble to the final regulation on sodium labeling.

The agency also wishes to announce

that it is placing in the administrative file correspondence and other information that it received about the sodium program after the Department of Health and Human Services and FDA announced it in April 1981, but before publication of the sodium labeling proposal in the **Federal Register** of June 18, 1982 (47 FR 26580). The agency is taking this action because it believes that the entire sodium program, including this labeling proposal, has properly been a matter of public knowledge and general comment since that announcement.

List of Subjects

21 CFR Part 101:

Food labeling; Misbranding; Nutrition labeling; Warning statements.

21 CFR Part 105:

Dietary foods; Food labeling; Infant foods; Nutrition; Vitamins and minerals.

Interested persons may, on or before November 15, 1982, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Three copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 4, 1982.

Arthur Hull Hayes, Jr.,
Commissioner of Food and Drugs.

[FR Doc. 82-21633 Filed 8-6-82; 10:33 am]
BILLING CODE 4160-01-M

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21 CFR Part 809

[Docket No. 81N-0163]

Investigational in Vitro Diagnostic Products for Human Use; Proposed Revocation of Shipment Notification Requirement

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revoke a requirement that a person notify FDA of the shipment of an investigational diagnostic device that is not subject to the investigational device exemption (IDE) regulations as a condition for the shipment to be exempt from certain labeling and other requirements. FDA has found the required notification to be unnecessary.

DATES: Comments by October 12, 1982. FDA is proposing that any final revocation be effective on its date of publication in the **Federal Register.**

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael J. Andrews, Bureau of Medical Devices (HFK-403), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8162.

SUPPLEMENTARY INFORMATION: The regulations in Part 812 (21 CFR Part 812) establishing procedures for IDE's do not apply to clinical investigations of a diagnostic device if, among other things, the divices complies with certain labeling requirements of § 809.10(c) (21 CFR 809.10(c)) of the regulations applicable to in vitro diagnostic products for human use and if the testing performed (1) is noninvasive, (2) does not require an invasive sampling procedure that presents significant risk, (3) does not by design or intention introduce energy into the subject, and (4) is not used as a diagnostic procedure without confirmation of the diagnosis by another medically established diagnostic product or procedure. Under § 809.10(c)(2)(ii), all labeling for such a product being shipped or delivered for testing before full commercial marketing is required bear the statement: "For Investigational Use Only. The performance characteristics of this product have not been established." Under § 809.10(c)(2)(iii), a person who ships or delivers the product is required to submit to FDA a notification of each shipment or delivery. These labeling and notification requirements have to be met for the products to be exempt from the labeling requirements of § 809.10 (a) and (b), from the exempted investigation requirements of the IDE regulation under Part 812, and from any performance standard for the device promulgated under Part 861 (21 CFR Part 861).

FDA has found the required notification to be necessary. It adds nothing to the subject protection afforded by the other criteria for exemption. FDA has not had occasion to use those notifications in its IDE compliance activities. As indicated above, persons that ship investigational in vitro diagnostic devices are exempt from the IDE regulation if, in addition to complying with the notification and labeling requirements, the diagnostic information obtained with the investigational diagnostic device is confirmed by another medically established diagnostic device or procedure. This assures that the diagnosis is not made solely on the basis of an investigational device. Also, the cost of performing two tests minimizes the possibility of commercialization. Elimination of the notification requirement for in vitro diagnostic device investigations also would be consistent with FDA's policy of not requiring sponsors to inform FDA about investigations of devices of other then significant risk or other exempt investigations.

Thus, FDA is proposing to revoke the requirement in § 809.10(c)(2)(iii) that sponsors notify FDA of shipment of investigational in vitro diagnostic devices. The proposal would eliminate rather than impose a reporting requirement, and would, therefore, relieve a restriction within the meaning of 21 CFR 10.40(c)(4)(i). Accordingly, FDA intends that, if promulgated, the revocation take effect upon the date of its publication in the **Federal Register.**

FDA has determined pursuant to 21 CFR 25.24(b)(17) (proposed December 11, 1979; 44 FR 71742) that this proposal is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The proposed revocation of this reporting requirement provides regulatory relief. It would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, and the revocation is not a major rule as defined in section 3(g)(1) of Executive Order 12291. Therefore, neither a regulatory flexibility analysis under 5 U.S.C. 603 and 604 nor a regulatory impact analysis under Executive Order 12291 is required.

List of Subjects in 21 CFR Part 809

In vitro diagnostic devices; Labeling; Medical devices.

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

§ 809.10 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 501, 502, 520(g), 701(a), 702, 704, 801, 52 Stat. 1042-1043 as amended, 1049-1051 as amended, 1055-1058 as amended, 67 Stat. 477 as amended, 90 Stat. 565-574 (21 U.S.C. 331, 351, 352, 360j(g), 371(a), 372, 374, 381)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 809 be amended in § 809.10

Labeling for in vitro diagnostic products by removing paragraph (c)(2)(iii).

Interested persons may, on or before October 12, 1982 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 23, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-21744 Filed 8-9-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-276-81]

Certain Amounts Refunded in Reinsurance Transactions; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of change of date of a public hearing on proposed regulations relating to the treatment of certain amounts refunded in reinsurance transactions and the allocation of certain items in modified coinsurance transactions.

DATES: The public hearing will be held on September 21, 1982, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by September 13, 1982.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-276-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: By a notice appearing in the **Federal Register** for Thursday, July 8, 1982 (47 FR 29692), it was announced, among other things, that a public hearing on proposed regulations relating to the treatment of certain amounts refunded in reinsurance transactions and the allocation of certain items in modified coinsurance transactions would be held on August 19, 1982, beginning at 10:00 a.m. in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The proposed regulations were published in the **Federal Register** for Friday, March 19, 1982 (47 FR 11882).

The date for the public hearing has been changed and it will be held on September 21, 1982.

Outlines of oral comments must be delivered or mailed by September 13, 1982.

In all other respects the details with respect to the hearing remain the same.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Fred T. Goldberg, Jr.,

Acting Director, Legislation and Regulations Division.

[FR Doc. 82-21618 Filed 8-5-82; 3:05 pm]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-143-80]

Investment Credit for Movie and Television Films; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations to investment credit for movie and television films.

DATES: The public hearing will be held on October 14, 1982, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by October 4, 1982.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-143-80), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 48(k) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Thursday, June 3, 1982 (47 FR 24142).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject. These outlines should be mailed or delivered by October 4, 1982. Each speaker will be limited to 10 minutes for oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Fred T. Goldberg, Jr.,

Acting Director, Legislation and Regulations Division.

[FR Doc. 82-21769 Filed 8-9-82; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-600]

Proposed Revocation of Advisory and Repetitive Standards

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for written responses to OSHA's Notice of Proposed Revocation of Advisory and Repetitive and Standards (47 FR 23477, May 28, 1982) to assure that all interested parties have sufficient time to compile data and submit responses. The written responses were to be postmarked by July 27, 1982.

DATE: Written comments must be received by September 10, 1982.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. S-600, Occupational Safety and Health Administration, U.S. Department of Labor, Room S-6212, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 523-7894.

FOR FURTHER INFORMATION, CONTACT: Mr. Thomas H. Seymour or Mr. Wendell Glasier, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3463, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523-7216.

SUPPLEMENTARY INFORMATION: On May 28, 1982, OSHA published in the **Federal Register** (47 FR 23477), a notice of proposed revocation of advisory and repetitive standards. Corrections to the notice were published on June 8, 1982 (47 FR 24751) and June 15, 1982 (47 FR 25743). The proposal would revoke 193 provisions of the General Industry Safety and Health Standards (Part 1910) in which the word "should" or other advisory language is used instead of the mandatory "shall." Also proposed for revocation was one advisory paragraph which was improperly adopted as a mandatory provision by OSHA and three (3) sections whose requirements are repeated elsewhere in Part 1910. Additionally, it was proposed to amend § 1910.6 to clarify that only mandatory provisions of standards incorporated by reference are adopted as OSHA standards.

Interested persons were given until July 27, 1982, to submit written data, views and arguments on the proposal, to file objections, and request a hearing.

OSHA has received requests for extension of the comment period. Since summer vacation schedules have apparently precluded timely responses from some commenters, OSHA has decided to grant a 45-day extension, to September 10, 1982, to assure that all interested parties have sufficient time to compile data and submit responses.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911, Secretary of Labor's Order No. 8-76 (41 FR 25059)).

Signed at Washington, D.C., this 3rd day of August 1982.

Throne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-21631 Filed 8-9-82; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3110, 3120, and 3130

Oil and Gas Leasing; Request for Comments on Making the Contingent Right Stipulation Optional to the Applicant for an Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for comments.

SUMMARY: An agreement signed in January 1982 by the Bureau of Land Management (BLM), the Forest Service (FS) and the Minerals Management Service (MMS) supported adoption of a contingent right stipulation (CRS) to speed up lease issuance in rare cases where planning or environmental reviews were not sufficiently complete to fully condition (stipulate) a lease but where a positive leasing decision already had been made. To date, the Department has not finalized its decision on how to use this stipulation where the surface of the lands covered by the lease application is administered by the BLM. The Department is now proposing to make acceptance of the stipulation optional with the lessee. In such cases where the applicant declines the CRS, the applicant would request BLM to complete the environmental impact statement (EIS)/Environmental Assessment (EA) which will result in a delay in the issuance of a lease with normal stipulations. The applicant will not lose priority in such instances.

In order to properly evaluate such an option, the Bureau requests that interested individuals or parties submit comments in this regard.

DATES: Comments should be submitted on or before August 30, 1982.

ADDRESS: Comments should be sent to: Director 140, Bureau of Land Management, 18th and C Street NW., Washington, D.C. 20240.

Comments will be available for public review Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Raul E. Martinez, (202) 343-7722.

Lists of Subjects in 43 CFR Parts 3100, 3110, 3120 and 3130

Administrative practice and procedure, Oil and gas leasing.

Dated: August 4, 1982.

Robert F. Burford,

Director.

[FR Doc. 82-21630 Filed 8-9-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Parts 3100, 3110, 3120, and 3130

Oil and Gas Leasing; Request for Comments Regarding the Opportunity for the Completion of Environmental Analyses by the Lease Applicant or the Applicant's Contractor To Expedite the Lease Issuance Process

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for comment.

SUMMARY: The Bureau of Land Management is presently considering a course of action which, if adopted, would allow the oil and gas lease applicant or the applicant's contractor to complete the necessary Environmental Assessment (EA) or, where an Environmental Impact Statement (EIS) is required, the applicant's contractor to prepare the EIS, in accordance with the National Environmental Policy Act of 1969 regulations at 40 CFR Part 1500-1508, for purposes of identifying specific terms and conditions to be attached to such lease(s) and for expediting the lease issuance process. In order to properly evaluate such an alternative course of action, the Bureau requests that interested individuals or parties submit comments specifically addressing this proposal.

DATES: Comments should be submitted by August 30, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 18th and C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Raul E. Martinez, 202–343–7722.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management, in an effort to expedite oil and gas lease issuance and increase public access to lands for purposes of oil and gas development, is presently considering a course of action which would allow for the preparation of Environmental Assessments (EA's) by the lease applicant or the applicant's contractor and the preparation of Environmental Impact Statements (EIS's) by the applicant's contractor in instances where there is sufficient information to make a decision regarding lease issuance and to conclusively determine all terms and conditions necessary for lease issuance. Under such a proposed course of action, an EA would be prepared by either the lease applicant or the applicant's contractor provided that the responsibility of the scope and content of the document remains with the Bureau. In addition, the Bureau would complete an independent evaluation of relevant environmental issues and would be responsible for the accuracy of the EA. An EIS would be prepared by the applicant's contractor chose *solely* by the Bureau. The Bureau would be responsible for the complete control over the scope and content of the EIS, the full evaluation of the sufficiency of all materials produced by the contractor, and assuring for the correction of any defects or deficiencies. The Bureau would, in addition, assure that the contractor remains a disinterested party in the outcome of the lease issuance decision(s). Further, the cost of preparing either an EA or an EIS would be borne by the lease applicant.

It is anticipated that such an approach will reduce the Bureau's analytical workload to permit more time for EA review and to expedite application processing and lease issuance.

Specifically, it is requested that interested individuals or parties submit comments regarding such a policy and, in addition, responses to the following questions:

—Does the benefit of expedited lease issuance exceed the increased burden of an Environmental Assessment (EA) prepared by the applicant or applicant's contractor? Of an Environmental Impact Statement (EIS) prepared by the applicant's contractor?

—Are there any anticipated problems or difficulties which might arise through the applicant's or contractor's preparation of the necessary environmental analyses?

—Does the level of effort required for the preparation of an Environmental Impact Statement (EIS) as opposed to an Environmental Assessment (EA) substantially lessen the anticipated benefits of such a policy?

—Under what circumstances would the *applicant* prepare the necessary Environmental Assessment? Under what circumstances would the applicant seek the assistance of a *contractor* to prepare the Environmental Assessment?

Lists of Subjects in 43 CFR Parts 3100, 3110, 3120 and 3130

Environmental protection, Oil and gas leasing.

Dated: August 4, 1982.

Robert F. Burford,

Director.

[FR Doc. 82–21629 Filed 8–9–82: 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No FEMA–6376]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100–year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90)days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESS: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., National Flood Insurance Program, (202) 287–0230, Federal Management Agency Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100–year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed base (100-Year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Connecticut	Branford, Town, New Haven County	Long Island Sound	Confluence of Farm River to the east end of Kelsey Island.	*16
			East end of Kelsey Island to Johnson Point	*14
			Johnson Point to south side of Lamphier Cove	*16
			South side of Lamphier Cove to Indian Neck Point	*13
			Indian Neck Point to confluence with Hoadley Creek	*16
	Maps Available for inspection at the Engineering Office, Town Hall, Branford, Connecticut.			
	Sent comments to the Honorable Peter Ablondie, First Selectman of Brandford, Town Hall, Branford, Connecticut 06405.			
Florida	Atlantic Beach (City), Duval County	Atlantic Ocean	750 feet east of intersection of 7th Street with Beach Avenue.	*14
			600 feet east of intersection of 5th Street with Beach Avenue.	*12
			400 feet east of intersection of 1st Street with Beach Avenue.	*10
		Pablo Creek/Intracoastal Waterway.	100 feet south of intersection of West 14th Street with Carnation.	*6
	Maps Available for inspection at Building Department, 716 Ocean Boulevard, Atlantic Beach, Florida.			
	Sent comments to the Honorable Robert B. Persons, Jr., P.O. Box 25, 716 Ocean Boulevard, Atlantic Beach, Florida 32283.			
Florida	Town of Callahan, Nassau County	Alligator Creek	Just upstream of U.S. Highway 1 Bridge	*16
			Just upstream of Seaboard Coastline Railroad Bridge	*18
	Maps Available for inspection at Town Hall, 119 South Kings Road, Callahan, Florida 32011.			
	Sent comments to Mayor Donald C. Ladson, Town Hall, P.O. Box 162, Callahan, Florida 32011.			
Florida	City of Fernandina Beach, Nassau County	Atlantic Ocean	State Highway 200 extended to Atlantic Ocean	*16
			State Highway 108 extended to Atlantic Ocean	*15
		Atlantic Ocean/Amelia River	Dade Street extended to Amelia River	*12
			Alachua Street extended to Amelia River	*11
	Maps available for inspection at City Hall, 204 Ash Street, Fernandina Beach, Florida 32034.			
	Send comments to Mayor Charles Albert, Jr. or Mr. Grady W. Courtney, City Manager, City Hall, 204 Ash Street, Fernandina Beach, Florida 32034.			
Florida	Jacksonville (City), Duval County	Atlantic Ocean	At confluence of Deese Creek and Nassau River	*16
			At intersection of U.S. Highway 95 with Nassau River	*14
			At confluence of Pumpkin Hill Creek with Nassau River.	*14, *15
			At Bird Island on Nassau Sound 200 feet upstream from Mink Creek confluence with Nassau River.	*13
			At the confluence of Thomas Creek with Seaton Creek.	*13
			*1200 feet west of Edwards Creek confluence with Pumpkin Hill Creek.	*12
			1250 feet north of intersection of Yellow Bluff Road with State Highway 5.	*12
			20 feet south of intersection of Shellcracker Road with Croaker Road.	*11
			At intersection of Hecksher Drive with Edgewood Drive	*10
			100 feet north of intersection of McKenna Drive with State Highway 105.	*9
			200 feet east of intersection of Tomas Drive with Inlet Drive.	*8
			At intersection of Ramoth Drive with Palm Glenn Road	*7
		McGirts Creek	200 feet upstream from center of State Highway 8	*63
		Sixmile Creek	100 feet upstream from center of Bulls Bay Highway	*25
		North Fork Sixmile Creek	200 feet upstream from center of State Highway 117 South.	*38
		Ribault River	At intersection of Ribault Scenic Drive with Helson Drive.	*7
		McCoys Creek	At intersection of Lemon Street with McCoys Boulevard.	*9
		North Branch McCoys Creek	150 feet upstream from center of of Live Oak Avenue	*19
		Southwest Branch McCoys Creek	100 feet upstream from center of U.S. Highway 10	*13
		Strawberry Creek	At the center of Mill Creek Lane crossing	*35
		Red Bay Branch	100 feet upstream from center of Star Road	*11
		Ortega River	50 feet upstream from center of Kirwin Road	*15
		Goodbys Creek	At intersection of Laffit Drive with Prayer Drive South	*15
		Northeast Branch Goodbys Creek	100 feet upstream from center of Powers Avenue	*13
		South Fork Goodbys Creek	At center of Sunbeam Road crossing	*23
		East Branch Goodbys Creek	100 feet upstream from center of Craven Road	*18
		Cormorant Branch	At center of Old Acosta Road crossing	*12
		Oldfield Creek	At center of St. Joseph Road crossing	*15
		Pablo Creek/Intracoastal Waterway.	250 north of confluence of Pablo Creek with Boathouse Creek.	*9
			At confluence of Pablo Creek with Boathouse Creek	*8
			300 feet north of intersection of Riverview Drive with Atlantic Boulevard.	*7
			At confleuence of Deblieu Creek with Intracoastal Waterway.	*6
			At intersection of Agua Vista Drive with Pablo Terrace	*5
			At confluence of Sandy Run with Open Creek	*4
	Maps available for inspection at Engineering Department, 220 E. Bay Street, Room 100, Jacksonville, Florida.			
	Send comments to the Honorable Jake M. Godbold, 220 E. Bay Street, Jacksonville, Florida 32202.			

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Florida	Jacksonville Beach (City), Duval County	Atlantic Ocean	500 feet east of intersection of 25th Avenue with South Ocean Drive.	*14
			350 feet east of intersection of Alhambra Street with South Ocean Drive.	*12
			300 feet east of intersection of 14th Avenue South with South Ocean Drive.	*10
		Pablo Creek/Intracoastal Waterway.	100 feet west of intersection of 9th Avenue with 23rd Street.	*5
			200 feet southwest of intersection of Evans Drive with Seagrape Drive.	*4
	Maps available for inspection at Building Department, 15 N. 3rd Street, Jacksonville Beach, Florida.			
	Send comments to the Honorable Bob O'Neill, 11 N. 3rd Street, Jacksonville Beach, Florida 32250.			
Florida	Neptune Beach (City), Duval County	Atlantic Ocean	500 feet east of intersection of North Street with the Strand.	*14
				*12
			400 feet east of intersection of South Street with the Strand.	*10
			200 feet east of intersection of Lora Street with the Strand.	
		Pablo Creek/Intracoastal Waterway.	150 feet west of intersection of Bartolome Road with Mayport Boulevard.	*5
			200 feet west of intersection of Atlantic Boulevard with Bartolome Road.	*6
	Maps available for inspection at City Clerk's Office, 116 1st Street, Neptune Beach, Florida.			
	Send comments to the Honorable Ish Brant, P.O. Box 700, Neptune Beach, Florida 32233.			
Florida	Unincorporated Areas of Polk County	Blackwater Creek	Just upstream from Sand Lane	*131
		Haines City Drainage Canal	Just downstream of the corporate limits of Haines City	*124
		Itchepackesassa Creek	Just downstream of Sutton Road	*120
			Just upstream of Galloway Road	*127
			Just upstream of Interstate Highway 4	*137
		Lake Gibson Drain	Just downstream from Interstate Highway 4	*140
		Lake Hunter Drain	Just downstream of Ariana Street	*160
		Lake Lena Drain	500 feet upstream from Thornhill Road	*106
			500 feet downstream from Service Road Bridge	*115
			300 feet downstream from Derby Road	*132
		Lake Parker Drain	Just downstream of Fish Hatchery Road Bridge	*110
			Just upstream of Woodland Avenue	*125
			Just downstream of Cumber Road	*129
		Lake Parker Tributary	Just downstream of Florida Avenue	*137
		Lake Rosalie Tributary	Just upstream of Camp Mack Road	*62
		Lester Lake Drain	Just downstream of Ross Creek Road	*129
		Mud Lake Drain	400 feet upstream from Sand Lane	*131
		North Prong Alafia River	600 feet upstream from confluence with Poley Creek	*68
			200 feet upstream from Nichols Road	*89
		Peace River	Just upstream of Hardee/Polk Counties line	*72
			Just downstream of State Road 657	*82
		Peace River Drainage Canal	Approximately 500 feet downstream of 91 Mine Road	*103
			Approximately 1000 feet upstream of Old Bartow Road.	*113
		Peace Creek Drainage Canal	400 feet upstream of Town of Dundee corporate limits	*122
		Poley Creek	Just upstream from State Highway 60 Bridge	*74
			Just upstream from Ewell Road Bridge	*92
			Just downstream from Pipkia Road exit	*103
		Saddle Creek	Just upstream from Old Bartow Road Bridge	*100
			1200 feet upstream from U.S. Highway 92 Bridge	*110
		Southwest Ditch	Just upstream of State Road 540	*105
			Just downstream of Lakeland city corporate limits	*152
		Bay Lake	Entire Shoreline	*134
		Big Gum Lake	Entire Shoreline	*95
		Bonnet Lake	Entire Shoreline	*134
		Clearwater Lake	Entire Shoreline	*148
		Crooked Lake	Entire Shoreline	*126
		Gum Lake	Entire Shoreline	*133
		Lake Agnes	Entire Shoreline	*136
		Lake Alfred	Entire Shoreline	*134
		Lake Ariana	Entire Shoreline	*138
		Lake Arietta	Entire Shoreline	*145
		Lake Bentley	Entire Shoreline	*120
		Lake Buffum	Entire Shoreline	*133
		Lake Clinch	Entire Shoreline	*110
		Lake Conine	Entire Shoreline	*130
		Lake Cummings	Entire Shoreline	*133
		Lake Daisy	Entire Shoreline	*131
		Lake Deeson	Entire Shoreline	*133
		Lake Dexter	Entire Shoreline	*132
		Lake Echo	Entire Shoreline	*134
		Lake Eloise	Entire Shoreline	*133
		Lake Fannie	Entire Shoreline	*124
		Lake Florence	Entire Shoreline	*129
		Lake Garfield	Entire Shoreline	*107
		Lake George	Entire Shoreline	*131

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Lake Gibson	Entire Shoreline	*145
		Lake Haines	Entire Shoreline	*131
		Lake Hamilton	Entire Shoreline	*123
		Lake Hammock	Entire Shoreline	*134
		Lake Hancock	Entire Shoreline	*102
		Lake Hartridge	Entire Shoreline	*133
		Lake Helene	Entire Shoreline	*147
		Lake Henry	Entire Shoreline	*127
		Lake Ida	Entire Shoreline	*81
		Lake Idylwild	Entire Shoreline	*133
		Lake Jessie	Entire Shoreline	*133
		Lake John	Entire Shoreline	*113
		Lake Juliana	Entire Shoreline	*135
		Lake Lena	Entire Shoreline	*138
		Lake Lowery	Entire Shoreline	*134
		Lake Lucerne	Entire Shoreline	*134
		Lake Lulu	Entire Shoreline	*133
		Lake Mariam	Entire Shoreline	*126
		Lake Mariana	Entire Shoreline	*139
		Lake Marion	Entire Shoreline	*68
		Lake Mattie	Entire Shoreline	*135
		Lake Otis	Entire Shoreline	*130
		Lake Pansy	Entire Shoreline	*131
		Lake Parker	Entire Shoreline	*132
		Lake Parker Tributary Swamp	Entire Shoreline	*140
		Lake Pierce	Entire Shoreline	*79
		Lake Rochelle	Entire Shoreline	*130
		Lake Rosalie	Entire Shoreline	*56
		Lake Roy	Entire Shoreline	*133
		Lake Shipp	Entire Shoreline	*133
		Lake Smart	Entire Shoreline	*131
		Lake Van	Entire Shoreline	*135
		Lake Weohyakapka	Entire Shoreline	*64
		Lake Whistler	Entire Shoreline	*141
		Lake Winterest	Entire Shoreline	*133
		Lester Lake	Entire Shoreline	*130
		Little Lake Agnes	Entire Shoreline	*136
		Little Lake Hamilton	Entire Shoreline	*124
		Mine Pits, SE Lakeland	Entire Shoreline	
		Pit 1	Entire Shoreline	*135
		Pit 2	Entire Shoreline	*136
		Pit 3	Entire Shoreline	*126
		Mudlake	Entire Shoreline	*141
		Ned Lake	Entire Shoreline	*131
		Reedy Lake	Entire Shoreline	*81
		Saddleburg Lake	Entire Shoreline	*108
		Southeast Lake	Entire Shoreline	*113
		St. Claire Lake	Entire Shoreline	*135
		Skyview Lake	Entire Shoreline	*137
		Tangerine Lake	Entire Shoreline	*135
		Tower Lake	Entire Shoreline	*134
		Engineers Lake	Entire Shoreline	*127
		Unnamed Lake South of Dundee	Entire Shoreline	*142

Maps available for inspection at Planning Department, County Commissioners Building, 185 North Broadway, Bartow, Florida 33830.

Send comments to Mr. Jack Simmers, Chairman of Board of Commissioners, or Mr. Merle Bishop, Planning Director, County Commissioners Building, P.O. Box 60, Bartow, Florida 33830.

Iowa	(C) Harlan, Shelby County	West Nishnbotna River	About 1.25 miles downstream of State Route 44	*1187
			Just upstream of State Route 44	*1191
			About 1.1 miles upstream of State Route 44	*1195
		West Fork West Nishnabotna River.	About 0.67 mile downstream of Plumb Street	*1197
			About 0.08 mile upstream of Plumb Street	*1200

Maps available for inspection at the City Clerk's Office, City Hall, Harlan, Iowa.

Send comments to Honorable Orv Rocker, Mayor, City of Harlan, City Hall, Box 650, Harlan, Iowa 51537.

Iowa	(C) Pacific Junction, Mills County	Missouri River	About 4400 feet upstream of U.S. Highway 34	*961
			About 9100 feet upstream of U.S. Highway 34	*964
		Pony Creek	About 1400 feet downstream of Burlington Northern Railroad.	*961
			About 2700 feet upstream of Burlington Northern Railroad.	*967

Maps available for inspection at the City Hall, Pacific Junction, Iowa.

Send comments to Honorable Donald Mills, Mayor, City of Pacific Junction, City Hall, Box 527, Pacific Junction, Iowa 51561.

Kansas	(Uninc.) McPherson County	Black Kettle Creek	About 0.8 mile downstream of Old U.S. Highway 81 Bypass.	*1463
			Just upstream of Old U.S. Highway 81 Bypass	*1469
			Just upstream of Missouri Pacific Railroad	*1,473
			About 0.95 mile upstream of Durst Street	*1477
		Black Kettle Creek Tributary No. 1	At confluence with Black Kettle Creek	*1475
			About 1650 feet upstream of confluence with Black Kettle Creek.	*1477
		Galva Drain	About 530 feet downstream of City of Galva corporate limit.	*1533
			At City of Galva corporate limit	*1535
		Smoky Hill River	Just downstream of Union Pacific Railroad	*1325

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 0.14 mile upstream of First Street	*1326
			About 1.2 miles downstream of Washington Street	*1373
			Just upstream of Washington Street	*1377
			About 0.74 mile upstream of Washington Street	*1379
		Smoky Hill River Tributary No. 1	About 100 feet downstream of Fifth Street	*1388
			Just upstream of Missouri Pacific Railroad (upstream crossing).	*1392
			About 100 feet downstream of State Highway 4	*1408
		Dry Turkey Creek	Just upstream of State Route 61	*1473
			Just downstream of Chicago, Rock Island and Pacific Railroad.	*1478
			Just upstream of East First Street	*1486
			Just downstream of County Road A	*1494
		East Branch Dry Turkey Creek	At confluence with Dry Turkey Creek	*1475
			Just upstream of East Avenue A	*1486
			Just downstream of South Front Street	*1487
			Just upstream of East First Street	*1493
			Just downstream of Atchison, Topeka and Santa Fe Railway.	*1494
		Dry Turkey Creek Tributary No. 3	At confluence with Dry Turkey Creek	*1486
			About 1500 feet upstream of confluence with Dry Turkey.	*1486
		Bull Creek	At confluence with Dry Turkey Creek	*1476
			Just downstream of Chicago, Rock Island and Pacific Railroad.	*1478
			Just upstream of South Main Street	*1483
			Just downstream of West Avenue A	*1484
			Just upstream of State Route 153	*1486
			Just upstream of Atchison, Topeka and Santa Fe Railway.	*1489
			Just upstream of West Northview Road	*1491
			Just downstream of County Road A	*1494

Maps available for inspection at the County Courthouse, Box 945, McPherson, Kansas.

Send comments to Honorable Carl Oakleaf, Chairman of the Board of County Commissioners, McPherson County, County Courthouse, Box 945, McPherson, Kansas 67460.

Kentucky	City of Allen, Floyd County	Levisa Fork	Just upstream of State Highway 80	*651

Maps available for inspection at City Clerk's Office, City Hall, Allen, Kentucky 41601.

Send comments to Mayor Obie Crips or Bill Parson, City Clerk, City Hall, P.O. Box 63, Allen, Kentucky 41601.

Kentucky	City of Wayland, Floyd County	Right Fork Beaver Creek	Approximately 500 feet upstream of the county road at the confluence of Steel Creek.	*716
		Steel Creek	Just upstream of State Highway 1086	*780

Maps available for inspection at City Hall, Main Street, Wayland, Kentucky 41666.

Send comments to Mayor Patricia Murphy or Ms. Mary Bradley, City Clerk, City Hall, P.O. Box 293, Wayland, Kentucky 41666.

Louisiana	Unincorporated Areas of St. Charles Parish	Lake Pontchartrain	Approximately 500 feet from shore at Jefferson Parish Boundary.	*15

Maps available for inspection at St. Charles Parish Courthouse, P.O. Box 302, Hahnville, Louisiana 70059.

Send comments to Mr. Kevin Friloux, President of St. Charles Parish Police Jury or Mr. Joe Binet, Parish Police Jury Inspector, St. Charles Parish Courthouse, P.O. Box 302, Hahnville, Louisiana 70059.

Maine	Kennebunkport, Town York County	Batson River	At downstream dam (upstream side)	*15
			Approximately 0.6 mile upstream of Stone Road	*23
		Kennebunk River	Approximately 0.1 mile upstream of confluence with Atlantic Ocean.	*9
			Corporate limits	*9
		Little River	Approximately 0.3 mile upstream of confluence with Atlantic Ocean.	*9
			Corporate limits	*13
		Smith Brook	At State Route 9	*9
			At dam (upstream side)	*22
		Atlantic Ocean	Confluence of Kennebunk River	*16
			Summit Avenue (extended)	*21
			Cleaves Cove Road (extended)	*14
			Confluence of Little River	*14
			Langsford Road (extended)	*14
			Dyke Road (extended)	*14

Maps available for inspection at the Municipal Offices, Kennebunkport, Maine.

Send comments to Honorable J. Michael Phelps, Chairman of the Kennebunkport Board of Selectmen, Box 566, Kennebunkport, Maine 04046.

Massachusetts	Grafton, Town, Worcester County	Blackstone River	Downstream corporate limits	*276
			Upstream of Dam	*296
			Upstream corporate limits	*318
		Quinsigamond River	Confluence with Blackstone River	*296
			Upstream of Massachusetts Turnpike	*309
			Upstream of Hovey Pond Dam	*359
		Big Bummett Brook	Confluence with Quinsigamond River	*309
			Upstream of Waterville Street	*329
			Upstream ofWestborough Road	*356
			Upstream of corporate limits	*386
		West River	Downstream corporate limits	*315
			Upstream of Upton Street	*343
			Approximately 2,700' upstream of Silver Lake Dam	*355

Maps available for inspection at the Office of the Planning Board, Town House, Grafton, Massachusetts.

Send comments to Honorable Francis Noel, Chairman of the Grafton Board of Selectmen, Town House, Grafton, Massachusetts 01519.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Minnesota	(Uninc.) Chisago County	St. Croix River	At south county boundary	*701
			About 4.2 miles upstream of State Highway 243	*705
		Horseshoe Lake	Shoreline	*923
		Fish Lake	Shoreline	*918
		Rush Lake	Shoreline	*916
		North Center Lake	Shoreline	*902
		South Center Lake	Shoreline	*903
		North Lindstrom Lake	Shoreline	*903
		South Lindstrom Lake	Shoreline	*903
		Chisago Lake	Shoreline	*903
		Little Green Lake	Shoreline	*895
		Green Lake	Shoreline	*895
		Pioneer Lake	Shoreline	*906
		Sunrise Lake	Shoreline	*876
		Goose Lake	Shoreline	*918
		Robour Lake	Shoreline	*918
		Mandall Lake	Shoreline	*918
		Little Horseshoe Lake	Shoreline	*923

Maps available for inspection at the Zoning Administrator's Office, Chisago County Courthouse, Center City, Minnesota.

Send comments to Honorable Loren Jennings, County Board Chairman, Chisago County, Chisago County Courthouse, Center City, Minnesota 55012.

New Hampshire	Bennington, Town, Hillsborough County	Contoocook River	Downstream corporate limits	*604
			Upstream Depot Street	*608
			Upstream State Route 31	*610
			Upstream Bennington Bridge	*659
			Upstream corporate limits	*682

Maps available for inspection at the Selectmen's Office, Town Hall, Bennington, New Hampshire.

Send comments to Honorable Charles E. Lindsay, Chairman of the Board of Selectmen, Town Hall, Bennington, New Hampshire 03442.

New Hampshire	Cornish, Town, Sullivan County	Connecticut River	Downstream corporate limits	*320
			At confluence of Blow-Me-Down-Brook	*333
			Upstream corporate limits	*338
		Blow-Me-Down Brook	Upstream State Route 12A	*333
			Upstream Platt Road	*369
			Upstream Mill Road	*433
			Upstream corporate limits	*448
		Upper Reach Blow-Me-Down Brook.	Downstream corporate limits	*793
			Downstream State Route 120	*838
			Upstream Private Road	*882

Maps available for inspection at the Selectmen's Office, Town Hall, Cornish, New Hampshire.

Send comments to Honorable Michael Yatsevitch, Chairman of the Cornish Board of Selectmen, Town Hall, Cornish, New Hampshire 03746.

New Hampshire	Plainfield, Town, Sullivan County	Connecticut River	Downstream corporate limits	*338
			Confluence of Beaver Brook	*351
			Upstream corporate limits	*354
		Blow-Me-Down Brook	Approximately 1,100' downstream of Mill Road	*405
			Upstream Mill Road	*433
			Upstream Hayward Road	*476
			Upstream Daniels Road	*483
			Approximately 5,000' upstream Daniels Road	*511

Maps Available for inspection at the Selectmen's Office, Plainfield Town Offices, Meriden, New Hampshire.

Sent comments to Honorable David W. Stockwell, Chairman of the Plainfield Board of Selectmen, Town of Plainfield, Town Offices, Meriden, New Hampshire 03770.

New Jersey	Closter, Borough, Bergen County	Dwars Kill	Confluence with Oradell Reservoir	*28
			Middle crossing of Blanche Avenue (upstream side)	*35
			Upstream crossing of Blanche Avenue (upstream side)	*40
			Piermont Road (upstream side)	*53
		Tenakill Brook	Confluence with Oradell Reservoir	*28
			Demarest Avenue (upstream side)	*31
			Upstream corporate limits	*32
		Oradell Reservoir	Downstream corporate limits	*24
			Conrail (upstream side)	*26
			Confluence of Dwars Kill	*28

Maps Available for inspection at the Borough Hall, 295 Closter Dock Road, Closter, New Jersey.

Sent comments to the Honorable Elias M. Eliashof, Borough Hall, 295 Closter Dock Road, Closter, New Jersey 07624.

New Jersey	Freehold, Township, Monmouth County	Manasquan River	Corporate limits	*78
			Downstream of Georgia Road	*88
			Confluence with Tributary A to Manasquan River	*93
		Tributary A to Manasquan River	Confluence with Manasquan River	*93
			Downstream of Elton Adelphia Road	*106
			Approximately 1,950' upstream of Elton Adelphia Road	*118
		Tributary B to Manasquan River	Confluence with Manasquan River	*84
			Downstream of Elton Adelphia Road	*106
			Downstream of Buckingham Way	*115
			Upstream of Winchester Drive	*130

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Tributary C to Manasquan River	Confluence with Manasquan River	*80
			Downstream of Elton Adelphia Road	*101
			Upstream of Old Post Road	*110
		Debois Creek	Confluence with Manasquan River	*78
			Upstream of Elton Adelphia Road	*89
			Downstream of Three Brooks Road	*102
			Downstream of Willow Brook Road	*113
			Approximately 120' upstream of Park Avenue	*122
			Upstream of Center Street	*138
		Tributary to Debois Creek	Confluence with Debois Creek	*94
			Downstream of Three Brooks Road	*106
		Burkes Creek	Confluence with Debois Creek	*91
			Approximately 3,000' upstream of Halls Mill Road	*102
		Applegate Creek	Confluence with Debois Creek	*93
			Downstream of Three Brooks Road	*102
			Upstream of Willow Brook Road	*116
		Yellow Brook	Corporate limits	*99
			Downstream of Camille Lane	*106
			Upstream of Randolph Road	*115
		Tributary to Yellow Brook	Conference with Yellow Brook	*102
			Upstream of Paulett Drive	*108
		Wemrock Brook	Corporate limits	*104
			Upstream of Wemrock Road	*109
			Upstream of State Route 33	*118
		Weamaconk Creek	Corporate limits	*106
			Downstream of Interstate Route 9	*121
			Upstream of Waterworks Road	*135
			Upstream of Gordons Corner Road	*140
		McGellairds Brook	Corporate limits	*102
			Upstream of Waterworks Road	*111
			Upstream of Gordons Corner Road	*114
		South Branch Tepehemus Brook	Corporate limits	*105
			Upstream of Silvers Road	*113
			Approximately 75' downstream of Robertsville Road	*119

Maps available for inspection at the Municipal Plaza, Schenk Road, Freehold, New Jersey.

Send comments to Honorable Arthur Kondrup, Mayor of Freehold Township, Municipal Plaza, Schenk Road, Freehold, New Jersey 07728.

New Jersey	Galloway, Township, Atlantic County	North Branch	Downstream corporate limits	*14
			Upstream of Garden State Parkway	*21
			Upstream of downstream Conrail crossing	*30
			Downstream of upstream Conrail crossing	*44
		Tributary to Atlantic City Reservoir	Downstream of Access Road crossing	*21
			Downstream of Eighth Avenue	*26
		Mattix Run	Downstream of Access Road which extends from Glory Road.	*10
			Upstream of Old Port Republic Road	*18
			Upstream of Pitney Road	*29
		Cordery Creek	Upstream of U.S. Route 9	*9
			Upstream of Brook Lane	*12
		Doughty Creek	Lilly Lake	*10
			Upstream of U.S. Route 9	*15
		Atlantic Ocean	Entire shoreline within community	*9
			Entire shoreline of Great Bay within community	*9
			Entire shoreline of Little Bay	*9
			Entire shoreline of Grassy Bay	*9
			Entire shoreline of Reeds Bay	*9
			Entire shoreline of Mullica River within community	*9
			Entire shoreline of Nacote Creek within community	*9.

Maps available for inspection at the Municipal Building, 625 West White Horse Pike, Cologne, New Jersey.

Send comments to Honorable Harry Leeds, Jr., Mayor of Gallow Township, 625 West White Horse Pike, Cologne, New Jersey 08213.

New Jersey	Lower Alloways Creek, Township, Salem County	Delaware River	Entire shoreline	*9
			Alloways Creek shoreline	
		Delaware Bay	Entire shoreline	*9

Maps available for inspection at the Municipal Building, Locust Island Road, Hancocks Bridge, New Jersey.

Send comments to Honorable Samuel Donelson, Mayor of Lower Alloways Creek Township, Municipal Building, P.O. Box 157, Hancocks Bridge, New Jersey 08038.

New Jersey	Norwood, Borough, Bergen County	Dwars Kill	Confluence with Oradell Reservoir	*28
			Second crossing of Blanche Avenue (upstream side)	*35
			Third crossing of Blanche Avenue (upstream side)	*40
			Piermont Road (upstream side)	*53
		Norwood Brook	Confluence with Oradell Reservoir	*28
			Conrail (upstream side)	*30
			Approximately 30 feet downstream Broadway	*30
		Tappan Run	Downstream corporate limits	*40
			Blanche Avenue (upstream side)	*47
			Broadway (upstream side)	*53
			Approximately 140' upstream Conrail	*55
		Oradell Reservoir	Entire shoreline within community	*28
		Sparkill Brook	Entire flooding within community downstream Piermont Road.	*43

Maps available for inspection at the Borough Hall, 455 Broadway, Norwood, New Jersey.

Send comments to Honorable Raymond McKenna, Mayor of Norwood, 455 Broadway, Norwood, New Jersey 07648.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Conquest, Town, Cayuga County	Seneca River	Downstream corporate limits	*384
			Confluence with Barge Canal	*384
		Barge Canal	Confluence with New York State Barge Canal	*384
			Confluence with Seneca River	*384
Maps available for inspection at the Office of the Town Clerk, Fuller Road, Port Byron, New York.				
Send comments to Honorable Robert Howell, Supervisor of Conquest, R.D. 2, Port Byron, New York 13021.				
New York	Huntington Bay, Village, Suffolk County	Huntington Bay	Shoreline from northeast corporate limits to Wincoma Point.	*15
			Shoreline from Wincoma Point to approximately 800' north along shoreline from Woodland Drive extended.	*14
		Huntington Harbor	Shoreline from approximately 800' north along shoreline from Woodland Drive extended to southeast corporate limits.	*12
Maps available for inspection at the Village Hall, 244 Vineyard Road, Huntington Beach, New York.				
Send comments to Honorable James Shambaugh, Mayor of Huntington Bay, 244 Vineyard Road, Huntington Beach, New York 11743.				
New York	Jewett, Town, Green County	Schoharie Creek	Upstream corporate limits	*1,544
			Approximately 6,000 feet downstream of Deming Road	*1,506
			Carr Road (upstream)	*1,468
			Approximately 6,100 feet upstream of confluence with East Kill.	*1,434
			Confluence with East Kill	*1,403
			Downstream corporate limits	*1,374
		East Kill	Scribner Hollow Road (downstream)	*1,816
			Approximately 6,700 feet downstream of Scribner Hollow Road.	*1,772
			Approximately 2,400 feet upstream of Beechers Corner's Road.	*1,678
			State Route 296 (upstream)	*1,649
			Approximately 5,000 feet downstream State Route 296	*1,610
Maps available for inspection at the Town House, Route 23C, Jewett, New York.				
Send comments to Honorable Carol A. Muth, Supervisor of Jewett, County Route 40, Jewett, New York 12424.				
New York	Lawrence, Village, Nassau County	Bannister Creek	Entire shoreline within community	*8
		Reynolds Channel	Entire shoreline within community	*8
		Broad Channel	Entire shoreline within community	*8
		Post Lead	Entire shoreline within community	*8
Maps available for inspection at the Village Hall, 196 Central Avenue, Lawrence, New York.				
Send comments to Honorable Stanley D. Kahn, Mayor of Lawrence, 196 Central Avenue, Lawrence, New York 11559.				
New York	Montezuma, Town, Cayuga County	New York State Barge Canal	Conrail (upstream)	*384
		Seneca River	Abandoned Railroad (upstream)	*385
Maps available for inspection at the Office of the Town Clerk, Route 31, Montezuma, New York.				
Send comments to Honorable John Giurdina, Supervisor of Montezuma, R.D. 1, Montezuma, New York 13034.				
New York	New Hartford, Town, Oneida County	Sauquoit Creek	Downstream corporate limits	*477
			Confluence of Tributary to Sauquoit Creek	*503
			Upstream of Conrail (3rd crossing)	*550
			Approximately 3,300' downstream of Kellogg Road	*580
			Upstream of Kellogg Road	*612
			Upstream of Oneida Street	*655
			Upstream of Bleachery Place	*684
			Upstream of Elm Street	*721
			Upstream corporate limits	*736
		Mud Creek	Downstream corporate limits	*457
			Upstream of Clinton Street	*480
			Approximately 1,200' upstream of 2nd access road	*495
			Upstream of State Route 5A	*518
		Tributary to Sauquoit Creek	Confluence with Sauquoit Creek	*503
			Upstream of Conrail	*523
			Approximately 100' upstream of Golf Avenue	*541
		Tributary to Mud Creek	Confluence with Mud Creek	*514
			Approximately 100' upstream of Access Road	*529
			Upstream corporate limits	*553
Maps available for inspection at the Office of the Town Clerk, Town Hall, 48 Genesee Street, New Hartford, New York.				
Send comments to Honorable Gordon J. Newell, Supervisor of New Hartford, 48 Genesee Street, New Hartford, New York 13413.				
New York	Northport, Village, Suffolk County	Northport Harbor	Shoreline from southwest corporate limits to Fox Lane extended.	*14
			Shoreline from Fox Lane extended to Bluff Point	*12
		Northport Bay	Shoreline from Bluff Point to northern corporate limits	*14
Maps available for inspection at the Village Hall, Northport, New York.				
Send comments to Honorable Peter Nolan, Mayor of Northport, 224 Main Street, Northport, New York 11768.				

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Old Field, Village Suffolk County	Long Island Sound	Shoreline from West Meadow Road extended to Crane Neck Point.	*11
			Shoreline from Crane Neck Point to the mouth of Port Jefferson Harbor.	*16
		Port Jefferson Harbor	From the mouth of Port Jefferson Harbor to Conscience Bay.	*14
		Conscience Bay	From Port Jefferson Harbor to Pleasant Run extended	*14
	Maps available for inspection at the Village Hall, Old Field, New York.			
	Send comments to Honorable Dean P. Darrow, Mayor of Old Field, Box 7, Setauket New York 11733			
New York	Tannersville, Village Greene County	Gooseberry Creek	Downstream corporate limits	*1,820
			Confluence of Sawmill Creek	*1,861
		Sawmill Creek	Confluence with Gooseberry Creek	*1,861
			State Route 23A (upstream)	*1,899
			Upstream corporate limits	*1,957
	Maps available for inspection at the Village Hall, Tannersville, New York.			
	Send comments to Honorable Frederick Haines, Mayor of Tannersville, Village Hall, Tannersville, New York 12485.			
Ohio	(V) Grand Rapids Wood County	Maumee River	About 1,800 feet downstream of Bridge Street	*641
			About 3,000 feet upstream of Norfolk and Western Railway.	*646
	Maps available for inspection at the Mayor's Office, Village Hall, 300 Front Street, Grand Rapids, Ohio.			
	Send comments to Honorable Harry Jeffers, Mayor, Village of Grand Rapids, Village Hall, Box 231, 300 Front Street, Grand Rapids, Ohio, 43522.			
Ohio	(V) Millbury, Wood County	Crane Creek	About 1200 feet downstream of Millbury Road	*611
			About 550 feet upstream of South Street	*616
		Henry Creek	At confluence with Crane Creek	*614
			Just downstream of Bradner Road	*615
	Maps available for inspection at the Mayor's Office, 28861 Hille Drive, Millbury, Ohio.			
	Send comments to Honorable Michael Timmons, Mayor, Village of Millbury, 28661 Hille Drive, Millbury, Ohio 43447.			
Pennsylvania	Spring, Township, Berks County	Tulpehocken Creek	Downstream corporate limits	*214
			Grayrock Road upstream	*218
			Redbridge Road upstream	*224
			Upstream corporate limits	*231
		Cacoosing Creek	Confluence with Tulpehocken Creek	*231
			Sweitzer Road upstream	*247
			At 1st Farm Road Access Road	*259
			State Hill Road upstream	*272
			Reedy Road upstream (second crossing)	*284
			2nd Farm Access Road upstream	*300
			Mountain Home Road upstream	*351
			1st Private Road upstream	*374
			Wernersville Road upstream	*403
			2nd Private Road upstream	*436
			Old Fritztown Road upstream	*462
			Mail Route Road downstream	*488
	Maps available for inspection at the Township Municipal Building, 2800 Shillington Road, Cornwall Terrace, Reading, Pennsylvania.			
	Send comments to Honorable William B. Myers, Chairman of the Spring Board of Supervisors, 2800 Shillington Road, Cornwall Terrace, Reading, Pennsylvania 19608.			
Pennsylvania	Tyrone, Borough, Blair County	Little Juniata River	Downstream corporate limits	*889
			9th Street (extended)	*897
			Upstream corporate limits	*907
		Bald Eagle Creek	Confluence with Little Juniata River	*894
			Upstream corporate limits	*912
			Confluence of Laurel Run	*925
			Approximately 1,180 feet upstream of confluence of Gypsy Run.	*951
		Decker Run	Downstream corporate limits	*949
			Approximately 140 feet downstream Adams Avenue	*965
			Upstream corporate limits	*980
		Gypsy Run	Downstream corporate limits	*949
			Upstream Adams Avenue	*961
			Upstream corporate limits	*964
		Hutchinson Run	Confluence with Little Juniata River (downstream corporate limits).	*906
			Upstream Washington Avenue	*911
			Upstream corporate limits	*937
		Laurel Run	Downstream corporate limits	*929
			At Adams Avenue	*939
			Upstream Madison Avenue	*949
			Upstream Clites Street	*978
			Approximately 1,050' upstream Clites Street	*1,017
			Approximately 1,710' upstream of Clites Street	*1,053
	Maps available for inspection at the Office of the Borough Secretary, Municipal Building, 1100 Logan Avenue, Tyrone, Pennsylvania.			
	Send comments to Honorable Gilbert Beckwith, Council President of Tyrone, Municipal Building, 1100 Logan Avenue, Tyrone, Pennsylvania 16686.			

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Wyomissing, Borough, Berks County	Schuylkill River	Downstream corporate limits	*213
			Upstream corporate limits	*214
		Tulpehocken Creek	Confluence with Schuylkill River	*214
			Upstream corporate limits	*214
		Wyomissing Creek	Footbridge 1 (upstream)	*223
			Wyomissing Boulevard (upstream)	*236
			At Old Mill Road	*248
			Old Wyomissing Road (upstream)	*270
			U.S. Route 222 (downstream)	*299
		Lauers Run	Confluence with Wyomissing Creek	*253
			Lauers Lane (upstream)	*268
			Approximately 50' downstream of corporate limits	*293
		Tributary 1 to Lauers Run	Confluence with Lauers Run	*262
			Dauphin Avenue downstream	*278
		Tributary 2 to Lauers Run	Confluence with Lauers Run	*263
			Logan Street culvert (upstream)	*279
			Upstream corporate limits	*291
	Maps available for inspection at the Borough Hall, 22 Reading Boulevard, Wyomissing, Pennsylvania.			
	Send comments to Honorable Alfred Drayovitch, Borough Manager of Wyomissing, Borough Hall, 22 Reading Boulevard, Wyomissing, Pennsylvania 19610.			
South Carolina	Town of Edisto Beach, Colleton County	Atlantic Ocean	Intersection of Louise Street and McConkey Boulevard	*11
			Intersection of Point Street and Edisto Street	*12
			Intersection of McConkey Boulevard and Osceola Street.	*13
	Maps available for inspection at Town Hall, White Cap and Lee Street, Edisto Beach, South Carolina 29438.			
	Send comments to Mayor E. Whitson Brooks or Ms. Linda Flaten, Town Clerk, Town Hall, P.O. Box 402, Edisto Beach, South Carolina 29438.			
Texas	City of Beach City, Chambers County	Galveston Bay/Trinity Bay	At Windy Oaks Drive (extended) and Trinity Bay Shoreline.	*19
			At McKinney Drive (extended) and Trinity Bay Shoreline.	*18
			50 feet southeast of intersection of Bayside Drive and Live Oak Drive.	*15
			500 feet southeast of intersection of Live Oak Drive and Cedar Point Road.	*12
	Maps available for inspection at City Hall Office of Beach City, Community Building, Tri-City Beach Road, Beach City, Texas 77520.			
	Send comments to Mayor Jim Ainsworth or Ms. Charlotte Huffman, City Secretary, City Hall, P.O. Box 455, Baytown, Texas 77520.			
Texas	City of Friendswood, Galveston County	Chigger Creek	Just downstream of Farm Market Road 528 (West Parkwood Avenue).	*21
			Just downstream of Windwood Drive	*30
		Clear Creek	Just upstream of Farm Market Road 528 (East Parkwood Avenue).	*21
		Cowart Creek	Just upstream of Sunset Drive	*24
		Marys Creek	Approximately 150 feet downstream of Dunbar Estates Road.	*30
			Approximately 200 feet upstream of Winding Road	*32
		Shallow Flooding (Overflow from Marys Creek Bypass Channel).	At the intersection of Castle Lake Drive and Stratmore Drive.	*1
	Maps Available for inspection at City Hall, 109 Willowick, Friendswood, Texas 77546.			
	Sent comments to Mayor Ralph Lowe, City Hall, 109 Willowick, Friendswood, Texas 77546.			
Texas	Unincorporated Areas of Wharton County	Colorado River	Just upstream of Southern Pacific Railroad	*103
			Approximately 4000 feet upstream of U.S. Highway 59 Bypass.	*108
			Just upstream of FM 960	*119
		Lower Caney Creek	Just upstream of Asphalt Road	*93
			Just downstream of Asphalt Road	*92
			Just downstream of Kriegel Road	*90
		Upper Caney Creek	Just downstream FM 102 near the City of Wharton	*107
			Just downstream of Early Road	*110
		Baughaman Slough	0.30 mile upstream of Junior College Boulevard	*96
			Just downstream of U.S. Highway 59 Bypass	*103
			Just upstream of U.S. Highway 59 Bypass	*105
		Tres Palacios Creek	Just downstream of Murray Road	*96
			Just upstream of U.S. Highway 59 Bypass	*100
		Tres Palacios Tributary	Just upstream of South Meadow Lane	*102
			Just downstream of Southern Pacific Railroad	*103
		Sand Stage Creek	Approximately 400 feet downstream of U.S. Highway 71.	*98
			Just downstream of Farm Road	*100
		Blue Creek Tributary	Just downstream of East Calhoun Street extended	*105
			Just downstream of upstream bridge	*109
	Maps available for inspection at Wharton County Courthouse, 100 Courthouse Building, Wharton, Texas 77488.			
	Send comments to Judge Daniel R. Sklar, Wharton County Courthouse, 100 Courthouse Building, Wharton, Texas 77488.			
Texas	Unincorporated Areas of Wichita County	Wichita River	Just upstream of Cameron Road	*936
			Just downstream of River Road	*941
			Just downstream of Barnett Road	*959

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		East Fork Pond Creek	Just downstream of U.S. Highway 287	*981
			Just upstream of U.S. Highway 287	*989
			Just downstream of Tank Farm Road	*990
		East Fork Pond Creek	Approximately 100 feet downstream of Hemme Road	*1014
		Middle Fork Pond Creek	At State Highway 367	*957
			Just downstream of U.S. Highway 287	*994
			Just downstream of Rogers Road	*996
		West Fork Pond Creek	Just downstream of Horseshoe Lake Road	*977
			Just upstream of Horseshoe Lake Road	*978
			Just upstream of Rogers Road	*1011
		Gordon Creek	Just downstream of N. Atlantic Street	*1015
			Just downstream of Iowa Park corporate limits	*1016
		Buffalo Creek	Just downstream of FM 1814	*976
		Buffalo Creek Tributary	Just downstream of the City of Iowa Park southernmost corporate limits.	*995
			Just downstream of the City of Iowa Park northernmost corporate limits.	*1013
		Gilbert Creek	Just upstream of Bishop Road	*993
		Plum Creek	Just downstream of the southernmost Wichita Falls corporate limits.	*957

Maps available for inspection at Wichita County Clerk's Office, Seventh and Lamar Streets, Wichita Falls, Texas 76301.

Send comments to Judge Tom Bacus, or Ms. Linda Proffitt, Secretary, Wichita County Courthouse, Seventh and Lamar Streets, Wichita Falls, Texas 76301.

Utah	Layton (City) Davis County	North Fork Holmes Creek	50 feet upstream from centerline State Highway 106	*4318
			50 feet upstream from centerline Fairfield Road	*4396
			100 feet upstream from centerline Oakhills Drive	*4489
		Snow Creek	100 feet upstream from centerline Fairfield Road	*4411
			50 feet upstream from centerline Adams Reservoir Dam.	*4556
		Kays Creek	50 feet upstream from centerline Galbraith Lane	*4234
			50 feet upstream from centerline Hawthorne Drive	*4368
			150 feet upstream from centerline Fairfield Road	*4461
		South Fork of Kays Creek	50 feet upstream from centerline Emerald Street	*4536
			50 feet upstream from centerline Valley View Drive	*4911
		Middle Fork of Kays Creek	150 feet downstream from centerline Oak Forest Drive	*4719
		North Fork of Kays Creek	100 feet upstream from centerline 2000 North	*4555
			125 feet upstream from centerline U.S. Highway 89	*4895

Maps available for inspection at Building and Zoning Department, 437 Wasatch Drive, Layton, Utah.

Send comments to Honorable Lewis G. Shields, 437 Wasatch Drive, Layton, Utah 84041.

Virginia	Cedar Bluff, Town, Tazewell County	Clinch River	Downstream corporate limits	*1,939
			Upstream 3rd crossing Norfolk and Western Railroad	*1,947
			Downstream City Street	*1,951
			Downstream 6th crossing Norfolk and Western Railroad.	*1,976
			Upstream corporate limits	*1,998
		Middle Creek	Downstream State Route 631	*1,951
			Upstream corporate limits	*1,992
		Indian Creek	Downstream State Route 631	*1,954
			Upstream corporate limits	*1,969

Maps available for inspection at the Town Hall, Cedar Bluff, Virginia.

Send comments to Honorable Doug Anderson, Mayor of Cedar Bluff, Town Hall, Drawer 287, Cedar Bluff, Virginia 24609.

Virginia	Richlands, Town, Tazewell County	Clinch River	Downstream corporate limits	*1,920
			Upstream of U.S. Route 460 (downstream crossing)	*1,924
			Upstream of Second Street	*1,930
			Upstream of Virginia Avenue	*1,934
			Upstream corporate limits	*1,940
		Tributary to Clinch River	Confluence with Clinch River	*1,922
			Downstream of Burnett Street	*1,932
		Town Hill Creek	Confluence with Clinch River	*1,920
			Upstream of City Street	*1,925
			Upstream of Lake Park Drive	*1,954
			Upstream of Hill Creek Road	*1,969
			Upstream corporate limits	*1,983
		Big Creek	Confluence with Clinch River	*1,929
			Upstream of Fifth Street	*1,930
			Upstream Norfolk and Western Railroad	*1,944
			Upstream of State Route 67	*1,972
			Upstream corporate limits	*1,996

Maps available for inspection at the Town Hall, 217 Railroad Avenue, Richlands, Virginia.

Send comments to Honorable C. P. Mahaffey, Town Manager of Richlands, Town Hall, 217 Railroad Avenue, Richlands, Virginia 24641.

West Virginia	Ohio County Unincorporated Areas	Ohio River	Downstream corporate limits	*662
			Upstream corporate limits	*663
		Wheeling Creek	At Shafer Avenue	*693
			Upstream corporate limits	*699

Maps Available for inspection at the City County Building, Room 215 Wheeling, West Virginia.

Send comments to Honorable John Tominack, President of the Ohio County Board of Commissioners, City County Building, Wheeling, West Virginia 26003.

West Virginia	Wetzel County	Ohio River	At downstream county boundary	*634
			Confluence of Fishing Creek	*636
			Confluence of Williams Run	*637

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Doolin Run	Upstream of Hannibal Lock and Dam	*638
			Downstream of upstream county boundary	*640
			Confluence with Fishing Creek	*636
		Fishing Creek	Approximately 2,400' upstream State Routes 7 and 20	*636
			Approximately 4,300' upstream State Routes 7 and 20	*653
			Approximately 7,300' upstream State Routes 7 and 20	*679
			Downstream of downstream corporate limits	*636
			Upstream of upstream corporate limits (extended)	*636

Maps Available for inspection at the Wetzel County Courthouse, New Martinsville, West Virginia.

Send comments to Honorable Anthony Estep, President of the Wetzel County Commissioners, Box 548, New Martinsville, West Virginia 26155.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: July 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-21403 Filed 8-9-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-482; RM-4118]

FM Broadcast Station in Frisco, Colorado; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of a Class A FM channel to Frisco, Colorado, in response to a petition filed by P–N–P Broadcasting. The proposed assignment could provide a first FM broadcast service to Frisco.

DATES: Comments must be filed on or before September 27 reply comments on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: .

Lists of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 2, 1982.

1. The Commission herein considers a petition for rule making filed May 12, 1982, by P–N–P Broadcasting ("petitioner") proposing the assignment of FM Channel 221A tro Frisco, Colorado, as that community's first FM assignment. The channel can be assigned consistent with the minimum distance separation requirements. Petitioner stated that it would apply for the channel, if assigned.

2. Petitioner submitted comments in support of the proposal to assign FM Channel 221A to Frisco, Colorado.[1]

3. Since the proposed assignment could provide Frisco with its first local aural service, the Commission believes it appropriate to propose amending the FM Table of Assignments, 73.202(b) of the rules, with respect to the following community.

Channel No.	City	
	Present	Proposed
Frisco, Colorado		221A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note:—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Sec. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to the authority found in Sections 4(i), 5(d)(1), 303(g) and (4), and

[1] Petitioner submitted demographic and economic data demonstrating the need for a first FM assignment. However, the information is no longer required due to the action taken in the *Second Report and Order* in BC Docket No. 80–130, 47 Fed. Reg. 26624, published June 21, 1982.

307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflicts with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead to the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-21641 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-481; RM-4095]

FM Broadcast Station in Long Beach, Washington; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of Channel 232A to Long Beach, Washington, in response to a petition filed by P-N-P Broadcasting. The proposed assignment could provide a first FM service to Long Beach.

DATE: Comments must be filed on or before September 27, 1982, and reply comments on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 2, 1982.

1. A petition for rule making was filed on April 5, 182, by P-N-P Broadcasting ("petitioner") proposing the assignment of Channel 232A to Long Beach, Washington, as its first FM assignment. Petitioner stated that it would apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. Petitioner furnished data supporting the proposal.[1] Long Beach, Washington, has no local aural service.

3. In view of the fact that the proposed assignment could provide a first local broadcast service to Long Beach, the Commission proposes to amend the FM Table of Assignments, Section 73.202(b) of the Rules, with regard to Long Beach, Washington, as follows:

City	Channel No.	
	Present	Proposed
Long Beach, Washington		232A

4. Since Long Beach, Washington, is within 320 kilometers (200 miles) of the U.S.-Canadian border, the proposed assignment requires coordination with the Canadian Government.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note:—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevent provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Sec. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

[1] Petitioner submitted economic, demographic and engineering data demonstrating the need for a first aural service in Long Beach, Washington. However, in view of the action taken in the *Second Report and Order* in BC Docket No. 80-130, 47 F.R. 26624, published June 21, 1982, the information is no longer required.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the communications act of 1934, as amended, and §0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assigments, Section 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See §1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-21642 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-492; RM-4134]

FM Broadcast Station in Fresno, California; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution on one Class B FM channel for another, and modification of the license for Station KYNO–FM, Fresno, California, accordingly, in response to a petition filed by the licensee, KYNO, Inc. The substitution is desired so that the station can move its transmitter site.

DATES: Comments must be filed on or before September 27, 1982 and reply comments on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 3, 1982.

By the Chief, Policy and Rules Division.

1. Radio KYNO, Inc. ("petitioner"),[1] on June 10, 1982, filed a petition for rule making seeking to substitute Class B Channel 239 for Channel 238 at Fresno, California, and modify the license for Station KYNO–FM to specify operation of Channel 239.

2. In support of the request, petitioner points out that the proposal stems from the need to change KYNO–FM's present location (atop the roof of a downtown Fresno office building). Petitioner adds that aside from the long range uncertainties inherent in the present situation, other constraints prevent full utilization of the facility at its present site. Petitioner further notes that technical limitations affecting Channel 238 make it impossible to relocate to achieve full utilization of the facility. According to the petitioner, the proposed channel substitution would provide the flexibility needed for maximum coverage of the Fresno and mid-valley area, without short spacing or significant preclusive impact.[2]

3. We believe that the petitioner's proposal warrants consideration. The channel can be substituted in compliance with the Commission's minimum distance separation requirements. Also, we shall propose to modify the license of Station KYNO–FM (Channel 238) to specify operation on Channel 239.

4. In view of the above, the Commission proposes to amend the FM Table of Assignment, § 73.202(b) of the Rules as it pertains to Fresno, California, as follows:

Channel No.	City	
	Present	Proposed
Fresno, California	229, 238, 250, 266, 270, 274, and 290.	229, 239, 250, 266, 270, 274, and 290.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragaph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose

[1] Radio KYNO, Inc. is the licensee of Station KYNO(FM), Fresno, California.

[2] In view of the action taken in the *Second Report and Order*, BC Docket 80–130, 47 Fed. Reg. 26624, published June 21, 1982, revising the FM assignment policies, preclusion impact is no longer required to justify an assignment.

Tyree, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended 1066, 1082; 47 U.S.C. 134, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as sety forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-21723 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-488; Rm-4143]

FM Broadcast Station in Alma, Georgia; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 240A to Alma, Georgia, in response to a petition filed by Queen City Broadcasting Systems. The proposed assignment could provide a first FM service to Alma.

DATES: Comments must be filed on or before September 27, 1982, and reply comments on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 3, 1982.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making, filed June 15, 1982, by Queen City Broadcasting Systems ("petitioner") proposing the assignment of FM Channel 240A to Alma, Georgia, as that community's first FM assignment. Petitioner stated that it will apply for the channel, if assigned.

2. Alma, the seat of Bacon County, is located approximately 144 kilometers (90 miles) southwest of Savannah, Georgia.

3. A site restriction of approximately 2.1 miles northwest of the city is required due to Station WKTZ in Jacksonville, Florida.

4. Petitioner filed information in support of the proposal.[1] Alma has one AM station, WULF.

5. In view of the fact that the proposed assignment could provide Alma with its first local FM broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Alma, Georgia		240A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedure.

8. The Commission has determined that the relevent provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend*

[1] Petitioner submitted data in support of the proposal. However, in view of the action taken in BC Docket 80–130, *Second Report and Order*, 47 FR 26624, published June 21, 1982, this information is no longer required.

§§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-21724 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-490; RM-4130]

FM Broadcast Station in Cleveland, Wisconsin; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 276A to Cleveland, Wisconsin, in response to a petition filed by Electro Technik, Inc. The proposed assignment could provide Cleveland with a first FM service.

DATES: Comments must be filed on or before September 27, 1982, and reply comments must be received on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 3, 1982.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed June 4, 1982, by Elektro Technik, Inc. ("petitioner") seeking the assignment of Channel 276A to Cleveland, Wisconsin,[1] as its first FM assignment. Petitioner has expressed an interest in applying for the channel, if assigned.

2. A site restriction of 3.8 miles north is required due to Station WBCS in Milwaukee, Wisconsin.

3. In view of the provision of a first local FM service to Cleveland, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Cleveland, Wisconsin		276A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of

[1] Petitioner submitted community data for Cleveland. However, in view of the action taken in the *Second Report and Order*, 47 FR 26624, published June 21, 1982, this information is no longer required.

Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-21725 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-480; RM-4131]

FM Broadcast Station in Duluth, Minnesota and Ashland, Wisconsin; Proposed Changes in Table of Assignments

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes a seventh Class C FM assignment to Duluth, Minnesota, and the substitution of one Class A FM channel for another at Ashland, Wisconsin, in response to a petition field by Duchossois Enterprises, Inc.

DATES: Comments must be filed on or before September 27, 1982, and reply comments on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau (202) 632-7792..

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 3, 1982.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed June 4, 1982, by Duchossois Enterprises, Inc. ("petitioner") [1], which seeks the assignment of Class C Channel 239 to Duluth, Minnesota, and the substitution of Channel 244A for Channel 240A at Ashland, Wisconsin.[2] The substitution of Channel 244A for Channel 240A also requires a modification of the license for Station WATW-FM to specify the new channel. Petitioner expressed a desire to apply for Channel 239, if assigned. Duluth is presently served by five FM stations: WSCD-FM (Channel 225), KQDS (Channel 235), WAKX (Channel 255), KUMD-FM and WGGR (Channel 286.

2. Petitioner stated its willingness to reimburse Station WATW-FM to the extent required by Commission policy, for expenses incurred in the change of its facility to Channel 244A, provided it is the successful applicant for Channel 239 at Duluth.

3. The assignment of Channel 239 at Duluth, Minnesota, and the substitution of Channel 244A for 240A at Ashland, Wisconsin, requires coordination with the Canadian government.

4. In view of the foregoing and the fact that the proposed assignment would provide a sixth FM broadcast service to Duluth, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, with regard to the following cities:

City	Channel No.	
	Present	Proposed
Duluth, Minnesota	225, 235, 255, 273, 277, and 286.	225, 235, 239, 255 273, 277, and 286.
Ashland, Wisconsin	240A	244A.

5. It is ordered, that pursuant to Sec. 316(a) of the Communications Act of 1934, as amended, Ashland Broadcasting Corporation, licensee of Station WATW-FM, Ashland, Wisconsin, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 244A in lieu of Channel 240A.

6. Pursuant to § 1.87 of the Commission's Rules, Ashland

[1] Duchossois Enterprises, Inc., is the licensee of Station KDAL (AM), Duluth, Minnesota.

[2] Petitioner's first option proposed assigning Channel 282 to Duluth and substituting Channel 222 for Channel 281 at International Falls, Minnesota. Under that proposal, Station KSDM (Channel 281) could not use Channel 222 at its present site without being short spaced to Channel 221A at Ely, Minnesota. Thus, we have chosen the other option for Duluth herein.

Broadcasting Corporation, may, not later than October 12, 1982, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, Ashland Broadcasting Corporation, may, not later than October 12, 1982, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Ashland Broadcasting Corporation to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Ashland Broadcasting Corporation will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules;* 46 F.R. 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

11. It is ordered, That the Secretary of the Commission SHALL SEND, by certified mail, return receipt Requested, a copy of this *Order to Show Cause* to Ashland Broadcasting Corporation, P.O. Box 627, Ashland, Wisconsin 54806.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-21726 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-487; RM-4129]

FM Broadcast Station in Fort Scott, Kansas; Proposed Changes in Table of Assignments

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of Channel 269A to Fort Scott, Kansas, in response to a petition filed by K of K Communications, Inc. The proposed assignment could provide a second FM service to Fort Scott.

DATES: Comments must be filed on or before September 27, 1982, and reply comments must be filed on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted July 27, 1982.

Released: August 3, 1982.

1. A petition for rule making filed June 3, 1982, by K of K Communications, Inc. ("petitioner"), proposes the assignment of Channel 269A to Fort Scott, Kansas,[1] as its second FM assignment. The channel can be assigned in compliance with the minimum distance separation requirements of the Commission's Rules. Petitioner expressed an interest in applying for the channel, if assigned.

2. In view of the provision of a second FM service to Fort Scott, the Commission proposes to amend the FM table of assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Fort Scott, Kansas	280A	280A, 269A

3. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.218(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 21727 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[1] Petitioner submitted community data for Fort Scott. However, in view of the action taken in BC Docket No. 80-130, released June 2, 1982, 47 Fed. Reg. 26624, published June 21, 1982, this information is no longer required.

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47 CFR Part 73

[BC Docket No. 82-491; RM-4128]

FM Broadcast Station in Paris, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 280A to Paris, Texas, in response to a petition filed by the Gene Sudduth Company, Inc. The proposed assignment could provide a second FM service to Paris.

DATES: Comments must be filed on or before September 27, 1982, and reply comments on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 3, 1982.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed on June 2, 1982, by the Gene Sudduth Company, Inc. ("petitioner") seeking the assignment of Channel 280A to Paris, Texas, as its second FM assignment.[1]

[1] Petitioner is the licensee of AM Station KPRE, Paris, Texas.

Petitioner expressed an interest in applying for the channel, if assigned.[2] This channel can be assigned in compliance with the minimum distance separation requirements.

2. In view of the provision of a second local FM service to Paris, the Commission proposes to amend the FM Table of Assignments, §73.202(b) of the Commission's Rules, for the community below as follows:

City	Channel No.	
	Present	Proposed
Paris, Texas	257A	257A, 280A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, §73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections (4)i, 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-21728 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[2] Petitioner also provided community data in support of the requested assignment. However, in view of the action taken in BC Docket No. 80-130, *Second Report and Order,* 47 FR 26624, published June 21, 1982, this information is no longer required.

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47 CFR Part 73

[BC Docket No. 82-489; RM-4147]

FM Broadcast Station in San Angelo, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Class C Channel 298 to San Angelo, Texas, in response to a petition filed by Gary Hess and Earl Calhoun. The proposal could provide a fifth FM service to San Angelo.

DATES: Comments must be filed on or before September 27, 1982, and reply comments on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 3, 1982.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed on June 28, 1982, by Gary Hess and Earl Calhoun ("petitioners") proposing the assignment of Class C Channel 298 to San Angelo, Texas, as its fifth FM assignment. Petitioners state that they will apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. Petitioners submitted information in support of the proposal to assign

Channel 298 to San Angelo, Texas, which is no longer required in view of the action taken in BC Docket 80–130, *Second Report and Order*, 47 FR 26624, published June 21, 1982.

3. Since San Angelo is located within 320 kilometers (199 miles) of the U.S.-Mexican border, the proposed assignment requires the concurrent of the Mexican Government.

4. In view of the fact that the proposed FM channel assignment would provide a fifth FM broacast service to San Angelo, Texas, the Commission believes it appropriate to propose amending the FM Table of Assignments, 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
San Angelo, Texas	225, 230, 234, and 248.	225, 230, 234, 248, and 298.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are revised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-21729 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-483; RM-4116]

FM Broadcast Station in Waimea, Hawaii; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of a Class C FM channel to Waimea, Hawaii, as that community's first aural service in response to a petition filed by Richard A. Bowers and Thomas F. Muller.

DATES: Comments must be filed on or before September 27, 1982, and reply comments on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Waimea, Hawaii); BC Docket No. 82–483, RM–4116.

Adopted: July 27, 1982.

Released: August 2, 1982.

1. A petition for rule making was filed April 22, 1982, by Richard A. Bowers and Thomas F. Muller ("petitioners") requesting the assignment of Class C

Channel 256 to Waimea, Hawaii,[1] as its first FM assignment. The channel can be assigned to Waimea in compliance with the Commission's minimum distance separation requirements.

2. Waimea (also known as Kamuela) is located in the northwestern portion of Hawaii County.

3. Petitioners state that they believe that the public interest would be served by assigning Channel 256 to Waimea as its first FM assignment.[2] Petitioners state that they will apply for the channel, if assigned.

4. In view of the fact that this assignment could provide a first aural service to the community, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with regard to Waimea, Hawaii, as follows:

City	Channel No.	
	Present	Proposed
Waimea, Hawaii		256

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-21735 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[1] This request was made in the form of "Comments" to the *Notice of Proposed Rule Making*, issued March 8, 1982, in BC Docket No. 82-124, concerning the assignment of three channels (253 and/or 258 and 262) to Honolulu, Hawaii. Since there is no conflict, we have chosen to institute a separate proceeding for consideration of the channel.

[2] Petitioners furnished population, economic, community and demographic data demonstrating the need for the FM assignment. However, this information is no longer required in view of the action taken in the *Second Report and Order* in BC Docket No. 80-130, 47 FR 26624, published June 21, 1982.

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47 CFR Part 73

[BC Docket No. 82-486; RM-4144]

FM Broadcast Stations in Caldwell, Idaho; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of FM Channel 296A to Caldwell, Idaho, in response to a petition filed by Twin Cities Broadcasting Company. The proposed assignment could provide a third FM broadcast service to Caldwell.

DATES: Comments must be filed on or before September 27, 1982, and reply comments on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 2, 1982.

By the Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed on June 22, 1982, by Twin Cities Broadcasting Company ("petitioner") proposing the assignment of FM Channel 296A to Caldwell, Idaho[1], as that community's third FM assignment. Petitioner expressed an interest in applying for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. Caldwell, the seat of Canyon County, is located approximately 40 kilometers (25 miles) west of Boise, Idaho.

3. In view of the fact that the proposed assignment could provide Caldwell with its third FM broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, Section 73.202(b) of the Commission's rules, as follows:

City	Channel No.	
	Present	Proposed
Caldwell, Idaho	231, 276A	231, 276A, and 296A.

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 27, 1982 , and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to a denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-21736 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[1] Petitioner submitted community data in support of the proposal. However, in view of the action taken in BC Docket No. 80-130, *Second Report and Order*, 47 FR 26624, published June 21, 1982, this information is no longer required.

47 CFR Part 73

[BC Docket No. 82-484; RM-4132, RM-4133]

FM Broadcast Station in Oxford, Mississippi; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 221A to Oxford, Mississippi, in response to separate petitions filed by Rebel Broadcasting Company of Mississippi and by North Mississippi Broadcasters. The assignment could provide a second FM service to Oxford.

DATES: Comments must be filed on or before September 27, 1982, and reply comments must be filed on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 2, 1982.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed June 8, 1982, by Rebel Broadcasting Company of Mississippi ("petitioner") proposing the assignment of Channel 221A to Oxford, Mississippi, as its second FM channel. Petitioner stated its intention to apply for the channel, if assigned. A separate petition was filed by North Mississippi Broadcasters for the same channel assignment. We have treated that petition as comments in support. The channel can be assigned in compliance with the minimum distance separation requirements.

2. Both petitioners provided some demographic data in support of their request. However, in view of the action taken in the *Second Report and Order* in BC Docket 80-130, 47 Fed. Reg. 26624, published June 21, 1982, this information was not needed.

3. In view of the fact that the proposal could provide a second FM service to Oxford, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Oxford, Miss.	248	221A, 248

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark. N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the notice of proposed rule making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the notice of proposed rule making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rule making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's

Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.
[FR Doc. 82-21737 Filed 8-9-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-485; RM-4125]

FM Broadcast Station in Webb City, Missouri; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Rule.

SUMMARY: Action taken herein proposes the assignment of Channel 232A to Webb City, Missouri, in response to a petition filed by Don Stubblefield. The proposed assignment could provide a first FM service to Webb City.

DATED: Comments must be filed on or before September 27, 1982, and reply comments must be filed on or before October 12, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: July 27, 1982.

Released: August 2, 1982.

By the Chief, Policy and Rules Division.

1. A petition for rule making filed May 26, 1982, by Don Stubblefield ("petitioner") proposes the assignment of Channel 232A to Webb City, Missouri,[1] as its first FM assignment. A site restriction is required of approximately 6.7 miles north-northwest of the city due to Station KAMO (FM) in Rogers, Arkansas. Petitioner expressed an interest in applying for the channel, if assigned.

2. In view of the provision of a first FM service to Webb City, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Webb City, Arkansas		232A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before September 27, 1982, and reply comments on or before October 12, 1982, and are advised to read the Appendix for the proper procedures.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's

[1] Petitioner submitted community data for Webb City. However, in view of the action taken in BC Docket No. 80-130, released June 2, 1982, 47 FR 26624, published June 21, 1982, this information is no longer required.

Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-21738 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 82-470; FCC 82-340]

Amendment To Eliminate Certain Restrictions on Non-Voice Operations in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopts a Notice of Proposed Rule Making seeking to eliminate two limitations on Private Land Mobile operations: (1) A two second limitation on non-voice base/mobile communications; and (2) the secondary status on non-voice communications. These limitations currently inhibit the effective use of non-voice systems.

DATE: Comments are due by September 14, 1982 and replies by September 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Keith Plourd or Fred Day, Private Radio Bureau, Land Mobile and Microwave Division, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Private land mobile radio services.

Adopted: July 22, 1982.

Released: August 6, 1982.

By the Commission.

1. On its own motion the Commission hereby gives notice of its intention to amend § 90.233 of its rules to eliminate the limitation which presently restricts the transmission of non-voice data to a two second duration. Pursuant to § 90.233 of the Commission's rules, non-voice transmissions between base and mobile radio stations are limited to a maximum duration of two seconds and are secondary to voice transmissions.[1] In this proceeding, we are proposing to remove these limitations to make the transmission of digital data and other types of non-voice messages equal in status to telephony on frequencies below 800 MHz.[2] Elimination of these limitations should permit the utilization of advanced digital technologies and systems in base/mobile operations and increase the efficiency with which the channels are used.

Background

2. In Docket No. 19086, *Report and Order*, 31 FCC 2d 351 (1971), we permitted non-voice transmissions on voice frequencies in the land mobile radio services for communications between base and mobile stations. Recognizing trends in equipment development and increased user interest in non-voice radio operations to combat growing congestion on private land mobile frequencies, we observed that "[N]on-voice techniques appear to be capable of accomodation on mobile frequencies, make relatively little demand upon the spectrum, and promise significant advantages in speeding up communications and reducing the redundancy rate associated with voice communications." Docket No. 19086, *Report and Order*, 31 FCC 2d 351, 352 (1971).

3. We did, however, place certain limitations on the use of non-voice techniques to minimize the impact on regular voice communications. To maintain the priority of voice operations, we permitted non-voice operations to use land mobile frequencies only on a secondary, non-interference basis. To reduce the possibility of interference to voice operations, we limited the length of non-voice transmssions to two seconds. We now believe that these restrictions are no longer necessary and, in fact, inhibit the use of more advanced digital technology on land mobile frequencies. In the *Second Report and Order* in PR Docket 80-416 (47 FR 15337), we specifically stated our intention to reconsider the two second restriction on data transmissions on Private Land Mobile Radio Service frequencies.

The Proposal

4. In PR Docket 80-416, the Association of American Railroads commented that it would be inappropriate to limit the transmission of digital data (F9Y emission) on frequencies employing digital voice (F3Y emission) since the two have similar emissions, and their effect on and perception by co-channel and adjacent channel users would be the same. We agree with that position, and since we assigned primary status to digital voice, placing it on equal footing with analog voice, we believe that, for similar reasons, digital data on analog voice channels should be given similar treatment.

5. Therefore, to permit expanded use of digital transmissions, we are proposing to delete the two second limitation on non-voice signaling on mobile service frequencies in the Private Land Mobile Radio Serivces. (47 CFR § 90.233) References to this section in § 90.207(k), recently adopted in PR Docket 80-416, would also be deleted. Further, in order to permit licensees to transmit encoded, non-voice messages in the place of voice messages between base stations and mobile units (such as the co-called "digital dispatching"), we are also proposing to delete the secondary status of non-voice transmissions and to place them in a status equal to telephony. Use of non-voice data emissions would be restricted to the coordinated radio services and frequency bands below 800 MHz and would be authorized through the licensing process.

6. We are also proposing to delete the station identification requirements stated in § 90.233(c). Since non-voice signaling would now have equal status, the requirements for station identification would be contained in § 90.425 making § 90.233(c) repetitive and unnecessary. Unless specifically exempted in § 90.425, all stations employing non-voice signaling would continue to identify using non-scrambled voice or International Morse Code.

7. These proposals would be applicable only to base/mobile communications on mobile service frequencies. We are not proposing, as this time, to relax the restrictions on secondary fixed point-to-point signaling

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[1] Section 90.233 reads:

§ 90.233 Secondary base/mobile nonvoice signaling operations.

On a secondary basis to voice operations, the use of A2, A9, F2, F9 (audio-frequency toneshift or tone phase shift) or F9Y emission may be authorized to base/mobile operations in accordance with the following limitations and requirements:

(a) Authorizations are limited to mobile service frequencies below 950 MHz.

(b) Maximum duration of a transmission for each distinct non-voice message, including automatic repeats of the message, may not exceed 2 seconds. There must be a break in the carrier between each such transmission.

(c) Required station identification for non-voice operations must be made by F3 or A3 emission and may be given by the base station for a base/mobile system.

(d) Secondary non-voice operations under this section may not be authorized for tone paging, telemetry, radiolocation, AVM, radioteleprinter, radiofacsimile, or radio call box operations. These operations are authorized under other sections of this part.

[2] In frequency bands above 800 MHz, we have already proposed flexibility in the licensee's choice of emission mode and invited public comment on this and other points. (See *Further Notice of Proposed Rule Making*, PR Docket No. 79-191 (FCC 81-268), released July 14, 1981, and *Notice of Proposed Rule Making*, PR Docket No. 81-703 (FCC 81-460), released October 14, 1981.) This proceeding, therefore, only addresses frequencies below 800 MHz.

and alarm functions permitted by § 90.235 of the Rules. We are, however, proposing to add F3Y, A9Y, and F9Y to the list of permissible emissions in § 90.235.

The Issues

8. In eliminating the two second restriction for data transmissions, the central issues are: (1) whether to retain the secondary status of non-voice data and signaling or to make non-voice data equal in status to voice messages, and (2) whether to replace the two second restriction with a less restrictive limitation or to impose no limitation at all.

9. Our proposal would delete the time limit altogether and would give non-voice data equal status with voice. Specific comments are requested in these two areas. We believe that the current limitation prevents the transmission of digital messages which can compress messages to a fraction of their duration if transmitted by voice. This would enable such channel uses at digital dispatching (serving many more vehicles per channel) and status reporting ("I'm busy, call me later.") Also, we are confident that few would invest in digital data equipment to meet their needs if they knew they might be required to vacate a channel to a voice-only user. Furthermore, we see no reason to keep non-voice secondary to voice in the Private Land Mobile Radio Services in view of our previous decision to give digital voice systems a primary status.

10. Comments are also solicited as to whether new rule provisions would be required to keep data transmissions compliant with permissible communications rules. For example, should we place a 3 minute limit on all data except on systems where digital voice is specifically authorized?[3]

11. *Regulatory Flexibility Act Initial Analysis.*

I. Reason for Action

If advanced digital technologies and systems are to be used in base/mobile operations, the restrictions in Section 90.233 imposed on non-voice communications must be removed.

II. The Objectives

The Commission desires to allow flexibility in the use of land mobile frequencies and increase the efficiency with which the channels are used.

III. Legal Bases

Action proposed is in accordance with Sections 303(r) and 4(i) of the Communications Act of 1934, as amended, which permits the Commission to make such rules and regulations, not inconsistent with law, as may be necessary in the execution of its functions, with the additional view of the public welfare.

IV. Description, Potential Impact and Number of Small Entities Affected

This proposal would affect all types of licensees in the Land Mobile Radio Service including both large and small entities. Frequencies in the Land Mobile Radio Service are used to provide communications between mobile radios in vehicles such as taxi cabs, trucks, etc. and base stations. The communications permitted on the frequencies include dispatch, status reports, safety of life and property, and other communications necessary to mobile operations.

As of January 31, 1982, there were 819,297 stations licensed in the Land Mobile Radio Service. The Commission, however, does not require licensees in the Land Mobile Radio Service to submit information enabling it to determine what proportion of these stations are licensed to small entities. This rulemaking proceeding would increase the technologies permitted on the frequencies, thereby allowing more diverse use of frequencies which could improve the overall efficiency of the mobile operations of all licensees including small businesses and local governmental entities. We anticipate no detrimental impact on small entities from this action since we anticipate little potential for co-channel or adjacent channel interference. We anticipate a beneficial impact to the extent that small entities choose to avail themselves of this technology.

V. Recording, Record-Keeping and Other Compliance Requirements

No additional recording or record-keeping, or other compliance requirements would be necessary if this proposal is adopted.

VI. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

VII. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With the Stated Objectives

None if this technological capability is to be implemented.

12. Accordingly, notice is hereby given of rule making to amend Part 90 of the Commission's Rules and Regulations, in accordance with the proposal set forth in the attached Appendix. The Secretary is also directed to serve a copy on the Council for Advocacy of the Small Business Administration.

13. We encourage all interested parties to respond to this Notice since such information as they may provide often forms the basis for further Commission action. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts ae permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who initiates an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

14. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before September 14, 1982 and reply comments on or before September 29, 1982. Timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into

[3] The economies of data transmission speed offer a single radio channel many times the message capacity, compressing the information contained in a lengthy voice transmission down to a few seconds of encoded message.

consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, Federal Communications Commission, Washington, D.C. 20554. (202) 632-7000.

15. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and five copies of all statements, briefs or comments filed shall be furnished to the Commission. Responses will be available for public inspection during business hours in the Commission's Public Reference Room in its headquarters in Washington, D.C.

16. For further information concerning this rule making proceeding, contact Keith Plourd or Fred Day ((202) 634-2443).

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The Federal Communications Commission proposes to amend 47 CFR Part 90, as follows:

1. Revise § 90.233 to read as follows:

§ 90.233 Base/mobile non-voice signaling operations.

The use of A2, A9, A9Y, F2, F9, or F9Y emission may be authorized to base/mobile operations in accordance with the following limitations and requirements:

(a) Authorizations are limited to mobile service frequencies below 512 MHz.

(b) Provisions of this section do not apply to authorizations for paging, telemetry, radiolocation, AVM, radioteleprinter, radiofacsimile, or radio call box operations, which are governed by other sections of this part.

2. Revise paragraph (k) of § 90.207 to read as follows:

§ 90.207 Types of emissions.

* * * * *

(k) F3Y emission may be employed on 800 MHz systems or any frequency which is subject to the coordination requirements set forth in § 90.175 (a) or (b). The use of F3Y must be specifically requested and approved by the Commission. Authorization to use F3Y shall be construed to include authorization to use F9Y emission.

3. Revise paragraph (c)(3) of § 90.235 to read as follows:

§ 90.235 Secondary fixed tone signaling and alarm operations:

* * * * *

(c) * * *

(3) A1, A2, A9, A9Y, F1, F2, F9, and F9Y emission may be authorized. In the Police Radio Service, A3, F3 or F3Y emission may also be authorized.

* * * * *

[FR Doc. 82-21734 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 154
Tuesday, August 10, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to proposed additional financing assistance to Northern Michigan Electric Cooperative, Inc., (NMEC) of Boyne, Michigan, and Wolverine Electric Cooperative, Inc., (WEC) of Big Rapids, Michigan, for the completion of the Enrico Fermi Atomic Generating Station Unit No. 2 in Monroe County, Michigan.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and NMEC and WEC's Borrower's Environmental Report (BER) may be reviewed in the office of the Director, Power Supply Division, Room 0230, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250; telephone (202) 382–1400, or at the office of Northern Michigan Electric Cooperative, Inc., (Clyde L. Johnson, Manager) P.O. Box 138, Boyne City, Michigan 49712, telephone (616) 582–6572 or Wolverine Electric Cooperative, Inc., (Norman N. Newby, Manager) P.O. Box 1133, Big Rapids, Michigan 49307, telephone (616) 796–8649, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for assistance with additional financing from NMEC and WEC, has reviewed the BER submitted by the two borrowers and has determined that it represents an accurate assessment of the environmental impact of the project now under construction. NMEC has an 11.2 percent ownership participation and WEC has an 8.8 percent ownership participation in the project. The remaining 80 percent is owned by Detroit Edison Company. The project consists of one 1093 MW boiling water nuclear reactor and associated facilities. As of June 1, 1982, Unit 2 was 90 percent complete. The transmission facilities associated with the project have been completed and energized. Based upon information contained in the BER and the Final Environmental Statement (FES) and Addendum No. 1 issued by the Nuclear Regulatory Commission in August 1981 and March 1982, respectively, concerning the project and its impacts, REA concluded that the proposed additional financing assistance would not be a major Federal action significantly affecting the quality of the human environment.

The BER and FES adequately consider impacts of the project on resources, including threatened and endangered species, important farmlands, cultural resources, wetlands and foodplains.

Alternatives examined include reduced participation in the project (no action) and continued participation with a combined 20 percent ownership. After reviewing these alternatives, REA determined that continued 20 percent participation in the project is an acceptable alternative because it best meets the needs of WEC and NMEC with a minimum of adverse impacts.

This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees)

Dated: August 3, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-21487 Filed 8-9-82; 8:45 am]
BILLING CODE 3410-15-M

Oglethorpe Power Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Parts 1500–1508) and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to proposed financing assistance to Oglethorpe Power Corporation (OPC) of Atlanta, Georgia, for its ownership share of capital improvements, modifications, additions and cost overruns at Plants Hatch in Appling County, Wansley in Carroll and Heard Counties, and Scherer in Monroe County, all in Georgia.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment (EA) along with OPC's Borrowers Environmental Reports and Supplements (BER's) and other related material can be reviewed in or requested from the Office of the Director, Power Supply Division, Room 0230, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone: (202) 382–1400, or the office of OPC, (Mr. F. F. Stacy, Jr., Manager) 2888 Woodcock Boulevard, Tuland Building, Atlanta, Georgia 30348, telephone: (404) 455–1121.

SUPPLEMENTARY INFORMATION: REA reviewed the BER's submitted by OPC and the supplements there to, and determined that they represent an accurate evaluation of the environmental impacts of the projects. Based upon the BER's as supplemented, previous environmental documents (Environmental Impact Statements, EA's, etc.) and other related data submitted by OPC, REA prepared an EA concerning the changes at each plant and their impacts. It is REA's view that the proposed financing assistance will not be a major Federal action that will significantly affect the quality of the human environment.

REA has determined that the capital improvements, modifications, additions and cost overruns will have no additional effect on important farmland, cultural resources, threatened or endangered species, wetlands or floodplains. Since OPC has contractual obligations to continue its involvement in these projects, alternatives were

limited to those found to be technically and economically feasible, and to no action. REA finds that the proposed or undertaken alternatives are environmentally acceptable.

(This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.)

Dated: August 3, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-21486 Filed 8-9-82; 8:45 am]

BILING CODE 3410-15-M

Oglethorpe Power Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to proposed additional financing assistance to Oglethorpe Power Corporation (Oglethorpe), Atlanta, Georgia, for the completion of the Alvin W. Vogtle nuclear power plant in Burke County, Georgia.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment, Oglethorpe's Borrower's Environmental Report (BER) and the Supplement to the BER may be reviewed in the office of the Director, Power Supply Division, Room 0230, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–1400, or at the office of Oglethorpe Power Corporation (Mr. F. F. Stacy, Jr., Manager) 2888 Woodcock Boulevard, Atlanta, Georgia 30348, telephone (404) 455–1121, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for assistance with additional financing from Oglethorpe, has reviewed the BER with supplement submitted by Oglethorpe and has determined that they collectively represent an accurate assessment fo the environmental impact of the project now under construction. The other partifcipants are Georgia Power Company, Municipal Electric Authority of Georgia, and the City of Dalton. Oglethorpe has a 30 percent ownership participation in Units 1 and 2. The project now consists of two 1157 MW pressurized water nuclear reactors and associated facilities. As of June 1, 1982, Unit 1 was 30 percent complete and Unit 2 was 10 percent complete. Minor changes have been made in the project design and Units 3 and 4 have been cancelled. Based upon the BER, as supplemented, the Final Environmental Statement issued by Atomic Energy Commission in March 1974, and other available information, REA prepared an Environmental Assessment concerning the project and its impacts. REA concluded that the proposed additional financing assistance would not be a major Federal action significantly affecting the quality of the human environment.

The BER and its supplement and EA adequately consider impacts of the project on resources, including threatened and endangerd species, important farmlands, cultural resources, wetlands and floodplains.

Alternatives examined include no action (end or reduce participation), convert the project to coal-fired generation and continue to participate with a 30 percent ownership. After reviewing these alternatives, REA determined that continued 30 percent participation in the project is an acceptable alternative because it best meets Oglethorpe's needs with a minimum of adverse impacts.

(This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.)

Dated: August 3, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-21485 Filed 8-9-82; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Order Establishing Standard Foreign Fare Level

The International Air Transportation Competition Act (IACTA), Pub. L. 96–192, requires that the Board establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). The SFFL thus computed becomes the benchmark for measuring the statutory nonsuspend zone similar to the zone of reasonableness established by the Airline Deregulation Act and set forth in sec. 1002(d) of the Federal Aviation Act of 1958, as amended. Order 80–2–69 established the first interim SFFL and subsequent Order 82–6–12 established the current effective two-month SFFL applicable through July 31, 1982.

In establishing the SFFL for the two-month period starting August 1, 1982, we have projected nonfuel costs based on the year ended March 31, 1982, and have determined fuel prices on the basis of experienced monthly fuel cost levels and reported weekly fuel cost trends.

By Order 92–8–6, effective August 1, 1982 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic—1.2177
Latin America—1.2307
Pacific—1.3319

Copies of the Board's order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact: Julien R. Schrenk, (202) 673–5298.

By the Civil Aeronautics Board: August 2, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-21558 Filed 8-9-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 4887]

U.S.-People's Republic of China Service Proceeding (Phase II);Notice of Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated at Washington, D.C., August 3, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-21560 Filed 8-9-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40269]

Visit USA Fare/Export Inland Contract Rate Investigation; Notice of Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held commencing September 14, 1982, at 10:00 a.m. (local time), in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., August 3, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-21559 Filed 8-9-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-8-28; Docket 40662]

Application of Aero West Airlines, Inc. for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order instituting the Aero West Airlines Fitness Investigation, 82-8-28, Docket 40662.

SUMMARY: The Board is instituting an investigation to determine the fitness of Aero West Airlines to engage in the interstate and overseas air transportation of persons, property and mail between all points in the United States, its territories and possessions, except in all-cargo service within Alaska or Hawaii.

DATES: Persons wishing to intervene in the Aero West Airlines Fitness Investigation shall file their petitions in Docket 40662 by August 19, 1982.

ADDRESSES: Petitions to intervene should be filed in Docket 40662, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. In addition, copies of such filings should be served on persons listed in the attachment and on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT: Joseph W. Bolognesi, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text or Order 82-8-28 is available from our Distribution Section, Room 100, 1825 Connecticut Ave., N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-8-28 to that address.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

August 5, 1982.

[FR Doc. 82-21676 Filed 8-9-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-8-37; Docket No. 40451]

Application of Frontier Airlines, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause 82-8-37.

SUMMARY: The Board has tentatively decided to approve the application of Frontier Airlines, Inc. for renewal of its certificate authority to provide nonstop service between Spokane, Washington and Vancouver, British Columbia, Canada. The authority will be renewed for a period of five years.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this action be taken, as described in the order cited above, shall no later than August 25, 1982, file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 40451, Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428) and mail copies to Frontier Airlines, Inc., Western Air Lines, Inc., the Ambassador of Canada in Washington, D.C., and the Secretaries of State and Transportation. A statement of objections must cite the docket number and must include a summary of testimony, statistical data or other such supporting evidence. If no objections are filed, the Secretary of the Board will enter an order which will make final the Board's tentative findings and conclusions, and subject to the disapproval of the President under section 801(a) of the Act, amend the carrier's certificate to renew its Spokane-Vancouver authority for a five year period.

To get a copy of the complete order, request it from the Civil Aeronautics Board, Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington, Metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Don Hainbach, (202) 673-5035, Legal Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

August 5, 1982.

[FR Doc. 82-21675 Filed 8-9-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40747]

Emerald Air, Inc., d.b.a. Emerald Airlines; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled matter is assigned to be held on August 19, 1982, at 10:00 a.m. (local time), in Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

In order to facilities the conduct of the conference, parties including the Bureau of Domestic Aviation are instructed to submit on or before August 11, 1982, one copy to each party and prospective party and six copies to the Judge of (1) A proposed statement of issues; (2) proposed stipulations; (3) proposed requests for additional information and for evidence (4) responses to the requests for information and evidence submitted by Air New England and Southwest Airlines; (5) statements of positions; and (6) proposed procedural dates.

Dated at Washington, D.C., August 4, 1982.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 82-21674 Filed 8-9-82; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that meeting of the Arkansas Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 10:00 p.m., on September 1, 1982, at the Sheraton Little Rock, Sixth and Ferry Streets, in the Boston Room, Little Rock, Arkansas, 72202. The purpose of this meeting is to discuss the Arkansas block grant project and program planning for Fiscal Year 1983.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Marcia McIvor, 1229 Lakeridge, Fayetteville, Arkansas, 72701, (501) 442-0600 or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas, 78204, (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 5, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-21663 Filed 8-9-82; 8:45 am]

BILLING CODE 6335-01-M

New York Advisory Committee; Amended Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the New York Advisory Committee of the Commission originally scheduled for August 13, 1982, at New York, New York, (FR Doc. 82-19802 on page 31716) has been changed.

The meeting will now be held on August 24, 1982, beginning at 9:00 a.m. and will end at 1:00 p.m., at the Eastern Regional Office, Jacob K. Javits Building, 26, Federal Plaza, in Room 1639, New York, New York, 10278.

Dated at Washington, D.C., August 4, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-21664 Filed 8-9-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Preliminary Affirmative Countervailing Duty Determinations; Certain Steel Products From Belgium; Correction

AGENCY: International Trade Administration, Commerce.

ACTION: Correction to amendment to notice of preliminary affirmative countervailing duty determinations.

SUMMARY: This notice is to advise the public that the Department of Commerce is correcting its amendment to Appendix A of the "Notice of Preliminary Affirmative Countervailing Duty Determinations, Certain Steel Products from Belgium". The correction affects the proceedings on certain steel products form South Africa and from the United Kingdom.

EFFECTIVE DATE: June 17, 1982.

FOR FURTHER INFORMATION CONTACT: David L. Binder, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-1273.

SUPPLEMENTARY INFORMATION: The Department of Commerce amended the "Notice of Preliminary Affirmative Countervailing Duty Determinations, Certain Steel Products from Belgium" (47 FR 26300), in the **Federal Register** on June 29, 1982 (47 FR 28121). In that notice, the product definitions of hot-rolled carbon steel bars, hot-rolled alloy steel bars, and cold-formed carbon steel bars were amended by deleting the phrase "and not coated or plated with metal" from each of those product definitions. Instead, that notice should have amended, as indicated, the product definitions of hot-rolled alloy steel bars and cold-formed carbon steel bars. The product definition of hot-rolled carbon steel bars remains as set forth in the original notice (47 FR 28121). Furthermore, the product definition of cold-formed alloy steel bars should be deleted since that product is not under investigation in any of the countervailing duty cases on which preliminary determinations were made on June 10, 1982. This correction of the product definition of hot-rolled carbon steel bars and the elimination of the product definition of cold-formed alloy steel bars, most directly affect the proceedings on certain steel products from South Africa and from the United Kingdom.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 3, 1982.

[FR Doc. 82-21622 Filed 8-9-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Affirmative Countervailing Duty Determination; Prestressed Concrete Steel Wire Strand From Brazil

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary affirmative countervailing duty determination.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of prestressed concrete steel wire strand ("PC strand"). The estimated net subsidy is 16.23 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of PC strand from Brazil which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this product in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination by October 15, 1982.

EFFECTIVE DATE: August 10, 1982.

FOR FURTHER INFORMATION CONTACT: Paul J. McGarr, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-1167.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the "Act"), are being provided to manufacturers, producers, or exporters in Brazil of PC strand. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

- IPI rebates for capital investment.
- IPI export credit premium.
- Preferential working capital financing for exports.
- Income tax exemption for export earnings.
- Accelerated depreciation for capital goods manufactured in Brazil.

We estimate the net subsidy to be 16.23 percent *ad valorem*.

Case History

On March 4, 1982, we received a petition from counsel for American Spring Wire Corporation, Florida Wire & Cable Company, Pan American Ropes, Inc. and Shinko Wire America, Inc., filed on behalf of the U.S. industry producing PC strand. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Brazil of PC strand.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on March 30, 1982, we initiated a countervailing duty investigation (47 FR 13396). We stated that we expected to issue a preliminary determination by May 28, 1982. We subsequently determined that the investigation is "extraordinarily complicated," as defined in section 703(c) of the Act, and postponed our preliminary determination for 65 days until August 2, 1982 (47 FR 20652).

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the U.S. International Trade Commission ("ITC") of our initiation. On April 19, 1982, the ITC preliminarily determined that there is a reasonable indication that these imports are materially injuring, or threaten to materially injure, a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C. On May 26, 1982, we received the response to that questionnaire.

Scope of the Investigation

For the purpose of this investigation, the term "prestressed concrete steel wire strand" covers wire strand of steel other than stainless steel for prestressed concrete, as currently provided for in item 642.1120 of the *Tariff Schedules of the United States Annotated*.

Companhia Siderurgica Belgo-Mineira ("Belgo-Mineira") is the only known producer and exporter in Brazil of PC strand to the United States. The period for which we are measuring subsidization is calendar year 1981.

Analysis of Programs

In its response, the government of Brazil provided data for the applicable periods. Based upon our analysis to date of the petition and the response to our questionnaire, we preliminarily determine the following.

I. Programs Preliminarily Determined To Be Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of PC strand under the following programs.

A. IPI Rebates for Capital Investment

Decree Law 1547 (April 1977) provides funding for the expansion of the Brazilian steel industry through a rebate of the Industrialized Products Tax ("IPI"), the Brazilian federal excise tax. Under this tax system, a company determines its liability for the tax at the end of each month. The net tax owed is calculated as the difference between the total IPI the company paid on purchases and the total IPI it collected on domestic sales. Normally, within five months after the end of each month, a company must pay the amount of the net tax owed directly to the Brazilian government. This net IPI tax is the basis for calculating the rebate for investment. A Brazilian steel company may deposit 95 percent of the net IPI tax in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects, and when rebated to the firms constitute tax-free capital reserves which must eventually be converted into subscribed capital. We consider the amount rebated each year as an untied grant received in that year. We allocated the grants over 15 years, the estimated average life of capital assets in integrated steel mills (based on Internal Revenue Service studies of actual experience in integrated mills in the U.S.). Dividing the total benefit for 1981 by the company's total sales for 1981, we calculated an *ad valorem* benefit of 1.83 percent.

B. IPI Export Credit Premium

The IPI export credit premium has been found to be a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981. Currently, the program is scheduled to be phased out in several steps, ending on April 1, 1983.

Exporters of PC strand are eligible for the maximum IPI export credit premium. Up until March 30, 1982, 15 percent of the "adjusted" f.o.b. invoice price of the exported merchandise was reimbursed in cash to the exporter through the bank involved in the export transaction. Subsequently, the government of Brazil reduced the benefit to 14 percent on March 31, 1982, and to 12.5 percent on June 30, 1982.

In calculating the amount the exporter is to receive, several deductions may be made to the invoice price to obtain the "adjusted" f.o.b. value. These adjustments include: any agent commissions, rebates or refunds resulting from quality deficiencies or damage during transit, contractual penalties, and the value of imported inputs. In order to receive the maximum export credit premium, the exported product must consist of a minimum of 75 percent value added in Brazil. If this minimum limit is not met, there is a specific calculation to reduce the f.o.b. invoice price when calculating the base upon which the IPI export credit premium is paid.

The government of Brazil provided us with the amount of the IPI credit received by Belgo-Mineira for the period April 1, 1981 to March 31, 1982, as well as the value of total exports for the same time period. Belgo-Mineira was eligible for the maximum level of IPI credits. Because of some administrative problems, the benefits received were substantially less than that to which Belgo-Mineira was entitled. However, we believe that this situation has changed and that the benefits received by Belgo-Mineira during the above period do not accurately reflect its recent experience. Consequently, we preliminarily determine that a subsidy in the amount of 12.5 percent *ad valorem* exists based on the best information available to us at this time. This is the maximum amount currently available to Belgo-Mineira.

C. Preferential Working Capital Financing for Exports: Resolution 674

Under this program, companies are declared eligible to receive working capital loans by the Department of Foreign Commerce of the Banco Central do Brasil ("CACEX"). These loans may have a duration of up to one year. Firms in the steel industry can obtain this financing at preferential rates for up to 20 percent of the net f.o.b. value of the previous year's exports. We preliminarily determine that such financing is an export subsidy.

The net export value is calculated by taking numerous deductions from the export value of the merchandise, including agent commissions, contractual penalties or refunds, exports denominated in cruzeiros, imported inputs over 20 percent of the export value, and a deduction for the company's trade deficit as a percentage of the value of its exports. In addition, any growth in the cruzeiro value of exports over the previous year will reduce the value of the benefits as a percentage of the current year's exports.

To determine the value of loans in existance under this program during 1981, we prorated any loans that straddled other years. For loans taken out in 1980, only that portion extending into 1981 was included in our calculation. Any 1981 loans extending into 1982 were similarly adjusted. We then divided the total value of these loans by the total value of Belgo-Mineira's exports in 1981 to calculate the amount of preferential financing it received as a percentage of exports.

As in previous Brazilian countervailing duty cases, we are using the rate established by the Banco do Brasil for discounting sales of accounts receivable as the commercial rate for the acquisition of short-term working capital.

Although we are comparing the terms of a loan with the terms of sale of an asset, we have used this comparison because information provided by the government of Brazil indicates that, with the Brazilian financial system, working capital is normally raised through the sale of accounts receivable. Currently, the rate for discounting sales of accounts recivable is 59.6 percent plus a 6.9 percent tax on financial transactions ("IOF"). The subsidy is the difference between the interest rate available under Resolution 674 and the commercial rate. The interest rate on loans under Resolution 674 is 40 percent, with interest payable semiannually and the principal fully payable on the due date of the loan. The effective rate of interest for these loans is 44 percent. These loans are also exempt from the IOF. Therefore, the differential between these two types of financing is 22.5 percent. When multiplying this differential by the amount of preferential financing received as a percent of exports, we calculated an *ad valorem* export subsidy of 1.06 percent.

D. Income Tax Exemptions for Export Earnings

Exporters of PC strand are eligible to participate in this program, under which the percentage of their profit

attributable to export revenue is exempt from income tax.

To arrive at this percentage, export revenue is divided by total revenue. The amount of profit exempt from the income tax is then multiplied by the 35 percent corporate income tax rate to determine the amount of the benefit.

In a program of this kind, benefits cannot be determined with finality until the books are closed sometime in the following year. Therefore, we must look at fiscal year 1980 income tax returns to determine if any benefit was received in fiscal year 1981. Belgo-Mineira received benefits under this program in 1981. By dividing the benefit received by the value of exports, we calculated an *ad valorem* export subsidy of 0.52 percent.

E. Accelerated Depreciation for Capital Goods Manufactured in Brazil

This program is available to companies that purchase Brazilian-made capital equipment, as part of an expansion project approved by the Industrial Development Council ("CDI"). Although nominally available to all companies, firms can obtain approval only if projects meet at least one of several national interest criteria, including development of certain regions of the country. In addition, it is not clear on the basis of information presently available to us that this program is in fact available to all applicants on the same terms. In view of the probability that project approval is discretionary and that in practice this type of accelerated depreciation is not nondiscriminatorily permitted on a country-wide basis, we have preliminarily determined that this program is not generally available on equal terms and consequently confers a subsidy within the meaning of section 771 of the Act.

This program allows depreciation of equipment at twice the rate normally permitted under tax laws. However, once the asset has been fully depreciated at this accelerated rate, it is then appreciated (adding to taxable income) in order to repay the benefit received earlier. This is accomplished by keeping a record of both the amount depreciated and the amount appreciated, with the yearly balances adjusted by the indexing factor. As with the income tax exemption for export earnings, the tax benefit received under this program in a particular fiscal year equals the amount by which total depreciation exceeds appreciation in the prior fiscal year. The government of Brazil states that Belgo-Mineira utilized the accelerated depreciation provisions for fiscal year 1980, and enjoyed a tax benefit in 1981. By dividing the benefit received by the total value of sales, we calculated an *ad valorem* benefit of 0.32 percent.

II. Programs Preliminarily Determined Not To Be Subsidies

We preliminarily determine subsidies are not being provided to manufacturers, producers, or exporters in Brazil of PC strand under the following programs.

A. Regional Development Investment Subsidy From Credit to the Corporate Income Tax

Brazilian tax law allows any corporation that owes corporate income taxes to elect to apply up to 51 percent of its corporate income taxes owed to the government to specified investment funds. The investment funds generally are for the economic development of certain regions, industries, or national interests (e.g., the Amazon, the Northeast, fisheries, tourism and reforestation). The steel industry is not among the targeted sectors. If a corporation elects to direct the taxes it owes to the government into one or more of the specified investment funds, it receives stock for its investment in those funds. Upon receipt of the stock, which must be held at least five years, the investment is included in the equity holdings of the corporation. Belgo-Mineira has taken part in this program, but not during 1981. We preliminarily determine that election to participate in this program does not constitute a subsidy since all corporations which pay corporate income taxes are eligible to participate in the program on equal terms.

B. Long-Term Loans

Belgo-Mineira has long-term loans from various sources in both domestic and foreign currencies. The loans in foreign currencies have interest rates ranging between 0.5 percent to 2.25 percent above LIBOR, which are typical rates for such loans in Brazil. The government of Brazil states that long-term financing in cruzeiros is generally available only through government-controlled fiancial institutions. Belgo-Mineira has received loans from FINAME, a program of the government-controlled National Development Bank ("BNDE"), for the purchase of capital equipment produced in Brazil. These loans have real interest rates ranging from 8 to 11 percent, with the principal fully adjusted by the indexing factor.

FINAME loans are available to a wide variety of sectors in Brazil. While the steel industry is one of the chief recipients, this appears to be warranted in view of the capital requirements of a large capital-intensive industry. Other large capital-intensive industries have received loans in similar proportions. In addition, numerous other sectors have also received loans from FINAME during this period. We do not have a benchmark in Brazil for comparing the interest rates on these loans, because of a lack of alternate sources for such financing. However, the real interest rates of 8 to 11 percent are quite high by international standards. Based on the general availability of these loans, we preliminarily determine that these loans do not constitute a subsidy.

C. Transportation Subsidies

The Brazilian government, in its response to our questionnaire, states that Belgo-Mineira receives no preferential rates when using railroad and ports. We have no evidence that any programs exist which gives preferential freight rates to steel exporters.

D. Income Tax Deductions for Employee Training and Meals

Belgo-Mineira has a tax deductible training program for which it has taken deductions for training costs, but it has never had a tax deductible meal plan. The maximum deduction for training of taxes owed, although the combined deducation may not exceed 10 percent to taxes owed. The government of Brazil states that under applicable tax law any manufacturer, without sectoral preference, may take the above deductions for training and meal expenditures for employees. Consequently, we preliminarily determine that the benefits conferred under this program are not countervailable because they are generally available on equal terms.

III. Programs Preliminarily Determined Not To Be Utilized

We preliminarily determine that the following programs, alleged by the petitioners to confer subsidies, were not utilized by the manufacturers, producers, or exporters in Brazil of PC strand.

A. The Commission for the Granting of Fiscal Benefits for Special Export Programs ("BEFIEX")

BEFIEX grants several types of

benefits to companies that are part of certain targeted industries and that sign contracts that include specific export commitments. These benefits include the following: a reduction of between 70 percent and 90 percent of the import duties and the IPI tax on the import, of machinery, equipment, apparatus, instruments, accessories and tools necessary to meet the approved export commitment; an extension of the period for carrying tax losses forward from four to six years, provided no dividends are paid during that time; and amortization of pre-operational expenses of BEFIEX projects at the discretion of the company rather than the normal straight-line amortization over ten years. As a general rule, companies that sign BEFIEX contracts guaranteeing these and any other benefits must make an export commitment that over the life of the project it will generate export earnings of the least three times the value of imports for the project. The government of Brazil states that the steel industry in Brazil has been developed primarily to supply the domestic market. Since Belgo-Mineira exports only a small portion of its production, it is not in a position to make the required export commitments. Belgo-Mineira received no benefits from this program in 1981.

B. Industrial Development Council ("CDI") Program

This program allowed an exemption of 80 percent of the customs duties and 80 percent of the IPI tax on certain imported machinery for projects approved by the CDI. Decree Law 1726 repealed this program in 1979 and no new projects are eligible for these benefits. However, companies with projects approved prior to repeal may still receive these benefits pending the completion of the project. The government of Brazil states that Belgo-Minera did not receive such benefits during 1981.

C. Deductions From Income Tax for Foreign Market Expenditures

The government of Brazil states that expenses incurred abroad in connection with export sales are deductible for income tax purposes in the same way that similar expenses incurred on domestic sales are deductible. Belgo-Mineria did not deduct any such expenses incurred on export sales in 1981.

Verification

In accord with section 776(a) of the Act, we will verify data used in making our final determination.

Suspension of Liquidation

In accord with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of PC strand from Brazil which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise in the amount of 16.23 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on September 1, 1982, at the U.S. Department of Commerce, Room 3080, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by August 25, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within thirty days of this notice's publication, at the above address and in at least ten copies.

August 2, 1982.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-21621 Filed 8-9-82; 8:45 am]

BILLING CODE 3510-25-M

Sodium Nitrate From Chile; Postponement of Antidumping Duty Preliminary Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of antidumping duty preliminary determination.

SUMMARY: The antidumping duty preliminary determination involving sodium nitrate from Chile is being postponed because the investigation has been determined to be extraordinarily complicated. We intend to issue the antidumping duty preliminary determination no later than November 8, 1982.

EFFECTIVE DATE: August 10, 1982.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; (202) 377-3965.

Postponement

On May 6, 1982, we announced the initiation of an antidumping duty investigation to determine whether sodium nitrate from Chile is being, or is likely to be, sold in the United States at less than fair value. The notice of initiation of antidumping duty investigations state that if the investigation proceeds normally we will issue a preliminary determination on or before September 20, 1982.

As detailed in the notice of initiation of antidumping investigation, the petition alleges that sodium nitrate from Chile is being, or is likely to be, sold in the United States at less than fair value. The number of the transactions to be investigated and adjustments to be evaluated are considerable. We have determined that the parties concerned are cooperating, and that additional time is necessary to make the antidumping preliminary determination. For these reasons we find that these cases are extraordinarily complicated in accordance with section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the "Act"), and we postpone the antidumping duty preliminary determination to not later than November 8, 1982.

This notice is published pursuant to section 733(c)(2) of the Act.

August 3, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-21648 Filed 8-9-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program (NVLAP); Report of Accreditation Actions for July 1982

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcement of accreditation action.

SUMMARY: The National Bureau of Standards (NBS) announces the renewal of accreditation to the laboratory named herein, as being competent to perform specific tests on freshly mixed field concrete under the National Voluntary Laboratory Accreditation Program (NVLAP). This laboratory, whose initial accreditation expired on December 31, 1981, is accredited only for the specific tests listed in this notice.

No other accreditation actions under the NVLAP were taken by NBS during the month of July 1982.

TERM: This accreditation was granted for a term beginning on July 8, 1982, and is valid through December 31, 1982, except that the accreditation may be revoked before the expiration date in the event of violation of the criteria or other conditions of the laboratory's accreditation, or otherwise terminated at the request of the laboratory.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Locke, Manager, Laboratory Accreditation, TECH B141, National Bureau of Standards, Washington, DC 20234, (301) 921–3431. (*Note:* the new room and telephone number which shall serve for all communications with Mr. Locke and the NVLAP staff.)

SUPPLEMENTARY INFORMATION: The general and specific criteria to which the laboratory identified below conforms are described in sections 7a.19–7a.30 of the NVLAP Procedures (46 FR 37034–37036, dated July 17, 1981).

Accreditation Action of July 8, 1982

The laboratory and the test methods for which accreditation was granted are:

GENERAL TESTING LABORATORIES, INC., ATTN: LARRY POISNER, 1517 WALNUT STREET, KANSAS CITY, MO 64108, PHONE: (816) 471–1205

NVLAP code	Test method designation	Short title (property) subtitle (if applicable)
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field.
02/M03	ASTM C172	Sampling Fresh Concrete.
02/P01	ASTM C143	Slump of Portland Cement Concrete.
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete.

GENERAL TESTING LABORATORIES, INC., ATTN: LARRY POISNER, 1517 WALNUT STREET, KANSAS CITY, MO 64108, PHONE: (816) 471–1205—Continued

NVLAP code	Test method designation	Short title (property) subtitle (if applicable)
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method.
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens.

Accredited Laboratories

Including the laboratory identified in this notice, a total of one hundred and four laboratories are currently accredited under NVLAP. NVLAP accreditation shall not relieve the laboratories from the necessity of observing and being in compliance with existing Federal, State, and local statutes, ordinances, and regulations that may be applicable to the operations of the laboratory, including consumer protection and antitrust laws. For a list of NVLAP accredited laboratories, contact the NVLAP Manager at the address shown above.

Dated: August 5, 1982.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 82–21594 Filed 8–9–82; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 2614–106]

Standard on Computer Data Integrity; Proposed Federal Information Processing Standard

Under the provisions of Public Law 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce (Secretary) is authorized to establish uniform Federal automatic data processing standards. This announcement proposes, as a Federal Information Processing Standard, specifications for two crytographic authentication algorithms for use in ADP systems and networks. The authentication algorithms make use of the Data Encryption Standard (DES) cryptographic algorithm as defined in Federal Information Processing Standard (FIPS RUB) 46.

The proposed Federal Information Processing Standard contains two basic sections: (1) An announcement section which provides information concerning applicability and implementation of the standard, and (2) a specification section which defines the technical parameters of the standard. Only the announcement section is provided in this notice.

In order to ensure that all parties have an opportunity to present their views, the National Bureau of Standards (NBS) is soliciting comments on the proposed standard before submitting the standard to the Secretary for review and approval. Interested parties may obtain a complete copy of the proposed standard, any may also submit comments, by writing to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Attn: Computer Data Integrity, Washington, D.C. 20234. To be considered, comments on this proposed standard must be received in writing on or before November 8, 1982.

Written comments received in response to this notice plus written comments obtained from Federal departments and agencies will be made part of the public record and will be made available for inspection and copying in the Department's Central Reference and Records inspection Facility, Room 6628, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, D.C. 20230. Persons desiring more information about this proposed standard may contact Miles E. Smid, (301) 921–3427.

Dated: August 5, 1982.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication——

(Date)——————

Announcement of the Standard on Computer Data Integrity

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard: Standard on Computer Data Integrity (FIPS PUB—).

Category of Standard: ADP Operations, Computer Security.

Explanation: This standard specifies a Data Authentication Algorithm (DAA) which may be used to detect unauthorized modifications, both intentional and accidental, of data that is transmitted or stored in either plain text or cipher text form. In addition, the standard specifies a Modification Detection Encryption Algorithm (MDEA) for both the authentication and the encryption of data using a single cryptographic key. The standard is based on the algorithm specified in the Data Encryption Standard (DES), Federal Information Processing Standards Publication (FIPS PUB) 46. The examples given in Appendix 2 and Appendix 3 may be used

when validating implementations of this standard.

Approving Authority: Secretary of Commerce.

Maintenance Agency: U.S. Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

Cross Index

(Proposed) American National Standards Institute (ANSI) Standard, "Financial Institution Message Authentication," X9 Doc. 8869A, Draft #13.

FIPS PUB 1–1, "Code for Information Interchange," December 24, 1980.

FIPS PUB 46, "Data Encryption Standard," January 15, 1977.

FIPS PUB 74, "Guidelines for Implementing and Using the NBS Data Encryption Standard," April 1, 1981

FIPS PUB 81, "DES Modes of Operation," December 2, 1980.

(Proposed) Federal Standard 1026, "Telecommunications: Interoperability and Security Requirements for use of the Data Encryption Standard in the Physical and Data Link Layers of Data Communications," June 1, 1981.

(Proposed) Federal Standard 1027, "Telecommunications: General Security Requirements for Equipment Using the Data Encryption Standard," July 15, 1981.

Applicability: This standard shall be used or specified by Federal departments and agencies whenever an authorized official or manager responsible for data security or the security of any computer system determines that cryptographic authentication is needed for the detection of intentional modifications of data, unless the data is classified according to the National Security Act of 1947, as amended, or the Atomic Energy Act of 1954, as amended.

In all cases, the authorized agency official shall determine that any cryptographic authentication system perfoms at least as well as those specified in this standard. Use of this standard is also encouraged in private sector applications of cryptographic authentication for data integrity.

Implementation: The DAA and MDEA, including the portions defined by the DES, may be implemented in hardware, firmware, software, or any combination thereof.

Implementation Schedule: This standard become effective six months after publication of a notice in the Federal Register of its adoption by the Secretary of Commerce.

Export Control: Cryptographic devices and technical data regarding them are subject to Federal government export controls either as specified in Title 22, Code of Federal Regulations, Parts 121 through 128, or in Title 15, Code of Federal Regulations, Parts 368 through 399, as applicable. Any exports of cryptographic devices implementing this standard and technical data regarding them must comply with these Federal regulations.

Patents: Cryptographic equipment implementing this standard may be covered by U.S. and foreign patents.

Specifications: Federal Information Processing Standard (FIPS ———), Standard on Data Integrity (affixed).

Waivers: Heads of agencies may request that the requirements of this standard be waived in instance where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and when the overall interests of the Federal government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must specify anticipated performance and cost advantages in the justification for the waiver. Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver of this standard. No agency shall take any action to deviate from this standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall implement or procure equipment or software using a cryptographic authentication algorithm not conforming to this standard unless a waiver has been approved.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication —— (FIPS PUB ——), and title. When microfiche is desired, this should be specified. Payment may be made by check, money order, credit card, or deposit account.

[FR Doc. 82–21593 Filed 8–9–82; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Notice of Modification of Permit No. 260 (P132A)

On March 2, 1982, Notice was published in the **Federal Register** (47 FR 8808) that a modification to Permit No. 260 issued to the Point Reyes Bird Observatory, 4990 Shoreline Highway, Stinson Beach, California 94970 was requested.

Notice is hereby given that pursuant to § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals, Scientific Research Permit No. 260 is modified in the following manner:

Section A–1 is changed to read: "1. 4,200 northern elephant seals *(Mirounga angustirostris)* may be taken, tagged, marked, and released."

Section B–2 is changed to read: "2. The research authorized shall be conducted on Point Reyes/Farallon Islands Marine Sanctuary."

The modification is effective August 10, 1982.

The Permit, as modified, is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 4, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82–21589 Filed 8–9–82; 8:45 am]

BILLING CODE 3510–22–M

Salmon and Steelhead Advisory Commission; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: Meeting of the Salmon and Steelhead Advisory Commission.

DATE: September 8, 1982. The meeting will convene at 10:00 a.m. and continue until 5:00 p.m. A public comment period will be provided at 1:30 p.m. Limited seating is available.

ADDRESS: Columbia River Inter-Tribal Fish Commission, 8383 N.E. Sandy Boulevard, Room 110, Portland, Oregon 97220; (503) 257–0181.

MEETING AGENDA: The Commission will meet to consider issues, problems, and concerns regarding the salmon resource and which need to be resolved in order to provide coordinated management, research, enforcement and enchancement. The Commission will also consider other matters appropriate to its responsibilities.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, Regional Director, National Marine Fisheries Services, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115; telephone (206) 527–6150.

Dated: August 5, 1982.

Robert K. Crowell,

Deputy Executive Director.

[FR Doc. 82–21646 Filed 8–9–82; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Level for Certain Cotton Fabrics From the People's Republic of China

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Amending the bilateral agreement to include a specific ceiling of 167,000,000 square yards for cotton

printcloth in Category 315 combined with Category 320 pt. (only T.S.U.S.A. number 326.0092), produced or manufactured in the People's Republic of China and exporting during the period which began on January 19, 1982 and extends through December 31, 1982.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 112, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654)).

SUMMARY: Under the terms of the paragraph 8 of the Bilateral Cotton, Wool, and man-Made Giver Textile Agreement of September 17, 1980, as amended, between the Governments of the United States and the People's Republic of China, the two governments have consulted and agreed to amend the agreement further to include a specific ceiling of 167,000,000 square yards for cotton textile products in Category 315 combined with Category 320 pt. (only T.S.U.S.A. Number 326.0092) during the period which began on January 19, 1982 and extends through December 31, 1982. It was also agreed that no swing would be available for this combined category during the January 19-December 31, 1982 period. The levels established for Categories 315 and 320 during the twelve-month period which, began on January 19, and extends through January 18, 1983 are being cancelled; however, shipments in excess of the levels established for the two categories during the ninety-day period which began on October 21, 1981 and extended through January 18, 1982 will be charged, as applicable, to the new level.

EFFECTIVE DATE: August 9, 1982.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On June 14, 1982, there was published in the Federal Register (47 FR 25560) a letter dated June 8, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for cotton textile products in Categories 315 and 320, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on October 21, 1981 and extended through January 18, 1982 and the twelve-month period which began on January 19, 1982 and extended through January 18, 1983.

The letter published below cancels and supersedes that portion of the letter of June 8, 1982, which established levels for the two categories during the twelve-month period which began on January 19, 1982 and extends through January 18, 1983, and establishes instead a new level of 167,000,000 square yards for cotton textile products in Category 315 combined with Category 320 pt. (only T.S.U.S.A. number 326.0092) for the period which began on January 19, 1982 and extends through December 31, 1982. The new level has not been adjusted to account for any import during the period which began on January 19, 1982 and extends to the effective date of this directive. As the date become available, such adjustments will be made.

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive cancels and supersedes that portion of the directive of June 8, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption, of cotton textile products in Categories 315 and 320, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 19, 1982 and extends through January 18, 1983, in excess of the designated levels of restraint.

Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 17, 1980, as amended, between the Governments of the United States and the People's Republic of China and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on August 2, 1982 and for the period which began on January 19, 1982 and extends through December 31, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 315 combined with 320 pt. (only T.S.U.S.A. number 326.0092), produced or manufactured in the People's Republic of China and exported on and after January 19, 1982, in excess of 167,000,000 square yards.[1]

In carrying out this directive, entries of cotton textile products in Category 315 combined with Category 320 pt. (only T.S.U.S.A. number 326.0092), produced or manufactured in the People's Republic of China, which have been exported to the United States on and after October 21, 1981 and extending through January 18, 1982, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for cotton textile products in Categories 315 and 320 during that ninety-day period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926) and May 13, 1982 (47 FR 20654)).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports of cotton textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-21625 Filed 8-9-82; 8:45 am]

BILLING CODE 3510-25-M

[1] The level of restraint has not been adjusted to account for any imports after January 18, 1982.

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc., Proposed Rules Relating to Exchange Speculative Position Limits; Correction

In FR. Doc. 82–19630 appearing at page 31417, in the issue of Tuesday, July 20, 1982, make the following corrections:

1. On page 31419, third column, under Rule 524, ninth line, "Greater Position Limit" should have read, "Greater Side Position Limit."

2. Also, "member of member firm" should have read "member or member firm" on page 31419, third column, under Rule 524, lines nineteen and twenty-three; page 31420, first column, lines third-three, fifty-two and fifty-eight, second column, lines six, forty-eight and seventy, third column, line four.

3. On page 31420, second column, twenty-first line, "know" should have read "knows."

4. On page 31420, second column, twenty-fourth line, delete "or other party

to the cash," line should read "cash or other."

August 3, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-21596 Filed 8-9-82; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange Proposal To Trade Commodity Options; Availability

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability on the proposed terms and conditions of the Chicago Mercantile Exchange Application to trade options on the Standard & Poor's 500 Stock Price Index futures contract.

SUMMARY: Eight domestic boards of trade submitted applications to trade options on commodity futures contracts under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"), 46 FR 62893 (December 29, 1981); correction, 47 FR 223 (January 5, 1982). Three boards of trade subsequently withdrew their original proposals and submitted new applications, 47 FR 18639 (April 30, 1982); extension of comment period, 47 FR 26426 (June 18, 1982). On July 1, 1982, the Chicago Mercantile Exchange ("CME") also withdrew its original proposal to trade options on domestic certificate of deposit futures contracts and submitted a new application to trade options on the Standard & Poor's 500 Stock Price Index futures contract. The Commission believes that public comment on this proposal is in the public interest, and is consistent with its options regulations, 46 FR 54500 (November 3, 1981), and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before September 9, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the Chicago Mercantile Exchange application to trade options on the Standard & Poor's 500 Stock Price Index futures contract.

FOR FURTHER INFORMATION CONTACT: Eugene Moriarty, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-7303; or Linda Kurjan, Esquire, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254-8955.

A copy of the terms and conditions of the CME proposal to trade options on the Standard & Poor's 500 Stock Price Index futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

Other materials submitted in support of the CME application to trade options on the Standard & Poor's 500 Stock Price Index futures contract may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of these applications to trade options on futures contracts or with respect to other materials submitted in support of these applications, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by [thirty (30) days after publication]. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on August 4, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-21601 Filed 8-9-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: August 26-27, 1982.

ADDRESS: Department of Education, 400 Maryland Avenue SW., Room 3000, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Laverne Johnson, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs, Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202 (202) 472-6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The meeting of the Council is open to the public. The meeting is scheduled for 9 a.m. to 4:30 p.m. on August 26 and will continue on August 27 from 9 a.m. to 12:30 p.m.

The proposed agenda includes:

—Discussion on the Federal Role in Education
—Discussion on Department of Education/Foundation for Education Assistance Proposal
—Briefing on Block Grants

Records are kept of all Council proceedings, and are available for public inspection at the office of the Intergovernmental Advisory Council on Education, 400 Maryland Avenue SW., Room 1079, Washington, D.C.

Signed at Washington, D.C. on August 4, 1982.

William F. Keough,

Acting Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 82-21567 Filed 8-9-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

West Coast Oil Co.; Proposed Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to West Coast Oil Co. and opportunity for objection

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that a Proposed Remedial Order (PRO) was issued on July 30, 1982, to West Coast Oil Company, P.O. Box 5475, Oildale, California 93308. Any aggrieved person may file a Notice of Objection to the Proposed Remedial Order in accordance with 10 CFR 205.193 on or before August 25, 1982.

West Coast Oil Company was the owner and operator of a refinery located in Oildale, California, during the period from October 1973 through January 1976, which is the audit period of concern.

By this PRO, ERA sets for the proposed findings of fact and conclusions of law concerning West Coast's pricing of refined petroleum products under the refiner price rules in 10 CFR Part 212, Subpart E between October 1973 and January 1976. West Coast is alleged to have overcharged its general refinery product and distillate customers by $2,300,131 in voilation of the Mandatory Petroleum Price Regulations.

Specifically, West Coast is charged with (1) improperly revising its crude oil costs for the base month of May 1973 by impermissibly prorating the proceeds from "sales" of fee-exempt oil import licenses rather than reporting these proceeds in the months in which the oil was imported under the licenses, and (2) improperly claiming non-product cost increases without prenotifying DOE of its intention to pass through these cost increases. As a remedy, West Coast would be directed to refund the full amount of overcharges during the audit period, plus interest.

Requests for copies of the Proposed Remedial Order, with confidential information deleted, should be directed to: Patrick J. O'Hern, Director, San Francisco Office, Economic Regulatory Administration, United States Department of Energy, 333 Market Street, Sixth Floor, San Francisco, California 94105.

Aggrieved persons may object to this Proposed Remedial Order by filing a "Notice of Objection to the Proposed West Coast Remedial Order." This notice must comply with the requirements of 10 CFR 205.193. To be considered, a Notice of Objection must be filed with: Office of Hearings and Appeals, Department of Energy, 12th and Pennsylvania Avenue, N.W. Washington, D.C. 20461.

The Notice must be filed, in duplicate, by 4:30 p/m/ e.d.t. on or before August 25, 1982, or the first federal workday thereafter.

In addition, a copy of the Notice of Objection must, on the same day as filed, be served on West Coast Oil Company and on each of the following persons, pursuant to 10 CFR 205.193(c):

Patrick J. O'Hern, Director, San Francisco Office, Economic Regulatory Administration, United States Department of Energy 333 Market Street, Sixth Floor, San Francisco, California 94105

George Kielman, Deputy Solicitor, Office of Special Counsel, United States Department of Energy, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

No data or information which is confidential shall be included in any Notice of Objection.

Issued in San Francisco, California on the 30th day of July, 1982.

Patrick J. O'Hern,

Director, San Francisco Office, Economic Regulatory Administration.

[FR Doc. 82-21574 Filed 8-9-82; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With the Standard Oil Co. (Ohio)

AGENCY: Economic Regulatory Administration.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Office of the Special Counsel (OSC) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with The Standard Oil Company ("Sohio"). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations for the period August 19, 1973 through January 27, 1981, when crude oil and petroleum products were decontrolled by Executive Order 12287, 46 FR 9909 (January 30, 1981). To remedy any violations that may have occurred during the period, Sohio has agreed to make payments totalling $15,000,000.

As required by the regulation cited above, OSC will recieve comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or, if appropriate, issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 p.m. on September 9, 1982. Address comments to: Sohio Consent Order Comments, Department of Energy, RG-30, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, RG-30, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, Phone: (202) 633-9358.

Copies of the Consent Order may be received free of charge by written request to:

Sohio Consent Order Request, Department of Energy, RG-30, Room 5109, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, Room 1E-190, Washington, D.C. 20585, between the hours of 8:00 a.m.-4:00 p.m.

SUPPLEMENTARY INFORMATION: Sohio is a petroleum refiner subject to the jurisdiction of the OSC to determine compoinace with the DOE Petroleum Price and Allocation Regulations (Regulations). During the period covered by the Consent Order, Sohio engaged in, among other things, the importation, production, refining and marketing of crude oil and refined petroleum products. An audit conducted by OSC of Sohio included a review of Sohio's records relating to its compliance with the Regulations during the period August 19, 1973 through January 27, 1981. During the audit, questions and issues were raised and enforcement documents were issued. Except for the matters excluded from the settlement in the Consent Order, this Consent Order resolves all administrative and civil issues not previoulsy resolved concerning the allocation and sale of covered petroleum products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Sohio's compliance with the applicable Regulatins; however, Sohio's rights or obligations under the Entitlements Program; the issues or claims pending or arising out of the subject matter now before the courts in *Stelbar Oil Corp., Inc. and The Standard Oil Company* v. *DOE, et. al,* C.A. No. 78-1176 (D. Kan.) (consolidated in *In re: The Department of Energy Stripper Well Exemption Litigation,* MDL 378 (D. Kan.), *appeal pending, Energy Reserves Group, Inc., et. al* v. *DOE,* No. 10-39 (TECA; *argued* April 9, 1982)); and Sohio's rights concerning receipt of moneys under 10 C.F.R. Part 205, Subpart V or similar proceedings are not covered by this Consent Order. OSC's audit reviewed Sohio's pricing and allocation policies and procedures and the manner in which Sohio applied the Regulations with respect to, among other things, its importation, production,

refining, and sale of crude oil and covered products.

At the conclusion of the audit, OSC raised certain issues with respect to Sohio's compliance with the Regulations. Notwithstanding DOE's position to the contrary, Sohio maintains that it has correctly construed and applied the Regulations. The parties, however, desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Sohio audit, and thus, that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any violations that may have occurred during the audit period, Sohio has agreed to payments totalling $15 milion. First, within fifteen (15) days after Consent Order has been made effective, Sohio shall remit $5,000,000 to DOE for deposit in the U.S. Treasury as miscellaneous receipts. Also within fifteen (15) days after the effective date of the Consent Order, Sohio shall pay $10,000,000 to those states within which Sohio sold refined petroleum products during the period covered by the Consent Order. Each state's share of the $10 million, which will be paid to each state's treasurer, will be based on the portion of all covered petroleum products sold by Sohio during the period covered by the Consent Order that was sold in each state.

Because of the complexity of the marketing system for crude oil and refined petroleum products and the uncertainties concerning the effects of the Federal petroleum price and allocation regulations on the prices and recoveries of such products, DOE has not been able to identify any specific purchaser who may have been injured or, furthermore, to determine the amount by which such purchaser was injured. DOE and Sohio have explored the extent to which types of classes of purchaser could be identified or their injury determined. The nature of the findings of DOE's audit, in which issues were raised with regard to Sohio's sales of crude oil and its cost calculations under the refiner price rule, resulted in our conclusion that the most effective form of restitution is a distribution of the funds attributable to the refiner issues to those states in which Sohio marketed covered products during the period of the Consent Order. The $5 million attributable to the crude oil issues will be paid into the Treasury inlight of the fact that the effect of a sale to a refiner with an allegedly improper certification is ameliorated by the Entitlements Program.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Among other things, DOE reserves the right to initiate enforcement proceedings and to seek appropriate penalties for any newly discovered regulatory violations committed by Sohio, but only if Sohio knowingly concealed such violations. Thus, DOE would be free to institute enforcement proceedings where, for example, Sohio had misled DOE during the course of an audit.

Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Sohio has waived its right to administrative or judicial appeal. The Consent Order does not constitute an admission by Sohio or a finding by OSC of a violation of any Federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. September 9, 1982 will be considered by OSC before determining whether to adopt the Consent Order as a final order. Any modifications to the Consent Order that, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment. If, after consideration of public comments, DOE determines to issue the Consent Order as a final order, the Consent Order will be made final and effective by actual notice to that effect to Sohio. Pursuant to 10 CFR 207.199J(c), DOE will thereafter promptly publish in the **Federal Register** notice of any action taken on this Consent Order and an appropriate explanation of the action.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C. August 4, 1982.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 82-21575 Filed 8-9-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be obtained under the above mentioned agreements, for the following transfers of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: From Sweden to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing, 507 irradiated fuel assemblies, containing 90,000 kilograms of uranium, enriched to 0.9% in U-235, and 670 kilograms of plutonium from the Barseback Power Stations 1 and 2, and 48 irradiated fuel assemblies from the Ringhals Power Station 2 containing 21,888 kilograms of uranium enriched to approximately 0.61% in U-235 and 199.4 kilograms of plutonium. These subsequent arrangements are designated as RTD/EU(SW)-67, and RTD/EU(SW)-68, respectively.

The Department of Energy has received letters of assurance from the Government of Sweden that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as

amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: August 5, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-21616 Filed 8-9-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51414A; TSH-FRL 2185-8]

Complex Quaternary Ammonium Chloride; Premanufacture Notice, Extention of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) P-82-340, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on November 3, 1982. The PMN was submitted for a chemical which will be imported and which is known generically as a complex quaternary ammonium chloride. It will be used as a dyeing aid for textiles.

FOR FURTHER INFORMATION CONTACT: June Thompson, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. M-2610, 401 M St., SW., Washington, D.C. 20460, (202-755-9190).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a premanufacture notice (PMN) to EPA 90 days prior to commencement of manufacture or import. Under section 5(c) EPA may extend the notice period for good cause for additional periods, not to exceed an aggregate of 180 days from the date of receipt.

On May 7, 1982 EPA received PMN P-82-340 for a chemical to be imported and which is known generically as a complex quaternary ammonium chloride. The submitter stated that the substance would be used as a textile dyeing aid. The submitter claimed its identity, the specific chemical identity, the specific use, and the estimated import volume to be confidential business information. Notice of receipt of the PMN was published in the **Federal Register** of May 21, 1982 (47 FR 22214). The original 90-day review period was scheduled to expire on August 5, 1982.

EPA's detailed analysis of the substance described in PMN P-82-340 addressed the following: effects on bacteria in activated sludge systems, effects on aquatic organisms, environmental fate, release to activated sludge systems, release to the environment, degree of risk relative to available commercial substitutes, potential marketability, and the identification of other information which may be required to resolve outstanding issues.

As a result of this analysis, EPA has reason to believe the following:

1. Significant quantities of the PMN substance may be released to water treatment facilities using activated sludge systems.

2. The PMN substance may be acutely toxic to bacteria in activated sludge systems.

3. The PMN substance may be released to surface waters.

4. The PMN substance may be acutely toxic to aquatic organisms.

Based on its analysis to date, EPA finds that there is a possiblity that the substance submitted for review in PMN P-82-340 may be regulated under section 5(e) of TSCA. The Agency requires an extension of the review period to further investigate actual use conditions, to refine exposure and release estimates, to evaluate the need for additional data, to examine its regulatory options, and to prepare the necessary documents should regulatory action be required. An administrative order under section 5(e) if adopted as an Agency option, must be issued no later than 45 days prior to expiration of the review period. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to November 3, 1982.

PMN P-82-340 is available for pubic inspection in Room E-106, at the EPA Headquarters, address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday. Information claimed to be confidential by the submitter has been deleted from the documents in the public record.

Dated: August 2, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-21586 Filed 8-9-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 82-496, File No. BPCT-801023KG; BC Docket No. 82-497, File No. BPCT-801229KJ]

CELA, Inc. and Irving Texas T.V., Inc.; Applications For Construction Permit

In re applications of CELA, Inc., Irving, Texas (BC Docket No. 82-496), File No. BPCT-801023KG), Irving Texas T.V., Inc., Irving, Texas (BC Docket No. 82-497, File No. BPCT-801229KJ), For a Construction Permit; Hearing designation order designating applications for consolidated hearing on stated issue.

Adopted: July 23, 1982.

Released: August 5, 1982.

By the Chief, Broadcast Bureau.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration: (a) the above-captioned mutually exclusive applications of CELA, Inc. (CELA) and Irving Texas T.V., Inc. (ITTV) for a new commercial television station to operate on Channel 49 in Irving, Texas; (b) a conditional opposition to receipt of amendment to ITTV's application filed by CELA, plus a response to the conditional opposition, and (c) an informal objection to ITTV's application filed by Robert H. Walton.[1]

Application of Irving Texas T.V., Inc.

2. *Opposition to Amendment.* On May 5, 1982, CELA filed a conditional Opposition to Receipt of Amendment. The subject amendment filed by ITTV on April 26, 1982, proposed to change the transmitter site from a short-spaced one to one which is fully spaced. The amendment was filed in response to a Commission letter instructing ITTV to amend to a fully-spaced site or risk dismissal of its application. CELA's pleadings opposes the acceptance of the amendment unless the Commission denies ITTV the comparative coverage preference which it might otherwise receive since its proposal covers a significantly larger area than CELA's.

3. The applications of CELA and ITTV (prior to amendment) indicate that there would be a significant difference in the size of the areas within the proposed

[1] Pleadings were filed relating to ITTV's original proposed short-spaced transmitter site. However, they have been rendered moot by ITTV's amended application which now proposes a fully spaced site. The moot pleadings are as follows: (1) CELA's petition to deny ITTV's application, (2) an informal objection to ITTV's application filed by the Association of Maximum Service Telecasters, Inc., and (3) related pleadings. Hence, these pleadings will not be discussed in this Order.

Grade B contour of each of the applicants. ITTV's amendment, however, made no significant change in the size of the area within its proposed Grade B contour, although the actual areas differ slightly. Thus, whatever superior coverage advantage ITTV may have had when it filed its short-spaced application remains unchanged by the amendment. Therefore, we will not preclude consideration of comparative coverage since the amendment changed nothing in that respect. If, however, it develops that there is a substantially greater population within ITTV's amended coverage area than there was within the area prior to amendment, ITTV may not claim the increased population. The public interest requires that the Commission be able to consider superiority in area and population, but only to the extent that superiority was not achieved through amendment required by the Commission to cure an initially defective application. The areas and populations within applicants' respective Grade B coverage areas, subject to the above limitation, together with the availability of other primary television services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

4. *Walton's Informal Objection.* An informal objection was filed against ITTV's application by Robert H. Walton, alleging that ITTV's president, director and sole stockholder, Malcom Glazer, is not qualified to be a broadcast licensee. In support of his objection, Walton alleges that (1) Mr. Glazer has been the object of community criticism because of his programming policies as licensee of WRBL–TV, Columbus, Georgia; (2) that a charge against Columbus Broadcasting Co. (Mr. Glazer is the sole stockholder) has been filed with the EEOC and (3) that in 1978, Mr. Glazer acted irresponsibly in connection with the ascertainment effort when applying for WRBL–TV. Mr. Walton has failed to allege sufficient facts to raise an issue with respect to Mr. Glazer's qualifications to be a broadcast licensee. First, the renewal application of WRBL–TV was granted on March 23, 1982. Hence, we must conclude that there were no meritorious objections to the license application or to Mr. Glazer's qualifications. Second, an unproven charge, without more, against a licensee or its principals cannot be considered in determining whether the party has the requisite qualifications to be a broadcast licensee. Finally, there are no allegations or evidence which would support a finding that Mr. Glazer failed to comply with the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). For the aforementioned reasons, we find that Robert Walton's objections lack merit. Accordingly, no character or qualifications issue is warranted.

5. *Air Hazard.* Since we have not received a determination from the Federal Aviation Administration that ITTV's proposed tower height and location would not constitute a hazard to air navigation, an issue regarding this matter is required.

Conclusion and Order

6. Except as indicated by the issues specified below, the Commission finds the applicants legally, financially, technically and otherwise qualified. Since these applications are mutually exculsive, Commission is unable to make the statutory finding that a grant to the applications would serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues set forth below.

7. Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Irving Texas T.V., Inc. whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That the "Petition to Deny Waiver Request, To Dismiss Application, or for Alternative Relief", filed by CELA, is dismissed as moot.

9. It is further ordered, that the informal objection filed by the Association of Maximum Service Telecaster is dismissed as moot.

10. It is further ordered, That the informal objection filed by Robert H. Walton, is denied.

11. It is further ordered, That the "Conditional Opposition to Receipt of Amendment" is granted to the extent indicated and otherwise is denied.

12. It is further ordered, That the Federal Aviation Administration is made a party to this proceeding with respect to issue 1.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, that, the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-21657 Filed 8-9-82: 8:45 am]

BILLING CODE 6712-01-M

International Energy Conservation Systems; Petition for Waiver of Certification Requirement for an Electronic Ballast for a Fluorescent Lamp

International Energy Conservation Systems, 7297 Ronson Road, Suite A, San Diego, CA. 92111 has developed a solid state, electronic ballast which is stated to be extremely energy efficient. The electronic ballast generates RF energy which excites the fluorescent lamp. As such it is regulated as a piece of miscellaneous ISM equipment under Part 18 Subparts H & E of FCC rules.

Due to the physical nature of the product and the nature of its installation, International Energy requests a waiver of

(a) The requirement to provide a filtered and rectified plate power supply (Section 18.142(a)).

(b) The labelling requirement (Section 18.142(b).

(c) The recertification requirement (Section 18.142(c).

Comments on this petition are requested and should be submitted by August 30, 1982 to the Chief, RF Devices Branch, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554. The petition is available for inspection

in the office of the Chief, RF Devices Branch, Room 8302 at 2025 M St., N.W., Washington, D.C. 20554.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-21660 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 82-514, File No. 22810-CG-P-(2)-82, et al.]

John D. & Judith C. Vugteveen, et al.; Applications for Construction Permits

In re applications of John D. & Judith C. Vugteveen d.b.a. West Montana Mobile Telephone: For a construction permit for a new air-ground station to operate on frequencies 454.675 and 454.725 MHz in the Domestic Public Land Mobile Radio Services (DPLMRS) at Missoula, Montana (CC Docket No. 82-514, File No. 22810-CG-P-(2)-82); Air-Ground of Idaho, Inc.: For a construction permit for a new air-ground station to operate on frequencies 454.675 and 454.725 MHz in the DPLMRS at Missoula, Montana (CC Docket No. 82-515, File No. 23156-CG-P-(2)-82); Pac-West Telecom, Incorporated. For a construction permit for a new air-ground station to operate on frequencies 454.675 and 454.725 MHz in the DPLMRS at Missoula, Montana (CC Docket No. 82-516, File No. 23594-CG-P-(2)-82); Order Designating aplications for hearing designating applications for consolidated hearing on stated issues.

Adopted: July 28, 1982.

Released: August 4, 1982.

By the Common Carrier Bureau.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of John D. & Judith C. Vugteveen d.b.a. West Montana Mobile Telephone, Air-Ground of Idaho, Inc. and Pac-West Telecom, Incorporated. These applications are mutually excusive; therefore, a comparative hearing wil be held to determine which applicant would better serve the public interest. We find the applicants to be otherwise qualified.

2. Accordingly, it is ordered, pursuant to section 309 of the Communications Act of 1934, as amended, that the applications of John D. & Judith C. Vugteveen d.b.a. West Montana Mobile Telephone, File No. 22810-CG-P-(2)-82, Air-Ground of Idaho, Inc., File No. 23156-CG-P-(2)-82 and Pac-West Telecom, Incorporated, File No. 23594-CG-P-(2)-82 are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the maintenance, personnel and facilities pertaining thereto; and

(b) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

7. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent order.

8. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

9. It is further ordered, that the applicants shall file written notices of appearances under § 1.221 of the Commission's Rules within 20 days of the release date of this Order.

10. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 82-21658 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[FCC 82-324; BC Docket No. 82-435, File No. BP-801017 AK, et al.]

Oil Shale Broadcasting Co., et al.; Applications for Construction Permits

In re applications of Oil Shale Broadcasting Company, KWSR, Rifle, Colorado. Has: 810 kHz, 1 kW, Day, req: 660 kHz, 250 W, 10 kW-LS, U (BC Docket No. 82-435, File No. BP-801017AK); Valley Broadcasters, Inc., KAPS, Mount Vernon, Washington. Has: 1470 kHz, 500 W, DA, Day, req: 660 kHz, 1 kW, 10 kW-LS, U (BC Docket No. 82-436, File No. BP-801112AB); Northwest Indian Women Broadcasters, Inc., Portland, Oregon. Req: 660 kHz, 1 kW, 50 kW-LS, U, (BC Docket No. 82-438, File No. BP-801113AD); Family Life Broadcasting System, KFLR, Phoenix, Arizona. Has: 1230 kHz, 250 W, 1 kW-LS, U, req: 660 kHz, 1 kW, U (BS Docket No. 82-438, File No. BP-801120AB); KMO, Inc., KMO, Fife, Washington. Has: 1360 kHz, 5 kW, Day (Tacoma, Washington), req: 660 kHz, 1 kW, 50 kW-LS, U (Fife, Washington) (BC Docket No. 82-439, File No. BP-810211AF); The Navajo Nation, Window Rock, Arizona. Req: 660 kHz, 50 kW, DA-N, U (BC Docket No. 82-440, File No. BP-810306AH); For construction permit; Memorandum opinion and order designating applications for consolidated hearing on stated issues.

Adopted: July 15, 1982.

Released: August 3, 1982.

By the Commission: Commissioner Fogarty absent.

1. The Commission has under consideration (a) the six above-captioned, mutually exclusive applications for AM broadcast stations; (b) three informal objections to the Navajo application; and (c) related pleadings.[1]

2. *Initial matter re KMO, Inc.* The service area of the Fife proposal originally included substanital parts of the service area of a commonly owned, earlier filed proposal for a new AM station in Morton, Washington, file number BP-800123AJ. Because grant of both applications would have resulted in violation of our multiple ownership rules, our staff asked KMO[2] to resolve the conflict by amendment or dismissal of one of the applications, else we would dismiss the later-filed Fife application.[3] On July 30, 1981, KMO requested a one-month extension of the deadline for reply. When no further response was filed, we dismissed the Fife application on November 9, 1981.

3. Seeking reconsideration of that dismissal, KMO says it preferred to prosecute the Fife application all along (as evidenced by a September 2, 1981 letter to its counsel), but deferred withdrawing the Morton application on advice of counsel in order to protect the status of the Morton proposal in the United States inventory at the Region 2 Administrative MF Broadcasting Conference.[4] Indian Women opposes

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[1] Navajo filed petitions to dismiss or deny four of the other applications (all but Valley's). These petitions were dismissed as unauthorized, premature petitions to specify hearing issues, and are not considered herein. See *Processing of Contested Broadcast Applications*, 72 FCC 2d 202, 213-15 (1979). Radio Representatives, Inc., applicant for a new AM station on 660 kilohertz at Santa Ynez, California, also filed a petition to deny the Navajo application, and its petition was dismissed for the same reason. However, by amendment, Radio Representatives eliminated its proposal's mutual exclusivity with these six proposals. Its petition is therefore considered as an informal objection.

[2] The applicant for the Morton station was Morton Radio, Inc. For the sake of simplicity, we use KMO to refer to both KMO, Inc. and Morton Radio, Inc.

[3] The duopoly provision of § 73.35(a) of our Rules bars grant of licenses that would result in the overlap of the 1 mV/m contours of related AM stations. Section 73.3518 bars inconsistent applications.

[4] KMO says it tried to interest others in applying for the Morton facility, since the pendency of even a successor application would leave a Morton proposal in the United States inventory, thus improving its chances for international clearance. Not succeeding, it requested dismissal to resolve the conflict with the Fife proposal, and the Morton application was dismissed on December 7, 1981.

reconsideration, arguing that dismissal of the Fife application was the clearly foreseeable consequence of KMO's failure to respond to Commission correspondence, for which KMO cannot now complain of unfairness, and that grant of reconsideration would sanction KMO's dilatory tactics to the detriment of the competing applicants in this proceeding.

4. As far as it goes, Indian Women is correct; but other interests merit consideration. We have long held that the public interest is best served when we can choose from multiple applicants, especially when proposals for service to different areas and communities are involved. Consequently, when faced with the option of dismissing an application for procedural defects, we consider both the effects of the defects on the integrity of our processes and the effects of a dismissal on the public interest. *Vue-Metrics, Inc.*, 69 FCC 2d 1049, 1059 (1978); *K. & M. Broadcasters, Inc.*, 18 FCC 2d 514, 517 (1969). See generally AM Station Assignment Standards, 54 FCC 2d 1 (1975). Here, KMO's failure to respond to our correspondence did result in some additional administrative effort and delay, but these detriments are easily outweighed by the desirability of preserving the option to establish a first aural transmission service for Fife. Therefore, while KMO is admonished for not timely responding to our correspondence, we will grant its petition and reinstate the Fife application *nunc pro tunc*.

5. *Initial matter re consolidation.* Navajo has questioned whether the three northwestern application (Valley, Indian Women, and KMO) are mutually exclusive with the three southwestern applications (Oil Shale, Family Life, and Navajo) such that all six must be considered together. It urges that the two groups be separated to simplify the hearing that must be held. We conclude that they should remain consolidated, for the following reasons.

6. First, Navajo's proposal would be the primary contributor to Indian Women's night limit, which could be as high as 16.84 mV/m (13.95 mV/m from Navajo and 9.43 mV/m from Valley). With such a limit Indian Women's coverage of Portland could be so poor[5] as to preclude grant of the application under § 73.24(j) of our Rules. These applications are thus mutually exclusive.

7. The second reason for consolidation requires some background information. In the most recent *Clear Channel* proceeding, 78 FCC 2d 1345 (1980), we considered several alternative uses for the spectrum space available, and settled on essentially four of them. For three (underserved communities, minority ownership, and noncommercial service) we defined technical limits that resulted in rather modest nighttime service areas: a one-kilowatt power ceiling and a 10 mV/m normally-protected service contour. However, for the fourth—service to substantial areas without nighttime primary aural service (white areas)—we set a 50-kilowatt ceiling and normally-protected contours based on the often lower interference levels caused by previously authorized stations.[6] For the Navajo proposal this limit would be 1.87 mV/m (from WNBC, New York), resulting in service to a 54,100-square-kilometer area, about 70 percent without nighttime primary aural service now. The Indian Women and KMO proposals would raise the limit to 2.25 and 2.20 mV/m, respectively, reducing the Navajo service area by 7,464 and 6,617 square kilometers.

8. This interference would not put the Navajo proposal in violation of our technical rules such that it could not be granted;[7] therefore the interference to Navajo does not render the applications mutually exclusive. See *KLUC Broadcasting Co.*, 67 FCC 2d 586 (1978). However, service to white areas is among the most important of our service objectives, second only to the prevention of interference to existing service, *AM Station Assignment Standards*, FCC 63–468, 25 RR 1615 (1963); and as previously noted, we have made special provision for class II–B assignments that could provide substantial white-area service. Consequently, we want to consider carefully this potential loss of significant white-area service. Therefore, wholly apart from Indian Women's deficient coverage of Portland, this white-area matter requires consolidation of all six applications.[8]

9. *Oil Shale Broadcasting Company.* Since no determination has been reached that the antenna Oil Shale proposes would not constitute a menace to air navigation, an issue regarding this matter is required. In addition, the local notice of this application failed to list the applicant's principals, as required by § 73.3580(f)(1) of our Rules. Oil Shale must rebroadcast a corrected local notice.

10. *Valley Broadcasters, Inc.* This applicant proposes to use a Paran antenna.[9] Because the effectiveness of this type of antenna has not been established in the United States, an issue will be specified to explore its performance capabilities as they relate to our technical requirements. (It is not clear whether applicant proposes 100- or 120-foot towers, and how the towers would be configured. A clarifying amendment is required.)

11. Valley's local notice failed to describe the antenna proposed, as required by § 73.3580(f) (5) and (6) of the Rules, and failed to list the applicant's principals, as required by Section 73.3580(f)(1). Valley must republish and rebroadcast a corrected local notice.

12. *Northwest Indian Women Broadcasters, Inc.*[10] The applicant's map depicting its nighttime normally-protected (10 mV/m) contour indicates that it does not completely encompass the city of Portland as required by § 73.24(j) of the Rules.[11] However, Indian

[5] Neither Indian Women nor Navajo has made a showing of how much service to Portland would be lost with such a limit. Even the normally protected (10 mV/m) contour would not serve the entire city. (See para. 12, *infra*.)

[6] Contrary to Navajo's contention, we did not establish 2.5 mV/m as the nighttime normally-protected contour for these stations. The table is § 73.182(v) of our Rules will be amended to resolve any ambiguity. See §§ 73.21(a)(2)(ii)(D) and 73.182(a)(2)(ii) of our Rules; and *Clear Channel Broadcasting*, 78 FCC 2d 1345, 1379–81, *reconsid. denied*, 83 FCC 2d 216 (1980). These white-area proposals thus have service potentials comparable to the class II-A stations established two decades earlier. See *Clear Channel Broadcasting*, 31 FCC 565 (1961).

[7] In some situations, for example, an increased night limit might so reduce white-area service as to violate § 73.37(e)(2)(i) (acceptability) or § 73.21(a)(2)(ii)(D) (power limit), or so reduce principal-city service as to violate § 73.24(j) (coverage).

[8] The possibility of granting both a white-area proposal and another, interfering proposal is apparently novel. (When we established the class II–A stations, for example, we authorized only one new station on each frequency.) However, other applications filed under the 1980 clear-channel decision will present the same situation, and it is conceivable that non-clear-channel applications filed under § 73.37(e)(2)(i) might also. In all such circumstances, a thorough consideration of the loss of potential white-area service would be appropriate.

[9] To meet our minimum-efficiency requirements (Sections 73.45 and 73.189 of the Rules), AM antennas usually consist of one or more vertical towers at least one-fifth wavelength tall. Physically, this Paran ("Perimeter Current Antenna") system would consist of four relatively short (about one-fifteenth wavelength), grounded towers arranged in a 100-foot square, with horizontal wires connecting their tops. Properly excited, such a system is said to radiate omnidirectionally, and with acceptable efficiency.

[10] On July 28, 1981 and March 24, 1982 Indian Women petitioned for leave to amend its application pursuant to § 73.3522(a)(2) of the Rules. Good cause having been shown, the petitions are granted and the amendments accepted.

[11] Section 73.24(j) speaks of residential service with the 5 mV/m or nighttime interference-free contour, whichever is higher. Most class II–B stations will have a normally protected contour of 10 mV/m, and thus may well receive interference to that contour from later-authorized stations. For them we must disregard service beyond the 10 mV/m contour in determining compliance with § 73.24(j).

Women shows that the area outside the contour is but a small fraction of Portland's total area, containing less than 0.1 percent of the city's population. With respect to 10 mV/m coverage, therefore, the proposal substantially complies with Section 73.24(j). *Broadcast Station Assignment Standards*, 39 FCC 2d 645, 670 (1973). (But see para. 6 and n. 5, *supra*.)

13. *Family Life Broadcasting System.* This applicant's engineering exhibits do not show the proposed 25 mV/m contour in relation to the central business district of Phoenix, as required by Question 12A of Section V–A, Form 301. However, the proposal would clearly improve present business-district coverage, and thus substantially complies with Section 73.24(j) even if it may not satisfy it. See generally *KLUC Broadcasting Co.*, 67 FCC 2d 586 (1978).

14. *KMO, Inc.* This applicant proposes to serve the city of Fife, Washington, which has a population of 1,458. The proposed 5 mV/m daytime contour of Fife would completely encompass the city of Tacoma, which has a population of 155,100. Under these circumstances a presumption arises that the applicant intends to serve the larger community rather than the specified community. See *Policy Statement on 307(b) Considerations*, 2 FCC 2d 190, *reconsid. denied*, 2 FCC 2d 866 (1965); *AM Station Assignment Standards*, 54 FCC 2d 1, 21–22 (1975). An appropriate issue will be specified.[12]

15. KMO's local notice of its application failed to list the names of its principals, as required by § 73.3580(f)(1) of the Rules. KMO must republish and rebroadcast a corrected local notice.

16. *The Navajo Nation.* In their informal objections K-Ray, Incorporated and Radio Representatives, Inc. assert that the Navajo proposal would be an inefficient use of 660 kilohertz. It would, they contend, severely limit the number of minorities and others who could broadcast on the frequency, while Navajo could adequately achieve its service objectives using other available facilities with less preclusive effect. Furthermore, K-Ray asserts that the filing of the Navajo application unfairly precluded acceptance of other potential applications (including its own).

17. Objectors make no showing that the Navajo proposal violates our Rules or is otherwise inherently deficient. Their efficiency objections therefore have no merit. It is well established that "an application which is otherwise in the public interest, and meets the requirements of the rules, should be granted without regard to possible superior proposals which might have been advanced." *WKYR, Inc.*, 45 FCC 1092, 1095 (1963); *Alleghany County Broadcasting Corp.* v. *FCC*, 348 F. 2d 788 (1965); *Communico Oceanic Corp.*, 61 FCC 2d 96 (1976); *Television Broadcasters, Inc.*, 45 FCC 1897 (1965).

18. K-Ray's due process argument is also without merit. By Public Notice released February 3, 1981 (Report No. A–24, Mimeo No. 6394, 46 FR 11029), we accepted for filing the Indian Women application and announced that "[a]n application, in order to be considered with any application on the attached list *or with any other on file by the close of business on March 9, 1981, which involves a conflict necessitating a hearing with any application on this list* must be substantially complete and tendered for filing at the close of business on March 9, 1981 (*italics* supplied)." The Navajo application was properly filed pursuant to that notice on March 6, 1981. By the express terms of the cut-off list and by operation of § 73.3571(c) of our Rules, all interested parties were on notice that they should file 660 kilohertz applications by March 9, 1981 or take the risk of being in conflict with a cut-off application. Prospective applicants are held to have knowledge (actual or implied) that the filing of an application on or before the specified cut-off date may serve to eliminate them from consideration. *Kittyhawk Broadcasting Corp.*, 7 FCC 2d 153, *reconsid. denied*, 10 FCC 2d 160 (1967), *appeal dismissed, Cook, Inc.* v. *United States*, 394 F. 2d 84 (7th Cir. 1968).

19. Objectors also charge that Navajo's proposed nighttime antenna system would be unstable, likely causing objectionable interference to co-channel class I–A station WNBC, New York. However, its assertion is not supported by an appropriate engineering study, and thus raises no substantial question of Navajo's technical qualifications.

20. J. Tonny Bowman, an enrolled member of the Navajo Tribe, has also filed an informal objection, alleging that Navajo has in local media improperly suppressed viewpoints it opposes, in one case refusing to publish one writer's work in the *Navajo Times* and in another acquiescing in the termination of the television service of station KGGM through a local translator. Neither charge raises a substantial question of Navajo's qualifications, however, the first suggesting no more than the legitimate exercise of editorial discretion (see *e.g. Michael D. Bramble*, 58 FCC 2d 565 (1976)), the second supported only by suggestion and innuendo.[13]

21. *Other matters.* Except as indicated by the issues specified below, all six applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although for different communities, the KMO proposal would serve substantial areas in common with the Valley and Indian Women proposals, and the Navajo and Family Life proposals would serve substantial areas in common. Therefore, in addition to an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will be specified.

22. Accordingly, it is ordered, That the petition for reconsideration filed by KMO, Inc. is granted, Indian Women's opposition thereto is denied, and KMO's application is reinstated *nunc protunc.*

23. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Oil Shale Broadcasting Company would constitute a hazard to air navigation.

2. To determine with respect to Valley Broadcasters, Inc., whether the proposed Paran Antenna system can reliably operate in conformance with the Commission's technical requirements.

3. To determine whether the proposal of KMO, Inc. would realistically provide a local transmission service for Fife, Washington, or for Tacoma, Washington.

4. To determine, in the event it be concluded pursuant to Issue 3 that the KMO proposal would not realistically provide a local transmission service for Fife, Washington, whether the proposal meets the technical provisions of the Rules for AM broadcast stations assigned to Tacoma, Washington.

[12] The suburban community policy is currently under review in BC Docket No. 82–320. The disposition of the issues specified here, will, of course, be governed by the policies then in effect as a result of our review.

[13] Bowman also objects that Navajo is in essence a governmental entity and not a minority person. This objection is without merit, since governmental entities can hold broadcast licenses (see, for example, the City of New York's WNYC), and Navajo's proposal is acceptable even without regard to its obvious minority control.

5. To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural service to such areas and populations.

6. To determine in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

7. To determine in the event it be concluded that a choice among the applications should not be based solely on considerations relating to section 307(b), which of the overlapping proposals would, on a comparative basis, best serve the public interest.

8. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

24. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

25. It is further ordered, That the informal objections of K-Ray, Incorporated, Radio Representatives, Inc., and Tonny Bowman are denied.

26. It is further ordered, That Valley shall file the amendment specified in paragraph 10 above within 30 days after this order is published in the **Federal Register.**

27. It is further ordered, That Oil Shale, Valley, and KMO shall give corrected local notice of their applications in accordance with § 73.3580 of the Rules, and shall certify their publications to the presiding Administrative Law Judge within 40 days after this order is published in the **Federal Register.** (The corrected notices may be consolidated with the notices of hearing required by § 73.3594 of our Rules.)

28. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) and (e) of the Commission's Rules, the parties shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this order.

29. It is further ordered, That pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the rule, and shall advise the Commission of the publication of the notices as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-21659 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

Radio Advisory Committee; Meeting

August 3, 1982.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled at 9:30 a.m., Wednesday, September 22, 1982, in Room 856, 1919 M Street, N.W., Washington, D.C.

The Committee will consider reports from its Technical Subgroup concerning:

—FM receiver characteristics and their impact on FM allocations.

—Further advice to the Federal Communications Commission concerning continuing discussions between the United States and Canada on the drafting of a new bilateral agreement on AM broadcasting, to implement the Rio Final Acts and take the place of NARBA.

—Other business, if proposed by participants.

The meetings of the Committee are open for participation by all interested persons. The meeting scheduled for September 22, 1982 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please contact the Committee chairman, Louis C. Stephen, at FCC Headquarters, (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-21661 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 82-463 and 82-464; File Nos. 353-A-L-111 and 141-A-L-121]

Aircraft Auction, Inc. and Mobile Business Units, Inc.; Order

Adopted: July 20, 1982.

Released: July 28, 1982.

1. Aircraft Auction, Inc. and Mobile Business Units, Inc. (hereafter MBU) have each filed an application for authority to operate an aeronautical advisory station at Cartersville-Bartow County Airport, Cartersville, Georgia. Since § 87.251(a) of our rules provides that only one aeronautical advisory station may be authorized at an airport, the above-captioned applications are mutually exclusive. Accordingly, it is necessary to designate these applications for comparative hearing in order to determine which, if any, should be granted.

2. In view of the foregoing, it is ordered, That pursuant to the provisions of § 309(e) of the Communications Act of 1934, as amended, and Section 0.331 of the Commission's rules, the above-captioned applications are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order on the following comparative issues:

(a) to determine which applicant would provide the public with better aeronautical advisory service based on the following considerations:

(1) Location of the fixed-base operation and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of applicant and employees in aviation and aviation communications, including but not limited to operation of stations in the Aviation Services (Part 87) that may be or have been authorized to the applicant;

(5) Ability to provide information pertaining to primary and secondary communications as specified in § 87.257 of the Commission's rules;

(6) Proposed radio system including control and dispatch points; and

(7) The availability of the radio facilities to other fixed-based operators.

(b) to determine in light of the evidence adduced on the foregoing issues which os the applications should be granted.

3. It is further ordered, That the burden of proof and the burden of proceeding with the introduction of evidence is on each applicant with respect to its application except issue (b) which is conclusory.

4. It is further ordered, That to avail themselves of an opportunity to be heard Aircraft Auction and MBU, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for hearing and present evidence on the issues specified in this Order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

Federal Communications Commission.
James C. McKinney,
Chief, Private Radio Bureau.
[FR Doc. 82-21651 Filed 8-9-82; 8:45 am]
BILLING CODE 6712-01-M

[BC Docket No. 82-498 etc.; File Nos. BPCT-811030 KL etc.]

Church Faith Is the Victory et al.; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: July 23, 1982.
Released: August 5, 1982.

In re applications of Church Faith Is the Victory, Bayamon, Puerto Rico, (BC Docket No. 82-498, File No. BPCT-811030KI), Puerto Rico Family Television, Ltd., Bayamon, Puerto Rico, (BC Docket No. 82-499, File No. BPCT-820106KJ), Caribbean Broadcasting, Inc., Bayamon, Puerto Rico, (BC Docket No. 82-500, File No. BPCT-820106KL), for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Church Faith is the Victory (Church), Puerto Rico Family Television, Ltd. (Family) and Caribbean Broadcasting, Inc. (Caribbean) for authority to construct a new commercial television station on Channel 36, Bayamon, Puerto Rico.

2. Caribbean intends to operate the proposed facility as a 100 percent satellite of commonly-owned station WBNB-TV, Channel 10, Charlotte Amalie, Virgin Islands. Caribbean is the only applicant proposing a satellite operation; the others propose full service operations. Accordingly, an issue will be specified to determine whether a satellite operation is necessary for Bayamon. *Houma Broadcasters, Inc.*, FCC 80-534 (released September 30, 1980).

3. No determination has been reached that the tower heights and locations proposed by Church and Caribbean would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. The financial data submitted by Family and Caribbean does not demonstrate the applicants' financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicants will be given 30 days from the date of mailing of this Order to review their financial proposals in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Adminstrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If an applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82- .

Puerto Rico Family Television, Inc.

5. Family is a limited partnership, consisting of a general partner and two limited partners. On May 17, 1982, Church filed a motion to dismiss Family's application on the grounds that it was not signed by an authorized member of the partnership. The application was sign by Adib Eden, Jr., a limited partner. Church contends that the application shows that Family was organized under the laws of Florida [1] and that Florida law specifically limits the right to bind partnerships to a general partner. Moreover, Church alleges, the signature by a limited partner is in direct conflict with the specific provisions of Section 13.1 of Family's partnership agreement.[2] Family responds that, under Puerto Rican law, a limited partner may bind the partnership. Moreover, FCC Form 301 requires only that the application be signed by "a partner" and does not limit that authority to a general partner.[3]

6. It is clear that the application was signed in contravention of the specific provisions of the partnership agreement. While the Commission's application forms and rules do not specify whether "a partner" means only a general partner or may include a limited partner, the principles of partnership law lead us to conclude that, for the purposes of our rules and forms, signatures should be limited to general partners only. This is for clarification in situations of this type in the future. Because the application was executed in conflict with the partnership agreement, the application is defective; it is not relevant whether the partnership was organized under the laws of Florida or Puerto Rico nor which jurisdiction's laws govern.[4] This Commission is the sole judge of the validity of the applications filed with it. Clearly, we could hold this application to be invalid and to dismiss it, but we think that this would be too drastic an action in a mutually exclusive situation. Consequently, Family will have 10 calendar days from the date of release of this Order to have the limited partner's action ratified and confirmed by the general partner. This may be done either by an instrument of ratification or by the filing of a Section I, FCC Form 301 (June 1977 edition or earlier) or a Section VII of the January 1982 edition, FCC Form 301.

7. Applicants for new broadcast stations are required by § 73.3580 of the Commission's Rules to give local notice of the filing of their applications. They may certify to the Commission compliance with the requirement as described in § 73.3580(h). We have no evidence that Family has published the required local notice. To remedy this, Family may file certification with the presiding Administrative Law Judge, within 30 days after this Order appears in the **Federal Register**, that it has or will comply with § 73.3580.

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether circumstances exist which would make a satellite operation necessary for Bayamon, Puerto Rico.

2. To determine, with respect to Church and Caribbean, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

3. To determine, on a comparative basis, which of the applications would best serve the public interest, convenience and necessity.

4. To determine, in the light of the evidence adduced pursuant to the

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[1] From Section II, paragraph 2, of Family's application. The general partner resides in Florida; the limited partners reside in Puerto Rico.

[2] Section 13.1 of the partnership agreement provides: "The Limited Partners shall not participate in the management or control of the Partnership's business nor shall they transact any business for the Partnership, nor shall they have the power to act or bind the Partnership, such powers being vested solely and exclusively in the General Partner."

[3] See also § 73.3513(a)(2) of the Commission's rules.

[4] No one disputes the validity of the partnership; the only dispute is with respect to the acceptability of the application.

foregoing issues, which of the applications should be granted.

10. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

11. It is further ordered, That Church Faith is the Victory's Petition to Dismiss is dismissed.

12. It is further ordered, That Puerto Rico Family Television, Ltd. shall, within 10 calendar days from the release of this Order, have its general partner ratify and confirm the action of its limited partner.

13. It is further ordered, That Puerto Rico Family Television, Ltd. and Caribbean Broadcasting, Inc. shall each submit a financial certification, in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

14. It is further ordered, That, within 30 days after this Order appears in the **Federal Register**, Puerto Rico Family Television, Ltd. shall file certification that it has or will comply with Section 73.3580 of the Commission's Rules with the presiding Administrative Law Judge.

15. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

16. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-21655 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 82-517 and 82-518; File Nos. 20367-CD-P-(3)-79 and 20806-CD-P-79]

Digital Paging Systems of New York, Inc. and Selective Paging Corp.; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: July 30, 1982.

Released: August 4, 1982.

In re application of Digital Paging Systems of New York, Inc., for a Construction Permit to establish a new one-way station to operate on frequency 35.22 MHz in the Domestic Public Land Mobile Radio Service (DPLMRS) at Fairport, Rochester, and Attica, New York; and of Selective Paging Corporation, for a Construction Permit to establish an additional location for KEK276 to operate on frequency 35.22 MHz in the DPLMRS at Attica, New York.

1. Presently before the Chief, Mobile Services Division, under delegated authority, are the captioned applications of Digital Paging Systems of New York, Inc. (Digital) and Selective Paging Corporation (Selective). A Petition to Dismiss or deny Digital's application was filed by Tel-Page Corporation (Tel-Page). Selective filed an informal objection against Digital's application. Responsive pleadings have been filed.

2. Tel-Page alleges that Digital lacked candor in specifying transmitter and control points sites which were later found to be unavailable and that Digital's survey of public need for Rochester was unreliable. Selective argues that Digital has not shown any local public need for its proposed Attica facilities and that Digital is presently prosecuting another application for a one-way facility at Attica, File No. 20946-CD-P-(4)-78 (Location No. 1), and does not explain why any public need for one-way service in Attica would not be met by a grant of that facility.

3. We have considered these allegations, and we find that they are without merit. First, Digital has secured alternate sites, and we find that the allegations regarding the sites originally specified by Digital do not suggest that Digital misrepresented information to the Commission or exhibited a lack of candor.[1] Second, on May 14, 1982, the Commission eliminated the requirement that an applicant demonstrate need for an initial one-way channel and stated that this policy was applicable to all pending one-way applications and to applications filed after the adopted date (April 29, 1982) of the Order.[2] Therefore, the Digital Attica application is not required to demonstrate need.[3]

4. Accordingly, since the captioned applications are electrically mutually exclusive, a comparative hearing will be held to determine which applicant would better serve the public interest. We find both applicants to be otherwise qualified.[4]

5. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended,[5] the applications of Digital Paging Systems of New York, Inc., File No. 20367-CD-P-(3)-79, and Selective Paging Corporation, File No. 20806-CD-P-79, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[6] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[7] and to determine and compare the relative demand for the proposed services in said areas; and

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[1] Digital's loss of its originally specified Rochester site resulted from a reasonable misunderstanding between Digital and the site owner. *See* Tel-Page Corporation, Mimeo 1498, released June 16, 1981 (Com. Car. Bur.). Furthermore, we find that the circumstances surrounding Digital's originally specified Fairport site do not raise a substantial issue regarding the candor of any Digital employee.

[2] General Docket No. 80-183, FCC 82-202, 47 FR 24557, June 7, 1982.

[3] We have previously considered similar allegations concerning Digital's need surveys in Digital Paging Systems of New York, Inc., Mimeo 271, released November 3, 1981 (Com. Car. Bur.), and we found that those allegations did not raise issues which warranted designation for hearing. *See also* Tel-Page Corporation, *supra*, n. 1. We also note here that Digital's application File No. 20946-CD-P-(4)-78 for location No. 1 at Attica was returned as defective on July 26, 1982.

[4] Selective also argued that Digital is not financially qualified to construct and operate the proposed station. However, the Commission has eliminated the required that mobile radio applicants demonstrate their financial qualifications. *See* Elimination of Financial Qualifications, 80 FCC 2d 152 (1980). Other allegations which may have been raised have all been considered but were not deemed to have raised a substantial and material question of fact.

[5] 47 U.S.C. 309(e).

[6] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504 in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. 6406, equation 8.

[7] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way signaling service. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours (F50,50) for the facilities involved in this proceeding. (The applicants should consult with Bureau counsel with the goal of reaching joint technical exhibits.)

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

6. It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

7. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

8. It is further ordered, That the applicants shall file written notices of appearances under § 1.221(c) of the Commission's Rules within 20 days of the release date of this Order.

9. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 82-27653 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 82-508 and 82-509; File Nos. BPCT-8203117KE and BPCT-82043]

First City Media, Inc., and Thornberry Television, Ltd.; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: July 27, 1982.

Released: August 4, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above mutually exclusive applications of First City Media, Inc. (Media) and Thornberry Television, Ltd. (Thornberry) for authority to construct a new commercial television station on Channel 18, Wichita Falls, Texas.

2. Media and Thornberry each proposes to mount its antenna on the KKQV-FM tower which is located 1.53 miles from Station KWFT(AM), Wichita Falls, Texas. Because of the proximity of the proposed site to KWFT, any grant of a construction permit to either Media or Thornberry will be conditioned to ensure that KWFT's radiation pattern is not adversely affected by the construction of either of the proposed stations.

3. *Thornberry Television, Ltd.* No determination has been reached that the antenna structure proposed by Thornberry would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are DESIGNATED for hearing in a Consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine with respect to Thornberry Television, Ltd.:

(a) Whether there is a reasonable possibility that the tower height and location proposed by applicant would constitute a hazard to air navigation;

(b) Whether, in light of the evidence adduced pursuant to issue (a), applicant is technically qualified.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, That, in the event of a grant of either First City Media, Inc.'s application or Thornberry Television, Ltd.'s application, the construction permit shall contain the following condition: Prior to the construction of the TV tower authorized herein, permittee shall notify AM station KWFT so that the AM station may determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the TV tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the array of the AM station has not been adversely affected. The results shall be submitted to the Commission and the AM station. Thereafter, the TV station may commence *Limited Program Tests.*

7. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with regard to issue 1.

8. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-21650 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 82-519 and 82-520; File Nos. 22135-CD-P-(1)-80 and 22657-CD-P-(1)-80]

Mobilfone Radio System and Interelectronics Corp.; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: July 29, 1982.

Released: August 4, 1982.

In re applications of Phone Depots Inc. d.b.a. Mobilfone Radio System, for a construction permit to add a new antenna location on frequency 454.350 MHz for Station KEA254 in the Domestic Public Land Mobile Radio Service (DPLMRS) at Spring Valley, New York; and of Interelectronics Corporation, for a construction permit to construct a new station to operate on frequency 454.350 MHz in the DPLMRS at Monroe, New York.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of Phone Depots, Inc. d.b.a. Mobilfone Radio System (Mobilfone) and Interelectronics Corporation (IC) for new two-way stations to operate on frequency 454.350 MHz. A petition to dismiss or deny was filed against the IC application by Mobilfone.[1] A responsive pleading was filed.

[1] Although the Mobilfone petition to dismiss or deny was filed more than thirty days after the public notice of the IC application and was therefore untimely, we will treat it as an informal objection pursuant to Section 47 CFR 22.30.

2. These two applications are electrically mutually exclusive because they both request use of the same frequency in the same general area.[2] Accordingly, a comparative hearing will be held to determine which applicant would better serve the public interest.

3. We have examined IC's application as amended and Mobilfone's allegations, and we find those allegations to be without merit. Mobilfone argues that IC filed a strike application. The elements to be considered in determining whether an application is a strike application were set forth by the Commission in *Grenco, Inc.*, 28 FCC 2d 166 (1971). The elements include: (1) the timing of the application; (2) the economic and competitive benefit occurring from the application; (3) the good faith of the applicant; and (4) questions concerning frequency allocation. A review of the Mobilfone strike allegations relative to the *Grenco* criteria shows that the allegations raise no material and substantial questions on this issue. IC explained why it filed for frequency 454.350 MHz rather than another frequency. IC also demonstrated that its proposed reliable service area does not duplicate Mobilfone's and that, consequently, IC does not propose to serve the identical market area. In addition, the time of filing an application does not alone demonstrate that a strike application was filed. We will not, therefore, designate a strike issue against IC.

4. We find both Mobilfone and IC to be legally, technically and otherwise qualified to construct and operate the proposed facilities.

5. Accordingly, it is ordered, That the Petition to Dismiss or Deny filed by Phone Depots, Inc. d.b.a. Mobilfone in File No. 22657–CD–P–(1)–80 is denied.

6. It is further ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended,[3] the applications of Phone Depots, Inc., d.b.a. Mobilfone Radio System, File No. 22135–CD–P–(1)–80 and Interelectronics Corporation, File No. 22657–CD–P–(1)–80, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 39 dBu contours,[4] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[5] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the above-referenced applications would best serve the public interest, convenience and necessity.

7. It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

8. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

9. It is further ordered, That the applicants shall file written notices of appearances under § 1.221 of the Commission's Rules within 20 days of the release date of this order.

10. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 82–21654 Filed 8–9–82; 8:45 am]

BILLING CODE 6712–01–M

[BC Dockets Nos. 82–501 etc.; File No. BPH–810204AF]

Pitkin County Broadcasters, Inc. et al.; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: July 23, 1982.

Released: August 5, 1982.

In re applications of Pitkin County Broadcasters, Inc., Snowmass Village, Colorado (BC Docket No. 82–501, File No. BPH–810204AF) (Req: 103.9 MHz, Channel 280A, 3.0 kW (H&V), −763 feet); Mark L. Wodlinger, Snowmass Village, Colorado (BC Docket No. 82–502, File No. BPH–810210AC) (Req: 103.9 MHz, Channel 280A, 3.0 kW (H&V), −840 feet); Sno-Mass Communications, Inc., Snowmass Village, Colorado (BC Docket No. 82–503, File No. BPH–810817AE) (Req: 103.9 MHz, Channel 280A, 3.0 kW (H&V), −84 feet); Ervin L. Cartwright, Snowmass Village, Colorado (BC Docket No. 82–504, File No. BPH–810817AG) (Req: 103.9 MHz, Channel 280A, 3.0 kW (H&V), −763 feet); Roaring Fork Broadcasting, Inc., Snowmass Village, Colorado (BC Docket No. 82–505, File No. BPH–810819AD) (Req: 103.9 MHz, Channel 280A, 3.0 kW (H&V), −792 feet); Craig Broadcasting Co., Snowmass Village, Colorado (BC Docket No. 82–506, File No. BPH–810819BJ) (Req: 103.9 MHz, Channel 280A, 3.0 kW (H&V), 300 feet); Alpine Broadcasting Corporation, Snowmass Village, Colorado (BC Docket No. 82–507, File No. BPH–810819BX) (Req: 103.9 MHz, Channel 280A, 3.0 kW (H&V), −751 feet); for construction permit for a new FM radio station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Pitkin County Broadcasters, Inc. (hereafter Pitkin), Mark L. Wodlinger, Ervin L. Cartwright, Sno-Mass Communications, Inc., (hereafter Sno-Mass) Roaring Fork Broadcasting, Inc. (hereafter Roaring), Craig Broadcasting Co. (hereafter Craig), and Alpine Broadcasting Corporation for a new FM broadcast station at Snowmass Village, Colorado.

2. The materials submitted in the applications of Pitkin and Roaring do not demonstrate their financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicants will be given 30 days from the date of mailing of this order to review their financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301 as to its financial qualifications. If the applicants cannot make the required certification, they shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378.

3. *Sno-Mass.* Examination of the engineering portion of the Sno-Mass proposal indicates that the applicant's

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[2] We note that while the IC application is for a new facility, the Mobilfone application is seeking an additional location for Station KEA254. A grant of either application would preclude the grant of the other.

[3] 47 U.S.C. 309(e).

[4] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504 in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. 6406, equation 8.

[5] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way service on frequencies in the 450 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours (F50,50) for the facilities involved in this proceeding. (The applicants should consult with Bureau counsel with the goal of reaching joint technical exhibits.)

signal may be subject to shadowing in the direction of Snowmass Village. Thus, the applicant may not be able to provide the requisite 3.16 mV/m coverage to the proposed community of license. An issue will be specified.

4. *Craig.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. We have no evidence that Craig published the required notice. To remedy this deficiency, Craig will be required to publish local notice, if it has not already done so, and so inform the presiding Administrative Law Judge.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as indicated by the issued specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is further ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applicants are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

2. To determine whether Sno-Mass would place a signal of 3.16 mV/m over Snowmass Village as required by § 73.315 of the Commission's Rules and, if not, whether circumstances exist which warrant waiver of that rule.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That Pitkin County Broadcasters, Inc., and Roaring Fork Broadcasting, Inc., shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

9. It is further ordered, That Craig Broadcasting Co. shall inform the presiding Administrative Law Judge as to whether it has complied with the public notice requirements of § 73.3580(f) of the Commission's Rules.

10. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

Appendix

The Commission has not yet received Federal Aviation Administration clearance for the antenna tower(s) proposed by the below listed applicant(s). Accordingly, it is further ordered, That the following issue is specified:

1. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the tower height(s) and location(s) proposed by Mark L. Wodlinger, Ervin L. Cartwright, Sno-Mass Communications, Inc. and Alpine Broadcasting Corporation.

It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

[FR Doc. 82-21656 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 82-494 and 82-495; BPCT-810527KE and 810806KF]

Racine Telecasting Co. and Channel 49 of Racine, Inc.; Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: July 23, 1982.

Released: August 3, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it: (a) the above-captioned mutually exclusive applications of Joel Kinlow, d.b.a. Racine Telecasting Company (Kinlow) and Channel 49 of Racine, Inc. (CRI) for a new commercial television station to operate on Channel 49 in Racine, Wisconsin; (b) a petition to dismiss filed by Kinlow against CRI; and (c) related pleadings.

2. In support of its petition to dismiss, Kinlow argues that CRI's application is not substantially complete, since: (1) It has failed adequately to ascertain the needs and interest of Racine; (2) it has failed to demonstrate its ability to meet its construction and three month operating costs; and (3) it states that it intends to seek subscription television authority but has not submitted an STV application. In addition, CRI argues that CRI's application violates the Commission's multiple ownership rules, since Solomon Atkins, CRI's president, is also executive vice president of Communications Design Group, which, directly or through its principals, has an interest in Focus Broadcasting Company, the permittee of WFBN-TV, Joliet, Illinois, and seven other television applicants.

3. Kinlow's ascertainment argument is premature, since applicants need not file ascertainment surveys until after the award of a construction permit. *Second Report and Order in Gen. Docket No. 79-137,* 49 R.R. 2d 1219, 1222 (1981). We agree with Kinlow that CRI has failed to demonstrate an ability to meet its proposed construction and operating costs; however, this deficiency can be cured by the applicant, and in paragraph 11 *infra* we have required the applicant either to certify the availability of the funds or to advise the presiding Administrative Law Judge that the certification cannot be made. With respect to Kinlow's STV argument, an applicant's intent to offer STV programming is not considered in hearings of mutually exclusive applications, and it is of no consequence that CRI has not filed an STV application. *Subscription TV Program Rules,* Docket No. 21502, 85 F.C.C. 2d 631, 637 (1981). Finally, Solomon Atkins has interests in only two other television applicants and, thus, grant of CRI's applicant would not violate the Commission's "7 station" rule (47 CFR § 73.636(a)(2)). The fact that other principals of Communications Design Group have interests in other applicants cannot be counted against Atkins, as Kinlow suggests. Accordingly, Kinlow's petition to dismiss will be denied.

4. Since we have not received a determination from the Federal Aviation Administration that Kinlow's and CRI's proposed tower heights and locations would not constitute a hazard to air navigation, an issue regarding this matter is required.

5. The material submitted in both applications does not demonstrate the applicants' financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, Kinlow and CRI will be given 30 days from the date of mailing of this Order to review their financial proposals in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit certifications to the presiding Administrative Law Judge in the manner called for in revised Section III, Form 301, as to their financial qualifications. If the applicants cannot make the required certification, they shall so advise the Administrative Law Judge, who shall then specify appropriate issues. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378, (released July 15, 1982).

6. Applicants for new broadcast stations are required to give local notice of the filing of their applications, in accordance with § 73.3580 of the Commission's Rules. They must then file proof of publication of such notice or certify that they have or will comply with the public notice requirement; however, we have no evidence that CRI has done either. If it has not already done so, CRI, will be required to publish local notice of the filing of its application and to file a statement of publication with the presiding Administrative Law Judge within 30 days of the mailing of this Order.

Conclusion and Order

7. Except as indicated by the issues specified below, the applicants are qualified to operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding of the issues set out below.

8. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated processing to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That the Federal Aviation Administration is made a party respondent in respect to Issue 1 above.

10. It is further ordered, That within 30 days of the mailing of this Order, CRI shall, if it has not already done so, publish local notice of the filing of its application and file a statement of publication with the presiding Administrative Law Judge.

11. It is further ordered, That Kinlow and CRI shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

12. It is further ordered, That the petition to dismiss filed by Kinlow against CRI is denied.

13. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issue specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcasting Facilities Division, Broadcast Bureau.

[FR Doc. 82–21652 Filed 8–9–82; 8:45 am]

BILLING CODE 6712–01–M

[Docket Nos. 82–510 etc.; File Nos. BPCT–811127KF]

Waco Community Media, Ltd. et al.; Order Designating Application for Consolidated Hearing on Stated Issues

Adopted: July 27, 1982.

Released: August 4, 1982.

In re applications of Waco Community Media, Ltd., Waco, Texas (BC Docket No. 82–510, File No. BPCT–811127KF); Focus Broadcasting of Waco, Inc., Waco, Texas (BC Docket No. 82–511, File No. BPCT–820127KE); Latin American Broadcasting Co., Waco, Texas (BC Docket No. 82–512, File No. BPCT–820127KK) for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Waco Community Media, Ltd. (Community), Focus Broadcasting of Waco, Inc. (Focus) and Latin American Broadcasting Co. (American) for authority to construct a new commercial television station on Channel 44, Waco, Texas.

2. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications. They may certify to the Commission compliance with the requirements as described in § 73.3580(h). We have no evidence that Community has published the required local notice. To remedy this, Community may file certification with the presiding Administrative Law Judge, within 30 days after this Order appears in the **Federal Register** that it has or will comply with § 73.3580.

3. The materials submitted in each of the applications do not demonstrate the applicants' financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, Community, Focus and American will each be given 30 days from the date of mailing of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If an applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket 82–378 (released July 15, 1982).

Focus Broadcasting of Waco, Inc.

4. No determination has been reached that the antenna height and location proposed by Focus would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a Consolidated Proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Focus Broadcasting of Waco, Inc.:

(a) If there is a reasonable possibility that the tower height and location proposed by applicant would constitute a hazard to air navigation.

(b) Whether, in light of the evidence adduced pursuant to issue (a), applicant is qualified.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, That Waco Community Media, Ltd. may certify to the presiding Administrative Law Judge, within 30 days after this Order appears in the **Federal Register**, that it has or will publish local notice of the filing of its application.

8. It is further ordered, That Waco Community Media, Ltd., Focus Broadcasting of Waco, Inc. and Latin American Broadcasting Co. shall each submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

9. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

10. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is further ordered, That the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-21649 Filed 8-9-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Publication of Director of Central Depositories for Home Mortgage Disclosure Act Data

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of availability of information.

SUMMARY: Section 340(f) of the Housing and Community Development Act of 1980 (Public Law 96-399; October 8, 1980; 94 Stat. 1614-1680) directs the Federal Financial Institutions Examination Council (FFIEC) to establish a central depository for Home Mortgage Disclosure Act (HMDA) data in each Standard Metropolitan Statistical Area (SMSA) so that interested parties may review the disclosure statements financial institutions are required to report to their federal financial regulators under HMDA. The FFIEC has published a directory that lists the central depositories that have been established to date in 306 of the 324 SMSAs. The directory is being published in order to inform interested parties of the location of the central depositories. The directory will be updated when new depositories are added or the locations of existing depositories are changed.

DATE: Directory information is as of August 5, 1982.

ADDRESS: Federal Financial Institutions Examination Council, 490 L'Enfant Plaza, SW, Eighth Floor, Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT: L. Ann Jones, Federal Financial Institutions Examination Council, 490 L'Enfant Plaza, SW, Eighth Floor, Washington, D.C. 20219, (202) 447-0939.

Dated: August 4, 1982.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 82-21571 Filed 8-9-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 2395]

Fastway Forwarders, Inc.; Order of Revocation

On August 2, 1982, Fastway Forwarders, Inc., P.O. Box 60414, Miami Springs, FL 33166 surrendered its Independent Ocean Freight Forwarder License No 2395 for revocation.

Therefore, by virture of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 2395 issued to Fastway Forwarders, Inc. be revoked effective August 2, 1982.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Fastway Forwarders, Inc.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 82-21569 Filed 8-9-82; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Fujiki U.S.A., Inc., 200 Market Bldg., Suite 1430, 220 SW Market Street, Portland, OR 97201. Officers: Takeshi Itoh, President/Director; Tokunori Natsume, Director; Reijiro Shimizu, Director; Hirotaka Aoi, Vice President/General Manager; Kenneth Lee Novajoski, Vice President; William W. Wyse, Secretary

Max Gruenhut International Inc., One Greenway Plaza East, Suite 402, Houston, TX 77046. Officers: Paul Sekin, Secretary; Kurt D. Schroeder, Vice President; Martin Haeberli, President; Ronald Hiemann, Vice President; Juergen Schlueter, Vice President; J. L. Worsham, Director

Max Gruenhut International, Inc., 8420 W. Bryn Mawr Avenue, Suite 950, Chicago, IL 60631. Officers: Horst Mahlmann, Director; Kurt Dieter Schroeder, President; Robert Van Gent, Vice President/Treasurer; Joerg Frede, Vice President; Ronald W. Hiemann, Vice President; Klaus Joerg, Vice President

Max Gruenhut International, Inc. Boston, 33 Broad Street, Boston, MA 02109. Officers: Kurt Dieter Schroeder, Vice President/Director; Horst Mahlmann, Director; Klaus Joerg, Vice President; Juergen Schluter, Vice President; Ronald W. Hiemann, President/Secretary; Elizabeth D. Morton, Treasurer

Max Gruenhut International, Inc., Five World Trade Center, Suite 9289, New York, NY 10048. Officers: Kurt D. Schroeder, President/Director; Horst Mahlmann, Executive Vice President/Director; Klaus Joerg, Vice President/Secretary; Rainer Luerseen, Vice President; Ronald W. Hiemann, Vice President; Juergen Schlueter, Vice President; Max Hirschi, Treasurer

Weicker-Gruenhut International, Inc., 2900 Brighton Blvd., Denver, CO 80216. Officers: Hubert Work, Director Vice President; John W. Amberg, Secretary/Assistant Treasurer; Horst Mahlmann, President, Kurt D. Schroeder, Treasurer; Horst Behm, Vice President

Accelerated Customs Brokers, Inc., 133 Sierra Street, El Segundo, CA 90245; Officers: Jeffrey Robert Landa, President; William Robert Wratschko, Executive Vice President

Young S. Kim, d.b.a. Ace Young Company, 3555 W. Peterson Avenue, Chicago, IL 60659.

By the Federal Maritime Commission.

Dated: August 4, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-21568 Filed 8-9-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1539R]

Midwest Overseas, Inc.; Order of Revocation

On July 15, 1982, Midwest Overseas, Inc., 801 Chase Avenue, Elk Grove Village, Illinois 60007, surrendered its Independent Ocean Freight Forwarder License No. 1539R for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1539R issued to Midwest Overseas, Inc. be revoked effective July 15, 1982.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Midwest Overseas, Inc.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 82-21570 Filed 8-9-82; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before August 30, 1982 in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T-3038-1.

Filing party: Mr. John E. Nolan, Assistant Port Attorney, Port of Oakland, P.O. Box 2064, 66 Jack London Square, Oakland, California 94604.

Summary: Agreement No. T-3038-1, between the Port of Oakland (Port) and American President Lines, Ltd. (APL), modifies the basic agreement between the Port, APL and Seatrain Terminals of California, Inc. (Seatrain), whereby Seatrain assigned to APL Agreements Nos. T-2480 and T-2605. Agreement No. T-3038-1 provides with respect to a third crane installed on the premises situated in the Port area of Oakland by APL, that the Port and APL shall have the same rights to obtain or assign the secondary use of the third crane as they have pursuant to Agreements Nos. T-2480 and T-3038, for the existing two Port owned cranes preferentially assigned to APL. Revenues from any assignment by Port or APL of use of the third crane will be distributed in the same manner as would secondary use revenues for the two existing Port owned cranes, except when the Port is already receiving for its account crane rental revenues from the secondary assignment of the two Port owned cranes. This amendment shall become effective upon approval by the Commission.

Agreement No. T-3500-1.

Filing party: Mr. H. H. Wittren, Associate Director of Real Estate Leasing, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-3500-1, between the Port of Seattle (Port) and Pacific Alaska Line, Inc. (PAL), amends the basic agreement which provides for a five-year renewable lease to PAL of terminal facilities at Terminal 105, Seattle. The amendment extends the lease by exercising the first option period, commencing September 1, 1982, for a five year period. The monthly rental paid by PAL to the Port will be increased to $1,680. The leased premises will be revised by the deletion of an existing office building, and subject to Port's approval, PAL may construct a modular office building on the premises. All maintenance and repairs and their costs will be the responsibility of the Port. PAL shall submit documents to the Port Commission indicating the consent of surety on PAL's bond lease to all provisions of this amendent, in the amount of $20,160.

Agreement No. T-3540-1.

Filing party: Mr. H. H. Wittren, Associate Director of Real Estate Leasing, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-3540-1, between the Port of Seattle (Port) and Pacific Alaska Line, Inc. (PAL), amends

the basic agreement which provides for the five-year renewable lease to PAL of 6,179 sq. ft. of land area, with a building area of 11,100 sq. ft., at Terminal 105, Seattle. By exercise of the first option, the terms of the lease is extended by the five-year period, commencing August 15, 1982. The monthly rental is increased to $2,146.74. All maintenance and repairs, including structural, shall be the responsibility of the Port. Pending approval by the Commission, PAL will be assessed rental pursuant to Port tariffs, and upon Commission approval, PAL will pay rent pursuant to the lease. PAL shall submit to the Port Commission documents indicating the consent of surety on their lease bond to all provisions of this amendment, in the amount of $25,761.

Agreement No. T-3649-1.

Filing party: Mr. H. H. Wittren, Associate Director of Real Estate Leasing, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-3649-1, between the Port of Seattle (Port) and Pacific Alaska Line, Inc. (PAL), amends the basic agreement which provides for the four-year and two and one-half months renewal lease to PAL of 34,557 sq. ft. of unimproved land located at King County, Washington, PAL will exercise the first of three additional 5-year extensions commencing August 15, 1982. PAL shall pay to Port an increased monthly rental of $2,073.42. Pending approval by the Commission, PAL will be assessed rental pursuant to Port tariffs. Upon Commission approval, PAL will be assessed rent pursuant to the lease. PAL shall submit to the Port Commission documents indicating the consent of surety on their lease bond to all provisions of this amendment, in the amount of $25,761.

Agreement No. 5600-43

Filing party: Charles F. Warren, Esq., Warren & Associates, P.C., 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Summary: Agreement No. 5600-43 modifies the basic agreement of the Philippines North America Conference to clarify the conference's intermodal ratemaking authority extends to the Puerto Rico & U.S. Virgin Islands Trade Group, and to clarify that the jurisdiction of that trade group includes intermodal services to ports therein via U.S. coastal points.

Agreements Nos. 8080-19 and 8240-18

Filing party: Wade S. Hooker, Jr., Esquire, Burlingham Underwood & Lord, One Battery Park Plaza, New York, New York 10004.

Summary: Agreement No. 8080-19, the Atlantic and Gulf-Indonesia Conference; and, Agreement No. 8240-18, the Atlantic and Gulf-Singapore, Malaya and Thailand Conference, amend respectively, the basic agreements to provide for agreement upon credit practices.

Agreement No. 8260-22.

Filing party: Anthony J. Ciccone, Jr., Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 8260-22 amends the basic agreement of the Mediterranean U.S.A. Great Lakes Westbound Freight Conference to provide an indefinite extension of European inland intermodal authority and add interconference European inland intermodal authority.

Agreement No. 9902-14.

Filing party: Edward M. Schmeltzer, Esq., Schmeltzer, Aptaker, & Sheppard, P.C., 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036.

Summary: Agreement No. 9902-14 amends the Euro-Pacific Joint Service Agreement to: (1) add traffic between U.S. Pacific Coast Ports and Canadian Pacific Coast Ports to its scope, (2) allow the parties to adjust their present relative participation in the joint service at their own discretion and (3) extent the term of the entire agreement through December 31, 1986.

Agreements Nos. 10045-7 and 10105-5.

Filing party: Donald J. Brunner, Esq., 1101 14th Street, N.W., Suite 1000, Washington, D.C. 20005.

Summary: Agreement No. 10045-7, the U.S. South Atlantic and Gulf-Panama and Costa Rica Rate Agreement; and Agreement No. 10105-5, the U.S. South Atlantic and Gulf-El Salvador/Guatemala/Honduras Rate Agreement amend respectively, the basic agreements to provide that a member may request (within a specific time) a review of an independent action proposal which fails to carry by a majority vote, stipulating that such review must be conducted by a poll within two full working days of the request.

Agreements Nos. 10045-8 and 10105-6.

Filing party: Donald J. Brunner, Esq., 1101 14th Street, N.W., Suite 1000, Washington, D.C. 20005.

Summary: Agreement No. 10045-8, the U.S. South Atlantic and Gulf-Panama and Costa Rica Rate Agreement; and Agreement No. 10105-6, the U.S. South Atlantic and Gulf-El Salvador/Guatemala/Honduras Rate Agreement amends the respective basic agreements to: (1) Revise the self-policing provisions, (2) increase the amount of liquidated damages from $5,000 to $15,000, for each violation involved in a malpractice and (3) increase the security deposit from $5,000 to $50,000.

By Order of the Federal Maritime Commission.

Dated: August 5, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-21639 Filed 8-9-82; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Salsbury Laboratories; Swine Premix Containing Roxarsone; Withdrawal of Approval of NADA.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Salsbury Laboratories, Inc., for Hog-Gain Medicated Premix containing 3-nitro-4-hydroxyphenylarsonic acid (roxarsone) and other ingredients for use in swine and lambs. The firm requested withdrawal of approval.

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Salsbury Laboratories, Inc., Charles City, IA 50616, is the sponsor of NADA 7-422 for Hog-Gain Medicated Premix which contains 3-nitro-4-hydroxyphenylarsonic acid (roxarsone), niacin, potassium iodide, dicalcium phosphate, copper sulfate, iron sulfate, cobalt sulfate, manganese sulfate, and zinc sulfate. The premix is labeled for use in feed for swine and lambs as an aid in stimulating growth and increasing feed efficiency and as an aid in preventing swine pellagra, goitrous conditions, and nutritional anemia due to deficiencies of copper and iron.

Hog-Gain Medicated Premix was among several animal drug products containing 3-nitro-4-hydroxyphenylarsonic acid reviewed by the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group. The NAS/NRC findings were published in the **Federal Register** of September 10, 1970 (35 FR 14273). NAS/NRC evaluated the drugs reviewed as: (1) Effective for improved feed efficiency for swine, chickens, and turkeys; (2) effective for

treatment of swine dysentery (hemorrhagic enteritis or bloody scours); (3) effective for improved pigmentation in chickens and turkeys; (4) probably effective for faster weight gains in swine, chickens, and turkeys; however, the label claim for stimulation of growth should be "will result in faster weight gains and improved feed efficiency under appropriate conditions"; (5) probably not effective for coccidiosis; (6) more information is needed on control of cecal coccidiosis; and (7) not effective for necrotic enteritis in swine. NAS/NRC stated: (1) The claim for bloody scours should be changed to "swine dysentery"; (2) more information is needed with regard to claims for use in lambs and with regard to the combination of an arsenical drug and trace elements; (3) a caution statement should be required to state "excessive consumption of this product may cause leg weakness and nerve damage"; and (4) when drugs are administered in feed or water for therapeutic claims, the label should warn that treated animals must actually consume enough medicated water or medicated feed to provide a therapeutic dose under the conditions that prevail and, as a precaution, the label should state the desired oral dose per unit of animal weight per day for each species as a guide to effective use of the preparation in drinking water or feed.

FDA concurred with the NAS/NRC findings; however, the agency concluded the appropriate claim for faster weight gains and improved feed efficiency should be "For increased rate of weight gain and improved feed efficiency for (under appropriate conditions for use)."

Because the NAS/NRC review showed deficiencies in the NADA, FDA suggested that Salsbury either submit additional data to address the deficiencies or request that the agency withdraw the application. The sponsor has requested by letter dated December 22, 1981, that the NADA be withdrawn.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115) *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 7–422 and all supplements for Hog-Gain Medicated Premix is hereby withdrawn, effective August 20, 1982.

Dated: August 3, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-21393 Filed 8-9-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0205]

Morton Chemical; Filing of Food Additive Petition

Correction

In FR Doc. 82–20170, published on page 32480, on Tuesday, July 27, 1982, in the first column, in the "For Further Information Contact:" paragraph, in the third line "NW.," should be corrected to read "SW.,".

BILLING CODE 1505-01-M

[Docket No. 82N-0014]

Status of Gentian Violet Used as a Mold Inhibitor in Poultry Feed

Correction

In FR Doc. 82–20171, published on page 32480, on Tuesday, July 27, 1982, in the second column in the **"FOR FURTHER INFORMATION CONTACT:"** paragraph, in the fourth line "443–336" should be corrected to read "443–3336".

BILLING CODE 1505-01-M

[Docket No. 76N-0465; DESI 64]

Certain Barbiturate-Analgesic Oral Combination Drugs; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice amends a previous notice, which stated the conditions for marketing products identical to Sandoz Pharmaceuticals' Fiorinal Tablets and Capsules, to provide for the submission of abbreviated new drug applications or full new drug applications for certain other combination butalbital-analgesic products described below.

DATE: Manufacturers of such products who do not hold either an approved supplemental new drug application or an approved full or abbreviated new drug application by August 10, 1983 will be subject to regulatory action.

ADDRESSES: Communications in response to this notice should be identified with reference number DESI 64, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

New drug applications or supplements to full new drug applications (identify with NDA number): Division of Neuropharmacological Drug Products (HFD–120), National Center for Drugs and Biologics.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD–530), National Center for Drugs and Biologics.

Requests for guidelines or information on conducting dissolution tests and bioavailability studies: Division of Biopharmaceutics (HFD–520), National Center for Drugs and Biologics.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), National Center for Drugs and Biologics.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), National Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, National Center for Drugs and Biologics (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301–443–3650.

SUPPLEMENTARY INFORMATION: A notice published in the **Federal Register** of November 15, 1977 (42 FR 59115), announced the conditions under which the Food and Drug Administration would accept an abbreviated new drug application (ANDA) for products identical in composition to Fiorinal containing butalbital (50 mg), aspirin (200 mg), phenacetin (130 mg), and caffeine (40 mg).

Because of the unfavorable benefit-to-risk ratio with excessive use of phenacetin, many manufacturers have reformulated their existing products to delete phenacetin or wish to come on the market with such a product that does not contain phenacetin. In a separate notice published elsewhere in this issue of the **Federal Register**, the agency is announcing its conclusions regarding the safety of phenacetin. That notice affects all products containing phenacetin.

In a **Federal Register** notice of June 24, 1980 (45 FR 42375), FDA denied a hearing and withdrew approval of certain barbiturate-analgesic combinations, specifically (1) Butigetic Tablets (butabarbital, acetaminophen, phenacetin, and caffeine) and (2)

Indogesic Tablets (butabarbital, acetaminophen, and salicylamide), because the sponsors had failed to submit any data or information to demonstrate the existence of a genuine and substantial issue of fact requiring a hearing. That notice stated that FDA had been unable to identify any data that are adequate to support the effectiveness claims of any barbiturate-analgesic, except for the Fiorinal formulation, and that accordingly barbiturate-analgesic drugs such as Butigetic and Indogesic are new drugs requiring full new drug applications. As a result, regulatory action was initiated against all barbiturate-analgesic combinations not identical to the Fiorinal formulation, a product determined by FDA to be suitable for ANDA's.

Subsequently, three petitions were received by FDA. They are on file at the Dockets Management Branch. Two petitions on behalf of Gilbert Laboratories requested (1) that FDA permit ANDA's for a particular butalbital-acetaminophen-caffeine combination and (2) a stay of enforcement action regarding the Gilbert product until the first petition is acted upon. This notice denies the relief sought by the first petition in that this notice does not allow ANDA's to be submitted for combination products containing acetaminophen and butalbital. This notice does allow for the submission of a full new drug application which will not be required to contain efficacy data because FDA has made a determination that products containing butalbital and acetaminophen, with or without caffeine; and butalbital, aspirin, and acetaminophen, with or without caffeine are effective for the indication stated in this notice. The second petition is made moot by the action taken on the first petition. The third petition, on behalf of the National Pharmaceutical Alliance, requested a stay of all regulatory and enforcement action on barbiturate-analgesic combination drug products until FDA clarifies in the **Federal Register** the status of and proper procedure for marketing barbiturate-analgesic combination products. This petition is granted, by this notice, insofar as it pertains to products containing butalbital in combination with aspirin or acetaminophen or both, because this notice advises firms of the ANDA or NDA requirements for such products. That part of the petition pertaining to a stay of regulatory action, including enforcement activity with respect to other barbiturate-analgesic combination drug products is denied for the reasons stated in the June 24, 1980 notice.

After reconsidering the status of barbiturate-analgesic combinations in light of the phenacetin notice, FDA concludes that the drug products described below are suitable for ANDA's or full NDA's. Such drugs are regarded as new drugs (21 U.S.C. 321(p)). An approved new drug application is a requirement for marketing such drug products. Therefore, the notice of November 15, 1977, is superseded by this notice which sets forth the conditions for marketing these additional combination products.

A. *Effectiveness classification.* The Food and Drug Administration has considered all available evidence and concludes that the following combination products, with or without caffeine (40 mg), are effective for the symptom complex of tension (or muscle contraction) headache: (1) Butalbital (50 mg) and aspirin (325 or 650 mg); (2) butalbital (50 mg) and acetaminophen (325 or 650 mg); (3) butalbital (50 mg), aspirin (160–165 mg), and acetaminophen (160–165 mg) formulated so that the total amount of aspirin and acetaminophen equals 325 mg; and (4) butalbital (50 mg), aspirin (325 mg), and acetaminophen (325 mg).

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve new drug applications for these products as follows: (1) For the drug products described under A(1), abbreivated new drug applications and supplements to previously approved new drug applications; (2) for the drug products described under A(2), (3), and (4), full new drug applications and supplements to previously approved new drug applications. The conditions for approval are described below.

1. *Form of drug.* The drug is in tablet or capsule form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indication is as follows: For the relief of the symptom complex of tension (or muscle contraction) headache.

3. *Marketing status.* a. (i) Butalbital-analgesic combination drug products of a composition other than one of those described in A above that are now the subject of an approved new drug application or abbreviated new drug application may be reformulated in accordance with one of the formulations described in A. For A(1) formulations, a supplement should be submitted. For A(2), A(3), or A(4) formulations, a supplement should be submitted only for approved full applications; if the applicant holds an approved abbreviated application, then the reformulated product should be provided for through a new full application.

(ii) Both supplements and new applications should contain in vitro dissolution rate studies on the reformulated product. These studies are to be conducted in accordance with the methods provided for in the guidelines on conducting dissolution tests and bioavailability studies, which are available from the Division of Biopharmaceutics (HFD–520) at the address given above. In vivo demonstration of bioavailability shall be required of all products which fail to achieve adequate dissolution.

(iii) Any approved product that is reformulated to contain butalbital and aspirin, as described in A(1) above, with or without caffeine may be initially marketed before FDA approves the supplemental new drug application, according to the procedure provided by 21 CFR 314.8 (d) and (e). On or after August 10, 1983 the product will be subject to regulatory action unless it has been approved in a supplemental new drug application.

(iv) The application holder of an approved product that is reformulated to contain any of the other formulations described in A. above will be required to submit a clinical study demonstrating that such combination products do not cause hepatic injury. The applicant may not be required to conduct such a study if it is demonstrated by clinical evidence supplied from the literature that the combination is non-toxic. These products may not be initially marketed until the supplemental application or new drug application is first approved.

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained for a drug product of a composition described in A(1) above that is not now the subject of an approved new drug application or abbreviated new drug application. In vitro dissolution rate studies are required as a part of the application (see 3.a.(ii) above). In vivo demonstration of bioavailability shall be required of products which fail to achieve adequate dissolution.

c. Approval of a full new drug application must be obtained for a drug product of a composition described in A

(2), (3), or (4) above. Clinical studies demonstrating substantial evidence of effectiveness will not be required, but a clinical study demonstrating that the combination product does not cause hepatic injury will be required. Such a study may not be required if it is demonstrated by clinical evidence supplied from the literature that the combination is non-toxic. In vitro dissolution rate studies are required as part of the application. In vivo demonstration of bioavailability shall be required of products which fail to achieve adequate dissolution.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the National Center for Drugs and Biologics (see 21 CFR 5.70 and 47 FR 26913 published in the Federal Register of June 22, 1982).

Dated: July 1, 1982.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 82-21739 Filed 8-9-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0382; DESI Nos. 64, 6340, 7337, 8658, 10996, and 11792]

Prescription and Over-the-Counter Drug Products Containing Phenacetin; Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Applications

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice proposes to withdraw approval of new drug applications for both prescription and over-the-counter (OTC) drugs containing phenacetin due to its high potential for abuse and its unfavorable benefit-to-risk ratio when incorporated in analgesic mixtures which are then subjected to excessive chronic use. All drug products containing phenacetin are subject to this notice. Manufacturers must reformulate their products to delete phenacetin or replace it with another analgesic on or before August 10, 1983. Thereafter the marketing of any drug product containing phenacetin that is not the subject of a pending hearing request will be regarded as unlawful.

DATES: Hearing requests due on or before September 9, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 80N-0382, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Neuropharmacological Drug Products (HFD-120), Rm. 10B-34 (or Division of Surgical-Dental Drug Products (HFD-160), Rm. 18B-03, National Center for Drugs and Biologics.

Supplements to abbreviated new drug applications (identify with ANDA number): Division of Generic Drug Monographs (HFD-530), National Center for Drugs and Biologics.

Requests for Hearing (identify with Docket Number appearing in the heading of this notice): Dockets Management Branch (HFA-305), Rm. 4-62.

Requests for guidelines or information on conducting dissolution tests and bioavailability studies: Division of Biopharmaceutics (HFD-520), National Center for Drugs and Biologics.

Questions about phenacetic substitutes and whether a reformulated product is identical, similar, or related to a drug product evaluated by the Drug Efficacy Study Implementation (DESI) review: Division of Drug Labeling Compliance (HFD-310), National Center for Drugs and Biologics, Rm. 9B-28 (301-443-3750).

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, National Center for Drugs and Biologics (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301-443-3650.

SUPPLEMENTARY INFORMATION:

Background

Phenacetin, an ingredient in prescription and OTC drug products, has been widely used as an analgesic for over 80 years. It is usually used in combination with other analgesic ingredients; it is virtually never used as a single-ingredient drug product. Analgesic mixtures containing phenacetin when used chronically and excessively can result in severe and irreversible toxic effects. Phenacetin's history of abuse from its misuse and prolonged use led FDA in 1964 to require a warning statement in the labeling of all phenacetin-containing preparations. See 21 CFR 201.309.

In 1977, the FDA Advisory Review Panel on Over-the-Counter Internal Analgesic and Antirheumatic Products classified phenacetin as not safe for OTC use as an analgesic because of the high potential for abuse, the high potential for harm to the kidneys from phenacetin-containing mixtures, and the possibility of hemolytic anemia and methemoglobinemia resulting from abuse. In arriving at its conclusions regarding the safety of phenacetin, the Panel considered documented evidence showing:

1. That the central nervous system effects of phenacetin appear to be a major factor in the chronic abuse of combinations containing this drug. Several authors of the medical literature reviewed noted the habituation potential of phenacetin-containing combinations.

2. An association between excessive chronic ingestion of phenacetin-containing analgesics and life-threatening urinary tract and kidney disease (renal papillary necrosis, nonobstructive interstitial nephritis, calcification), and cancer of the kidney and bladder.

A thorough review of the literature on the relationship between phenacetin and severe renal disease was made by the Panel and submitted for outside statistical evaluation. Numerous experts appeared before the Panel. In addition, the Panel collected new information from a variety of sources including kidney dialysis centers and regulatory agencies of other countries. The Panel report states in part at 42 FR 35425:

"In the opinion of the Panel, the evidence relating phenacetin to severe renal disease now derives from a world body of published reports so numerous and varied in design that the possibility of coincidental association is negligible and requires that phenacetin be removed from the OTC drug market.

"There is a view set forth in material submitted to the Panel that phenacetin should not be singled out as the causative agent in analgesic combination products because other agents in analgesic combinations, such as aspirin or acetaminophen, have been shown to produce kidney damage when used alone in man and animals, whereas phenacetin alone has rarely been shown to produce kidney damage in man * * *. The Panel does not agree with this argument because there are now thousands of reported cases of kidney disease associated with the use of phenacetin-containing mixtures, while there are probably no more than ten well-documented cases of analgesic-induced kidney disease in the world literature that can be definitively associated with abuse of all other single agent products or combination analgesic products not involving phenacetin, even though these products are extensively used throughout the world. The Panel has discussed the adverse effects of

aspirin on the kidney elsewhere in this document. * * *

"From the point of view of safety of phenacetin, whether it causes kidney disease itself, augments effects of other active ingredients or increases the use of other nephrotoxic agents, it is the Panel's opinion that prolonged excessive ingestion of any common analgesic product containing phenacetin will significantly increase the probability of serious kidney disease and premature death. These levels and duration of ingestion, far exceeding label directions for use of such analgesic mixtures, are indicative of a serious potential for abuse problem that the Panel believes is associated with CNS effects of phenacetin and other components of such mixtures. This is especially true for powder formulations.

"Phenacetin is virtually never used as a single agent in the U.S. or any other country. It is almost always commercially available and used only in combinations containing other analgesic compounds. Obviously, since the actual use of phenacetin as a single entity is rare, it could not be expected that renal disease resulting from its use alone would occur or be reported. It should be noted though that at least one case allegedly involving only phenacetin has been reported * * *. Although epidemiological or experimental studies on the effects of phenacetin alone in producing renal disease in man are not available or feasible, several other types of evidence indicate the major involvement of phenacetin in analgesic-induced renal disease.

"In several major industrialized countries, where kidney disease induced by analgesic abuse has been a problem, many analgesic mixtures have been involved. Phenacetin has been the common denominator of analgesic products responsible for the problem. In the U.S., available data also indicate that phenacetin-containing products are invovled in almost all reported cases of analgesic-induced kidney disease * * *.

"In addition to phenacetin being involved qualitatively as the common denominator, data from several countries show similar quantitative relationships between the dose of phenacetin required to produce a given degree of kidney injury or incidence of kidney disease, irrespective of the dose of other agents involved * * *.

"Retrospective case control studies indicate that total doses of 2 to 4 kg phenacetin over a period of about 10 years would result in approximately a 70 percent probability of renal papillary necrosis. The probability of death due to kidney failure in patients with degeneration of the part of the kidney affected by phenacetin is about 30 to 40 percent. This incidence appears to be similar for all mixtures of phenacetin regardless of whether they contain aspirin, antipyrine, or caffeine.

"Several different types of studies consistently suggest temporal and dose relationships between phenacetin ingestion and renal dysfunction. In the opinion of the Panel, and consulting reviewers, studies following changes in renal function in the same individual or groups of individuals when phenacetin is removed, replaced, or readministered provide strong evidence for a direct causal effect. Followup studies in countries after complete removal of phenacetin from nonprescription use have shown a decrease in the incidence of kidney damage associated with analgesic abuse as will be discussed later in this document * * *. This not only supports the assumption of causality but also the conclusion that removal from OTC drug status would be beneficial. Data collected from kidney dialysis units in the U.S. and previous autopsy studies suggest the incidence of analgesic-induced kidney disease to be significantly high to warrant the Panel's action to recommend restriction of this drug from the OTC drug market * * *.

"The Panel further believes that these data provide the same early warning indications seen in other countries just before analgesic-induced kidney disease was diagnosed as a major public health problem. The 'lag time' between several initial diagnoses of analgesic-induced kidney disease and the realization that in fact the problem was widespread is what most concerns the Panel. While there are not large numbers of cases of analgesic-induced kidney disease being presently reported in the U.S., the Panel believes that if the medical community were aware of this problem and looked for this type of kidney disease, the incidence of analgesic-induced kidney disease would in fact be found to be a major public health problem in the U.S."

More detailed examination and documentation of the data supporting these Panel conclusions are contained in the Panel's report and proposed monograph for OTC Internal Analgesic, Antipyretic and Antirheumatic Products (Ref. 1) published in the **Federal Register** of July 8, 1977 (42 FR 35346) on pages 35424–35434.

The central nervous system effects of phenacetin in combination products have been further reported in recent years in experimental studies (Ref. 41) and in historical surveys (Refs. 42, 43) where both in the United States and in Europe phenacetin-containing combination products have been used for nonanalgesic indications.

Although attempts have been made to define the prevalence of analgesic abuse, it has been impossible so far to arrive at a generalized assessment. Real differences exist in the prevalence between countries and between different sections of individual countries, e.g., the United States and Australia (Refs. 42 through 46). The public health problems are primarily those secondary to chronic ingestion and although analgesic abuse leads to multiorgan dysfunction, it is primarily the renal disease that is of public health importance. It is estimated that in some areas of the United States "20 percent of patients with interstitial nephropathy had ingested large quantities of analgesic mixtures and that this consumption appeared to be the primary cause of their renal disease" (Ref. 45).

The adverse effects of chronic high doses of phenacetin-containing analgesic combination products discussed above and in the OTC Panel report have also been documented in recent medical literature (Refs. 41 through 45, 47 through 49). While experimental data from animal studies (Ref. 44) suggest that aspirin is more potent than phenacetin in producing renal papillary necrosis in animals, when the drugs are taken together the incidence of renal lesions is greater than with aspirin alone. Analgesic nephropathy is rare in humans who have abused aspirin alone, presumably because of the lesser toxic propensities of aspirin in man and less potential for abuse of the single ingredient. Although analgesic nephropathy occurs in patients with rheumatoid arthritis, the incidence is not high, and in almost all reported series has been limited to those patients who have taken combination analgesics containing phenacetin and not to those patients who have taken large quantities of aspirin alone (Ref. 46). Kincaid-Smith (Ref. 42) states that dosage may account for the fact that patients with rheumatoid arthritis who take aspirin for prolonged periods do not have a high incidence of analgesic nephropathy. That is, although they take large amounts of aspirin by conventional standards, the amounts are often less than those taken by analgesic abusers. Kincaid-Smith further states that when serious analgesic nephropathy is found in patients with rheumatoid arthritis they have almost always abused drug combinations.

It has also been suggested by Nanra et al. (Ref. 44) that removal of phenacetin from combination analgesics does not lower the incidence of analgesic nephropathy. This is based on a study in Australia of two consecutive groups of

patients who had exclusively abused either a product containing aspirin, phenacetin, and caffeine or a product containing aspirin, salicylamide, and caffeine. The authors concluded that the absence of phenacetin from this one product over an eight-year period did not appear to influence the frequency of renal insufficiency in patients. However, the pattern of drug ingestion in these patients was not validated in any manner other than by patient history, and the free availability of phenacetin in other OTC products throughout the period of the study raises issues of validity of these findings. This is in contrast to the experience in Canada, Denmark, and Sweden (Refs. 43, 46, 50) where removal of phenacetin from all combination analgesic products has resulted in a significant decline in analgesic nephropathy as measured by sensitive indices (Refs. 47, 49). There appear to be true differences between analgesic nephropathy as it occurs in Australia and as it occurs in other countries. Evidence of this is Australia's high frequency (25 percent) of end stage renal disease associated with analgesic nephropathy compared to 3.1 percent in Europe. This difference was also noted and discussed by the OTC Panel (Ref. 1).

Due to FDA's increasing concern about the toxicity of phenacetin, the agency requested its Peripheral and CNS Drugs Advisory Committee to evaluate the data on the safety and effectiveness of phenacetin in prescription analgesic combination products. At its meeting of February 13–14, 1978, the Committee concluded that a statement on the association of phenacetin with renal damage should be required in the labeling of such products, but the committee did not recommend that phenacetin be removed from the prescription drug market. On November 20, 1978, FDA wrote to NDA holders for prescription products that contained phenacetin, asking them to add a boxed warning statement to the labeling highlighting the association of large doses of phenacetin for long periods with severe kidney disease and with cancer of the kidney, and to add a statement to the Warnings section concerning kidney disease associated with phenacetin. Many firms have already revised their labeling to include these warnings. Since August 7, 1964, warning statements on the hazards of long-term use of phenacetin have been required in the labeling of phenacetin-containing products under 21 CFR 201.309.

Although the evidence linking abuse of analgesics to cancer of the kidney was not reviewed by the Peripheral and CNS Drugs Advisory Committee in 1978, several reports implicating long-term use of phenacetin-containing products with cancer of the kidney and urinary bladder were reviewed by both the OTC Panel (Ref. 1) and FDA (Refs. 21 through 40). FDA later reviewed additional medical literature, notably the 1978 Bengtsson report (Ref. 40) which states that over 100 cases of uro-epithelial cancers have been reported in users of phenacetin-containing analgesics. In 1980, the first epidemiologic study of analgesic nephropathy and transitional cell carcinoma of the urinary tract was reported from the United States by Gonwa et al. (Ref. 51). The findings here were consistent with the previous epidemiologic studies from Europe and implicate analgesic abuse, particularly of phenacetin, as being carcinogenic.

The Director of the National Center for Drugs and Biologics has reevaluated the conclusions of the Advisory Review Panel on Over-the-Counter Internal Analgesic and Antirheumatic Products, the Peripheral and CNS Drugs Advisory Committee, and the evidence available to the agency as discussed above and concludes that because the high potential for abuse of phenacetin-containing products may lead to excessive ingestion, producing a clinical syndrome characterized by serious kidney disease and premature death, the risks from use of such combination drug products outweigh any benefit and therefore they cannot be considered safe. The medical literature (Ref. 44) also reports that this clinical syndrome is characterized by gastrointestinal symptoms with peptic ulcerations in 35 percent of patients, anemia in 60–90 percent, hypertension in 15–70 percent, ischemic heart disease in 35 percent, pigmentation, psychiatric disorders, and possible effects on pregnancy. Although phenacetin is not unique in its ability to cause nephropathy, its central nervous system properties make it likely that analgesic combination products containing phenacetin will be abused. Because of the availability of other safe and effective analgesics both for prescription and OTC use, consumers would not be deprived of useful analgesic products.

Proposed Action

The Food and Drug Administration is charged with assuring that drugs are safe and effective for their intended use. The statutory framework anticipates that new information on the safety of marketed drugs may require that FDA withdraw certain drug products from the market or cause certain ingredients to be deleted from drug products, or prescribe changes in their labeling to reveal limitations on use, or to warn of previously unanticipated hazards. See 21 U.S.C. 352 and 355. In accordance with the Federal Food, Drug, and Cosmetic Act, the Director is now proposing to withdraw approval of all new drug applications for products containing phenacetin. However, the agency has determined that most of the products that contain phenacetin can be reformulated adequately by either deleting phenacetin or by replacing it with another analgesic whose safety and effectiveness is well established, thereby permitting reformulation to safe and effective products without the need to conduct safety and effectiveness studies. Therefore, these products as reformulated may continue to be available to consumers without marketing disruption. Many products that contained phenacetin have already been reformulated; several manufacturers have expressed a desire to reformulate their products and are awaiting FDA guidelines. In many other countries phenacetin has already been removed from the market without causing problems for consumers or manufacturers.

This notice applies not only to the particular phenacetin-containing drug products listed below, but also to any phenacetin-containing drug product that is the subject of a new drug application (NDA) approved either before or after the Drug Amendments of 1962 and to any other drug products containing phenacetin, whether or not they are the subject of approved NDA's. OTC drug products containing phenacetin previously deferred to the OTC review (37 FR 9464) are no longer deferred and are subject to this notice. Therefore, OTC drug products containing phenacetin will not be subject to the full OTC rule making procedure set forth in § 330.10 (21 CFR 330.10).

I. Prescription Drug Products Containing Phenacetin.

A. The following products contain aspirin 200 mg, butalbital 50 mg, caffeine 40 mg, and phenacetin 130 mg.

1. NDA 17–534; Fiorinal Tablets and Capsules; Sandoz Pharmaceuticals, P.O. Box 11, Route 10, E. Hanover, NJ 07936.

2. ANDA 85–441; APC with Butalbital Tablets; Zenith Laboratories, Inc., 140 Le Grand Ave., Northvale, NJ 07647.

3. ANDA 86–162; Butalbital with APC Tablets; West-Ward, Inc., 465 Industrial Way West, Eatontown, NJ 07724.

4. ANDA 86–231; A.P.C. with Butalbital Capsules; Chelsea Laboratories, Inc., 428 Doughty Blvd., Inwood, NY 11696.

5. ANDA 86–237; A.P.C. with Butalbital Tablets; Chelsea Laboratories, Inc.

6. ANDA 86–398; Butal Compound Tablet; Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.

7. ANDA 86–432; Butal Compound Capsule; Cord Laboratories, Inc.

8. ANDA 86–710; A.P.C. with Butalbital Tablets; Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.

9. ANDA 86–986; Lanorinal Tablets; Lannett Co., Inc., 900 State Rd., Philadelphia, PA 19136.

10. ANDA 86–996; Lanorinal Capsules; Lannett Co., Inc.

11. ANDA 87–048; Butalbital with APC Tablets; Generic Pharmaceutical Corp., 433 Commerical Ave., Palisades Pk., NJ 07650.

12. ANDA 87–279; Butalbital with APC Tablets; Premo Pharmaceutical Laboratories, Inc., 111 Leuning St., South Hackensack, NJ 07606.

B. The following products contain aspirin 227 mg, caffeine 32.4 mg, phenacetin 162 mg, and propoxyphene hydrochloride 65 mg.

1. NDA 10–996; Darvon Compound 65 Capsules; Eli Lilly & Co., Box 618, Indianapolis, IN 46206.

2. ANDA 80–044; Propoxyphene Compound 65 Capsules; Federal Pharmacal, Inc., P.O. Box Q, Kingshill St., St. Croix, VI 00850.

3. ANDA 80–882; ICN 65 Compound Capsules; ICN Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213.

4. ANDA 83–077; Propoxyphene Compound 65 Capsules; Zenith Laboratories, Inc.

5. ANDA 83–072; Propoxyphene Compound 65 Capsules; Mylan Pharmaceuticals, Inc., P.O. Box 4293; Morgantown, WV 26505.

6. ANDA 83–086; Dolene Compound-65 Capsules; Lederle Laboratories, Pearl River, NY 10965.

7. ANDA 83–101; Propoxyphene Compound 65 Capsules; Cord Laboratories.

8. ANDA 83–106; SK-Propoxyphene APC Capsules; Smith Kline & French Laboratories, 1500 Spring Garden St., Philadelphia, PA 19101.

9. ANDA 83–230; Propoxyphene Compound 65 Capsules; Parke Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.

10. ANDA 83–530; Propoxyphene Compound 65 Capsules; Purepac Pharmaceutical Co.

11. ANDA 83–681; Propoxyphene HCl with A.P.C. Capsules; Richyln Laboratories, 3725 Castor Ave., Philadelphia, PA 19124.

12. ANDA 83–701; Propoxyphene Compound 65 Capsules; Towne Paulsen & Co., Inc., 140 E. Duarte Rd., Monrovia, CA 91016.

13. ANDA 83–737; Repro Compound 65 Capsules; Reid-Provident Laboratories, Inc., 640 10th St., Atlanta, GA 30318.

14. ANDA 83–968; Propoxyphene HCl with A.P.C. Capsules; Mylan Pharmaceuticals, Inc.

15. ANDA 84–190; Propoxyphene Compound 65 Capsules; Anabolic, Inc., 17802 Gillette Ave., Irvine, CA 92664.

16. ANDA 84–207; Propoxyphene HCl Compound 65 Capsules; Philips Roxane Laboratories, Inc., 330 Oak St., Columbus, OH 43216.

17. ANDA 84–249; Propoxyphene HCl with A.P.C. Capsules; Abbott Laboratories, Inc., 14th & Sheridan Rd., N. Chicago, IL 60064.

18. ANDA 84–553; SK-65 Compound Capsules; Smith Kline & French Laboratories.

19. ANDA 85–732; Propoxyphene Compound 65 Capsules; Chelsea Laboratories.

20. ANDA 86–488; Propoxyphene Compound 65 Capsules; Premo Pharmaceutical Laboratories, Inc.

21. ANDA 87–142; Dolene Compound–65 Capsules; Lederle Laboratories.

C. NDA 10–996; Darvon Compound Capsules containing aspirin 227 mg, caffeine 32.4 mg, phenacetin 162 mg, and propoxyphene hydrochloride 32 mg; Eli Lilly & Co.

D. NDA 16–864; Darvo Comp–N 50 Tablets containing aspirin 227 mg, caffeine 32.4 mg, phenacetin 162 mg, and propoxyphene napsylate 50 mg; Eli Lilly & Co.

E. NDA 16–864; Darvo Comp–N 100 Tablets containing aspirin 227 mg, caffeine 32.4 mg, phenacetin 162 mg, and propoxyphene napsylate 100 mg; Eli Lilly & Co.

F. NDA 7–337; Percodan Tablets containing aspirin 224 mg, caffeine 32 mg, oxycodone hydrochloride 4.5 mg, oxycodone terephthalate 0.38 mg, and phenacetin 160 mg; Endo Laboratories, Inc., 1000 Stewart Ave., Garden City, NJ 11530.

G. NDA 7–337; Percodan-Demi Tablets containing aspirin 224 mg, caffeine 32 mg, oxycodone hydrochloride 2.25 mg, oxycodone terephthalate 0.19 mg, and phenacetin 160 mg; Endo Laboratories, Inc.

H. NDA 10–894; Zactirin Compound-100 Tablets containing aspirin 227 mg, caffeine 32.4 mg, ethoheptazine citrate 100 mg, and phenacetin 162 mg, Wyeth Laboratories, Inc., P.O. Box 8299, Philadelphia, PA 19101.

I. NDA 11–536; Kryl Tablets containing ascorbic acid 100 mg, aspirin 230 mg, isothipendyl hydrochloride 4 mg, phenacetin 160 mg, and phenylephrine hydrochloride 5 mg; Ayerst Laboratories, 685 Third Ave., New York, NY 10017.

J. NDA 12–365; Soma Compound Tablets containing caffeine 32 mg, carisoprodol 200 mg, and phenacetin 160 mg, Wallace Laboratories, Half Acre Rd., Cranbury, NJ 08512.

K. ANDA 87–042; Carisoprodol Compound Tablets containing caffeine 32 mg, carisoprodol 200 mg, and phenacetin 160 mg, Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiaque, NY 11726.

L. NDA 12–365; Soma Compound with Codeine Tablets containing caffeine 32 mg, carisoprodol 200 mg, codeine phosphate 16 mg, and phenacetin 160 mg; Wallace Laboratories.

M. NDA 13–416; Norgesic Tablets containing aspirin 225 mg, caffeine 30 mg, orphenadrine citrate 25 mg, and phenacetin 160 mg; Riker Laboratories, Inc., 19901 Nordhoff St., Northridge, CA 91324.

N. NDA 13–416; Norgesic Forte Tablets containing aspirin 450 mg, caffeine 60 mg, orphenadrine citrate 50 mg, and phenacetin 320 mg; Riker Laboratories, Inc.

O. NDA 16–109; Sinubid Sustained Release Tablets containing acetaminophen 300 mg, phenacetin 300 mg, phenylpropanolamine hydrochloride 100 mg, and phenyltoloxamine citrate 66 mg; Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.

II. OTC Drug Products Containing Phenacetin (some of these products have been discontinued and are not being marketed.)

A. That part of NDA 6–412 pertaining to Decapryn S with APC containing aspirin 230 mg, caffeine 30 mg, phenacetin 150 mg, and doxylamine succinate 6 mg or 12 mg; Merrell-Dow Pharmaceutical Inc., P.O. Box 15260, Cincinnati, OH 45215.

B. That part of NDA 6–412 pertaining to Decapryn with APC containing aspirin 230 mg, caffeine 30 mg, phenacetin 150 mg, and doxylamine 6 mg or 12 mg; Merrell-Dow Pharmaceuticals Inc.

C. That part of NDA 6–921 pertaining to Coricidin Tablets containing aspirin 3.5 gr, caffeine 0.5 gr, chlorpheniramine maleate 2 mg, and phenacetin 2.5 gr; Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033.

D. Those parts of NDA 6–303 and 7–026 pertaining to Thephorine Tablets containing aspirin 160 mg, caffeine 15 mg, phenacetin 160 mg, and phenindamine tartrate 10 mg; Hoffmann-LaRoche, Inc., Roche Park, Nutley, NJ 07110.

E. That part of NDA 7–018 pertaining to Thenfadil Compound Tablets containing aspirin 180 mg, caffeine 15 mg, phenacetin 120 mg, and thenyldiamine maleate 6 mg; Winthrop Laboratories, 90 Park Ave., New York, NY 10016.

F. NDA 7–352; Hista-Pac Tablets containing aspirin 3.5 gr, caffeine 0.5 gr, phenacetin 2.5 gr, and pyrilamine maleate 25 mg; Hance Bros. & White Co., 442 North 12th St., Philadelphia, PA 19123.

G. NDA 7–812; Inhiston-APC Tablets containing aspirin 3.5 gr, caffeine 0.5 gr, phenacetin 2.5 gr, and phenyltoloxamine maleate 10 mg; Plough, Inc., P.O. Box 377, Memphis, TN 38151.

H. NDA 8–528; Bristamine-APC containing aspirin 210 mg, caffeine 30 mg, phenacetin 150 mg, and phenyltoloxamine 25 mg; Bristol Laboratories, P.O. Box 657, Syracuse, NY 13201.

I. NDA 11–292; Cardui Tablets containing pamabrom 25 mg, phenacetin 125 mg, and salicylamide 200 mg; Chattanooga Medicine Co., 1715 West 38th St., Chattanooga, TN 37409.

J. NDA 11–849; Pamprin Tablets containing pamabrom 25 mg, phenacetin 125 mg, pyrilamine maleate 12.5 mg, and salicylamide 250 mg; Chattem Chemicals, 1715 West 38th St., Chattanooga, TN 37409.

K. NDA 11–922; Carbetapentane Citrate with SPC Capsules containing caffeine 0.5 gr, carbetaphetane citrate 12.5 mg, phenacetin 1.25 gr, and salicyamide 3.5 gr, USV Laboratories, 1 Scarsdale Rd., Tuckahoe, NY 10707.

Accordingly, all drug products that contain phenacetin are regarded as new drugs (21 U.S.C. 321(p)) and are subject to the requirements of this notice.

Opportunity for Hearing

Therefore, notice is given to the holders of the new drug applications for products containing phenacetin and to all other interested persons that the Director of the National Center for Drugs and Biologics proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications (or if indicated above, those parts of the applications providing for the drug products listed above) and all amendments and supplements thereto because new evidence of clinical experience, not contained in such applications or not available to the Director until after such applications were approved, evaluated together with the evidence available to the Director when the applications were approved, shows that such drugs are not shown to be safe for use under the conditions of use on the basis of which the applications were approved.

This notice of opportunity for hearing applies not only to new drug application holders (named above), but to all persons who manufacture or distribute a drug product, whether prescription or over-the-counter, that contains phenacetin. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers a drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicants and all other persons subject to this notice including drug manufacturers of over-the-counter products containing phenacetin are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of drug products containing phenacetin.

An applicant or any other person subject to this notice who decides to seek a hearing, shall file (1) on or before September 9, 1982, a written notice of appearance and request for hearing, and (2) on or before October 12, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, submission of data, information, and analyses to justify a hearing, submission of other comments, and the granting or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice to file a timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing. See 21 CFR 314.200(g).

All submissions under this notice must be filed in four copies. Such submissions, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Guidelines for Reformulation

The Director has determined that most phenacetin-containing combination products currently being marketed can be reformulated by deleting phenacetin or by replacing phenacetin with another analgesic. Manufacturers will be given until August 10, 1983, to reformulate their products. Reformulation of an OTC drug product containing phenacetin must be in accord with the provisions of any applicable OTC drug final monograph. Before an applicable OTC drug final monograph is published, manufacturers of such OTC drug products may reformulate either by deleting phenacetin or by replacing phenacetin with other analgesic ingredients, provided the following conditions are met. The reformulation does not result in a product containing a combination of ingredients not previously marketed in this country; and it does not result in a product containing (1) an active ingredient limited to prescription use on or after May 11, 1972, or (2) an active ingredient present at a dosage level higher than that available in any OTC drug product on December 4, 1975, and unless the ingredient and/or dosage level (single unit or total daily dosage) is classified in a proposed or tentative final monograph in Category I.

Phenacetin-containing prescription drug products that are the subject of an

approved full or abbreviated new drug application may be reformulated without prior FDA approval by either deleting phenacetin or replacing phenacetin with another analgesic ingredient as follows: (1) Because the data establishing the safety and effectiveness of the analgesics aspirin and acetaminophen are well-known, phenacetin in combination products containing one of these analgesics should be replaced on a milligram-for-milligram basis with aspirin or acetaminophen, whichever analgesic ingredient is already in the product. (2) If both of the above analgesics are in a product, then either one or both of the analgesics present can be used to replace the phenacetin on a milligram-for-milligram basis (i.e., the total milligram amount of the analgesics added must be equal to the milligram amount of phenacetin deleted). Clinical studies demonstrating the safety and effectiveness of the reformulated product are not required. If reformulated as above these products may be marketed before FDA approves a supplemental application, according to the procedure provided by 21 CFR 314.8 (d) and (e)

A manufacturer may not reformulate a phenacetin-containing prescription drug product that is the subject of an approved full or abbreviated new drug application by substituting for phenacetin another analgesic ingredient not now in the drug product unless a supplemental application is first approved. Clinical studies will not be required for a reformulated product in which either aspirn or acetaminophen is substituted for phenacetin, except when acetaminophen is substituted for phenacetin and the product contains a known or potential inducer of hepatic enzymes; then a liver toxicity study will be required. An applicant may not be required to conduct such a study if it is demonstrated by clinical evidence supplied from the literature that the combination is non-toxic. For the prescription drug products listed in this notice, the only products of which the agency is aware that would require such evidence on liver toxicity (because they do not already contain aspirin or acetaminophen which can be increased to replace phenacetin) are products containing carisoprodol. If the phenacetin ingredient is in carisoprodol-containing products is replaced with acetaminophen, then supplements to full new drug applications or full new drug applications will be required.

Reformulation of a product that is now the subject of an approved ANDA by substituting for phenacetin an analgesic other than aspirin or acetaminophen will require a full approved NDA if FDA has not made a determination that an ANDA is acceptable. Because the Director is allowing manufactures 1 year in which to reformulate their products, early submission of a supplement or full new drug application requiring premarketing approval will provide a better opportunity for the applicant to obtain approval of the reformulated product in time to avoid interruption in its marketing.

Products that are subject to the drug efficacy study (DESI) program will continue to be subject to the requirements and conditions of the DESI program when the products are reformulated to delete phenacetin or to replace it with another analgesic. Reformulation of a phenacetin-containing prescription drug product subject to DESI for which a final effectiveness determination has been made must be in accordance with the applicable DESI notice. For example butalbital-analgesic combination products containing phenacetin are subject to DESI 64 which appears elsewhere in this issue of the **Federal Register.** A number of phenacetin-containing products also are in that part of the DESI program for which a final effectiveness determination has not yet been made. The Director advises that reformulation in accord with this notice will not alter any interim classifications of these drug products as less-than-effective.

Any phenacetin-containing prescription drug product that is not the subject of an approved NDA may be reformulated in accord with the same requirements as set forth for a prescription product that is the subject of an NDA. However, the reformulated product may result in a product that requires an approved NDA or ANDA prior to marketing. Inquiries as to the new drug status of a product should be sent to the Division of Drug Labeling Compliance (address given above).

The supplemental new drug applications, abbreviated new drug applications, or full new drug applications submitted for reformulated drug products as required by this notice are to include in vitro dissolution rate studies with the methods provided for in the guidelines on conducting dissolution tests and bioavailability studies, which are available from the Division of Biopharmaceutics at the address given above. In vivo demonstration of bioavailability shall be required of all products which fail to achieve adequate dissolution.

Any change in the formulation of a drug product required by this notice is subject to the requirements of 21 CFR 207.30 (drug listing amendment).

The Director intends to publish a notice withdrawing approval of those parts of the new drug applications that provide for products containing phenacetin, except for those products that are the subject of a hearing request, by October 12, 1982. The effective date of the withdrawal notice will be August 10, 1983. Therefore, any drug product containing phenacetin initially introduced or initially delivered for introduction into interstate commerce after August 10, 1983, except for a drug still the subject of a hearing request, will be considered misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) and a new drug within the meaning of section 201(p) for which an approved new drug application under section 505 of the act (21 U.S.C. 355) and Part 314 of the regulations is required for marketing. In the absence of an approved new drug application, any such drug product initially introduced or initially delivered for introduction into interstate commerce after August 10, 1983 will be subject to regulatory action. The agency concludes that although phenacetin poses an unfavorable benefit-to-risk ratio when incorporated into analgesic mixtures, a recall of phenacetin products is not warranted. Further, many firms have already reformulated their products and the agency expects that many other firms will reformulate their products as a result of the publication of this notice.

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Reprints of the above references have been placed on file with the Dockets Management Branch (address given above) and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)) and under the authority delegated to the Director of the National Center for Drugs and Biologics (see 21 CFR 5.82 and 47 FR 26913 published in the **Federal Register** of June 22, 1982).

Dated: July 1, 1982.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 82–21740 Filed 8–9–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685–92, February 25, 1970, as amended in pertinent part at 43 FR 16418–19, April 18, 1978) is amended to reflect the consolidation of the Office of Public Affairs and the Office of Legislative Affairs into a new Office of Legislation and Information. This reorganization will provide a single release point for FDA information to Congress and the media thereby ensuring better coordination between

the legislative and public information activities of the Agency as these activities relate to Congressional and media liaison, FDA publications, and implementation of the Freedom of Information Act.

Section HF–B, Organization and Functions, is amended as follows:

1. Delete Paragraph (c) *Office of Public Affairs (HFAB)* in its entirety and reserving it for future use:

(c) Reserved.

2. Delete paragraph (d) *Office of Legislative Affairs (HFAD)* in its entirety and substitute the following:

(d) *Office of Legislation and Information (HFAD).* Advises and assists the Commissioner and other key officials on Agency public information programs, Agency legislative needs, pending legislation, and oversight activities which may affect FDA.

Acts as the focal point for disseminating news on FDA activities and coordinates with PHS and Office of the Assistant Secretary for Public Affairs on public information programs.

Plans, develops, implements, and monitors policy and programs on Agency media relations and consumer information and education programs conducted through the media, FDA's consumer affairs officers, and other communication sources.

Plans, develops, produces, and publishes Agency publications and graphic arts materials.

Coordinates FDA implementation of the Freedom of Information (FOI) Act and the Privacy Act. Processes requests for information under FOI. Executes FOI denial authority for the Agency.

Serves as the focal point for legislative liaison activities within FDA and between FDA, the Department, PHS, and other agenies; analyses the legislative needs of FDA and drafts or develops legislative proposals, position papers, and Departmental reports on proposed legislation for approval of the Commissioner.

Advises and assists Members of Congress and congressional committees and staffs, in consultation or coordination with the Office of the Secretary, on Agency actions and policies, and issues related to legislation which may affect FDA.

Directs or coordinates the preparation of testimony and data for presentation to congressional committees; monitors hearings and congressional activities affecting FDA.

Provides a central FDA control and processing point for correspondence referred by the White House, Congress, the Department, PHS, and other sources.

Provides explanations of the requirements of the various laws and regulations administered by FDA and the historical background and/or rationale for these requirements.

Dated: July 30, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82–21561 Filed 8–9–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–82–1145]

Submission of Proposed Information Collection to OMB

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Robert G. Masarsky, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from Robert G. Masarsky, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The propsed information collection requirement is described as follows:

Proposal: Application for Homeownership Assistance Under Section 235(i)
Office: Housing
Form number: HUD–93100
Frequency of submission: On Occasion
Affected public: Individuals or Households
Estimated burden hours: 5,000
Status: Extension
Contact: Doris Stokes, HUD (202) 426–0070; Robert Neal, OMB, (202) 395–6880

(Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: July 23, 1982.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 82–21612 Filed 8–9–82; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Idaho; Section Chiefs in Branch of Lands and Minerals Operations; Redelegation of Authority

Pursuant to the authority contained in Part 1, Sec. 1.1.(a)(1) of the Bureau Order No. 701, dated July 23, 1964, as amended, the following officials in the Branch of Lands and Minerals Operations, Idaho State Office are hereby delegated authority to act for the State Director on sections of the above order as follows:

1. Chief, Lands Section.

(a) Sections 2.2(b) and (d); 2.3(a); 2.5; 2.9.

2. Chief, Minerals Section.

(a) Sections 2.2(b) and (d); 2.3(a); 2.6.

3. Chief, Lands Service Section.

(a) Sections 2.2(c); 2.3(c); 2.4(a)(4); 2.6 and 2.9 as to memorandums, letters, unacceptable filings and other types of correspondence which do not require a formal administrative decision.

This redelegation of authority will become effective May 10, 1982.

Dated: April 30, 1982.

Clair M Whitlock,

State Director.

[FR Doc. 82-20572 Filed 8-9-82; 8:45 am]

BILLING CODE 4310-84-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams at 202–395–7340.

Title: Multiple Use Questionnaire Package—Pretest of Wilderness Section (short form)
Bureau Form Number: None
Frequency: One-time
Description of Respondents: Cross-section of individuals who have expressed an interest in the Lahontan Resources Area (Nevada) planning effort
Annual Responses: 40
Annual Burden Hours: 20
Bureau Clearance Officer: Harold R. Walker, 202–653–8853

Dated: August 2, 1982.

James M. Parker,

Associate Director, Bureau of Land Management.

[FR Doc. 82-21579 Filed 8-9-82; 8:45 am]

BILLING CODE 4310-84-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams at 202–395–7340.

Title: Multiple Use Questionnaire Package—Socioeconomic Wilderness Section (long form)
Bureau Form Number: None
Frequency: One-time
Description of Respondents: Random sample of residents in 8 Wyoming counties
Annual Responses: 600
Annual Burden Hours: 300
Bureau Clearance Officer: Harold R. Walker, 202–653–8853

Dated: August 2, 1982.

James M. Parker,

Associate Director, Bureau of Land Management.

[FR Doc. 82-21581 Filed 8-9-82; 8:45 am]

BILLING CODE 4310-84-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams at 202–395–7340.

Title: Multiple Use Questionnaire Package—Test of Issue Identification Section
Bureau Form Number: None
Frequency: One-time
Description of Respondents: Individuals who have expressed an interest in the Washakie Resource Area planning effort, Wyoming
Annual Responses: 500
Annual Burden Hours: 125
Bureau Clearance Officer: Harold R. Walker, 202–653–8853

Dated: August 2, 1982.

James M. Parker,

Associate Director, Bureau of Land Management.

[FR Doc. 82-21582 Filed 8-9-82; 8:45 am]

BILLING CODE 4310-84-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams at 202–395–7340.

Title: Multiple Use Questionnaire Package—Pretest of Ranch Budget Section
Bureau Form Number: None
Frequency: One-time
Description of Respondents: Livestock ranchers holding BLM permits in Lahontan Resource Area, Nevada
Annual Responses: 20
Annual Burden Hours: 10
Bureau Clearance Officer: Harold R. Walker, 202–653–8853

Dated: August 2, 1982.

James M. Parker,

Associate Director, Bureau of Land Management.

[FR Doc. 82-21587 Filed 8-9-82; 8:45 am]

BILLING CODE 4310-84-M

[M 55228]

Montana; Realty Action, Direct Noncompetitive Sale of Public Land in Valley County

July 30, 1982.

The following described lands have been examined and identified as suitable for disposal by sale pursuant to Sec. 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), at no less than the fair market value:

Principal Meridian

T. 30 N., R. 36 E.,
Sec. 5, S½SW¼SW¼NW¼SW¼, SW¼SE¼SW¼NW¼S½, W½NE¼NW¼SW¼SW¼, NW¼NW¼SW¼SW¼, excluding from the above-described land a certain strip of land situated in the S½SW¼, Sec. 5, T. 30 N., R. 36 E., P.M.M., containing .067 acre, more or less, bounded and described as follows: Beginning at a point on the section line common to sections 5 and 6, 1170.3 feet south of the W¼ corner of Sec. 5, thence running easterly 5.5 feet to the NE corner of an 18 inch square concrete fence post (NE corner of Hillview Cemetery), thence running southerly 451.4 feet to the SE corner of an 18 inch square concrete fence post (SE corner of Hillview Cemetery), thence running westerly 7.5 feet to the intersection with the section line common to sections 5 and 6, thence running north along said section line, 451.4 feet to the point of beginning.

The area described contains 5.558 acres, more or less.

The land will be offered for direct sale by noncompetitive bidding procedures. Hillview Cemetery Association is the proposed designated buyer and will be offered the right to pay the appraised fair market value. Refusal or failure to meet that price shall cause cancellation of the sale.

The subject land is located one mile south of Hinsdale, Montana, south of U.S. Highway 2. The land adjoins the existing Hillview Cemetery which lies directly west of the subject parcel. The subject land has no unique values and has historically been used for livestock grazing. The sale, if consummated will allow expansion of the present Hillview Cemetery.

Disposal of the tract will serve important public objectives which cannot be achieved feasibly on land other than public land which outweigh other public objectives and values which would be served by maintaining the tract in Federal ownership.

The proposed sale is consistent with the Bureau's planning system and Valley County government officials have been notified of the proposed sale. Since the land has a low resource value, the transfer of the tract into private ownership will benefit the public interest and provide for better land management.

The terms and conditions applicable to the sale are as follows:

1. All minerals will be reserved to the United States together with the right to explore, prospect for, mine, and remove them under applicable law and regulations;

2. A right-of-way for ditches and canals will be reserved to the United States; and

3. The sale of these lands will be subject to all valid existing rights and reservations of record.

Detailed information concerning the sale, including the planning documents, environmental assessment, and the record of public discussions, is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457 and at the Valley Resource Area, Highway 2 West, Route 1–775, Glasgow, Montana 59230.

Comments will be accepted on the above proposal for a period of sixty (60) days from the date of this notice. At the end of that time period all comments will be evaluated and a final determination made. If the decision to sell is made, Hillview Cemetery Association shall submit the full purchase price within the time period designated by the authorized officer. Failure to submit the required amount within the allotted time will result in the cancellation of the sale.

For a period of 60 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

Mike Penfold,

State Director.

[FR Doc. 82–21583 Filed 8–9–82; 8:45 am]

BILLING CODE 4310–84–M

[Serial No. I–18777]

Idaho; Conveyance of Public Land, Owyhee County

July 30, 1982.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), the following described public lands have been sold by direct sale to Alfred H. and Ramona Lee Curt, Route 2, Fruitland, Idaho 83619.

Boise Meridian, Idaho

T. 5 S., R. 3 W.,
Sec. 6, lot 61.
Comprising 0.17 acres

The lands were conveyed to resolve a very complicated and long standing occupancy problem in the Old Historic Mining Area of Silver City. The public interest was well served through completion of the sale. The fair market value of the land was appraised at $265.00 and payment of this amount was received by the United States.

Vincent S. Strobel,

Acting Chief, Division of Operations.

[FR Doc. 82–21588 Filed 8–9–82; 8:45 am]

BILLING CODE 4310–84–M

National Park Service National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 30, 1982. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 25, 1982.

Bruce MacDougal,

Acting Chief of Registration, of the National Register.

ALABAMA

Covington County

Andalusia, *First National Bank Building,* 101 S. Cotton St.

Perry County

Marion, *First Congregational Church of Marion,* 601 Clay St.

ALASKA

Valdez-Chitina-Whittier District

Valdez, *Ahrens-Fox Continental Fire Engine,* City Museum

COLORADO

Routt County

Hahns Peak vicinity, *Ellis Trail,* E of Hahns Peak, N to state line

DELAWARE

Sussex County

Bridgeville vicinity, *Richards House—Linden Hall,* E of Bridgeville on US 13
Laurel vicinity, *Spring Garden,* NE of Laurel on Delaware Ave.
Lewes vicinity, *Cool Spring Presbyterian Church,* W of Lewes on SR 247
Lewes vicinity, *Norwood House,* SW of Lewes on DE 9
Rehoboth Beach vicinity, *Dodd Homestead,* W of Rehoboth Beach on DE 1
Seaford, *Robinson, Jesse, House,* High Street

GEORGIA

Ben Hill County

Fitzgerald, *Ben Hill County Jail (County Jails of Ben Hill, Berrien, Brooks, and Turner Counties TR),* Pine St.

Berrien County

Nashville, *Berrien County Jail (County Jails of Ben Hill, Berrien, Brooks, and Turner Counties TR),* N. Jefferson St.

Brooks County

Quitman, *Brooks County Jail (County Jails of Ben Hill, Berrien, Brooks, and Turner Counties TR),* 200 S. Madison St.

Fulton County

Atlanta, *Briarcliff Hotel (The 750),* 1050 Ponce de Leon Ave.
Atlanta, *Temple, The,* 1589 Peachtree St.

Gordon County

Calhoun, *Calhoun Depot,* Between Court and Oothcalooga Sts.

Gwinnett County

Lawrenceville vicinity, *Terrell, William, Homeplace,* E of Lawrenceville off US 29

Lincoln County

Lincolnton, *Lincolnton Presbyterian Church and Cemetery,* N. Washington St.

Pike County

Concord, *Strickland, R. F., Company,* Railroad and McLendon Sts.

Rockdale County

Conyers, *Rockdale County Jail,* 967 Milstead Ave.

Troup County

LaGrange, *College Home/Smith Hall,* LaGrange College campus

Turner County

Ashburn, *Turner County Jail (County Jails of Ben Hill, Berrien, Brooks, and Turner Counties TR),* 200 College St.

Worth County

Poulan, *Possum Poke,* US 82

KENTUCKY

Fayette County, Lexington, *Bates Log House,* 5143 Spurr Rd.
Lexington, *Beck, James Burnie, House,* 209 E. High St.
Lexington, *Randall Building/Bogaert's Jewelery Store,* 127–129 W. Main St.

LOUISIANA

St. Landry Parish

Opelousas, *Old Opelousas City Hall and Market,* Market and Bellevue Sts.

St. Mary Parish

Morgan City, *U.S. Post Office,* 1st and Everett Sts.

MASSACHUSETTS

Berkshire County

Monterey, *Bidwell, Rev. Adonijah, House* Royal Hemlocks and Art School Rds.
Sandisfield, *Sage, Philemon, House,* MA 183

Essex County

Lynn, *Lynn Bank Block,* 21–29 Exchange St.
Newburyport, *Dodge Building,* 19–23 Pleasant St.

MINNESOTA

Chippewa County

Montevideo, *Montevideo Public Library,* 125 N. 3rd. St.

Cook County

Grand Marais vicinity, *Naniboujou Club Lodge,* E of Grand Morals on US 61

Wabasha County

Wabasha, *Wabasha County Poor House,* Hiawatha Dr.

Waseca County

New Richland vicinity, *Vista Lutheran Church,* N of New Richland off MN 13
Waseca vicinity, *Phelps Farmhouse,* W of Waseca on SR 2

Winona County

Homer vicinity, *Rockledge,* US Highway 61

MONTANA

Gallatin County

Belgrade, *Maudlow School (One Room Schoolhouses of Gallatin County TR),* Milwaukee Rd.

NORTH CAROLINA

Bertie County

Windsor, *Freeman Hotel,* York and Granville Sts.
Windsor, *Rosefield,* 212 W. Grey St.

Cleveland County

Polkville vicinity, *Lattimore, John, House,* NW of Polkville on SR 1373

Durham County

Durham, *Bullington Warehouse,* 500 N. Duke St.

Scotland County

Laurinburg, *Villa Nova,* SR 1438

Wayne County

Eureka, *Eureka United Methodist Church,* Church St.

Wilson County

Wilson, *Cherry Hotel,* 333 E. Nash St.

OREGON

Clackamas County

Oregon City, *First Congregational Church of Oregon City (Atkinson Memorial Congregation Church),* 6th and John Adams Sts.

Deschutes County

Bend vicinity, *Boyd, Charles, Homestead Group,* N of Bend at 20410 Rivermall Ave.

Jackson County

Medford, *Wilkinson-Swem Building (Wilkinson, E. H., Building),* 217 E. Main St.

Lane County

Eugene, *Ax Billy Department Store (Ardel Building),* E. 10th Ave. and Willamette St.
Eugene, *McDonald Theater Building,* 1004–1044 Willamette St.

Marion County

Salem, *Farrar Building,* 351–373 State St.

Multnomah County

Portland, *Burke-Clark House,* 2610 NW Cornell Rd.
Portland, *Mills, Lewis H., House,* 2039 NW Irving St.

PENNSYLVANIA

Philadelphia County

Philadelphia, *Philadelphia Stock Exchange,* 1409–1411 Walnut St.

TENNESSEE

Blount County

Maryville, *Jones, David, House,* 720 Tuckaleechee Pike
Maryville, *Maryville College Historic District,* Washington Street

Davidson County

Nashville, *Holly Street Fire Hall,* 1600 Holly St.
Nashville, *Printers Alley Historic District,* Roughly bounded by 3rd and 4th Aves., Bank Alley, and both sides of Church St.
Nashville, *Scarritt College Historic District,* 19th Ave., S.

Jefferson County

Chestnut Hill vicinity, *Hill-Hance House (Joseph Hill House),* E of Chestnut Hill off US 411

Knox County

Knoxville, *Mall Building (Kern Building/ Jersey Lily Saloon Building),* 1–5 Market St.
Knoxville, *Trinity Methodist Episcopal Church,* 416 Lovenia Ave.

Marshall County

Mooreville, *Fitzpatrick House,* TN 50 A

McMinn County

Riceville vicinity, *McClatchey-Gettys Farm,* S of Riceville on SR 1

Shelby County

Memphis, *Central Gardens Historic District,* Roughly bounded by Rembert St., York, Cleveland and Eastmoreland Aves.
Memphis, *Memphis Street Railway Company Office and Streetcar Complex,* 821 Beale St.
Memphis, *Moore, William R., Dry Goods Building (Hein Building),* 183 Monroe Ave.
Memphis, *Second Congregational Church,* 763 Walker Ave.
Memphis, *Toof Building,* 195 Madison Ave.

Warren County

McMinnville vicinity, *Falconhurst,* N of McMinnville on Faulkner Springs Rd.
Rock Island vicinity, *Great Falls Cotton Mill,* W of Rock Island off US 705

Williamson County

Franklin vicinity, *Meeting-of-the-Waters (Thomas Hardin Perkins House),* NW of Franklin on Del Rio Pike
Franklin vicinity, *Montpier (Nicholas Perkins House),* NW of Franklin off Old Hillsboro Pike

TEXAS

Austin County

Nelsonville vicinity, *Roesler House,* W of Nelsonville on TX 159

Bexar County

San Antonio, *Bushnell,* 240 Bushnell

VIRGINIA

Alexandria (Independent City), Fort Ward, 4301 W. Braddock Rd.

Augusta County

Greenville vicinity, *Bethel Greem (James Bumgardner House),* Rte. 701

Campbell County

Gladys vicinity, *Shade Grove,* E of Gladys on VA 650

Halifax County

Brookneal vicinity, *Indian Jim's Cave (Site 44 HA 18),*
Newport News (Independent City), First Denbigh Parish Church Archaeological Site

Richmond (Independent City), Holly Lawn (Richmond Council of Garden Clubs House), 4015 Hermitage Rd.

[FR Doc. 82-21328 Filed 8-9-82; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the adminstrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

Republication

MC-FC-79866. By decision of July 26, 1982, Review Board Number 3 modified its prior decision of June 14, 1982, and authorized the transfer to Perry Express, Inc. of Certificate No. MC-151384 (Sub-No. 3) issued to G&J Trucking, Inc., of Ft. Smith, AR, in addition to Permit MC-151384 (Sub-No. 4) previously authorized. Sub 3 authorizes general commodities (with exceptions) between points in the U.S. (except AK & HI). Representative: G. William Fowler, 115 W. Fifth St., Odessa, TX 79761.

Note.—This application was previously published in the **Federal Register** on June 30, 1982.

MC-FC-79910. By decision of July 21, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to A-1 VAN LINES of Certificate No. MC-134916 issued to A-1 Van Lines, Mary Kathryn Laventure, Executrix authorizing the transportation of *household goods,* as defined by the Commission, (1) between points in Pierce County, WA, on the one hand, and, on the other, points in OR and WA, and (2) between Winlock, WA, and points within 10 miles of Winlock, and the one hand, and on the other, points in OR. Applicants' representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1200, Washington, DC 20036.

Note.—Transferee is a non-carrier.

MC-FC-79918. By decision of July 21, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Audet & Megantic Transport, Ltee., of Lac Megantic, Quebec, Canada, of Certificate No. MC-126291 (Sub-No. 2) issued September 14, 1965, MC-126291 (Sub-No. 3) issued March 7, 1967, MC-126291 (Sub-No. 4) issued April 10, 1967, MC-126291 (Sub-No. 8) issued November 29, 1967, MC-126291 (Sub-No. 9) issued September 24, 1968, MC-126291 (Sub-No. 10) issued May 19, 1970, MC-126291 (Sub-No. 12) issued June 8, 1971, MC-126291 (Sub-No. 17) issued July 5, 1972, MC-126291 (Sub-No. 19) issued November 14, 1973, and MC-126291 (Sub-No. 24) issued August 9, 1979, to Quirion Transport, Inc., (Ghislain Michaud, Trustee-In-Bankruptcy) of Sherbrooke, Quebec, Canada authorizing the transportation of (1) hardwood squares, from ports of entry on the US-CD Boundary line at specific points in ME and VT to points in ME, NH, VT, and MA; (2) lumber and cedar products from ports of entry on the US-CD Boundary line at specific points in NY, ME, and VT to points in ME, NH, VT, MA, RI, CT, NY, and NJ; (3) steel bar joists and steel trusses, from ports of entry on the US-CD Boundary line at specific points in ME, VT, and NY, to points in ME, NH, VT, MA, CT, RI, NY, and NJ; (4) bricks, from ports of entry on the US-CD Boundary line at specific points in ME, VT, and NY, to points in ME, NH, VT, NY, and MA; (5) sleds, sleighs, children's wagons, and parts thereof, children's shovels, wooden benches, chairs, stools, and tables, from ports of entry on the US-CD Boundary line to points in CT, IL, IN, IA, KY, ME, MA, MI, MN, NE, NH, NJ, NY, OH, PA, RI, VT, and WI; (6) rough lumber, from points in ME, NH, VT, and NY to specific ports of entry on the US-CD Boundary line in ME and VT; (7) switches and cables, from Worcester, MA to ports of entry on the US-CD Boundary line at named points in ME; (8) springs, from Bristol, CT to ports of entry on the US-CD Boundary line located at specific points in ME; (9) snowmobiles and snowmobile parts, from ports of entry on the US-CD Boundary line to points in CO, OH, IL, KS, IN, IA, KY, MI, MN, MO, NE, ND, SD, WI, CT, ME, MA, NH, NJ, NY, PA, RI, and VT, and returned shipments; (10) lumber, from ports of entry on the US-CD Boundary line in ME, NH, VT, NY, MI, WI, and MN, to points in PA, DE, MD, OH, IL, IN, MI, MN, WI, NE, IA, KY, VA, WV, NC, and DC; (11) wood products (except in bulk), from ports of entry on the US-CD Boundary line, in ME, NH, VT, NY, MI, WI, and MN, to points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, MD, DE, OH, IL, IN, MI, MN, WI, NE, IA, KY, VA, WV, NC, and DC; (12) waste, and scrap materials, from points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, MD, DE, OH, IL, IN, MI, MN, WI, NE, IA, KY, VA, WV, NC, and DC to ports of entry on the US-CD Boundary line in ME, NH, VT, NY, MI, WI, and MN; (13) (A) building materials (except in bulk), from points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, OH, and GA, (B) plastic film and sheeting, from Auburn and Pottstown, PA, (C) plastic articles (except in bulk), from Mooresville, NC, (D) plastic granules (except in bulk), from Washington, WV, and (E) methyl methacrylate monomer (except in bulk), from Belle, WV, to ports of entry on the International Boundary line between the U.S. and Canada, at specific points in ME. Transferee is a carrier. Application has not been filed for temporary authority under 49 U.S.C. 11349. Applicants' representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Phone: (617) 742-3530.

MC-FC-79919. By decision of July 26, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the

transfer to Jenkins & Osborne Pick-Up & Delivery Service of Certificate No. MC-139199 (Sub-No. 2F) issued to Boyd Trucking Company, Inc. authorizing the transportation of *general commodities,* with exceptions, between points in McMinn County, TN (except Calhoun), on the one hand, and, on the other, Cleveland and Chattanooga, TN, restricted to the transportation of traffic having a prior or subsequent movement by rail. Applicants' representative: Robert B. Wilson, P.O. Box 458, 63 Broad Street, NW., Cleveland, TN 37311.

Note(s).—(1) Transferee presently holds no authority from this Commission (2) Transferee has filed an application docketed No. MC-155717. We find it not to be directly related and have forwarded to the proper office for further processing.

MC-FC-79920 By decision of July 21, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 Review Board Number 3 approved the transfer to Perry Transport, Inc. of Permit No. MC-156554 issued November 18, 1981 and Certificate No. MC-156554 (Sub-No. 1) issued November 27, 1981 to Midwest Motor Freight, Inc. authorizing the transportation of food and related products (1) between points in the United States under continuing contract(s) with Colorado Meat Company, of Grand Rapids, MI, Dubuque Packing Company, of Dubuque, IA; Kent Provision Company, of Grand Rapids, MI, and Utica Packing Company, of Utica, MI; and (2) between points in the lower peninsula of MI and those in Dubuque County, IA, on the one hand, and, on the other, points in CO, IA, IL, KS, MI, MN, MO. NE, TX and WI. Applicant's representative is Mr. Richard O. Pell, President, Perry Transport, Inc., 14375-172nd Avenue, Grand Haven, MI 49417.

MC-FC-79924. By decision of July 20, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 1 approved the transfer to Illini State Trucking Co., of Thornton, IL, of Certificate No. MC-100785 (Sub-No. 7) issued June 1, 1982, to Lawrence E. Bult, an individual, d.b.a. L. Bult Cartage, of Thornton, IL, authorizing: *general commodities* (except classes A and B explosives and household goods) between points in IL, IN, and MI, on the one hand, and, on the other, points in OH, PA, KY, MO, IA, WI, IL, IN, and MI. Applicant's representative: Norman R. Garvin, 1301 Merchants Plaza East Tower, Indianapolis, IN 46204-3491, Phone: (317) 638-1301.

Note.—TA lease is sought. Transferee is not a carrier.

MC-FC-79929. By decision of 7-26-82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Danny L. Breer, of Kansas City, MO, of Permit No. MC-156644 issued to Marvin L. Yockstick, d.b.a. M.L. Yockstick Trucking, of King City, MO, authorizing: General commodities (with exceptions), between points in the U.S., under contract with Food Distributing Service, Inc. Applicant's representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102.

Note.—TA lease is not sought. Transferee is not a carrier.

MC-FC-79930. By decison of July 21, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Post Trucking, Inc., of Tacoma, WA, of Certificate No. MC-140163 Sub-3 issued to Post & Sons Transfer, Inc., of Tacoma, WA, authorizing: lumber, wood products, roofing and insulation materials, between points in WA and OR.

Applicant's representative: George R. LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055.

Note.—TA lease is not sought. Transferee is not a carrier.

MC-FC-79932. By decision of July 21, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board No. 3, approved the transfer to MERRIMACK SHUTTLE AND EXPRESS SERVICE, INC., of Merrimack, NH, of Certificate NO. MC-115198 (Sub-NO. 1F) issued to John R. Seasholtz, Jr., and Thomas M. Tate, a partnership, d/b/a MERRIMACK SHUTTLE AND EXPRESS SERVICE, of Merrimack, NH, authorizing the transportation of *passengers and their baggage and express in the same vehicle with passengers,* in special and charter operations, between Merrimack and Nashua, NH, on the one hand, and, on the other, Logan International Airport, Boston, MA. Applicants' representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108.

MC-FC-79935. By decision of 7-26-82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board No. 3, approved the transfer to Jon Golashewski and Edward Wayansky, dba Mon Valley Express of Certificate NO. MC-98792 Subs 1 and 3 issued to Jerome L. Samuels, dba Samuels Motor Express, of Monessen, PA, authorizing: general commodities (with exceptions) over regular routes (1) between Monessen, PA and Pittsburgh, PA (2) between Monogabela, PA, and Charlesor, PA, (3) between Monongahela, PA, and Webster, PA, serving in (1)-(3) all intermediate points and the off-route point of East Monongahela, PA, (4) between Monessen, PA, and Charlesor, PA, serving all intermediate points. Applicants representative: Arthur J. Diskin, 402 Law & Finance Bldg., Pittsburgh, PA 15219.

Note.—TA lease is not sought. Transferee is not a carrier.

MC-FC-79938 By decision of July 21, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 Review Board No. 3, approved the transfer to ABILITY TRANSFER & STORAGE, INC., of Cocoa, FL, of License No. MC-131038, issued to WARD MOVING & STORAGE CO., INC., which authorizes operations, as a broker, of *household goods,* between points in Brevard and Volusia Counties, FL, on the one hand, and, on the other, points in the U.S. Representative: James E. Wharton, 100 S. Orange Avenue, Suite 811, Metcalf Building, Orlando, FL 32801.

Note.—Transferee is not a carrier.

MC-FC-79942 By decision of 7-26-82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board No. 3 approved the transfer of Lanscaster Limousine Service, Ltd. of Certificate No. MC-129017, issued May 17, 1967, to Airport Transportation Service, Inc. authorizing the transportation over irregular routes of passengers and their baggage, in special operations, in non-scheduled door-to-door service, limited to the transportation of not more than 8 passengers in any one vehicle (not including the driver thereof), from points in York County, PA, to Washington National Airport, Gravelly Point, VA, Dulles International Airport, Loudoun-Fairfax County, VA, John F. Kennedy International Airport and La Guardia Airport, New York, NY, and Newark Airport, Newark, NJ, with no transportation of compensation on return except as otherwise authorized, between points in York County, PA, on the one hand, and, on the other, Friendship International Airport, Baltimore, MD, with service limited to the transportation of persons having prior or subsequent transportation by air. Applicant's representative is: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101.

MC-FC-79943. By decision of 7/29/82 issued under 49 U.S.C. § 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to EAZOR SPECIAL SERVICES, INC., of Pittsburgh, PA, of Certificate No. MC-59120 and Subs 9, 11, 13, 15, 16, 19, 20, 21, 22, 24, 26, 27, 29, 33, 35, 36, 37, 39, 42F,

and 43F which were issued to EAZOR EXPRESS, INC., of Pittsburgh, PA, and which authorize the transportation of general commodities in CT, DE, IL, IN, KY, MD, MA, MI, MO, NJ, NY, PA, RI, VA, WV, WI, and DC. Representative: Thomas C. Eazor, Eazor Square, Pittsburgh, PA 15201. Transferee is not a carrier. An application for temporary authority has been filed.

MC–FC–79945. By decision of 7/29/82 issued under 49 U.S.C. § 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to LOYD W. SHEFFLER, d.b.a. SHEFFLER TRUCK LINE of Permit No. MC–138076 (Sub P22)X issued to HEAVY HAULING, INC. authorizing the transportation of *metal products,* between points in the United States, under continuing contract(s) with Brown-Strauss Corp., a Division of Azcon of Kansas City, KS, and Brown-Strauss Corp., a Division of Azcon of Denver, CO. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. Transferee is a non-carrier.

MC–FC–79952. By decision of 7/30/82 issued under 49 U.S.C. § 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to WINDSOR CHARTABUS, INC. of Certificate No. MC–124817 (Sub-1) issued to TRANSIT WINDSOR authorizing the transportation of *passengers and their baggage,* in special operations, in sightseeing and pleasure tours, and in charter operations, from ports of entry on the United States-Canada Boundary line, to points in the United States (including AK but excluding HI), and return. Representative: Robert Schuler, 100 W. Long Lake Road, Suite 102, Bloomfield Hills, MI 48013.

Note.—Transferee is a non-carrier.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–21606 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

[Decision-Notice OP2–175]

Motor Carriers Finance Applications

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: August 2, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

Agatha L. Mergenovich,

Secretary.

MC–F–14905, filed July 15, 1982. MICHIGAN TRANSPORTATION CO. (MICHIGAN) (3601 Wyoming Ave., P.O. B. 248, Dearborn, MI 48120) and R & S TRANSPORT, INC. (R & S) (3601 Wyoming Ave. P.O.B. 248, Dearborn, MI 48120)—CONTINUANCE IN CONTROL—RALLY TRANSIT, INC. (RALLY) (714 Wheeler St., Griffith, IN 46319). Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. (313) 349–3980. Michigan and R & S seek authority to continue in control of Rally upon institution by Rally of operations, in interstate or foreign commerce, as a motor common carrier. Ralph A. Posnik, Sr. is the sole stockholder of Michigan and R & S, and seeks authority to acquire control of said rights through this transaction. Michigan and R & S are regulated carriers, which hold authority issued by the Commission in MC–85934 and MC–145747, respectively. Such common control between Michigan and R & S has been approved in MC–F–14133.

Note.—Rally has filed, as a directly related application, its initial common carrier application. That application, docketed MC–162072, was published June 23, 1982.

[FR Doc. 82–21607 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 286]

Motor Carriers; Permanent Authority Decisions; Restriction Removals

Decided: August 4, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any

applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

FF–435 (Sub-3)X, filed July 27, 1982. Applicant: NATIONAL FORWARDING COMPANY, INC., 2800 Roosevelt Rd., Broadview, IL 60153. Representative: John P. Torpats (same as applicant). Sub 1 permit: (1) Broaden commodity descriptions from (a) used household goods to "household goods and furniture and fixtures", and (b) used automobiles to "transportation equipment"; and (2) remove the export and import restriction.

MC 2729 (Sub-6)X, filed July 26, 1982. Applicant: GLENWOOD TRANSIT LINE, INC., 403 N. Chestnut St., Glenwood, IA 51534. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. MC–69036 (Sub-9) acquired pursuant to MC–FC–79567: (1) Broaden commodity description from (a) non-motorized farm equipment and supplies, and parts and accessories to "machinery" and (b) meats, meat products, and meat by-products, and articles distributed by meat packinghouses to "food and related products"; (2) eliminate the facility limitations; (3) broaden: Shenandoah to Fremont and Page Counties, IA; Glenwood to Mills County, IA; Minden and Lexington to Kearney and Dawson Counties, NE; and Rockford to Ogle, Boone, and Winnebago Counties, IL; (4) change one-way to radial; and (5) remove the except hides and commodities in bulk restrictions, and the originating at and destined to restrictions.

MC 118178 (Sub-26)X, filed July 15, 1982. Applicant: RED LINE, INC., P.O. Box 823, Emporia, KS 66801. Representative: Larry E. Gregg, 641 Harrision St., P.O. Box 1979, Topeka, KS 66601. Subs 1, 4, 6, 10, 14, 15, 20, 22, and 23 certificates (acquired in MC–FC–79296): (A) Broaden to (1) "food and related products" from (a) meats, meat products, and meat byproducts, and articles distributed by meat-packinghouses, except commodities in bulk, in tank vehicles, and/or hides, Subs 1, 10, 15, 20, 22 and 23; (b) wheat bran, in bags and in bulk; wheat standard middlings, and wheat gray shorts, in bags and in bulk; and flour (except in bulk), Sub 4; (c) cider and vinegar (except in bulk), Sub 14; and (d) frozen foods, in vehicles equipped with mechanical refrigeration, Sub 23; and (2) "metal products and machinery" from aircraft parts (except those which because of their size or weight require the use of special equipment), Sub 6; (B) remove (1) all exceptions from its general commodities authority, except classes A and B explosives, commodities in bulk, and household goods, Sub 23; (2) the restrictions limiting service to the transportation of traffic originating at and/or destined to named points in Subs 1, 6, 10, 15, 20, 22, and 23; (C) authorize service to all intermediate points between Cottonwood Falls, KS and Kansas City, MO, regular route, Sub 23; and (D) broaden to (1) county-wide authority: (a) Sub 1 (facility-Garden City) Finney County, KS; (b) Sub 4 (Hutchinson, KS and Santa Fe, NM), Reno County, KS and Santa Fe County, NM; (c) Sub 6 (Wellington), Sumner County, KS; (d) Sub 10 (facility-Liberal) Seward County, KS; (e) Sub 15 (facility-Mankato) Jewell County, KS; (f) Subs 20 and 22 (facilities-Wichita) Sedgwick County, KS and (g) Sub 23 (Guymon) Texas County, OK; and (2) radial authority, all Subs.

MC 126183 (Sub-6)X, filed July 23, 1982. Applicant: MER-BUZ CORP., d.b.a. BOWERS TRANSFER & STORAGE, CO., 3850 E. 48th, Denver, CO 80216. Representative: Thomas J. Burke, Jr., 1660 Lincoln St., Suite 1600, Denver, CO 80264. Sub-No. 4: (a) Broaden (1) refrigeration equipment, business machines, store and office furnishings, fixtures and equipment, all uncrated, (2) uncrated parts of the commodities in (1) above, and (3) machinery, equipment, materials, and supplies used in the operation and maintenance of industrial plants, offices, and other business establishments, when involved in, or part of the effects of, a removal of the plants, offices, and business establishments from one location to another, and (4) uncrated store and office furnishings, fixtures and equipment all component parts thereof, to "furniture and fixtures, and machinery and material, equipment and supplies used in the manufacture, distribution and installation thereof"; (2) delete originating at or destined to limitation; (3) broaden Lafayette and Denver, CO, to Denver and Boulder Counties, CO.

MC 127739 (Sub-10)X, filed July 30, 1982. Applicant: BOYCE BRUCE TRUCKING CO., INC., 517 N. Metts St., Louisville, MS 39339. Representative: Harold D. Miller, Jr., 17th Floor Deposit Guaranty, Plaza, P.O. Box 22567, Jackson, MS 39205. Sub 7F permit broaden territorial description to between points in the U.S. (except AK and HI), under continuing contract(s) with named shippers.

[FR Doc. 82–21608 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicants is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier duel operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the qualify of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a vertified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP2–178

Decided: August 2, 1982.

By the Commission, Review Board No. 1, members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 138313 (Sub-75), filed July 26, 1982. Applicant: BUILDERS TRANSPORT, INC., 409 14th Street SW., Great Falls, MT 59404. Representative: Mack E. Burgess (same address as applicant), 406–761–5454. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 140163 (Sub-6), filed July 26, 1982. Applicant: POST & SONS TRANSFER, INC., 2326 Milwaukee Rd., Tacoma, WA 98421. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055, 206–228–3807. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (including AK, but excluding HI).

MC 151432 (Sub-2), filed July 26, 1982. Applicant: VERNON MARTELL, 2434 Hillview Avenue, Bismarck, ND 58501. Representative: Charles E. Johnson, Box 2056, Bismarck, ND 58502–2056. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle, in such vehicle, between points in the U.S. (except AK and HI).

MC 163153, filed July 26, 1982. Applicant: ALACALCO, INC., P.O. Box 3508, Oxford, AL 36203. Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104, 205–262–2756. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

Volume No. OP2–179

Decided: August 3, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier, (Member Fortier not participating.)

MC 158733 (Sub-2), filed July 23, 1982. Applicant: LEONARD FEED & GRAIN, INC., 5511 16th Avenue SW., Cedar Rapids, IA 52404. Representative: Richard D. Howe, 600 Hubbell Bldg. Des Moines, IA 50309, (515) 244–2329. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163122, filed July 26, 1982. Applicant: FRED PATTERSON TRUCKING, INC., 1224 Brunswick Ave., Queens, NY 11691. Representative: Brian S. Stern, 5411–D Backlick Rd., Springfield, VA 22151, 703–941–8200. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Volume No. OP3–122

Decided: August 2, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 6485 (Sub-2), filed July 27, 1982. Applicant: CITY MOVING SYSTEMS, INC., 219 Terry Ave., N., Seattle, WA 98109. Representative: Jack R. Davis, 1200 IBM Bldg., Seattle, WA 98101, (206) 624–7373. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except HI).

MC 163115, filed July 26, 1982. Applicant: DANNY DAVIS, d.b.a. DANNY DAVIS TRUCKING, P.O. Box 544, Grand Junction, CO 87502. Representative: Danny Davis (same address as applicant), (303) 242–8286. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle, between points in the U.S. (except AK and HI).

MC 163134, filed July 26, 1982. Applicant: N. D. CUNNINGHAM & CO., INC., 118 North Royal St., Suite 302, Mobile, AL 36601. Representative: George D. Cunningham, Jr. (same address as applicant), (205) 432–4633. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 163144, filed July 26, 1982. Applicant: TERRY FALDE, d.b.a. T AND N TRUCKING, Route 1, Spring Valley, WI 54767. Representative: Terry Falde (same address as applicant), (715) 273–5930. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 163154, filed July 27, 1982. Applicant: MEADOWS WYE & CO, INC., 111 Broadway, 21st Fl., New York, NY 10006. Representative: Morton E. Kiel, Two World Trade Center, Suite 1832, New York, NY, (212) 466–0220. As

a *broker of general commmodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163164, filed July 27, 1982. Applicant: NATIONWIDE SALES & DISTRIBUTING, INC., 1710 Homestead, P.O. Box 402242, Carrollton, TX 75040. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255–6279. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5–159

Decided: July 29, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 118178 (Sub-24), filed June 24, 1982. Applicant: RED LINE, INC., 2805 Belaire Drive, Emporia, KS 66801. Representative: Larry E. Gregg, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601, (913) 234–0565. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162999, filed July 16, 1982. Applicant: STEVE DE JONG, Route 2, Box 2227, Selah, WA 98942. Representative: Steve De Jong (same address as applicant), (509) 697–6209. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners* by owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 163048, filed July 20, 1982. Applicant: DAYBREAK DISPATCH INC., 9013 N.E. Hwy. 99, Suite L, Vancouver, WA 98665. Representative: Harold R. Jones (same address as applicant), 206–574–7284. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 163049, filed July 19, 1982. Applicant: DAROLD SCHIMMING, d.b.a. DAROLD SCHIMMING AND SONS, R.R. 3, Box 17, Enderlin, ND 58027. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108, 701–237–4223. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP5–162

Decided: August 2, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 150489 (Sub-3), filed July 26, 1982. Applicant: ALL AMERICAN AIRFREIGHT, CORP., 7910 NE Airport Way, Portland, OR 97218. Representative: John A. Anderson, Suite 801, The 1515 Bldg., 1515 SW Fifth Ave., Portland, OR 97201 (503) 227–4586. (1) transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI), (2) transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI), and (3) as a *broker of general commodities* (except household goods), between points in the U.S.

MC 163098(a), filed July 23, 1982. Applicant: EXPRESS LIMOUSINE SERVICE, INC., 906 Cherokee Lane, Signal Mountain, TN 37377. Representative: Theo E. Lemaire (same address as applicant), (615) 886–1509. Transporting *shipments weighing 100 pounds* or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Note.—The balance of this application is shown under MC 163098(b).

MC 163178, filed July 28, 1982. Applicant: ROBERT MUCKENHIRN, Box 436, Delano, MN 55328. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121.Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers,* and *other soil conditioners* by owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–21609 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in

interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP2–176

Decided: August 2, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 107162 (Sub-84), filed July 26, 1982. Applicant: NOBLE GRAHAM TRANSPORT, INC., Rte. 1, Brimley, MI 49715. Representative: Michael S. Varda, P.O. Box 2509, Madison, WI 53701, 608–255–8891. Transporting *metal and metal products,* between Chicago, IL, on the one hand, and, on the other, points in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties, MN, and points in WI and MI.

MC 135152 (Sub-55), filed July 2, 1982. Applicant: CASKET DISTRIBUTORS, INC., P.O. Box 327, Harrison, OH 45030. Representative: Jack B. Josselson, 700 Atlas Bank Building, 524 Walnut St., Cincinnati, OH 45202, (513) 241–4037. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 146062 (Sub-6), filed July 26, 1982. Applicant: J. C. HAULING CO., P.O. Box 12, Millstadt, IL 62260. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102, 314–421–0845. Transporting *commodities in bulk,* between Atlanta, GA, Minneapolis-St. Paul, MN, Winston-Salem, NC, points in Montgomery County, KS, and points in MO and IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP2–177

Decided: July 30, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 107012 (Sub-777), filed July 27, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant), (219) 429–2224. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Chittenden and Eastman Company, of Burlington, IA.

MC 126542 (Sub-21), filed July 20, 1982. Applicant: B. R. WILLIAMS TRUCKING, INC., P.O. Box 3310, Oxford, AL 36201. Representative: John W. Cooper, P.O. Box 162, Mentone, AL 35984, (205) 634–4885. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Super Valu Stores, Inc., Minneapolis, MN, Anniston Division, of Anniston, AL.

MC 141512 (Sub-5), filed July 26, 1982. Applicant: HOMER'S, INC., 10554 West Donges Court, Milwaukee, WI 53224. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *pulp, paper, plastic and related products, and printed matter,* between Milwaukee, WI and Memphis, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 155293 (Sub-2), filed July 23, 1982. Applicant: CITY SERVICE, INC., 1645 Highway 93 South, P.O. Box 1, Kalispell, MT 59901. Representative: Bradley J. Luck, P.O. Box 7909, Missoula, MT 59807, 406–728–1200. Transporting *forest products and lumber and wood products,* between points in the U.S., under continuing contract(s) with Kalispell Pole and Timber Company, of Kalispell, MT.

MC 158202 (Sub-1), filed July 23, 1982. Applicant: PARSEC, INC., 1100 Gest St., Cincinnati, OH 45203. Representative: John L. Alden, 1396 W. 5th Ave., Columbus, OH 43212, 614–481–8821. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, KY, MO, and OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161883, filed July 26, 1982. Applicant: MUNROE COLD HEADING, INC., 3020 Lewis St., Little Rock, AR 72204. Representative: C. K. Munroe (same as applicant), (501) 663–2589. Transporting *rubber and plastic products* between Little Rock, AR, on the one hand, and, on the other, Memphis, TN, and Tupelo, MS, under continuing contract(s) with Foam Packaging Inc., of Little Rock, AR.

MC 163102, filed July 23, 1982. Applicant: JANET M. JOHNSON, d.b.a. ECONOMY MOVERS, 2016 E. Tyler, Fresno, CA 93701. Representative: Ed Hegarty, 100 Bush St., 21st Floor, San Francisco, CA 94104, 415–986–5778. Transporting *household goods,* between points in CA, WA, OR, NV, and AZ.

MC 163132, filed July 26, 1982. Applicant: OTHA W. DAVIS, INC., Rte 1, Box 437, Wilson, NC 27893. Representative: Ralph McDonald, 336 Fayetteville St. Mall, P.O. Box 2246, Raleigh, NC 27602, (919) 828–0731. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NC, on the one hand, and, on the other, points in AK, GA, IL, IN, KY, MI, MO, NY, OH, PA, SC, TN, VA and WV.

Volume No. OP2–180

Decided: August 3, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 67403 (Sub-15), filed July 22, 1982. Applicant: BROES TRUCKING COMPANY, INC., Interstate Highway 295 & Dominick Lane, Paulsboro, NJ 08066. Representative: Robert F. Blomquist, 499 Cooper Landing Rd., Cherry Hill, NJ 08002, 609–667–6000. Transporting (1) *metal products,* (2) *commodities which because of their size or weight require the use of special handling or equipment,* (3) *machinery and parts,* (4) *lumber and wood products,* (5) *wallboard,* (6) *tar paper,* and (7) *flake board,* between points in NY, NJ, PA, CT, MA, RI, DE, VA, MD, WV, OH, VT, NH, NC, ME, and DC.

MC 118202 (Sub-179), filed July 29, 1982. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, Winona, MN 55987. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424, 612–927–8855. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of plastic and rubber products, between points in Hunt County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 129222 (Sub-9), filed July 26, 1982. Applicant: FORD TRUCK LINE, INC., South Lynn St., Tipton, IA 52772. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, 515–274–4985. Transporting *fertilizer and fertilizer ingredients,* between points in IA, IL, MN, MO, and WI.

MC 144083 (Sub-20), filed July 26, 1982. Applicant: RALPH WALKER, INC., P.O. Box 3222, Jackson, MS 39207. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205, 601–355–3543. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 145603 (Sub-7), filed July 28, 1982. Applicant: B & H TRUCKING CO., INC., 570 West 17th St., Indianapolis, IN 46202. Representative: Edward H. Instenes, P.O. Box 676, 128½ Plaza East, Winona, MN 55987, 507–454–3914.

Transporting *food and related products,* between those points in the U.S. in and East of MN, IA, MO, AR and TX (except CT, MA, ME, NH and VT).

MC 147042 (Sub-4), filed July 27, 1982. Applicant: SEARS TRUCKING, INC., 14900 E. Valley Blvd., La Puente, CA 91746. Representative: Robert Evans, (same address as applicant) 213–330–3319. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA, AZ, NV, NM, OK, TX, OR, WA, ID, MT, UT, WY, CO, ND, SD, NE, and KS.

MC 149043 (Sub-7), filed July 21, 1982. Applicant: EASTERN TANK LINES, INC., 5536 Brentlinger Dr., Cayton, OH 45414. Representative: H. Neil Garson, 3251 Old Lee Highway, Fairfax, VA 22030, 703–691–0900. Transporting *fabricated metal products and transportation equipment,* between points in OH, on the one hand, and, on the other, points in AR, CO, IN, IL, AZ, AL, FL, GA, NC, KS, PA, TN, OR and CA.

MC 150422 (Sub-1), filed July 27, 1982. Applicant: CONAGRA TRANSPORTATION, INC., 5440 West Channel Rd., Catoosa, OK 74015. Representative: Peter A. Greene, 1920 N St. N.W., Washington, D.C. 20036, 202–331–8800. Transporting (1) *farm products,* and (2) *food and related products,* between points in the U.S. (except AK and HI) under continuing contract(s) with Ralston Purina Co., of St. Louis, MO.

MC 157683, filed July 26, 1982. Applicant: ERATH CARRIERS, INC., P.O. Box 671, Stephenville, TX 76401. Representative: Clayte Binion, 623 South Henderson, 2nd Floor, Fort Worth, TX 76104, 817–332–4415. Transporting (1) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Erath County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *mercer commodities* and *metal products.* between points in TX, on the one hand, and, on the other, points in OK, LA, NM, AR, KS, and TX.

MC 162722, filed July 22, 1982. Applicant: JAMES M. BAIMBRIDGE d.b.a. BAIMBRIDGE TRANSPORT, INC., Rt. No. 1, Box 213 G2, Riverton, WY 82501. Representative: James M. Baimbridge (same as applicant), 307–856–1318. Transporting *cement,* between points in Natrona County, WY, Gallatin and Jefferson Counties, MT, on the one hand, and, on the other, points in Washakie and Fremont Counties, WY.

MC 163033, filed July 19, 1982. Applicant: NOLTENSMEIER, INTERSTATE TRANS. CORP., R.R. Box 3A, Bath, IL 62617. Representative: Irwin D. Rozner, 134 North LaSalle St., Chicago, IL 60602, 312–782–6937. Transporting *building materials, rubber and plastic products, metal products, glass products, irrigation equipment, electric and diesel motors,* between points in IL, IN, MO, MI, TN, TX, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163083, filed July 23, 1982. Applicant: MERCHANTS CENTRAL CONVOY, INC., 400 Jackson, Woodward, OK 73802. Representative: C. L. Phillips, Room 248–Classen Terrance Bldg., 1411 N. Classen, Oklahoma City, OK 73106, (405) 528–3884. Transporting *machinery, equipment, materials and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, between points in AR, CO, KS, LA, NM, OK, TX and WY.

MC 163092, filed July 23, 1982. Applicant: RAYMOND R. CHASE AND JANICE N. CHASE, d.b.a. R. CHASE TRUCKING CO., 2505 Stansberry Way, Sacramento, CA 95826. Representative: Raymond R. Chase (same address as applicant), (916) 361–2438. Transporting *malt beverages,* between points in AZ, CA, NV, OR and WA.

MC 163133, filed July 26, 1982. Applicant: PAULSEN BROS. TRANS. INC., P.O. Box 1, St. George, ME 04857. Representative: Richard A. Paulsen (same address as applicant), 207–372–6330. Transporting (1) *cement,* between Thomaston, ME, on the one hand, and, on the other, points in NH, MA, RI, CT and VT, (2) *cement bags,* between points in MA, on the one hand, and, on the other, Thomaston, ME, and (3) *firebrick,* between points in NY, MA, RI and VT, on the one hand, and, on the other, Thomaston, ME, under continuing contract(s) with Martin Marietta Cement, of Baltimore, MD.

MC 163172, filed July 28, 1982. Applicant: KENNETH MANN TRUCKING, Route 2, Box 329A, Forest Grove, OR 97116. Representative: Kenneth Mann (same address as applicant), 503–357–6791. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of lumber and wood products, metal and metal products, and chemical products, between points in AZ, CA, CO, ID, MT, NM, NV, OK, OR, TX, UT, WA, WY, and KS.

Volume No. OP3–120

Decided: August 2, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 1305 (Sub-1), filed July 22, 1982. Applicant: SELECTIVE TRANSPORTATION CORPORATION, 560–60th St., West New York, NJ 07093. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 15735 (Sub-51), filed July 26, 1982. Applicant: ALLIED VAN LINES, INC. P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681–8378. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with the Dravo Corporation and its subsidiaries, of Pittsburgh, PA.

MC 61264 (Sub-42), filed July 23, 1982. Applicant: PILOT FREIGHT CARRIERS, INC., P.O. Box 27153, Winston-Salem, NC 27153. Representative: A. R. Hastings (same address as applicant), (919) 722–3421. Transporting *general commodities* (except Classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Minnesota Mining and Manufacturing Company, of St. Paul, MN.

MC 128685 (Sub-43), filed July 26, 1982. Applicant: DIXON BROS., INC., P.O.D. 8, Newcastle, WY 82701. Representative: Jerome Anderson, 100 Transwestern I, Billings, MT 59101, (406) 248–2611. Transporting *lumber and wood products,* between points in MT, WY, and SD, on the one hand, and, on the other, points in MT, CO, ND, SD, NE, KS, MN, IA, MO, WI, IN, IL, MI, OK, and TX.

MC 145435 (Sub-14), filed July 26, 1982. Applicant: WESTERN AG INDUSTRIES, INC., 2750 North Parkway Dr., Fresno, CA 93711. Representative: Miles L. Kavaller, 315 South Beverly Dr., Suite 315, Beverly Hills, CA 90212, (213) 277–2323. Transporting *general commodities* (except household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Western Ag Truck Brokers, Inc., of Fresno, CA.

Note.—To the extent the certificate granted in this proceeding authorizes the transportation of Classes A and B explosives it will expire 5 years from the date of issuance.

MC 148705 (Sub-8), filed July 26, 1982. Applicant: TWIN CONTINENTAL

TRANSPORT CORPORATION, 5738 Olson Hwy., Minneapolis, MN 55422. Representative: Stephen F. Grinnell, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402. Transporting *such commodities* as are dealt in by retail department and catalog stores, between points in WA, on the one hand, and, on the other, points in CO, ID, IA, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, OR, SD, UT, WA, WI, and WY.

MC 151275 (Sub-2), filed July 26, 1982. Applicant: CHICAGO SUBURBAN EXPRESS, INC., 1500 W. 33rd St., Chicago, IL 60608. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016, (312) 298–1094. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in IL, IN, IA, KY, MO, and WI.

MC 151665 (Sub-3), filed July 26, 1982. Applicant: MAGNUM, LTD., Box 775, Hillsboro, ND 58045. Representative: Richard P. Anderson, P.O. Box 2581, Fargo, ND 58108, (701) 235–3300. Transporting (1) *plastic products,* (2) *metal products,* (3) *machinery,* and (4) *transportation equipment,* between points in Cass County, ND, and Hennepin County, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151934 (Sub-1), filed July 26, 1982. Applicant: KING'S EXPRESS, INC., R.R. 2, St. Joseph, MN 56374. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *food and related products,* between points in MN, ND, SD, IA, WI, IL, IN, MI, OH, MO, KS, NE, WY, MT, ID, OR, and WA.

MC 153204 (Sub-2), filed July 26, 1982. Applicant: MANCHESTER SECURITY SERVICE, INC., P.O. Box 4916, 600 Harvey Rd., Manchester, NH 03108. Representative: L. John Osborn, Suite 1100, 1660 L St., NW., Washington, DC 20036, (202) 452–1692. Transporting (1) *commercial papers, documents, and written instruments,* and (2) *coin, currency, negotiable securities, and articles of unusual value,* between points in NH, ME, MA, and VT.

MC 154705 (Sub-1), filed June 28, 1982, and previously noticed in the **Federal Register** issue of July 13, 1982. Applicant: MAC'S CUSTOMIZED DISTRIBUTION SERVICE, INC., 4150–B Pleasantdale Rd., Doraville, GA 30340. Representative: Kim G. Meyer, 235 Peachtree St., N.E., Sts. 1200, Atlanta, GA 30303, (404) 522–2322. Transporting sound recordings, sound discs, sound tape, video discs, musical instruments, tape recorders, stereos, phonograph stands and printed matter, between Atlanta, GA, Indianapolis, IN and points in Dade County, FL, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, MO, AR, LA and TX.

Note.—The purpose of this republication is to correctly reflect the territorial description.

MC 155755 (Sub-3), filed July 26, 1982. Applicant: NORTHWESTERN MICHIGAN TRUCKING, INC., 9196 11 Mile Rd., Bear Lake, MI 49614. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684, (616) 941–5313. Transporting *food and related products,* between points in MO and those in Stanislaus County, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 156044 (Sub-2), filed July 26, 1982. Applicant: G.T. MOTOR TRANSPORT OF ALABAMA, INC., 101 Kingsberry Rd., Ft. Payne, AL 35963. Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104, (205) 262–2756. Transporting (1) *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Oconomowoc Canning Co., of Oconomowoc, WI; and (2) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Big Dipper, Inc., of Rainsville, AL.

MC 162805, filed July 6, 1982, previously noticed in the **Federal Register** on July 16, 1982. Applicant: ROBERT R. WEYER, d.b.a. WEYER TRUCKING, 14921 McCallum N.E., Alliance, OH 44601. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440, (216) 652–2789. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Fibrex, Inc., of Alliance, OH.

Note.—This republication corrects the name of applicant.

MC 163135, filed July 26, 1982. Applicant: PIASA OILS TRANSPORT, INC., No. 1 Piasa Lane, P.O. Box 25, Hartford, IL 62048. Representative: Jane E. Leonard, 515 Olive St., 17th Floor, St. Louis, MO 63101, (314) 231–2800. Transporting *petroleum products,* between points in MO on and east of U.S. Hwy 65, and those in IL on and south of Interstate Hwy 80, under continuing contract(s) with BST Oil Co., of Elsberry, MO, Bonafide Oil Co., of St. Louis, MO, Hartford-Wood River Terminal, Inc., of Hartford, IL, Patton Service, of Ellsberry, MO, Piasa Motor Fuels, Inc., of Hartford, IL, Star Service Co., of Maryland Heights, MO, Site Oil Co., of St. Louis, MO, and Western Zephyr, of Overland, MO.

MC 163155, filed July 26, 1982. Applicant: DONALD J. FRIED, d.b.a. GENERAL TRANSPORT, R.R. 5, Box 156D, Northfield, MN 55057. Representative: Donald J. Fried (same address as applicant), (507) 645–6238. Transporting (1) *raw plastics and finished plastic products,* (2) *metal containers,* (3) *soap and soap related products,* and (4) *toilet preparations and home fragrance products,* between points in the U.S. (except AK and HI), under continuing contracts with (a) General Polymers, Inc., of Warren, MI, (b) Tote Systems, Material Handling Division of Hoover Universal, of Beatrice, NE, (c) Tote Distributing, Inc., of Burnsville, MN, (d) Star-Tex Corporation, of Lakeville, MN, and (e) Minnetonka, Inc., of Chaska, MN.

Volume No. OP3–121

Decided: August 2, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 59264 (Sub-79), filed July 12, 1982. Applicant: SMITH & SOLOMON TRUCKING COMPANY, How Lane, New Brunswick, NJ 08903. Representative: Zoe Ann Pace, One World Trade Center, Suite 2373, New York, NY 10048, (212) 432–0940. Transporting *general commodities* (except household goods, classes A and B explosives and commodities in bulk), between points in CT, DE, MD, NJ, NY, PA, VA and DC.

MC 99074 (Sub-8), filed July 27, 1982. Applicant: GREENWOOD MOTOR LINES, INC., P.O. Box 336, Greenwood, SC 29646. Representative: Donald E. Cross, 918 16th St., N.W., Washington, D.C. 20006, (202) 785–3700. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in GA, NC, and SC, on the one hand, and, on the other, points in CT, DE, MA, MD, NH, NJ, NY, PA, RI, and VA.

MC 120184 (Sub-17), filed July 27, 1982. Applicant: PEP LINES TRUCKING CO., 32600 Dequindre Rd., Warren, MI 48092. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, (216) 566–5639. Transporting *machinery,* between points in the U.S. under continuing contract(s) with RCA Distributing Corp., of Taylor, MI.

MC 139234 (Sub-8), filed July 8, 1982. Applicant: EQUIPMENT TRANSPORTATION SERVICE, INC., POB 1017, Camarillo, CA 93010. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306,

(805) 872–1106. Transporting (1) *Mercer commodities,* between points in AZ, CA, CO, LA, NV, OR, TX and WY, and (2) *such commodities* as are dealt in or used by distributors or operators of construction or agricultural machinery, between points in AZ, CA, CO, IA, IL, IN, LA, NV, OK, OR, TX, UT, WA, WI and WY.

MC 148854 (Sub-3), filed July 26, 1982. Applicant: GENE KYKER & JOHN J. KYKER, d.b.a. KYKER TRANSPORT CO., 303 Sunset Lane, Mt. Morris, IL 61054. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603, (312) 236–0548. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and household goods), between points in Whiteside, Ogle, De Kalb, Lee, Winnebago, Kane, and McHenry Counties, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 154705 (Sub-2), filed July 27, 1982. Applicant: MAC'S CUSTOMIZED DISTRIBUTION SERVICE, INC., 4150–B Pleasantdale Rd., Doraville, GA 30340. Representative: Kim G. Myer, Suite 1200 Gas Light Tower, 235 Peachtree Street, NW., Atlanta, GA 30303. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Lithonia Lighting Division of National Service Industries, Inc., of Conyers, GA.

MC 156044 (Sub-1), filed July 26, 1982. Applicant: G. T. MOTOR TRANSPORT OF ALABAMA, INC., 101 Kingsberry, Fort Payne, AL 35963. Representative: Terry P. Wilson, 428 So. Lawrence St., Montgomery, AL 36104, (205) 262–2756. Transporting (1) *chemicals and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Alco Chemical Corporation and its subsidiaries and affiliates of Chattanooga, TN and (2) *general commodities,* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with United Forwarding, Inc. of Omaha, NE.

MC 157664 (Sub-1), filed July 26, 1982. Applicant: GEORGE WEIR, 871 Plymouth Street Abington, MA 02351. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, (617) 742–3530. As a *broker* in arranging for the transportation of *general commodities,* between points in the U.S.

MC 161774, filed July 27, 1982. Applicant: LYLE HAYES, d.b.a. HAYES TRUCKING, Kings Rd., Kings, IL 61045. Representative: Dennis P. Drda, 13 E. Stephenson St., Freeport, IL 61032, (815) 235–2212. Transporting *farm products and chemicals and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with USS Agri-Chemicals of Atlanta, GA.

MC 163145, filed July 26, 1982. Applicant: JAMES E. JOHNSON, d.b.a. J & M TRUCKING, 501 W. Jackson, Phoenix, AZ 85003. Representative: Andrew V. Baylor, 337 E. Elm St., Phoenix, AZ 85012, (602) 274–5146. Transporting *general commodities* (except household goods, classes A and B explosives and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with Piston Powered Products of Chandler, AZ.

MC 163184, filed July 27, 1982. Applicant: BAMFORD MOTOR COACH, INC., 122 Seward St., Duquesne, PA 15110. Representative: Robert J. Brooks, 1828 L St., N.W., Suite 1111, Washington, D.C. 20036, (202) 466–3892. Transporting *passengers and their baggage,* in charter and special operations, between points in the U.S. (including AK and HI).

MC 163185, filed July 28, 1982. Applicant: COTE CONTRACTORS, INC., 50 Commerce St., Williston, VT 05495. Representative: Antonio G. Guerrieri, Jr. (same address as applicant), (802) 658–2262. Transporting *machinery, transportation equipment, clay, concrete, glass or stone products* and *those commodities* which because of their size or weight require the use of special handling or equipment, between points in VT, NH, MA, ME, CT, NY and NJ.

Volume No. OP5–157

Decided: July 28, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

W 1349, filed July 19, 1982. Applicant: INLAND RIVER TRANSPORTATION CORPORATION, 10 South Brentwood Blvd., St. Louis, MO 63105. Representative: Keith G. O'Brien, 1729 H St., N.W., Washington, D.C. 20006, (202) 337–6500. To operate as a *contract carrier* by water, transporting *carbon (graphite) electrodes,* between Pensacola, FL and Memphis, TN, under continuing contract(s) with Union Carbine Corporation, of Danbury, CT.

Note.—This application comtemplates operations which should result in decreased energy consumption in comparison with existing energy consumption in the affected area. To the extent traffic will be diverted from existing transportation modes, greater energy efficiencies may be obtained without disruption to existing patterns of energy distribution or to development of energy resources. The application is, in all respects, consistent with prevailing goals and objectives of the National Energy Policy.

MC 79658 (Sub-26), filed July 12, 1982. Applicant: ATLAS VAN LINES, INC., 1212 St. George Road, P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills, Michael L. Harvey, (same address as applicant), (812) 424–2222. Transporting *household goods, computers and computer equipment, displays and exhibits,* and *computerized systems for power plants,* between points in the U.S. (except AK and HI), under continuing contract(s) with Quadrex Corp., of Campbell, CA.

MC 93318 (Sub-22), filed July 20, 1982. Applicant: JOE D. HUGHES, INC., P.O. Box 96469, Houston, TX 77013. Representative: J. Marshall Forsyth (same address as applicant), 713–678–1556. Transporting *Mercer commodities,* between points in the U.S. (except AK and HI).

MC 135648 (Sub-3), filed July 19, 1982. Applicant: ACKERMAN MOTOR LINES, INC., P.O. Box 509, East Plane St. & Maple Ave., Hackettstown, NJ 07840. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in ME, VT, NH, MA, RI, CT, NJ, NY, PA, DE, MD, VA, NC, SC, GA, FL, and DC.

MC 141758 (Sub-11), filed July 20, 1982. Applicant: LYDALL EXPRESS, INC., 615 Parker Street, Manchester, CT 06040. Representative: Hugh M. Josel, 410 Asylum St., Hartford, CT 06103, (203) 728–0700. Transporting *metal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Buell Industries, Inc., of Waterbury, CT.

MC 142288 (Sub-11), filed July 20, 1982. Applicant: HAMILTON TRUCKING COMPANY OF OKLAHOMA, INC., 12612 E. Admiral Place, Tulsa, OK 74116. Representative: Fred Rahal, Jr., 305 Reunion Center, 9 East Fourth Street, Tulsa, OK 74103, (918) 583–9000. Transporting *general commodities* (except classes A and B explosives and household goods) between points in the U.S., under continuing contract(s) with OK Grain, a Division of ConAgra, Inc., of port of Catoosa, OK and Martin Marietta Corporation, of Bethesda, MD.

MC 148849 (Sub-8), filed July 19, 1982. Applicant: EQUITABLE BAG CO., INC., 45–50 Van Dam St., Long Island City, NY 11101. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, 201–234–0301. Transporting *general commodities* (except classes A and B

explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Direct Shippers Association, Inc., of Bayonne, NJ.

MC 148849 (Sub-9), filed July 20, 1982. Applicant: EQUITABLE BAG CO., INC., 45–50 Van Dam St., Long Island City, NY 11101. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Nationwide Shippers Cooperative Association, Inc., of Cincinnati, OH.

MC 150358 (Sub-3), filed July 12, 1982. Applicant: RICHARD R. KROHN, d.b.a. NORTHWEST DELIVERY SERVICE, 4060 Trenton Ave., NO, Plymouth, MN 55441. Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, MN 55402, (612) 339–4546. Transporting *food and related products* between Chicago, IL, on the one hand, and, on the other, Minneapolis, MN.

MC 156509 (Sub-2), filed July 16, 1982. Applicant: W.M.M. COMPANY, INC., P.O. Box 80, Goshen, OR 94701. Representative: Wilford L. Main, 2299 Willona Dr., Eugene, OR 97401, (503) 726–5876. Transporting (1) *steel and steel byproducts,* and (2) *machinery,* between points in CA, OR, and WA.

MC 156679 (Sub-1), filed July 6, 1982. Applicant: LEXCO, INC., 1111 Pyott Rd., Lake in the Hills, IL 60102. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602, (312) 726–6525. Transporting *metal products, plastic products, and electrical products* between points in Kane County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159009, filed July 6, 1982. Applicant: GARRETT TRUCK SERVICE, INC., 8221 36th St., South, Wisconsin Rapids, WI 54494. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703, (608) 256–7444. Transporting (1) *food and related products* between points in IL and WI, on the one hand, and, on the other, those points in the U.S. in and west of MN, IA, MO, AR, and LA (except AK and HI), (2) *metal products and machinery* between Milwaukee, WI, and points in Boone and Winnebago Counties, IL, on the one hand, and, on the other, those points in the U.S. in and west of MN, IA, MO, AR, and LA (except AK and HI), and (3) *pulp, paper, plastic and related products* between points in WI, on the one hand, and, on the other, those points in and west of MN, IA, MO, AR, and LA (except AK and HI).

MC 159749, filed July 19, 1982. Applicant: D & E TRANSPORTATION CORPORATION, 507 Otter Branch Drive, Magnolia, NJ 08049. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *passengers and their baggage* in same vehicle with passengers, in special and charter operations, limited to the transportation of not more than 15 passengers in the vehitle, between Philadelphia, PA and points in NJ on and south of NJ Hwy 33 on the one hand, and, on the other, points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV, and DC.

MC 160199 (Sub-1), filed July 19, 1982. Applicant: COOKE TRUCKING COMPANY, INC., Rt 1, Box 128A, Mt. Airy, NC 27030. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, (615) 790–2510. Transporting *food and related products,* between points in TX, CO, IA, NE, and KS, on the one hand, and, on the other, points in VA, NC, MD, and DC.

MC 161199 (Sub-1), filed July 19, 1982. Applicant: WESTERN FREIGHT LINES, INC., 300 Elliott Ave., West #220, Seattle, WA 98109. Representative: Henry C. Winters, 12600 S. E. 38th Suite 200, Bellevue, WA 98006, (206) 644–2100.Transporting *such commodities* as are dealt in or used by grocery stores and food business houses, between points in in the U.S. under continuing contract(s) with Associated Grocers, Inc., of Seattle, WA.

MC 161758, filed July 20, 1982. Applicant: INDUSTRYWIDE SERVICE, INC., Route 102, Londonerry Professional Park, Londonerry, NH 03053. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in in the U.S. (except AK and HI).

MC 162328 (Sub-1), filed July 9, 1982. Applicant: DELIVERY EXCHANGE SERVICE, INC., 922 North Industrial Blvd., Dallas, TX 75207. Representative: Sam Hallman, 4555 First National Bank Bldg., Dallas, TX 75202, (214) 741–6263. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in AR, LA, OK, and TX.

MC 162499 (Sub-1), filed July 20, 1982. Applicant: SCHNUCKS TRANSPORTATION COMPANY, 12921 Enterprise Way, Bridgeton, MO 63044. Representative: William H. Borghesani, Jr., 1150 17th Street NW., Suite 1000, Washington, D.C 20036, (202) 457–1122. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between St. Louis, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162698 (Sub-1), filed June 28, 1982. Applicant: ARTHUR VANDERLINDEN AND ROY VANDERLINDEN, d.b.a. RAPCO Distributing Company, 1616 West 4800 South, Taylorsville, UT 84107. Representative: Irene Warr, 311 S State St., Suite 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Hughes Western Sales, Inc., of Murray, UT.

MC 163038, filed July 19, 1982. Applicant: KATHY NOOYEN, d.b.a. CARE-FREE TRAVEL CLUB, Route 1, Box 65, New Franken, WI 54229. Representative: Dennis J. Mleziva, P.O. Box 217, Casco, WI 54205, (414) 837–2203. To engage in operations as a *broker* at New Franken, WI, in arranging for the transportion of *passengers and their baggage* in special and charter operations, beginning and ending at points in Brown, Door and Kewanunee Counties, WI, and extending to points in the U.S.

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Decided: July 29, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 32909 (Sub-1), filed July 20, 1982. Applicant: Edward J. McCabe, d.b.a. E. J. McCabe CO., 65 Boyd St., Watertown, MA 02172. Representative: Joseph M. Klements, 89 State St., Boston, MA 02109, (617) 523–0800. Transporting (1) *office equipment, furniture and fixtures,* and (2) *household goods* between points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, VA, IL, IN, OH, MI, and DC.

MC 128798 (Sub-10), filed July 12, 1982. Applicant: GALASSO TRUCKING, INC., 8 Kilmer Rd., Larchmont, NY 10538. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022, 212–838–0600. Transporting *carpet and padding,* between points in the U.S. under continuing contract(s) with General Felt Industries, Inc. of Saddle Brooks, NJ.

MC 133589 (Sub-6), filed July 20, 1982. Applicant: BCT, INC., P.O. Box 7219, Boise, ID 83707. Representative: James R. Daly (same address as applicant), (208) 384–7230. Transporting *furniture and fixtures,* between points in the U.S. (except AK and HI), under continuing

contract(s) with American Woodmark Corporation, of Berryville, VA.

MC 142189 (Sub-55), filed July 21, 1982. Applicant: C. M. BURNS, d.b.a. WESTERN TRUCKING, P.O. Box 980, Baker, MT 59313. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Ten South 5th St., Minneapolis, MN 55402, (612) 340-0808. Transporting (1) *chemicals,* between points in the U.S. (except AK and HI), (2) *lime,* between points in Pennington County, SD, on the one hand, and, on the other, points in WY, MT, and SD, (3) *industrial minerals,* between Pennington and Custer Counties, SD, on the one hand, and, on the other, points in the U.S. (except AK and HI), (4) *clay and clay products,* between points in Big Horn, Crook and Weston Counties, WY, Phillips County, MT, and Butte and Custer Counties, SD, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (5) *lignite,* between points in Bowman County, ND on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142189 (Sub-56), filed July 21, 1982. Applicant: C. M. BURNS, d.b.a. WESTERN TRUCKING, POB 980, Hwy 12 West, Baker, MT 59313. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., 10 S. 5th St., Minneapolis, MN 55402, (612) 340-0808. Transporting *such commodities* as are dealt in by farm supply cooperatives, between points in the U.S. in and west of PA, WV, KY, TN, and MS (except AK and HI).

MC 144298 (Sub-11), filed June 21, 1982. Initially published in the **Federal Register** on July 9, 1982. Applicant: MASTER TRANSPORT SERVICES, INC., 5000 Wyoming Ave., Suite 203, Dearborn, MI 48126. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684, (616) 941-5313. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Wayne County, MI, Monroe County, PA, De Kalb County, GA, and Los Angeles County, CA, on the one hand, and, on the other, points in the U.S.

Note.—This republication shows Wayne County, MI, in lieu of Wyandotte County.

MC 147009 (Sub-4), filed July 19, 1982. Applicant: DEAN HUGHS, INC., R.R. #2, New Berlin, IL 62670. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544-5468. Transporting *printed matter, pulp, paper, and related products,* between points in the U.S. (except AK and HI).

MC 149088 (Sub-8), filed July 22, 1982. Applicant: TRANSPORTATION, INC., P.O. Box 362, Ottawa, KS 66067. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Ste. 110L, Topeka, KS 66612, (913) 233-9692. Transporting *clay, concrete, glass or stone products* and *non metallic minerals,* between points in Sedgwick and Wyandotte Counties, KS, Oklahoma County, OK, and Dallas County, TX, on the one hand, and, on the other, points in KS, OK, TX, MO, NE, IA, WY, and CO.

MC 150069 (Sub-3), filed July 23, 1982. Applicant: RARITAN TRANSPORTATION SERVICES, INC., P.O. Box 1348, Edison, NJ 08817. Representative: R.L. Knorowski (same address as applicant), 201-985-0322. Transporting *general commodities* (except classes A and B explosives, and household goods, between points in the U.S. (except AK and HI).

MC 151118 (Sub-23), filed July 7, 1982. Applicant: M D R CARTAGE, INC., 516 West Johnson St., Jonesboro, AR 72401. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701, (601) 335-3576. Transporting (1) *rubber and plastic products* between points in Cherokee and Tarrant Counties, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *metal products and machinery,* between points in Cherokee and Smith Counties, TX on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 154788 (Sub-1), filed July 21, 1982. Applicant: BONDED CARRIERS, INC., 307 East Road, Martinsburg, WV 25401. Representative: Frank B. Hand, Jr., 523 South Cameron Street, Winchester, VA 22601, (703) 662-0927. Transporting *pulp, paper and related products,* and *printed matter,* between points in AR, CT, DE, FL, GA, IL, IN, KY, LA, MD, MA, MI, MO, NH, NJ, NY, NC, OH, PA, SC, TN, VA, VT, WI, WV, and DC.

MC 155018, filed July 23, 1982. Applicant: RON AND BOB'S TRUCKING, INC., 1200 Como Park Boulevard, Depew, NY 14043. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202, (716) 854-5870. Transporting *swimming pools and related items,* between points in the U.S., under continuing contract(s) with Kayak Manufacturing Corp., of Depew, NY.

MC 159008 (Sub-7), filed July 21, 1982. Applicant: NORTHERN CARRIERS, INC., 3814-11th St., Rockford, IL 61109. Representative: Richard P. Anderson, 2525 South University Drive, P.O. Box 2581, Fargo, ND 58108, (701) 235-3300. Transporting (1) *pipe, pipe fittings and pipe accessories,* (2) *machinery,* and (3) *parts, attachments and accessories for machinery,* between points in Cass County, ND, on the one hand, and, on the other, points in the U.S.

MC 160409 (Sub-2), filed July 22, 1982. Applicant: SOUTHERN NEVADA MOVERS, INC., 1037 Colton Ave., Las Vegas, NV 89030. Representative: Mike Pavlakis, Box 646, Carson City, NV 89701, (702) 882-0202. Transporting *household goods,* between points in AZ, CA, NV, and UT.

MC 162548, filed July 19, 1982. Applicant: STANLEY WOLKEN, Rural Route 1, P.O. Box 81, Rantoul, IL 61866. Representative: Edward D. McNamara, Jr., 907 South Fourth St., Springfield, IL 62703, (217) 528-8476. Transporting (1) *fertilizer,* between points in Vigo and Lake Counties, IN, on the one hand, and, on the other, points in Douglas, Vermilion, Champaign and Edgar Counties, IL, and (2) *farm equipment and parts* and *lawn mowers* between points in IA, on the one hand, and, on the other, points in Ford County, IL.

MC 162788, filed July 7, 1982. Applicant: OWEN G. ANDERSON AND FREDERICK W. HEIMANN, d.b.a. L & K SERVICES, Route 3, Box 357J, Waco, TX 76708. Representative: Charles E. Munson, P.O. Box 1945, Austin, TX 78767, (512) 478-9808. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in McLennan and Bell Counties, TX, on the one hand, and, on the other, points in TX.

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Decided: August 2, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 14768 (Sub-5), filed July 21, 1982. Applicant: LANDES OZARK TRANSFER CO., d.b.a. OZARK TRANSFER COMPANY, 2301 No. Belcrest Ave., Springfield, MO 65803. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR 72201, (501) 375-9151. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AR, MO, OK, TX, TN, KY, IL, LA, KS, and NE.

MC 145058 (Sub-8), filed July 27, 1982. Applicant: THOMAS PRODUCE COMPANY OF MOUNT AIRY, INC., P.O. Box 16707, Greensboro, NC 27406. Representative: Michael F. Morrone, 1150 17th Street NW., Suite 1000, Washington, DC (202) 454-1124. Transporting *such commodities* as are dealt in or used by manufacturers, distributors and wholesalers of health and beauty aids, between points in the U.S. (except AK and HI), under

continuing contract(s) with Vidal Sassoon, Inc., of Chatsworth, CA.

MC 148818 (Sub-8), filed July 21, 1982. Applicant: CARL PRINCE, d.b.a. PRINCE TRUCKING, P.O. Box 37, Cane Hill, AR 72717. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753, (501) 846–2185. Transporting (1) *pulp, paper and related products,* (2) *lumber and wood products,* and (3) *plastic and plastic products,* between points in Oklahoma City, OK and points in Washington, Osage, and Tulsa Counties, OK, Jefferson, Faulkner, Madison, and Conway Counties, AR, Jefferson, Etowah, Madison and Montgomery Counties, AL, Putnam, Volusia, Lee, Duval, and Dade Counties, FL, Doughertym Fulton, and Dekalb Counties, GA, East Baton Rouge, Jefferson, and Orleans Parishes, LA, Taylor, Travis, Harris, and Bexar Counties, TX, St. Louis, St. Genevieve, Jackson, and Greene Counties, MO, and Harrison, Hines, and Oktibbeha Counties, MS.

MC 150008 (Sub-5), filed July 27, 1982. Applicant: KUELLA, INC., Rt. 2, King City, MO 64463. Representative: H. Dean Gilbert (same address as applicant) (816) 535–4577, (800) 821–2262. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 150229 (Sub-4), filed July 23, 1982. Applicant: CENTRAL PETROLEUM TRANSPORT, INC., 6115 Mitchell St., Sioux City Airport, Sioux City, IA 51110. Representative: Edward A. O'Donnell, 10004 29th St., Sioux City, IA 51104, (712) 255–3127. Transporting (1) *food and related products* between points in IA, IL, IN, KS, MI, MO, NE, ND, OK, SD, TX, and WI, and (2) *chemicals and related products and petroleum and coal products,* between points in IA, IL, KS, MN, MO, NE, ND, SD, and WI.

MC 150339 (Sub-49), filed July 22, 1982. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 302 Bloomingdale Ave., Federalsburg, MD 21632. Representative: Randall M. Evans (same address as applicant), 301–754–5084. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 151258 (Sub-1), filed July 23, 1982. Applicant: DAWES TRANPORT, INC., 9001 W. Brown Deer Rd., Milwaukee, WI 53224. Representative: Michael J. Haizel (same address as applicant), 414–355–7845. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (1) between points in FL, GA, IA, IL, IN, MI, MN, and WI, on the one hand, and, on the other, points in CA, OR and WA and (2) between points in IA, IL, IN, MN, and WI, on the one hand, and, on the other, points in FL and GA.

MC 155118 (Sub-10), filed July 28, 1982. Applicant: T.D.S. TRANSPORTATION, INC., 1700 South Wolf Road, Des Plaines, IL 60018. Representative: Julie L. Roper (same address as applicant), (312) 298–8800. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Cornelius Cannon, Inc., of Cannon Falls, MN, Trinity Paper and Plastics Corporation, of New York, NY, and Liberty Diversified Industries, of New Hope, MN.

MC 158728, filed July 23, 1982. Applicant: NCO MOTOR CARGO COMPANY, INC., P.O. Box 2147, Rocky Mount, NC 27801. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Avenue NW., Washington, DC 20036, 202–223–5900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. in and east of MN, IA, NE, MO, OK, and TX.

MC 163068, filed July 21, 1982. Applicant: H.C. WILLIAMS, JR. TRUCKING CO., INC., 212 South Carolina Ave., P.O. Box 1621, Wilmington, NC 28402. Representative: David H. Permar, P.O. Box 527, Raleigh, NC 27602, 919–828–5952. Transporting *metal products,* betwen points in the U.S. under continuing contract(s) with Queensboro Steel Corporation of Wilmington, N.C.

MC 163069, filed July 21, 1982. Applicant: CAL–CO TRANSPORTATION, INC., 3336 Fruitland Ave., Los Angeles, CA 90058. Representative: John C. Russell, 1545 Wilshire Blvd., Suite 606, Los Angeles, CA 90017, 213–483–4700. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (1) between points in Imperial, San Diego, Riverside, San Bernardino, Los Angeles, Orange, Ventura, Santa Barbara, Kern and Inyo Counties, CA, and (2) between points in (1) above on the one hand, and, on the other, points in Clark County, NV and Maricopa and Mohave Counties, AZ.

MC 163078, filed July 23, 1982. Applicant: ART KNIGHT, INC., 705 North Cook St., Portland, OR 97227. Representative: Harold E. Hass, P.O. Box 14626, Portland, OR 97214, (503) 284–7431. Transporting (1) *rubber products and related materials* and (2) *equipment* used in the installation of the commodities in (1), between points in the U.S., under continuing contract(s) with Atlas Tracks, Inc., of Lake Oswego, OR.

MC 163098(b), filed July 23, 1982. Applicant: EXPRESS LIMOUSINE SERVICE, INC., 906 Cherokee Lane, Signal Mountain, TN 37377. Representative: Theo E. Lemaire (same address as applicant), (615) 886–1509. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special operations, between Chattanooga, TN, on the one hand, and, on the other, Atlanta, GA.

Note.—The balance of this application is shown under MC–163098(a).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–21610 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 29970]

Rail Carriers; Atchison, Topeka & Santa Fe Railway Co.—Trackage Rights and Construction Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirements of prior review and approval (1) under 49 U.S.C. 11343, the acquisition by The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) of trackage rights over a 2.87-mile segment of line of the St. Louis Southwestern Railway Company (Cotton Belt) between Hutchinson and South Hutchinson, KS, upon the terms and conditions agreed to by the parties and (2) under 49 U.S.C. 10901, the construction and operation of a 443-foot track and turnout at South Hutchinson connecting the lines of Santa Fe and Cotton Belt.

DATES: Exemption effective on September 9, 1982. Petitions for reconsideration must be filed by August 30, 1982. Petitions for stay must be filed by August 20, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5349, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Michael W. Blaszak, The Atchison, Topeka & Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604, (312) 347–2289.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: For further information, see the decision served concurrently in Finance Docket No. 29970. To purchase a copy of the full decision contact T.S. Info Systems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call (202) 289–4357 in the D.C. Metropolitan area; or (800) 424–5403 Toll-free outside the D.C. area.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–21603 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte 387 (Sub-210)]

Rail Carriers; the Chesapeake and Ohio Railway Company Exemption for Contract Tariff ICC–CO–C–0020

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the Federal Register.

ADDRESSES: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: August 4, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Gilliam was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–21610 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket AB–167 (Sub-119N)]

Rail Carriers; Conrail Abandonment Between North Thatcher Glass and Sunman, IN; Findings

Notice is hearby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 1 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Thatcher Glass and Sunman in the Counties of Dearborn and Ripley, IN, a total distance of 16.3 miles effective on June 11, 1982.

The net liquidation value of this line is $1,533,838. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–21604 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket AB–167 (Sub-197N)]

Rail Carrier; Conrail Abandonment in Ripley, Decatur and Shelby Counties, IN; Findings

Notice is hearby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between (1) Sunman and Shelbyville; (2) the Westport Secondary Track between Greenburg and the end of the track; and (3) the Greenburg Industrial Track between the end of the track and Greenburg in Ripley, Decatur and Shelby Counties, IN, a total distance of 43.8 miles effective on June 11, 1982.

The net liquidation value of this line is $2,950,565. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–21605 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

[AB 33 SDM]

Rail Carrier; Union Pacific Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Union Pacific Railroad Co. has filed with the Commission its amended color-coded system diagram map in docket No. AB 33 SDM. The Commission on July 19, 1982, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 33 SDM.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–21602 Filed 8–9–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Attorney General

Proposed Consent Decree in Action To Remedy Chemical Waste Disposal

In accordance with Departmental Policy, 28 CFR 50.7 38 FR 19029, notice is hereby given that on July 29, 1982, a proposed consent decree in *United States* v. *Fisher-Calo* was lodged with the United States District Court for the Northern District of Indiana (South Bend Division). The proposed decree would require Fisher-Calo to monitor groundwater at its facility near Kingsbury, Indiana.

The Department of Justice will receive until September 9, 1982, written comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Fisher-Calo*, D.J. 90–7–1–48.

The proposed consent decree may be examined at the office of the United States Attorney, U.S. Courthouse and Post Office, 204 S. Main St., South Bend, Indiana, at the Region V office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn St., Chicago, Illinois and at the Environmental Enforcement Section, Land and National Resources Division, Department of Justice (Room 1515), Ninth and Pennsylvania Avenues, N.W., Washington, D.C. 20530. A copy of the proposed consent decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address. In requesting a copy, please enclose $1.00 (10 cent per page reproduction charge) payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-21590 Filed 8-9-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies; Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on November 14, 1982. The groups or fields represented are as follows: Employee organizations (representing an organization whose members are participants in a multiemployer plan), employers, actuarial counseling, investment counseling, and the general public (representing those receiving benefits from a pension plan).

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph may submit recommendations to the Secretary of Labor, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210. Recommendations must be delivered or mailed on or before October 8, 1982. Recommendations may be in the form of a letter, resolution, or petition, signed by the person making the recommendation, or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation shall identify the candidate by name, occupation or position, telephone number and address. It shall include a brief description of the candidate's qualifications and shall specify the group or field which he or she would represent for the purposes of Section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, D.C, this 5th day of August 1982.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs.

[FR Doc. 82-21662 Filed 8-9-82; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel (Jazz Organizations Prescreening); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Organizations Prescreening) to the National Council on the Arts will be held on August 17, 1982, from 9:00 a.m.-5:30 p.m. in room 1425 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 2, 1982.

[FR Doc. 82-21580 Filed 8-9-82; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 10, 1982. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627,

Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. The regulations appeared in final form in the 7 June 1979 **Federal Register**. Additional information was published in the 13 July 1982 **Federal Register**, page 30328.

The applications received are as follows:

1. *Applicant:* Vera Komarkova, INSTAAR, University of Colorado, Boulder, Colorado 80309.

A. *Activities for Which Permit Requested.* Taking (plants from a Specially Protected Area); Entering Specially Protection Area—Litchfield Island; Import into U.S.A.; and Export from U.S.A.

The applicant proposes to collect plants in the vicinity of Palmer Station and in the Specially Protected Area—Litchfield Island as part of a plant community study.

B. *Location.* Palmer Station and vicinity and Litchfield Island, Antarctica.

C. *Dates.* December 1, 1982 to April 30, 1983.

2. Applicant: William M. Hamner, Department of Biology, University of California, Los Angeles, California 90024.

A. Activities for Which Permit Requested. Taking; Import into U.S.A.; and Enter Specially Protected Area

The applicant proposes to collect sea birds via shotgun for 1) analysis of stomach contents and 2) chemical analysis of stomach oils, and 3) collect eggs of Adelie penguins and blue-eyed shags for study of patterns of thermoregulation and energetic requirements during embryonic development. The applicant proposes to photographically document predation on krill and feeding of young by mammals, birds, and fish that are krill predators. Species to be collected:

Species	Number	Age
Egg collection		
Adelie Penguin	25	
Blue Eyed Shag	25	
Shotgun collection		
Adelie Penguin	100	Adult.
Chinstrap Penguin	100	Adult.
Wilson's Storm Petrel	100	Adult.
Antarctic Tern	100	Adult.
Black-browned Albatross	5	Adult.
Wandering Albatross	5	Adult.
Giant Petrel	5	Adult.
Blue Petrel	5	Adult.
Antarctic Petrel	5	Adult.
White-chinned Petrel	5	Adult.
White-headed Petrel	5	Adult.
Peal's Petrel	5	Adult.
Wilson's Storm Petrel	5	Adult.
Snow Petrel	5	Adult.
Silver-grey Fulmar	5	Adult.
Prion	5	Adult.
Antarctic Tern	5	Adult.
Arctic Tern	5	Adult.
Southern Black-backed Gull	5	Adult.
South Polar Skua	5	Adult.
Brown Skua	5	Adult.
Blue-eyed Shag	5	Adult.
American Sheathbill	5	Adult.
Gentoo Penguin	5	Adult.
Macaroni Penguin	5	Adult.
Cape Pigeon	5	Adult.

List of species that are predators in krill food chain for which permit for photography is requested:

Birds

Wandering Albatross
Black-browed Albatross
Giant Petrel
Blue Petrel
Silver-grey Fulmar
Cape Pigeon
Prion
Southern Black-back Gull
Antarctic Petrel
White-chinned Petrel
White-headed Petrel
Peal's Petrel
Snow Petrel
Wilson's Storm Petrel
Brown Skua
South Polar Skua
Antarctic Tern
Arctic Tern
Blue-eyed Shag
American Sheathbill
Adelie Penguin
Chinstrap Penguin
Gentoo Penguin
Macaroni Penguin
Rock Hopper Penguin Mammals
Crabeater Seal
Leopard Seal
Weddell Seal
Ross Seal
Elephant Seal
Antarctic Fur Seal
Fin Whale
Blue Whale
Sei Whale
Humpback Whale
Minke Whale
Killer Whale

B. Location. Palmer Station and vicinity, Antarctica; at sea in Drake Passage, Gerlache Straits, Bransfield Straits, Bellingshausen Sea.

C. Dates. December 1982 through March 1983

Authority to publish this notice has been delegated by the Director, NSF to the Director, Division of Polar Programs.

Edward P. Todd,

Division Director, Division of Polar Programs.

[FR Doc. 82-21592 Filed 8-9-82; 8:45 am]

BILLING CODE 7555-01-M

PENSION BENEFIT GUARANTY CORPORATION

Class Exemption From Bond/Escrow and Sale-Contract Requirements Relating To Sale of Assets by an Employer That Contributes to a Multiemployer Plan; RGZ, Inc., et al.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of class exemption.

SUMMARY: On the basis of a joint request from RGZ, Inc./Gulf Elevator & Transfer Company, Inc. and Cooper Stevedoring Co., Inc., the Pension Benefit Guaranty Corporation has granted a class exemption for certain sales of assets from the bond/escrow and sale-contract requirements of section 4204(a)(1) (B) and (C) of the Employee Retirement Income Security Act of 1974, as amended. The class exemption will apply to certain transactions that occurred prior to January 1, 1981. A notice of consideration of a class exemption from these requirements was published on April 21, 1982 (47 FR 17137). The effect of this notice is to advise the public of the decision granting a class exemption.

ADDRESS: The request for an exemption and the PBGC decision are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, N.W., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (160) at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning (140), 2020 K Street, N.W., Washington, D.C. 20006; (202) 254–4862.

SUPPLEMENTARY INFORMATION:

Background

Section 4204(c) of Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA") authorizes the Pension

Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow and sale-contract requirements of section 4204(a)(1) (B) and (C) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

Section 4204(c) requires the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On April 21, 1982 (47 FR 17137), the PBGC published a notice of consideration of a class exemption. That notice was based on a joint request from the seller, RGZ, Inc./Gulf Elevator & Transfer Company, Inc. ("RGZ/GETCO"), and the purchaser, Cooper Stevedoring Co., Inc. ("Cooper"), (collectively referred to as the "Parties") for an exemption from the requirements of section 4204(a)(1) (B) and (C) of ERISA.

In the request, the Parties represented, among other things, that on October 5, 1980, Cooper purchased certain assets of RGZ/GETCO. Cooper assumed RGZ/GETCO's responsibilities under a collective bargaining agreement with the International Longshoremen's Association Local #3033, which obligated RGZ/GETCO to contribute to the New Orleans Steamship Association, International Longshoremen's Association, AFL–CIO Pension Plan (the "Plan"). More than one year after the sale, on November 23, 1981, the Parties entered into an agreement whereby RGZ/GETCO agreed, if section 4204 applied to the sale, that it would be secondarily liable to the Plan for any withdrawal liability it would have had but for the operation of section 4204.

The Parties stated that an exemption should be granted from the requirements of section 4204(a)(1) (B) and (C), because the sale was consummated only nine days after the enactment of the Multiemployer Act. The Parties further stated that, in view of the fact that they could not realistically have been aware of these requirements at the time the sale was consummated, a denial of the exemption "would be unjust, harsh and detrimental to RGZ/GETCO and Cooper." No financial information on the purchaser was submitted as part of the request.

In response to the request, PBGC indicated that it was considering granting a class exemption from the requirements of section 4204(a)(1) (B) and (C) for sales that were consummated before or soon after enactment of the Multiemployer Act, where the parties indicated in intention for their sale to be covered by section 4204. Further, PBGC suggested January 1, 1981 would be an appropriate cut-off date for the exemption. PBGC requested public comments on these proposals. In response to the notice, only one comment was received, and that comment was subsequently withdrawn.

With respect to the Parties' request, PBGC notes that, after the initial agreement was signed, the Parties subsequently modified their agreement to comply with the sale-contract requirement of section 4204(a)(1)(C). Parties in a sale of assets may properly comply with the sale-contract requirement by signing a subsequent agreement to that effect. Since the Parties have taken that action, no exemption from section 4204(a)(1)(C) is necessary.

As previously mentioned, this request is being considered as the basis for a class exemption. The specific transaction that prompted consideration of this class exemption represents a class of sales that occurred either before or soon after the enactment of the Multiemployer Act. In other words, sales that occurred at a time when parties either did not know or could not reasonably be expected to know that sales transactions could be structured in such a way as to avoid immediate withdrawal liability. Since Congress made section 4204 (like the other statutory provisions dealing with withdrawals and withdrawals liability) effective as of April 29, 1980, it is apparent that Congress intended this relief provision to be available for these transactions. PBGC finds that granting this exemption for these transactions, in the circumstances described below, would appropriately effectuate this Congressional intent.

The Parties to the instant transaction have jointly indicated an intention to have their sale covered by section 4204, and have thus agreed to assume the responsibilities they will incur if section 4204 applies. First, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years (section 4204(b)(1)). Thus, if the purchaser subsequently withdraws from the plan, its withdrawal liability may be based in part on the withdrawal liability the seller would have incurred had the transaction not been covered by section 4204. Second, under section 4204(a)(2), the seller becomes secondarily liable if within five years after the sale the purchaser withdraws and fails to make a withdrawal liability payment when due. PBGC finds that permitting a class variance under these circumstances will assure protection of plans, with the least practical intrusion into normal business transactions.

In addition, a major purpose of section 4204 is to protect against the evasion of payment of withdrawal liability through an employer's sale of assets. However, when a sale of assets occurred before or shortly after enactment of the Multiemployer Act, it is likely that the sale was a normal business transaction undertaken without regard to the question of withdrawal liability.

In light of these considerations, PBGC has determined that a class exemption from the bond/escrow and sale-contract requirements is warranted.

Therefore, PBGC hereby issues a class exemption from the requirements of ERISA section 4204(a)(1) (B) and (C). This class exemption applies to all sales of assets consummated prior to January 1, 1981, but on or after the effective date of Part 1, Subtitle E of Title IV of ERISA, on the condition that each of the parties provide written notification to the affected plan of the party's intention to have the transaction governed by section 4204.

The establishment of this class variance does not constitute a finding by PBGC that a specific transaction satisfies the other requirements of ERISA section 4204(a)(1). The determination of whether a transaction satisfies such other requirements is a determination to be made in a specific case by the plan sponsor. Further, the granting of this class variance does not waive the seller's underlying secondary liability under section 4204(a)(2).

Issued at Washington, D.C. on this 5th day of August, 1982.

Edwin M. Jones,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-21647 Filed 8-9-82; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 12578; 812-5165]

California Fund for Investment in U.S. Government Securities, Inc. and John J. Sullivan; Filing of Application for an Order Pursuant to Sections 17(b) and 17(d) of the Act and Rule 17d-1 Thereunder Granting Exemption From Section 17(a) of the Act and Permitting a Proposed Transaction

August 4, 1982.

Notice is hereby given that California Fund for Investment in U.S. Government Securities, Inc. ("Fund"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act") and John J. Sullivan ("Sullivan," and together with the Fund, "Applicants"), 2499 West Shaw Ave., Fresno, Calif. 92711, a director and president of the Fund and president of the Fund's adviser, filed an application on April 15, 1982, and an amendment thereto on July 7, 1982, pursuant to Sections 17(b) and 17(d) of the Act and Rule 17d-1 thereunder for an order of the Commission granting an exemption from Section 17(a) of the Act and permitting pursuant to Section 17(d) of the Act the purchase by Sullivan from the Fund of certain Government National Mortgage Association Bonds at their amortized cost of $389,690. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Sullivan and David H. Gaffney, a former principal of Bankers Acceptance Company, the Fund's adviser, executed an indemnity agreement dated January 14, 1978, in which they agreed to hold the Fund harmless from any loss in connection with certain Government National Mortgage Association Bond Commitments having a principal balance of $20,000,000 at December 31, 1977. During 1978 and 1979, the Fund was reimbursed approximately $767,000 pursuant to the agreement. At December 31, 1981, bonds due December 1992, with a coupon of 8.50% and having an amortized cost of $389,690 remain subject to the agreement (the "Bonds").

Applicants state that because the Fund is indemnified against loss on the Bonds, the Fund's financial statements for the year ended December 31, 1981 valued those securities at their amortized cost which was $140,976 in excess of their market value of $248,714. Applicants represent that the market value of the Bonds as of May 31, 1982, was $247,791.

Section 17(a) of the Act provides, in pertinent part, that it shall be unlawful for any affiliated person of a registered investment company, acting as principal, knowingly to purchase from such registered company any security, with certain exceptions not relevant to the application. Section 17(b) of the Act provides, however, that the Commission, upon application, may exempt a transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide in pertinent part, that it shall be unlawful for an affiliated person of a registered investment company, acting as principal, to participate in, or effect any transaction in connection with any joint enterprise or arrangement in which any such registered investment company is a joint participant, unless an application regarding such transaction is filed and an order is granted by the Commission approving such joint enterprise or arrangement. In passing upon such application, the Commission will consider whether the participation of such registered company in such arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants assert that the proposed sale is consistent with the provisions, policies and purposes of the Act and with the investment policies of the Fund. They further assert that the transaction is fair and reasonable, does not involve any overreaching and does not result in any adverse effect whatsoever on the Fund.

In support of the foregoing assertions, Applicants represent that the Fund would be in exactly the same position after the sale to Sullivan as it would be if it sold the Bonds to a non-affiliated third party at fair market value and recovered from Sullivan the difference between the sale proceeds and the amortized cost value of the Bonds. Applicants further state that, after the sale, the market risk of holding the Bonds would rest with Sullivan and the Fund would be free to invest the funds obtained from the sale in a higher yielding security consistent with the Fund's objective of providing current income. Applicants assert that although Sullivan may be able to realize a short-term capital tax loss when he resells the Bonds, there will not be any cost or adverse effect of any kind to the Fund. Finally, the Fund's directors (other than Sullivan) have approved the sale of the Bonds to Sullivan by written consent dated February 23, 1982, as just and reasonable to the Fund and its shareholders and have determined the proposed sales price to be fair to the Fund.

Notice is further given that any interested person may, not later than August 30, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request and the issues if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-21658 Filed 8-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 22594; 70-6753]

Georgia Power Co.; Notice of Proposed Issuance and Sale of First Mortgage Bonds and Preferred Stock at Competitive Bidding

August 3, 1982.

Georgia Power Company ("Georgia"), 333 Piedmont Ave., N.E., Atlanta, Ga.,

an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration and an amendment thereto with this Commission pursuant to Sections 6(b) and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 promulgated thereunder.

Georgia proposes to issue and sell at competitive bidding up to $250,000,000 principal amount of first mortgage bonds and up to $75,000,000 of preferred stock, without par value but with a stated value of up to $100 per share, in one or more series from time to time not later than June 30, 1983. Each series of bonds will have a term not less than five nor more than thirty years and will be sold at a price to Georgia of not less than 98% nor more than 101¾% of the principal amount of the bonds, plus accrued interest. Each series of Preferred Stock will be sold at a price to Georgia of not less than 100% nor more than 102% of the stated value per share.

Georgia will publicly invite from time to time sealed, written proposals from prospective bidders. Initially, a published invitation will request that parties interested in bidding advise Georgia. Such public invitation will be made at least 6 days prior to Georgia's entering into any contract or agreement for the issuance and sale of any bonds or preferred stock. Thereafter, in accordance with the terms of such public invitation, Georgia will designate the date and time for each presentation and opening of proposals in accordance with the competitive bidding requirements of Rule 50 by notice in writing (or by telephone, confirmed in writing) to such prospective bidders, in each case not less than 48 hours prior to the time so designated. Georgia will also designate in each such notice the term and principal amount of bonds, or the number of shares of preferred stock, with respect to which proposals are to be presented, subject to Georgia's right to designate different terms, amounts or numbers upon not less than 24 hours notice prior to time of bidding.

Each series of new bonds will be issued under the Indenture dated March 1, 1941 between Georgia and Chemical Bank, as trustee, as heretofore supplemented and as to be further supplemented by supplemental indenture dated as of the first day of the month during which each series of new bonds is issued. Georgia may provide for a 5 year restriction on the refundability or redemption of the bonds at a lower effective interest cost. Georgia may also provide for redemption through the operation of a mandatory cash sinking fund and through maintenance and replacement provisions of the supplemental indenture. Similar redemption conditions may accompany the issuance and sale of the preferred stock.

Georgia has indicated that it may request by amendment that the sale of the bonds and preferred stock be excepted from the competitive bidding requirements of Rule 50. The proceeds of the sales will be used to finance, in part, Georgia's business as an electric utility company.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 30, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit, or in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-21666 Filed 8-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 22593; 31-788]

St. Joe Minerals Corp. and Fluor Corp.; Notice of Application To Be Declared Not To Be An Electric Utility Company

August 3, 1982.

Fluor Corporation ("Fluor"), 3333 Michelson Drive, Irvine, Calif. 92730, a Delaware corporation, and its wholly-owned subsidiary St. Joe Minerals Corporation ("SJM"), 250 Park Ave., New York, N.Y. 10177, a New York corporation, have filed with this Commission an application pursuant to the Public Utility Holding Company Act of 1935 ("Act") requesting an order declaring SJM not to be an electric utility company under Section 2(a)(3), or, in the alternative, an order exempting fluor as a holding company under Section 3(a)(3). All interested persons are referred to the application, which is summarized below, for a description of applicants and a statement of the basis upon which the order is sought.

SJM is a diversified natural resource company engaged, directly and through subsidiaries, in mining and smelting various minerals and in oil and gas exploration and development. Among its operations is a division which owns and operates a zinc smelter in Monaca, Pennsylvania, northwest of Pittsburgh. To provide electricity for its smelting operations, SJM in 1959 installed two 60 MW coal-fired generating units ("Monaca facilities") on the premises of the smelter. These generators have a present capability of approximately 55 MW each. SJM established an interconnection of the Monaca facilities with those of Duquesne Light Company ("Duquesne") through which it obtained back-up capacity and exchanged energy. These arrangements with Duquesne were set out in an agreement dated February 1, 1959 ("1959 agreement").

In 1979, SJM virtually ceased operations at the Monaca smelter, which had become uneconomical. The Monaca facilities were kept in operation on a limited basis to meet obligations to Duquesne and to provide some continuing power requirements at the site. In October 1980, having modified the Monaca facilities to make them more efficient, SJM commenced limited smelting operations. The smelter currently requires approximately 40 MW of the 110 MW available, which amount is expected to increase to 45 MW in the fall of 1982. SJM is actively seeking expansion of smelting or other processing operations at Monaca, and expects eventually to use the entire output available from the Monaca facilities. On July 21, 1981, SJM and Duquesne entered into a new agreement superseding the 1959 agreement. Under the new agreement each party reserves 25 MW of capacity for the other's use (there is no payment for this capacity exchange), energy is paid for at the supplier's incremental cost of production, and unintentional energy exchanges are returned in kind.

SJM has entered into an agreement ("Agreement") dated as of January 4, 1982, with GPU Service Corporation ("GPU"), to sell power and energy available from the Monaca facilities. GPU executed the Agreement as agent for its associate companies, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, said companies and GPU all being subsidiaries of General Public Utilities Corporation, a registered holding

company. The Agreement provides for the sale by SJM to GPU of 25 MW of capacity and associated energy, and supplemental energy of at least 109.5 million KWH per year if SJM makes it available.

Delivery of the power and energy is accomplished over the transmission facilities of Duquesne and Cleveland Electric Illuminating Company ("CEI"). Contractually the delivery is through a chain of simultaneous sales and deliveries: SJM delivers the power and energy to Duquesne, which simultaneously sells equivalent power and energy to CEI, which simultaneously sells equivalent power and energy to GPU. Under the arrangements among the parties, GPU's payments to SJM are made through CEI and Duquesne. The Agreement is terminable: (1) on or after December 31, 1986, after either party's having given one year's written notice to the other; (2) upon one month's written notice from SJM to GPU if the Federal Energy Regulatory Commission or any other state or federal regulatory agency asserts jurisdiction over sales under the agreement; and (3) upon mutual agreement.

The estimated energy production and revenues from power sales for 1982 are as follows:

	KWH (millions)	Revenues (millions)
Smelting	306	
Sales to Duquesne	132	$2.6
Sales to GPU	282	9.1
Total	720	11.7

The $11.7 million of anticipated revenues from electrictly sales represents aproximately 1.26% of SJM's total revenues of $935,536,000 for the 12 months ending December 31, 1982. As of May 31, 1982, the net book value of the Monaca facilities was $21,979,000, or approximately 2.2% of SJM's total assets of $1,017,526,000.

SJM requests an order declaring it not to be an electric utility company pursuant to Section 2(a)(3) of the Act. That section provides that the Commission shall by order declare a company not to be an electric utility company if it finds "such company is primarily engaged in [a non-utility business], and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company for purposes of [the Act]."

In the event SMJ's application under Section 2(a)(3) is not granted, Fluor requests an order of exemption under Section 3(a)(3) which provides that the Commission shall exempt a holding company if "such holding company is only incidentally a holding company, being primarily engaged" in non-utility businesses, and (1) not deriving a material part of its income from public-utility subsidiaries or (2) deriving a material part of its income from public-utility subsidiaries if substantially all of the outstanding securities of such companies are owned by such holding company. Fluor is engaged, through subsidiaries, in the construction and engineering business, and in various other non-utility businesses. For its latest fiscal year ended October 31, 1981, it reported consolidated revenues of approximately $6.1 billion.

The application and amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 1, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-21667 Filed 8-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12579; 812-5238]

The Variable Annuity Life Insurance Co. et al.; Application for an Order of Exemption Pursuant to Section 6(c) of the Investment Company Act of 1940 From Sections 26(a)(2)(D) and 27(c)(2) of the Act and for an Order Approving the Terms of Certain Offers of Exchange Pursuant to Section 11 of the Act

August 4, 1982.

In the matter of The Variable Annuity Life Insurance Company, The Variable Annuity Life Insurance Company; Separate Account A, and The Variable Annuity Marketing Company, 2727 Allen Parkway, Houston, Texas 77019.

Notice is hereby given that The Variable Annuity Life Insurance Company ("VALIC"), The Variable Annuity Life Insurance Company Separate Account A ("Account A"), and The Variable Annuity Marketing Company ("VAMCO") (collectively, "Applicants") filed an application on July 8, 1982, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants, to the extent requested, from Sections 26(a)(2)(D) and 27(c)(2) of the Act and, pursuant to Section 11 of the Act, approving the terms of certain offers of exchange. VALIC is a Texas stock life insurance company; Account A, a separate account of VALIC, is registered under the Act as a unit investment trust. VALIC is the depositor of, and VAMCO, the principal underwriter for, Account A. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Account A funds variable annuity contracts (the "Contracts") issued by VALIC. The Contracts are individual variable annuity contracts designed to establish retirement benefits under certain programs providing federal tax advantages. Net purchase payments (the amount of a purchase payment less applicable premium taxes) with respect to the Contracts may be placed in Account A and allocated to one or more of its divisions or allocated to VALIC's general account. The assets of each division of Account A are invested solely in shares of an open-end management investment company (a "Fund"). Divisions One, Two and Three of Account A presently used in connection with the Contracts are invested in American General High Yield Accumulation Fund, Inc., American General Money Market Fund, Inc. and American General Equity Accumulation Fund, Inc. Applicants are planning to add a Division Four which shall invest in American General Capital Accumulation Fund, Inc., regarding which the present application is being made. During the accumulation and annuity periods, the terms of the Contracts permit contractowners and, in certain cases, beneficiaries under the Contracts to make transfers among the divisions of Account A or between the divisions and VALIC's general account, subject to certain limitations. Transfers will be effected at net asset value and no transfer charge will be imposed. The

privilege of making transfers during the accumulation and annuity period may be suspended or terminated by VALIC at any time.

Applicants have previously obtained exemptions from various sections of the Act, including Sections 26(a)(2)(D) and 27(c)(2), relating to possession of Account A's assets, and orders under Section 11 of the Act approving certain offers of exchange in connection with transfers between Divisions One and Two, and among Divisions One, Two and Three. Applicants assert that the terms of such exemptions and approvals are in all respects sufficiently broad to include the addition of proposed Division Four. Nevertheless, Applicants have been advised by the staff of the Commission that the addition of a new division will, in the staff's view, require an order of the Commission, pursuant to Section 11 of the Act approving the terms of certain offers of exchange and pursuant to Section 6(c) of the Act for exemptions from Sections 26(a)(2)(D) and 27(c)(2) of the Act with respect to newly created Division Four.

Exemptions Relating To Custodial Requirements

Section 27(c)(2) of the Act prohibits a registered investment company or any depositor or underwriter for such company from selling periodic payment plan certificates, unless the proceeds of all payments other than the sales load are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1) of the Act and held under an agreement containing, in substance, the provisions required by Sections 26(a)(2) and (3) of the Act. Applicants state that, except for Fund shares, which will be maintained in an open-account system, Account A's only assets will consist of amounts of cash from time to time. Such cash will be kept on deposit in the name of Account A with a bank meeting the requirements of Section 26(a)(1).

Section 26(a)(2)(D) of the Act requires, in part, that under the agreement with the trustee or custodian, such entity must have possession of all the securities and other property in which funds of a unit investment trust are invested. Applicants state that this has been interpreted to mean that the securities owned by the trust must be represented by share certificates physically in the custody of the custodian. Section 26(a)(2)(D) of the Act also requires that the agreement with the trustee or custodian provide that the securities and other property in which the funds of a unit investment trust are invested must be segregated and held in trust until distribution. Applicants assert that while the assets of Account A will be segregated, VALIC, as a life insurance company, may not properly place assets of the Separate Account in trust, because the insurance laws of the State of Texas require VALIC to retain ownership and control of the disposition of its property. Applicants state that VALIC will continue to hold in custody for safekeeping the assets of Account A until Account A has been completely liquidated and the proceeds of the liquidation distributed to persons entitled thereto under the Contracts or until a successor trustee or custodian is appointed.

Applicants request exemptions from Sections 26(a)(2)(D) and 27(c)(2) of the Act in order that assets of the Separate Account, including uncertificated shares of American General Capital Accumulation Fund, Inc., may be held by VALIC under the terms and conditions set forth in the application.

Approvals Under Section 11

Section 11(a) of the Act makes it unlawful for any registered open-end investment company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irresepective of the basis of exchange, the provisions of subsection (a) shall be applicable to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust and to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Applicants state that they do not believe that Sections 11(a) or 11(c) should be interpreted to require Commission approval of transfers between divisions of Account A pursuant to the Contracts. Nevertheless, to remove any uncertainty, Applicants request Commission approval under those sections, to the extent necessary to permit owners, annuitants and beneficiaries to effect transfers between Divisions One, Two and Three and Division Four pursuant to the Contracts. Applicants submit that such transfers will be effected at net asset value and will not generate any increased revenues or fees to VALIC or its affiliates. Therefore, Applicants believe the transfers between Account A's divisions contemplated by the Contracts are consistent with the purposes of Sections 11(a) and 11(c) of the Act and the terms thereof should be approved by the Commission.

Section 6(c)

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, no later than August 30, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following August 30, 1982, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notice and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–21668 Filed 8–9–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM-8/540]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting on September 14, 1982, of the Working Group on Transborder Date Flows of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 10:00 a.m. to 12:00 noon. The meeting will be held in the East Auditorium, Room 2925D, of the State Department, 2201 C Street, NW., Washington, D.C. 20520. The meeting will be open to the public.

The purpose of the meeting will be to report the results of the March 30–April 1 ICCP meeting, to discuss preparations for the upcoming ICCP Experts' Group and full committee meetings (September 23–24 and 27–28, respectively), to report on foreign reactions to the proposed international data pledge, to report on progress on resolving the customs valuation of computer software problems, and to discuss preparation of a U.S. national paper for the U.S. Centre on Transnational Corporations.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632–2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group will, as time permits, entertain oral comments from members of the public attending the meeting.

Dated: July 28, 1982.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 82-21615 Filed 8-9-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/539]

Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 24, 1982 at the Embassy Square Hotel, 2000 N Street, N.W., Washington, D.C. Meeting will start at 1:00 p.m.

Study Group D deals with telecommunications matters relating to the development of international digital data transmission services; the Modem Working Party reviews actual and proposed CCITT recommendations pertaining to the specifications and use of modems in data transmission.

The agenda for the meeting will include 9600/4800 two-wire full duplex echo cancelling modems.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chair. Requests for further information may be directed to William Lowell, Office of International Communications Policy, Department of State, Washington, D.C. 20520, telephone (202) 632–6583 or T. de Hass, Chairman of U.S. Study Group D, Institute of telecommunication Sciences, National Telecommunications and Information Administration, Boulder, Colorado 80303, telephone (303) 499–1000, ext. 3728.

Dated: July 28, 1982.

Richard E. Shrum,

Director, Acting, Office of International Communications Policy.

[FR Doc. 82-21614 Filed 8-9-82; 8:45 am]

BILLING CODE 4710-07-M

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 24, 1982 at 10:00 a.m. in Room 856 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group deals with U.S. Government aspects of international telegram and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at upcoming international Study Groups I and III meetings.

Members of the general public may attend the meeting subject to the instruction of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C., telephone (202) 632–3214.

Dated: July 29, 1982.

Richard E. Shrum,

Director, Acting, Office of International Communications Policy.

[FR Doc. 82-21613 Filed 8-9-82; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Announcement of Sealed Bid Auction for 477,718 Shares of Central Jersey Industries, Inc. Common Stock

AGENCY: Office of the Secretary, Treasury.

SUMMARY: The Department of the Treasury announces that it is receiving offers to purchase 477,718 shares of common stock of Central Jersey Industries, Inc. ("CJI") owned by the United States (the "Shares"). The Shares presently represent approximately 23.8 percent of the outstanding common stock of CJI. Offers to purchase the Shares must be made by sealed bid, under the procedures and subject to the terms and conditions set forth in an Invitation for Bids (the "Invitation"). Bids must be received by 3:00 p.m. (Washington, D.C. time) on September 8, 1982, in order to be considered.

The Invitation may be obtained, by mail or in person, beginning at 1:00 p.m. on August 10, 1982 at the office set forth below: Office or the Assistant General Counsel for Domestic Finance, United States Department of the Treasury, Room 2026, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220. There will be a charge of $5.00 for the Invitation, to reimburse the Treasury for reproduction costs. A check for that amount, payable to the United States Treasury, must accompany each request for the Invitation.

FOR FURTHER INFORMATION CONTACT: Walter Eccard (202–566–6630) or Ellen Seidman (202–566–2278), Office of the General Counsel, Department of the Treasury, Room 2028, Main Treasury Building, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION: Full details concerning the sale are available only in the Invitation and all bids must be submitted in the form set forth in the Invitation. The following, however, summarizes the major conditions of this sale.

(1) The Shares will be sold only as a block and only for cash.

(2) The Department of the Treasury reserves the right to reject all bids.

(3) All bidders will be required to submit information described in the Invitation concerning the bidder.

(4) All bidders will be required to submit a deposit of $50,000 in the form of a certified check, which will be returned to unsuccessful bidders and credited to the purchase price for the successful bidder.

(5) To be considered, bids must be received no later than 3:00 p.m. (Washington, D.C. time) on September 8, 1982 at Room 3321, Main Treasury Building, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220. Late bids will not be accepted.

(6) The purchaser of the Shares will be required to execute an investment intent letter stating that the Shares are purchased for investment and not with a view to distribution.

(7) The Shares will be legended with a notice that they may not be sold, transferred or hypothecated without compliance with the Securities Act of 1933.

(8) The successful bidder will be required to execute a stock purchase agreement in the form set forth in the Invitation.

Roger W. Mehle,

Assistant Secretary of the Treasury (Domestic Finance).

[FR Doc. 82-21642 Filed 8-6-82; 4:00 pm]

BILLING CODE 4810-25-M

[Supplement to Department Circular, Public Debt Series No. 19-82]

Series N-1985 Notes; Interest Rate

August 4, 1982.

The Secretary announced on August 3, 1982, that the interest rate on the notes designated Series N-1985, described in Department Circular—Public Debt Series—No. 19-82 dated July 29, 1982, will be 13⅜ percent. Interest on the notes will be payable at the rate of 13⅜ percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-21627 Filed 8-9-82; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 154
Tuesday, August 10, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-359 Amdt 2, August 5, 1982]

Additions to the August 5, 1982 Meeting

TIME AND DATE: 10 a.m., August 5, 1982.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

9a. Commuter carrier fitness determination of Spirit Airways, Inc. (Memo 1351-B BDA)

30. Docket 40877, Request of Japan Air Lines Company, Limited for authorization to temporarily increase service between Guam/Saipan and Japan under the U.S.-Japan Memorandum of Consultations of October 3, 1980. (BIA, OGC)

STATUS: 9a Open, 30 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1154-82 Filed 8-6-82; 3:41 pm]

BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Thursday, August 12, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial Session.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1153-82 Filed 8-6-82; 11:00 am]

BILLING CODE 6351-01-M

3

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 33030, July 30, 1982.

STATUS: Closed meetings.

PLACE: Room 6059, 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, July 28, 1982.

CHANGES IN THE MEETING: Additional meeting/meeting canceled. The following item was considered at a closed meeting scheduled on Tuesday, August 3, 1982, at 12:00 p.m.

Regulatory matter bearing enforcement implications.

A closed meeting scheduled for Thursday, August 5, 1982, at 10:00 a.m. has been canceled.

Chairman Shad and Commissioners Evans, Thomas and Longstreth determined by vote that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Catherine McGuire at (202) 272-3195.

August 5, 1982.

[S-1152-82 Filed 8-6-82; 10:48 am]

BILLING CODE 8010-01-M

federal register

Tuesday
August 10, 1982

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Conditional Approval of the Permanent Program Submission From the State of Ohio and Approval of the Abandoned Mine Reclamation Plan for the State of Ohio; Surface Mining Control and Reclamation Act of 1977

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Conditional Approval of the Permanent Program Submission From the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; Conditional approval of Ohio's permanent regulatory program.

SUMMARY: On January 22, 1982, the State of Ohio resubmitted to the Department of the Interior its permanent regulatory program under the Surface Mining and Control and Reclamation Act of 1977 ("SMCRA" or the "Act"), 30 U.S.C. 1201 *et seq.* This resubmission follows an initial disapproval, notice of which was published in the **Federal Register**, October 1, 1980 (45 FR 64962–64971). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. Because the original submission was disapproved in whole, the resubmission consists of the full program which has been considered in its entirety in this decision. After providing opportunities for public comment and conducting a thorough review of the complete program submission, the Secretary of the Department of the Interior has determined that the Ohio program meets the requirements of SMCRA and the Federal permanent program regulations, except for the minor deficiencies discussed below under "Supplementary Information." Accordingly, the Secretary of the Department of the Interior has conditionally approved the Ohio program.

A new Part 935 is being added to Subchapter T of 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval will be effective on August 16, 1982. This conditional approval will terminate as specified in 30 CFR 935.11 unless Ohio submits to the Secretary, by the dates specified in 30 CFR 935.11 adopted below, materials to correct the deficiencies in the manner indicated.

ADDRESSES: Copies of the Ohio program with modifications and the administrative record on the Ohio program, including the letter from the Ohio Department of Natural Resources agreeing to proceed with steps to correct the deficiencies which resulted in the conditional program, are available for public inspection and copying during regular business hours at:

Division of Reclamation, Ohio Department of Natural Resources, Fountain Square, Building B, Columbus, Ohio 43224, Phone (614) 265–6633

Office of Surface Mining, Region III, 46 East Ohio Street, Indianapolis, Indiana 46204–1994, Phone (317) 269–2629

Office of Surface Mining, Room 5315, 1100 L Street NW., Washington, D.C. 20240, Telephone: (202) 343–4728.

Copies of the full text of the proposed program with modifications are available for inspection and copying during regular business hours at the following locations:

Office of Surface Mining, Region III, Fifth Floor, Room 511, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204–1994

Ohio Division of Reclamation, Department of Natural Resources, Fountain Square, Building B, Columbus, Ohio 43224

Ohio Division of Reclamation, District V, 46633 East Richland, St. Clairville, Ohio 43950

Ohio Division of Reclamation, District VI, 10007 E. State Street, Athens, Ohio 45701

Ohio Division of Reclamation, District II, 1894 East High Street, New Philadelphia, Ohio 44663

Ohio Division of Reclamation, District III, 966 N. Market Street, Lisbon, Ohio 44432

Ohio Division of Reclamation, District IV, Technical Building, 850 Airport Road, Route 4, Zanesville, Ohio 43701

Ohio Division of Reclamation, District VI, 36 Portsmouth Street, Jackson, Ohio 45640

Office of Surface Mining, Ohio State Office, Room 202, 2242 South Hamilton Rd., Columbus, Ohio 43227.

FOR FURTHER INFORMATION CONTACT: Art Abbs, Chief, Division of State Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, Phone: (202) 343–5351.

SUPPLEMENTARY INFORMATION: To assist understanding of the findings underlying the Secretary's decision, this notice is organized into six parts:

A. Background on the Ohio Program Resubmission
B. Secretary's Findings
C. Disposition of Agency and Public Comments
D. Background on Conditional Approval
E. The Secretary's Decision
F. Additional Information

Part A summarizes the steps undertaken by Ohio and officials of the Department of the Interior since the Secretary's initial decision and the decision being announced today.

Part B contains the findings the Secretary has made pursuant to Section 503(a) of SMCRA and 30 CFR 732.15 and the reasons for each finding.

Part C summarizes the substantive public comments received during the review of the Ohio program resubmission and discusses the Secretary's disposition of them.

Part D provides the background on the conditional approval process.

Part E identifies and explains the Secretary's decision for conditional approval of the Ohio program.

Part F provides information with regard to a regulatory analysis and environmental impact of the decision.

The basis and purpose statement for the Secretary's decision to conditionally approve Ohio's program consists of this notice, the other **Federal Register** notice adopted below in this notice, and the October 1, 1980, **Federal Register** notice. Throughout the remainder of this notice, the terms "Ohio program" or "Ohio submission" are used to mean the resubmission. The term "Ohio surface mining laws" or "State laws" refers to Chapter 1513 of the Ohio Revised Code (ORC) submitted by Ohio as part of its resubmission. The term "Ohio regulations" or "State regulations" refers to the parts of the Ohio Administrative Code (OAC) submitted by Ohio as part of its program resubmission.

A. Background on the Ohio Program Resubmission

The general background on the permanent program, the general background on the State program approval process, and the background on the Ohio program submission were discussed in the **Federal Register**, October 1, 1980 (45 FR 64962–64965). Readers should refer to the October 1, 1980, notice for more details on this background information.

Also, in that notice the former Secretary announced his disapproval of the Ohio program in whole. The decision was made because the Ohio program did not have fully enacted laws and regulations before the 104th day after program submission as required by 30 CFR 732.11(d).

In accordance with the procedures set forth in 30 CFR 732.13(f), the State of Ohio had 60 days from the date of publication of the Secretary's initial decision in which to submit a revised program for consideration. Ohio was to submit its revised program for consideration on December 1, 1980. In a letter dated November 26, 1980, Charles E. Call, Chief of the Division of Reclamation, Ohio Department of Natural Resources (ODNR), informed the Office of Surface Mining that the Ohio Department of Natural Resources was enjoined on November 24, 1980 by the Common Pleas Court of Franklin County, Ohio, and on November 25, 1980 by the Common Pleas Court of Belmont County, Ohio from resubmitting to the Office of Surface Mining a State program for the regulation of surface coal mining in Ohio. The letter is contained in the Administrative Record. Ohio was enjoined and restrained from submitting a regulatory program to OSM until such time as the injunction terminated. Pursuant to Section 503(d) of the Act, the inability of Ohio to take action to submit a State program while the injunction remained in effect could not result, for one year, in the imposition of a Federal program under Section 504.

On November 24, 1981, and November 25, 1981, the respective injunctions terminated. Ohio resubmitted its program to OSM on January 22, 1982. Announcement of Ohio's resubmission was made in two newspapers of general circulation within the State of Ohio and published in the **Federal Register** on January 26, 1982 (47 FR 3571–3573).

A public hearing on the resubmission was announced in the January 26, 1982 **Federal Register**, and was held in Columbus, Ohio on February 18, 1982. The public comment period on the resubmission closed on February 20, 1982. Following two meetings between OSM and the State, discussed below, ODNR submitted on May 7, 1982, to OSM new materials revising and modifying the Ohio regulatory program.

The new materials submitted included a legal opinion from the State Attorney General concerning the State's legal authority to implement, administer and enforce the program to regulate coal exploration and surface coal mining and reclamation operations. Other materials included revised regulations, additional regulations, explanations and policy statements on the implementation and administration of program provisions.

OSM published notice in the **Federal Register** on May 7, 1982 (47 FR 19721), announcing receipt of new materials and reopening the public comment period for 30 days to allow the public to consider the new materials. Public disclosure of comments by Federal agencies was made on June 18, 1982, in the **Federal Register** (47 FR 26406).

On August 2, 1982, the Administrator of the United States Environmental Protection Agency (USEPA) transmitted her written concurrence on the aspects of the Ohio program which relate to air or water quality. In reaching a decision to concur the program submission was reviewed by Region V, USEPA staff. In the course of their review concerns were discussed with OSM staff. The memorandum from Region V to the Administrator detailing findings and recommending concurrence in the approval of the Ohio program is available for review in the Administrative Record.

On July 30, 1982, the Director recommended to the Secretary that the Ohio program be approved conditionally.

On August 3, 1982, the Secretary decided to approve conditionally the Ohio program.

The terms of the conditional approval were conveyed to Ohio and on July 28, 1982, the Chief of the Ohio Division of Reclamation, Charles E. Call, replied and accepted the conditions of approval. Copies of this letter are available for review in the Administrative Record.

Throughout the period beginning with the submission of the program, OSM has had frequent contact with the staff of the Department of Natural Resources. Discussions of the State program submission were held with various officials. All contacts between officials and staff of the Department of the Interior and the State of Ohio were conducted in accordance with the Department's guidelines for such contacts (44 FR 54444–54445, September 19, 1979). Minutes or notes of the discussions were placed in the Administrative Record and made available for public review and comment. On March 22 through March 24, 1982, officials of OSM met in executive session in Washington, D.C. with representatives of the Ohio Department of Natural Resources (ODNR) to discuss the Ohio regulatory program submission. On April 7 and 8, 1982, officials of OSM met with representatives of ODNR, members of the public and representatives of industry in Columbus, Ohio to discuss the Ohio regulatory program submission. Also on April 28 through April 30, 1982 officials of OSM met with representatives of ODNR in executive session in Columbus, Ohio to discuss the submission. And on June 2, 1982, ODNR representatives met with OSM staff in Washington to discuss conditions of approval that had been identified at that point.

The statutory basis for the Ohio program was House Bill 1051, the "Coal Mining and Reclamation Law" amending Chapter 1513 of the Ohio Revised Code. The law became effective September 1, 1981. The regulations contained in the program were in the proposed stage as of January 22, 1982, the date of the resubmission. Changes were made to the proposed regulations and submitted with additional materials on May 7, 1982. The regulations were promulgated by issuance of an Executive Order by the Governor through emergency rulemaking procedures to be effective August 16, 1982. The regulations remain in effect for ninety days during which full, regular procedures for permanent adoption of the rules are being followed for their final promulgation.

The Secretary's findings below are organized to follow the order set forth in Section 503 of SMCRA and 30 CFR 732.15, respectively.

These sections specify the findings which the Secretary must make in order to approve a State program.

B. The Secretary's Findings

The findings in this part are based on a review of the Ohio program as submitted February 29, 1980, the resubmission on January 22, 1982, additional material submitted on May 7, 1982, and the public comments in response to the State program submission. The February 29, 1980, submission contained, among other things, proposed and existing surface mining laws, proposed regulations and program narrative descriptions. The resubmission of January 22, 1982, contained the enacted State surface mining laws, proposed regulations and program narrative descriptions. On May 7, 1982, the State submitted new materials including regulations, policy explanations and the legal opinion of the State Attorney General regarding the legal authority to implement, administer and enforce the program. The regulations were made effective by issuance of an executive order by the Governor through emergency procedures.

The explanation of the findings below primarily discusses the differences between the Ohio program and the Federal requirements which the Department of the Interior identified in the review of the program. OSM and the State have found numerous typographical errors in the program regulations. These errors have been discussed by the State and OSM in the

meetings held since resubmission. The State will correct these errors in promulgating the rules. Since the State has indicated its intention to correct the errors, there will be no discussion of them in this decision and no condition of approval will be imposed that they be corrected.

Secretary's Findings

Section 503(a)

In accordance with Section 503(a) of SMCRA the Secretary finds that Ohio has the capability to carry out the provisions of SMCRA. Findings made in accordance with Section 503(a) of SMCRA are set forth in Findings 1 through 7 below:

Finding 1

The Secretary finds that Ohio has laws which provide, except as noted in the findings below, for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in Ohio in accordance with the requirements of SMCRA. The issues underlying this finding are analyzed under the following numbered paragraphs. Additional discussion of statutory issues may be found under various findings.

1.1. The Ohio Coal Mining and Reclamation Law, Ohio Revised Code, (ORC) Chapter 1513, in Section 1513.01(B) defines "coal mining and reclamation operations" but the term is not defined in the Surface Mining Act, Section 701. The term is defined in the Ohio law as "coal mining operations and all activities necessary and incident to the reclamation of such operations." The Surface Mining Act in Section 701(27) defines the term "surface coal mining and reclamation operations" in the same manner as Section 1513.01(B) but adds a phrase "after the date of enactment of this Act."

Section 1513.01(G) defines the terms "operations" or "coal mining operations." Section 701(28) of the Surface Mining Act defines the term "surface coal mining operations."

The definitions in the two statutes are the same. The State definition of "coal mining operations" includes the surface impacts incident to an underground mine. Section 1513.01(G)(1). The Surface Mining Act in Section 701(28) includes the surface effects of underground mining. Thus, the only difference between the Ohio and Federal statutes in this regard is the lack of the word "surface" in the term being defined in the State statute.

1.2. The phrase "but does not include public roadways" has been added to the definition of "coal mining operations" in ORC Section 1513.01(G)(2). This part of the definition pertains to areas upon which coal mining activities within the scope of regulation are set out. The definitions, like the definition in the Surface Mining Act, Section 701(28)(b), contains the following as areas subject to regulation: "all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities, and for hauling * * *." Public roads can be constructed and existing ones can be improved so as to gain access to mine sites and for hauling coal or other mining operations related materials. If the qualifying phrase is given literal effect, then any time a public road is used in a coal mining operation, the activities over it would not be subject to regulation.

Such a provision in the State statute is contrary to the Act and congressional intent. The use of the road is of paramount consideration, not whether it is in public or private ownership. *See* discussion on proposed revision of the term "affected area" in 30 CFR 701.5 at 47 FR 45 (January 4, 1982). The State has offered no explanation in its submission for the addition of the phrase.

Because the phrase is not in accordance with the Act, elimination of the phrase will be a condition of approval of the State program. The State must amend ORC Section 1513.01(G)(2) to delete the phrase "but not to include public roadways."

1.3. Ohio Revised Code Section 1513.01(R) defines the term "stripmining" which is not defined in the Surface Mining Act, Section 701. The definition is generally descriptive. It applies to operations which remove overburden prior to removing coal, auger mining and the recovery of coal not in its original geologic location. Since the State's definition of coal mining operations is not qualified, like the definition in Section 701(28) of the Surface Mining Act, by the term "surface", there is a need for a definition in the State statute for recognition of coal mining which is not connected with underground operations. The definition of the term does not place any aspect of the State's program outside the general definition of "coal mining operations". *See* discussion in 1.1, *supra.*

1.4. The Secretary could find no apparent complete Ohio statutory counterpart to Section 506(a) of SMCRA that states "all persons conducting surface coal mining operations under a permit from the State regulatory authority, issued in accordance with the provisions of Section 502, may conduct such operations beyond the eight month deadline [after program approval] if an application for a permit has been filed in accordance with the provisions of this Act, but the administrative decision has not been rendered."

Ohio Revised Code Section 1513.07(A)(1) provides for such continuation only for permits issued after February 3, 1978, and set to expire at any time before eight months after approval of the State program. Prior to September 1, 1981, the life of a permit issued by the State was no more than 3 years. The State language does two things: First, it extends permits which would expire, which SMCRA does not specifically allow; and, second, it omits any reference to existing permits which are not due to expire within eight months after approval of the program.

However, the Secretary is satisfied that the State regulation, Ohio Administrative Code (OAC), Section 1501:13-4-01(F)(2), clarifies the matter. It specifies that all persons conducting coal mining operations under a permit issued by the Chief after February 3, 1978, may conduct operations beyond the eight month deadline if the conditions in SMCRA are met, viz., that a complete application must have been filed, that the Chief not have acted on the application and that mining be conducted in accordance with interim program standards.

The Secretary finds that the Ohio statutory provision allowing an automatic extension of post-February 3, 1978 permits which would expire is qualified by the regulation which requires a complete application to be filed. Therefore, the statutory and regulatory provisions when considered together are in accordance and consistent with SMCRA, Section 506(a).

1.5. Section 507(b)(14) of SMCRA requires permit applications to contain cross-section maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture.

ORC 1513.07(b)(2)(n) allows registered surveyors to also prepare or direct preparation of and certify the required cross-section maps or plans of the area to be affected.

The State has offered a detailed explanation for its addition of land surveyors. It points out that historically surveyors have had considerable experience with mine maps. The State also has a class of surveyors known as mine surveyors. ORC Section 4733.11(B)(1) and (2). Furthermore, the

State has since 1933, when its registration law for professional engineers and surveyors was passed, allowed surveyors to prepare mine maps and plans. With enactment of reclamation laws in the State, the surveyor was recognized as the lead professional for the preparation of maps and plans. The State points out that under ORC Chapter 4733.01(D) surveyors in Ohio are qualified in the practice of measuring the area of any portion of the earth's surface, boundary lines, contours, and plotting of lands and subdivisions. Thus, in the State's view the surveyor is especially qualified to prepare the maps and plans required under the Surface Mining Act.

H.R. 2, 95th Congress, 1st Sess., the bill which became the Surface Mining Act, had a provision in Section 507(b)(14) which allowed land surveyors, in addition to professional engineers and in some instances professional geologists, to prepare and certify cross-section maps and plans. *See* H.R. 2 in H. Rept. 95–218, at p. 22 (April 22, 1977). The Senate bill, S. 7, had a provision which allowed only professional engineers to prepare the cross-section maps and plans. *See* S. 7, Section 407(b)(14) in S. Rept. 95–128 (May 10, 1977). The Conference Committee Report on H.R. 2 tried to reconcile the two provisions, but, significantly, omitted mention of land surveyors, thus leaving only professional engineers and geologists as capable of preparing the cross-section maps or plans. H. Rept. 95–493 (July 12, 1977). Because Congress deleted the provision for surveyors from Section 507(b)(14), the Secretary can only conclude that it intended not to allow surveyors to perform this work.

The Secretary concludes that ORC 1513.07(b)(2)(n) is not in accordance with Section 507(b)(14) of SMCRA because the Federal requirement that cross-section maps or plans be prepared by or under the direction of a certified by a qualified registered professional engineer or professional geologist is not met under State law. Therefore, approval of Ohio's program is conditioned on the State's adoption of an amendment to ORC 1513.07(B)(2)(n) that limits preparation of the cross-section maps or plans to qualified registered professional engineers or professional geologists.

Also see discussion and condition of approval regarding design of post mining land uses and certification of drainage control construction by registered engineers under Findings 1.9 and 13.6. In addition, because the Secretary does not agree with the Ohio argument for allowing work to be performed by surveyors in instances where SMCRA or 30 CFR Chapter VII require work to be performed or certified by engineers, approval of the program is conditioned on Ohio amending and revising program provisions so as to require work by registered professional engineers in every instance required by SMCRA and 30 CFR Chapter VII.

1.6. ORC 1513.07(B)(2)(m) requires that each application for a permit shall contain accurate maps to an appropriate scale clearly showing, among other things, the boundaries of the land to be affected. The State allows preparation of these maps by or under the direction of and certified by a qualified registered professional engineer or registered surveyor. Here the Secretary agrees with the use of surveyors because, as explained by Ohio, surveyors in the State are qualified in the practice of measuring the area of the earth's surface, boundary lines, contours, etc. *See* Finding 1.5. The Secretary finds ORC 1513.07(B)(2)(m) in accordance with Section 507(b)(13).

1.7. The State has omitted from Section 1513.16, the counterpart to Section 515 of the Surface Mining Act, the provision which is in subsection (b)(3) pertaining to insufficient overburden. Section 1513.16(A)(3) omits the provision for the reason that the State maintains there are no areas that have insufficient overburden. The omission is appropriate and does not render the State statute not in accordance with the Act.

1.8. Section 1515.16(A)(21)(b) and (d) adds the phrase "except in the zoned concept method" to the standards for disposal of excess spoil. The zoned concept method is not defined in any place in the program, nor is the concept used in any manner. The State has added it to the statute in the event it adopts such a concept in the future. As such, the provision is not inconsistent with the Surface Mining Act. If the State elects to implement the authorization, it would have to do so through the program amendment process, at which time its effectiveness would be measured against the Federal permanent program rules.

1.9. The State has added a registered surveyor as one, besides a registered engineer, who may design a change in the post-mining land use in ORC 1513.16(B)(3)(b)(vii). Section 515(c)(3)(B)(vii) of the Surface Mining Act only provides for a registered engineer designing a changed post-mining land use. *See* the discussion under 1.5, above. As a condition of approval of the program, the State will be required to amend the statute to remove surveyors as authorized to design post-mining land uses.

1.10. In Section 1513.161 the State has provided its counterpart to Section 515(b)(15) of the Surface Mining Act for the use of explosives. It provides that explosives shall be used in accordance with Chapter 4157 of the Ohio Revised Code and rules adopted pursuant to it, and in accordance with Federal laws and regulations controlling the use of explosives. The section also provides that except when any part of the operation involves underground coal mining the rules of the Chief of the Division of Mines control and in the event of a conflict with the rules of the Chief of the Division of Reclamation the rules of the former take precedence over the latter.

The State has pointed out that the Chief of the Division of Mines has not promulgated any rules. Therefore, the provision giving preemptive effect to the rules of the Chief of the Division of Mines is ineffective. Should the Chief of the Division of Mines ever promulgate rules, they will have to be submitted to OSM for a determination whether they are consistent with the Secretary's regulations on use of explosives.

1.11. The State has no counterpart provision to Section 707 of the Surface Mining Act in Chapter 1513 of the Revised Code. Section 707 provides for severability if any provision of the Act is held invalid, the remaining provisions of the Act are not affected by the ruling.

The State in explanations to its resubmission of May 7, 1982, points out that the Ohio Revised Code has a general provision, Section 1.50, which provides for severability in the same manner as Section 707 of the Act. The State's law is, therefore, in accordance with the Surface Mining Act on this point.

1.12. Section 5 of H.B. 1051, the bill which became ORC Chapter 1513, has a provision which would nullify the effect of any provision of the Surface Mining Act or the Secretary's regulations insofar as they have a counterpart in the State program if any Federal court is to strike the provision down. Thus, a Federal court having no jurisdiction in the State would be able to have effect given to its rulings by Section 5 which requires the Chief of the Division of Reclamation to not give effect to corresponding provisions in the State program. Because Section 5 gives extraterritorial effect to rulings of Federal courts with no jurisdiction in Ohio, it is not in accordance with the Surface Mining Act.

As a condition of approval, the State must either amend Section 5 to limit its effect to Federal courts having jurisdiction in the State or submit an opinion of the Attorney General that under Ohio law, Section 5 only extends to Federal courts having jurisdiction in the State.

Finding 2

The Secretary finds that Ohio has laws which provide sanctions for violations of state laws, regulations or conditions of permits which meet the minimum requirements of SMCRA. No significant issues were uncovered in reviewing this part of the program. For a discussion of the sanctions in relation to requirements in conducting exploration, see Finding 15.1.

Finding 3

The Secretary finds that the State regulatory authority will have sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA.

The State has presented in Volume I of the State program resubmission, summary tables of organization with job descriptions, functions and experience for the existing staff. Discussion of the staff versus projected workloads and use of other agency staff resources is also included. See Chapters XIII through XV of Volume I.

Finding 4

The Secretary finds that the State has laws which provide for effective implementation, maintenance and enforcement of a permit system meeting the requirements of SMCRA. Discussion of a significant issue raised during the review of Ohio statute in relation to permitting follows:

4.1. Section 1513.071(A) of the ORC is the counterpart to Section 513(a) of the Surface Mining Act. However, the State has added a qualifying term "significant" for the revision of a permit. As the State provision now reads, an applicant for a permit or for a significant revision of a permit must file with his or her application copies of newspaper advertisements notifying the public of the application.

Section 513(a) provides that applicants for permits and for revisions of permits shall file copies of the advertisements. In short, revision of a permit is treated the same as an application insofar as public notice is concerned. However, there is an exception to this similar treatment for an application and permit revision. Under Section 511(a)(3) of the Surface Mining Act, an incidental boundary change is not a revision subject to the full panoply of permit requirements. This exception for the State program is found in Section 1513.07(F)(3). Furthermore, Section 511(a)(2) of the Act provides that permit revisions which propose significant alterations in the reclamation plan are subject to notice and hearing requirements. The State in discussions has informed OSM that all permit revisions which do not involve incidental boundary revisions are significant. With the State's explanation, addition of the term "significant" would not allow the inference to be drawn that less than significant permit revisions are not subject to public notification requirements. Therefore, Section 1513.071(A) is in accordance with Section 513(a) of the Act.

Finding 5

The Secretary finds that the State has adequate procedures for the designation of lands unsuitable for surface coal mining.

Significant issues discovered during the review of Ohio regulations corresponding to Federal regulations implementing Section 522 of SMCRA are discussed under Finding 21, below.

Finding 6

The Secretary finds that the State has an adequate process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with all of the Federal and State permit processes applicable to the proposed operations. Significant issues discovered during the review of Ohio regulations corresponding to the Federal regulations on permitting are discussed under Finding 14 below.

Finding 7

The Secretary finds that the State has rules and regulations, which, except for minor deficiencies discussed in the Findings, are no less effective than the regulations in 30 CFR Chapter VII. Significant issues discovered during the review of the State regulations, which were enacted under the emergency powers of the Governor, are discussed under Findings 12 through 29, below.

Section 503(b) of SMCRA Findings

As required by Section 503(b)(1)(3) of SMCRA, and 30 CFR 732.11–732.13, the Secretary has, through OSM, fulfilled the requirements set forth in Findings 8 through 10 below:

Finding 8

The Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Ohio program.

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Ohio program which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

Finding 10

The Secretary has held public review meetings in Columbus, Ohio on April 11, 1980, to discuss the completeness of the Ohio submission; held public hearings on the submission in St. Clairsville, Ohio on July 21, 1980, and in Columbus, Ohio on July 22, 1980, and held a public hearing on the resubmission in Columbus, Ohio on February 18, 1982.

Finding 11

In accordance with Section 503(b)(4) of SMCRA, the Secretary finds that Ohio has, except for minor deficiencies discussed in this decision, the legal authority and sufficient qualified personnel to enforce the environmental protection standards in accordance with SMCRA.

30 CFR 732.15 Findings

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30 below on the basis of information in the Ohio program submission, resubmission, public comments and testimony, written presentations at public hearings and other relevant information within the administrative record.

Finding 12

In accordance with 30 CFR 732.15(a), the Secretary finds that the program provides for the State to carry out the provisions and meet the purposes of SMCRA. The State legislative authority is discussed in Findings 1, 2, and 4. State regulations and narrative descriptions are discussed in Findings 12 through 30. Issues which are general in nature and do not apply to individual program sections only are analyzed as follows:

12.1 Ohio regulation 1501:13–1–01(E)(2) establishes that for existing structures which meet performance standards that are less effective than the requirements of the program, the Chief *may* require modification to meet the design

requirements of the program or comparable performance standards, or both. 30 CFR 701.11(d)(1)(iii) does not allow discretion but requires modification. The Secretary, therefore, conditions approval of the Ohio program on the State adopting provisions which would require modification of existing structures under the circumstances contained in 30 CFR 701.11(d)(1)(iii).

12.2. Ohio regulation 1501:13–1–01(A) appears to exempt persons holding "D-permits" from applying for a new permit after approval of the State program by the Secretary. D-permits as defined in OAC 1501:13–1–02(YYY) are those issued pursuant to an application filed with the Division of Reclamation under Section 1513.07 after September 1, 1981. The State's statute took effect on September 1, 1981. It forms the statutory basis of the Ohio program. Therefore, operators with D-permits will be complying at least with the statutory provisions of the State program. However, concern is raised by this apparent exemption since the holders of D-permits will be allowed to continue operations under permits that would not be revised to reflect the administrative rules of the State program. The Secretary, therefore, conditions approval of the Ohio program on the State amending its regulations to delete the provision in 1501:13–1–01(A) exempting persons holding "D" permits from applying for a new permit after approval of the program.

Other requirements contained in the Ohio statute and regulations address the inconsistency of OAC 1501:13–1–01(A) and provide a solution for the interim until Ohio can effect a regulation change. The Secretary notes that OAC 1501:13–1–07(A) requires coal mining operations conducted under a D-permit to comply with the rules of the State program. ORC 1513.07(H) and OAC 1501:13–4–06(P) require the Chief to review each permit during its term and give him authority to require revision or modification of the permit to ensure compliance with the statute and regulations.

The Secretary, therefore, finds that until the State deletes 1501:13–1–01(A), Ohio will be required to comply with provisions in accordance with Section 506(a) of SMCRA, which states that after eight months from the date on which a State program is approved, no person shall engage in or carry out on lands within a State any surface coal mining operation unless such person has first obtained a permit issued by the State pursuant to an approved program. The Secretary understands that Ohio will utilize its authority under ORC 1513.07(H) and OAC 1501:13–4–06(P) to have operators supplement the previously filed information under the D-permits to incorporate the requirements established under the permit provisions of the State's regulations. Applications for D-permits were processed according to the procedures contained in ORC 1513.07 which included public notice and other statutory requirements of the permanent program. For this reason, the Secretary does not believe holders of D-permits must file entirely new permit applications. However, the State must require such supplemental information and justifications as may be necessary to satisfy the additional requirements of the State regulations.

Finding 13

In accordance with 30 CFR 732.15(b)(1), the Secretary finds that the Ohio program submission demonstrates, except as noted below, that the Ohio Division of Reclamation can implement, administer and enforce all applicable requirements of Subchapter K of 30 CFR Chapter VII under existing authority in Ohio laws, regulations and descriptive elements of the program submission. Ohio incorporated provisions of 30 CFR Chapter VII, Subchapter K in Ohio Administrative Code Chapters 1501:13–1–01 to 1501:13–14–04 and 1513–01–01 to 1513–01–05. Ohio's description of its system to administer and enforce the performance standards, found in the narrative entitled, "State of Ohio, Permanent Program Proposal, Section 731.14(g)(6), Administering and Enforcing the Permanent Program Performance Standards" adequately demonstrates that the State Division of Reclamation can administer and enforce a program. Issues related to the State's legislative authority are discussed under Findings 1, 2 and 4 above. Significant issues discovered during the review of Ohio regulations corresponding to Subchapter K of 30 CFR Chapter VII are as follows:

13.1. Ohio regulations 1501:13–9–13(A)(4)(b) and 1501:13–9–18 provide an extension of time for limestone, clay and shale removal. An additional one year delay for backfilling, grading and other reclamation may be granted by the Chief for mining clay, shale or limestone. Ohio reports that mining other minerals in addition to coal is a frequent activity of many Ohio coal operators, and the rule addresses the unique occurrence in Ohio where some operators have modified their mining and marketing techniques to take advantage of several of Ohio's mineral resources. Ohio also notes that the rule requires contemporaneous reclamation on any part of the mined area not being used for clay, shale or limestone removal.

The Secretary notes that SMCRA Section 515(b)(16) requires reclamation efforts to proceed in an environmentally sound manner and as contemporaneously as practicable with the surface *coal* mining operations. Likewise, 30 CFR 816.101 ties requiring timing of reclamation to coal removal operations. Because contemporary reclamation is required where only coal is being mined, the Secretary finds the Ohio extension for limestone, clay and shale removal to be in accordance with Section 515(b)(16) of SMCRA and no less effective than 30 CFR 816.101.

13.2. Ohio regulation 1501:13–9–15(B) allows use of introduced species of vegetation if approved by the Chief and based on criteria consistent with 30 CFR 816.112 (b), (c), and (d). The Ohio regulation does not include a counterpart to 816.112(a), which requires that field trials be used to demonstrate that the introduced species are desirable and necessary to achieve the postmining land use. The Secretary believes that the Ohio Division of Reclamation will investigate current research findings regarding the characteristics of species that are desirable and necessary to achieve a specific post mining land use so that field trials would be unnecessary. Hence, the Secretary finds Ohio regulation 1501:13–9–15(B) no less effective than 30 CFR 816.112.

13.3. Ohio regulation 1501:13–9–03 on topsoil handling in subpart (4) establishes provisions for situations where there is insufficient topsoil on the permit area.

Ohio regulation 1501:13–9–03(B)(4) allows applicants to employ alternative resoiling materials based on the submission of a certification by a qualified soil scientist or agronomist that the alternative resoiling materials are suitable for establishing the permanent vegetative species proposed by the applicant in the mining and reclamation plan.

30 CFR 816.22(e) requires that substitute materials may be used when the material "is equal to or more suitable" than topsoil. Since the Ohio regulation allows a qualified soil scientist or agronomist to select suitable alternative material only in cases where it has been determined that there is insufficient topsoil material, it is implicit in the Ohio requirements that the alternative material must be "equal to or more suitable" than the available topsoil.

The Secretary finds that because the proposed alternative materials can be used only where there is insufficient

topsoil and must be certified in State applications by a qualified soil scientist or agronomist that Ohio regulation 1501:13–9–03 is no less effective than 30 CFR 816.22.

13.4. Ohio regulation 1501:13–9–07 on disposal of excess spoil addresses virtually all the requirements of Sections 515(b)(22) of SMCRA except the provisions of (b)(22) (E) and (F) pertaining to placement of spoil on a slope. Ohio includes provisions in accordance with Section 515(b)(22), including (E) and (F), in ORC 1513.16(A)(21).

The Secretary notes, however, that the Ohio program does not include provisions governing disposal of coal processing waste in excess spoil fills consistent with 30 CFR 816.71(k). Provisions governing disposal of coal waste in fills are necessary since such waste frequently has properties that contribute to instability, fire hazards and toxic drainage. Accordingly, the Secretary finds that the Ohio rule is not as effective as 30 CFR 816.71(k). Approval of the program is conditioned on the State adopting provisions to govern disposal of coal waste in excess spoil fills consistent with the Federal regulations.

13.5. Ohio regulation 1501:13–13–03(E) establishes revegetation requirements for prime farmland. Under this provision each person who conducts coal mining and reclamation operations on prime farmland is to demonstrate compliance with the same ground cover and cropping provisions required for all operations as approved by the Chief of the Division of Reclamation in the permit application and reclamation plan. Ohio regulation 1501:13–4–12(F)(2)(i), on permitting for prime farmlands, requires that in all cases soil productivity for prime farmlands is to be returned to equivalent levels of yield as that on non-mined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey performed pursuant to (F)(2)(a) of the State's rule.

30 CFR 823.11(c), 823.15(b) and 823.15(c) of the Federal regulations were remanded insofar as they require actual crop production to measure revegetation success on prime farmland. 45 FR 51550, August 4, 1980. See also, *In re: Permanent Surface Mining Regulation Litigation,* U.S.D.C. D.C., No. 79–1144, memo. opin. February 26, 1978. In remanding 30 CFR 823.15, the Court stated that the capability could be demonstrated by a soil survey. Ohio need not and has not included the remanded provisions in the State program.

Ohio regulation 1501:13–7–05(B)(1)(b)(iii) establishes as a criterion for phase II bond release for prime farmlands that soil productivity must be returned to the level of yields as required by 1501:13–4–12(F). This provision is consistent with 30 CFR 807.12(e) for release of bond for prime farmlands.

The Secretary finds that the Ohio permitting and bond release provisions, cited above, requiring the operator to demonstrate the capability of the reclaimed prime farmland, are consistent with the requirements of the Federal regulations with respect to restoration of prime farmland productivity.

13.6. Ohio 1501:13–9–04(B)(5) provides that the operator's drainage control system including sediment ponds, diversions and other treatment methods shall be constructed, and upon completion, certified by a qualified registered professional engineer registered in the State *or* by a qualified surveyor approved by the Chief and registered in the State, as meeting design criteria set forth in the engineering plans, drawings and design details submitted as part of the application for a permit. Section 515(b)(10)(B)(ii) of SMCRA requires construction of siltation structures pursuant to subparagraph (B)(i) of the subsection prior to commencement of surface coal mining operations; such structures are to be certified by a qualified registered engineer, and constructed as designed and as approved in the reclamation plan. *See* discussion under Finding 1.5 concerning surveyors. Approval of Ohio's program is conditioned on the State adopting a revised regulation requiring certification of siltation structures by qualified registered engineers in accordance with Section 515(b)(10)(B)(ii) of SMCRA.

13.7. Ohio rule 1501:13–9–13(B) provides that the Chief may grant a variance to the requirements for contemporaneous reclamation where the applicant proposes to combine strip coal mining and underground coal mining operations, "or where required by the method of mining." The Secretary finds that, except for the last phrase, "or where required by the method of mining," the provision is consistent with 30 CFR Part 818 which establishes performance standards for concurrent surface and underground mining. Since the quoted phrase is not defined nor is it specific, the Secretary can find no basis for allowing exemptions, which would be consistent with the regulations in Part 818.

Therefore, approval of the Ohio program is conditioned on Ohio amending 1501:13–9–13(B) to delete the last phrase, "or where required by the method of mining."

13.8. Ohio regulation 1501:13–9–14(C)(4) provides that areas affected by underground mining operations which have become stabilized over the long term of such operation may be allowed to be retained in their existing configuration provided that the configuration is compatible with the approved post mining land use.

30 CFR 817.101 and .102 do not allow for such an exemption. Under the proposed regulation operators of underground mines would not be required to perform any backfilling or grading. The Secretary finds this exemption not to be consistent with 30 CFR 817.101 and .102. Approval of the Ohio program is conditioned on the State amending its regulations to delete the exemption.

13.9. 30 CFR 816.100 establishes that reclamation efforts, including, but not limited to, backfilling, grading, topsoil replacement and revegetation of all land that is disturbed by surface mining activities, shall occur as contemporaneously as practicable with mining operations. Ohio regulation 1501:13–9–13 does not include provisions for contemporaneous resoiling consistent with 30 CFR 816.100. Approval of the Ohio program is conditioned on the State adopting amendments to regulations to require resoiling to be as contemporaneous with mining as practicable.

13.10. 30 CFR 816.99(b) requires persons conducting surface mining activities to notify the regulatory authority at any time a slide occurs which may have a potential adverse effect on public property, health, safety, or the environment. Ohio regulation 1501:13–9–12(B) only requires notification in situations where a slide occurs that may have an imminent adverse effect on public property, health, safety, or the environment. The Secretary believes the regulatory authority must be made aware of all slides which exhibit a potential for damage. Approval of the program is conditioned on the State amending 1501:13–9–12(B) to require notification in situations consistent with 30 CFR 816.99(b).

13.11. 30 CFR 817.122 requires operators of underground mines to distribute the mining schedule by mail to all property owners and residents in the affected and adjacent areas, and specifies that each person shall be notified at least six months prior to

mining beneath that person's property or residence. The mining schedule must include all future mining planned to occur which might cause subsidence damage to the property. The Secretary does not find a comparable provision in the Ohio program and therefore conditions approval on the State adopting regulations requiring such notice.

13.12. Ohio regulation 1501:13–9–15(E)(5) establishes that the period of extended responsibility under the performance bond requirement begins at the last time of substantially augmented seeding, fertilizing, planting or other work necessary to insure successful vegetation and continues for not less than five years. Normal management practices for the locality and minor regrading shall not interrupt the responsibility period. The Ohio rules give examples of normal management practices as reseeding, fertilizing, and liming all or any part of the affected area. The rules also give an example of minor regrading as a small slip that requires regrading of five per cent of the area.

30 CFR 816.116(b)(1) establishes that the period of extended responsibility under the performance bond requirement is initiated when ground cover equals the approved standard after the last year of argumented seeding, fertilizing, irrigation or other work. The Secretary finds that the State regulation is not consistent with 30 CFR 816.116(b)(1) of the Federal regulations in that the period of extended responsibility in the State regulation begins at the last time of substantially augmented work, whereas the Federal period begins when ground cover equals the approved standard after the last year or augmented work. The preamble to 30 CFR 816.116(b)(1), as published at 44 FR 15237, March 13, 1979, elaborates on the meaning of augmented seeding, fertilizing, irrigation or other work, stating that the period of responsibility begins when ground cover or productivity for cropland that is not designated as prime farmland equals the approved standard after the last year of augmented seeding, fertilizing, irrigation or other work intended to ensure successful vegetation. The cultural practices of seeding, fertilizing, irrigating and other locally acceptable practices will not be considered augmentative for cropland or pastureland when the cultural practice and the rate of application is an accepted local agricultural practice that can be expected to continue as a postmining practice.

The Secretary finds that the examples offered by Ohio for normal management practices and minor regrading go beyond what is intended under the current Federal revegetation rules.

The first example seems to indicate that an operator could have a complete failure of the initial seeding and the five-year liability period of responsibility would not begin again. The second example could allow for substantial regrading of large affected areas, without the liability period beginning again.

Approval of the Ohio program is conditioned on the State adopting amendments to 1501:13–9–15(E)(5) to establish the beginning of the period for extended responsibility consistent with 30 CFR 816.116(b)(1) and to delete or limit the examples given for normal management practices and minor regrading.

13.13. Ohio regulation 1501:13–9–04(G)(18) establishes that sedimentation ponds shall not be removed until the disturbed area has been restored and the vegetation requirements of OAC 1501:13–9–15 are met and the drainage entering the pond has met the effluent limitations of the applicable Federal and State laws. The Secretary finds this provision consistent with 30 CFR 816.46(u).

However, OAC 1501:13–9–04(G)(18) provides, in instances where pre-mining hydrologic data show that above effluent limitations are not being met prior to mining, the Chief may grant a variance from the above limitations and establish limitations based on hydrologic data available to the Chief. 30 CFR 816.46(u) does not allow for such a variance. Under the State's proposed variance operators would not be required to meet the requirements of Section 515(b)(10)(B)(i) of SMCRA to conduct surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event are contributions to be in excess of requirements set by applicable State or Federal law. The Secretary finds this variance not to be consistent with 30 CFR 816.46(u). Approval of the Ohio program is conditioned on the State amending its regulations to delete the variance.

Finding 14

In accordance with 30 CFR 732.15(b)(2), the Secretary finds that the Ohio program demonstrates that the Ohio Division of Reclamation can implement, administer, and enforce a permit system consistent with Subchapter G of 30 CFR Chapter VII. Ohio's description of its permit system is found in the narrative section entitled, "State of Ohio, Permanent Program Proposal for Section 731.(4)(g)(1), (9) and (10)." The description adequately demonstrates that the Division of Reclamation can administer a permit system no less effective than the requirements in the Secretary's regulations. The State's legislative authority relating to permitting is discussed in Finding 4, above. Ohio incorporated provisions of 30 CFR Chapter VII, Subchapter G, in Chapter 1501:13–4. Discussion of a significant issue discovered during the review of Ohio regulations corresponding to Subchapter G of 30 CFR Chapter VII follows:

14.1. Ohio regulation 1501:13–4–04 does not include the requirement corresponding to 30 CFR 779.22(a)(1) that permit applications include a map of the uses of the land existing at the time of the filing of the application. In the program submission, the State explains that if more than one land use is described in the narrative, then the two or more land uses will be delineated on the application map. The State also explains that Ohio regulations, 13–4–04(I)(12), (22) and (29) cover this area. Review of these provisions indicates that (I)(12) covers prime farmland, (I)(22) covers subsurface water, if encountered, and (I)(29) covers lands proposed to be affected throughout the operation.

Because the State will require land uses to be delineated on the application map whenever there is more than one use, the Secretary finds Ohio regulation 1501:13–4–04 to be no less effective than 30 CFR 779.22.

Finding 15

In accordance with 30 CFR 732.15(b)(3), the Secretary finds that the Ohio program demonstrates, except as noted below, that the Ohio DNR can regulate coal exploration consistent with 30 CFR Parts 776 and 815. The State's authority is discussed in Findings 1, 2 and 4, above. Ohio has incorporated the provisions of 30 CFR Part 776, General Requirements for Coal Exploration, and 30 CFR Part 815, Coal Exploration Performance Standards, into Sections 1501:13–4–02 and 1501:13–8–01 of the Ohio Administrative Code. The description of the State system is found in the narratives entitled "State Section 731.14(g)(1)" and "State Section 731.14(g)(8)" and adequately demonstrates that the State can regulate coal exploration consistent with the Secretary's regulations. Significant

issues underlying this finding are as follows:

15.1. The Ohio counterpart to Section 512(c) on penalties for conducting exploration in violation of the Act is contained in four separate sections.

ORC 1513.072 provides that a person conducting coal exploration activities that substantially disturb the natural land surface in violation of the section or rules issued pursuant thereto is subject to ORC 1513.02(F). ORC 1513.02(F) authorizes the Division Chief to assess civil penalties.

ORC 1513.17(B), which applies to *all* activities subject to regulation under ORC Chapter 1513, provides that no person shall knowingly commit violations of the law. This is similar to Section 518(g) of the Act. ORC 1513.99(A) provides a criminal fine and penalty for violation of ORC 1513.17(B) similar to that found in Section 518(g) of the Act. In accordance with Section 518(i), the provisions in the State statute for penalties for coal exploration violations are found to be the same or similar as those in the Act.

15.2. Ohio regulation OAC 1501:13–4–02(A) establishes provisions for persons intending to conduct coal exploration during which less than two hundred fifty tons of coal will be removed. These provisions require the filing of a written notice of intention to explore and issuance by the Division Chief of an exploration permit.

OAC 1501:13–4–02(A) exempts exploration involving only drilling activities from the requirement of filing a notice and receiving an exploration permit. The Secretary finds this no less effective than the Federal regulations since drilling alone does not result in substantial disturbance to the natural land surface. The Secretary understands that if roadways are constructed or improved in order to conduct drilling activities, written notice will be required.

Ohio regulation OAC 1501:13–4–02(D) requires persons intending to remove more than two hundred fifty tons of coal to obtain a permit to conduct a mining and reclamation operation under Section 1513.07 of the Ohio Revised Code. The Secretary finds this to be no less effective than the Federal regulations in that the more stringent requirements for obtaining a regular mining and reclamation permit will apply.

Ohio regulation 1501:13–8–01 on coal exploration requires each person conducting exploration to comply with the performance standards of Section 1513.16 of the Revised Code and rules adopted under it. This section of the Revised Code is the counterpart to Section 515 of the Surface Mining Act. Compliance with the performance standards extends to all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment. The Secretary finds this to be no less effective than 30 CFR Part 815.

15.3. The Secretary notes that Ohio regulation 1501:13–8–01(C) provides the Chief with authority to exempt persons who conduct coal exploration that substantially disturbs the natural land surface from compliance with the performance standards if:

(1) The area will be permitted under Section 1513.07 of the Revised Code within twelve months of the disturbance; and

(2) The area affected will be stabilized and will have no adverse effect on land, air, or water resources.

This section provides an exemption not found in the Federal rules or SMCRA. The Secretary, therefore, finds it not as effective as the Federal rules and not in accordance with the provisions of SMCRA. Approval of the Ohio program is conditioned upon (1) the removal of the exemption authority from OAC 1501:13–8–01(C), and (2) the State's commitment not to allow exemptions under OAC 1501:13–8–01(C) until such time as the State revises the regulations to eliminate the exemption.

Finding 16

In accordance with 30 CFR 732.15(b)(4), the Secretary finds that the Ohio program demonstrates that the Ohio Division of Reclamation can regulate the extraction of coal incident to government-financed construction consistent with 30 CFR Part 707. Legislative authority is discussed under Finding 1. State regulations consistent with 30 CFR Part 707 are found in Chapter 1501:13–1–04 of the Ohio Administrative Code.

Finding 17

In accordance with 30 CFR 732.15(b)(5), the Secretary finds that the Ohio program demonstrates that the Ohio DNR can enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations consistent with Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII. The State's legislative authority is discussed under Finding 2. Provisions of 30 CFR Chapter VII, Subchapter L pertaining to inspections are incorporated in Chapters 1501:13–14–01 and 1513–1–01 through 06 of the Ohio Administrative Code. The description of the State's inspection system is found in the narrative entitled "State Section 731.14(g)(4)" and adequately demonstrates that the State can enter, inspect and monitor consistent with Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII.

Finding 18

In accordance with 30 CFR 732.15(b)(6), the Secretary finds that the Ohio program demonstrates, except as noted below, that the State Division of Reclamation can implement, administer and enforce a system of performance bonds and liability insurance consistent with the requirements of Subchapter J of 30 CFR Chapter VII. Provisions of 30 CFR Chapter VII, Subchapter J, are incorporated in Chapters 1501:13–7 01 through 07 of the Ohio Administrative Code. The description of the proposed system for bonding and insurance, located in the narrative entitled "State Section 731.14(g)(3)" is found to be adequate. Significant issues discovered during the review of the Ohio program corresponding to Subchapter J of the 30 CFR Chapter VII are as follows:

18.1. The State's bonding program took effect on September 1, 1981, when ORC Chapter 1513 became effective. In ORC Section 1513.08(A) the amount of the reclamation bond is set at $2500 per acre. Section 509(a) of the Surface Mining Act requires a bond in an amount "sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture * * * ." It is unlikely that the amount required to reclaim every acre of affected land throughout the State will be uniform. In some cases it may even be less than $2500 per acre.

However, the State proposes an alternative bonding system pursuant to Section 509(c). ORC Sections 1513.08(A) and 1513.18 create the Reclamation Special Account in the State Treasury, funds from which are "to be used * * * to reclaim permit areas upon which any bond has been forfeited * * * ." The Reclamation Special Account is to be funded in a maximum amount of $2 million, Section 1513.08(A). If the amount of the bond is insufficient to complete reclamation work, an additional sum will be drawn by the Chief from the Reclamation Special Account to cover the balance. Once funds are withdrawn from the Special Account, the Chief is authorized to request the State Auditor to transfer funds from an Unreclaimed Lands Special Account created under ORC Section 1513.30. This latter account is one funded for purposes of reclaiming abandoned mine lands. However, only as much as $500,000 may be transferred to the Reclamation Special Account

from the Unreclaimed Lands Account in any one year, Section 1513.08(A). Under Section 1513.18 any funds which are obtained through forfeiture of a reclamation bond under Section 1513.16 are to be placed in the Reclamation Special Account in the State Treasury. Also, an excise tax on the severance of coal is levied at the rate of 1 cent per ton pursuant to ORC Section 5749.02(B) for the purpose of funding the Reclamation Special Account. Thus, there are two principal sources of funds for the completion of reclamation work on which the operator has defaulted in his or her obligation: the bond amount of $2500 and the Reclamation Special Account. Furthermore, under ORC Section 1513.181 another special account is created in the State Treasury which is funded by fines collected for violations of the State statute. The funds in this special account are to be used first for administration of the program and the balance may be used, after appropriation by the General Assembly, for the reclamation of lands affected by coal mining.

The State of West Virginia proposed and had conditionally approved a similar alternative system. *See* 45 FR at 69257 (October 20, 1981) and 46 FR 5926 (January 21, 1981). The West Virginia program has established a bond rate at $1,000 per acre, but the amount in the fund available to cover additional costs is $2 million. Rather than trigger the imposition of the coal severance tax when any amount is withdrawn below the maximum, West Virginia's scheme only triggers the tax where the balance falls below $1 million. The State, as a condition, was required to demonstrate by way of an analysis performed by a professionally qualified party using standard statistical and actuarial techniques that sufficient funds will be available to reclaim defaulted areas. 46 FR at 5927.

The explanation of operation of the bond forfeiture in Ohio offered by the State and contained in the program submission indicates that there have been a substantial number of bond forfeitures since 1977 (63 permits covering 1220 acres) due to a downturn in the coal market and the imposition of more stringent regulation. The average bond amount per acre of the ones under forfeiture is $1,356. In September 1981 when the State statute took effect the minimum amount was raised, as indicated above, to $2500 per acre. However, the Division of Reclamation's Abandoned Mine Land program has found that the average cost per acre for reclamation work it has contracted for is $4700.

With the imposition of the 1¢ per ton serverance tax and the transfer each year of the maximum amount of $500,000 from the Unreclaimed Lands Special Account and the total amount available from bond forfeitures, based on past experience the State estimates that of the 1220 acres currently under forfeiture only 325 acres will be able to be reclaimed in Fiscal Year 1982 (ending June 30, 1982) with an expenditure of $1,528,601. With a transfer of the maximum amount to the Reclamation Special Account in the fiscal year ending June 30, 1983, an additional 447 acres will be able to be reclaimed at a cost of $1.8 million. In the following fiscal year (1984), $1,392,241 would be available in the Reclamation Special Account which would enable the State to contract for work on 400 acres. It would not be until Fiscal Year 1985 (ending June 30, 1986) that the State would have enough funds available to it to reclaim the rest of the 1200 acres (44).

At present the State is facing possible forfeiture on another 1745 acres. The total bond outstanding on these lands is $2,771,640. If, as the State estimates, 30% of the area is actually forfeited that action would increase the amount of acreage to be reclaimed by the State by another 524 acres. This acreage would not be able to be reclaimed, given the backlog of current forfeitures, until Fiscal Years 1986 and 1987 when a maximum of $800,000 would be available to the State each year in the Reclamation Special Account.

The Secretary is concerned about such a delay in being able to meet the reclamation requirements imposed by forfeitures. Section 509(c) of the Act requires that an alternative bonding system "achieve the objectives and purposes of the bonding program pursuant to this section." There is no requirement in either Section 509 or Section 519 that imposes an obligation on the regulatory authority to reclaim the land in a timely manner on which an operator has forfeited the bond. Section 509(a) does, however, specify that the bond amount shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture. But a timeframe of several years does not meet the requirement of completing the reclamation work as contemporaneously as practicable, SMCRA Section 515(b)(16), and implementation of the post-mining land use cannot be unreasonably delayed, SMCRA Section 515(b)(2).

The Secretary, therefore, conditions approval of the program on Ohio amending its program to revise the current bonding system to provide assurance of more timely reclamation at the site of all operations upon which bond has been forfeited.

18.2. Under Section 1513.16(F)(3) of the State's statute, the final reclamation bond may be released, but the Division Chief is also vested with the authority to make exceptions to the operator's liability period for achieving revegetation success. The provision is the counterpart to Section 519(c)(3) for the release of the bond after completion of the last phase of reclamation. Final release under the Surface Mining Act may only come after the expiration of the minimum liability period set in Section 515(b)(20); in the case of Ohio it is five years after the last year of augmented seeding, fertilizing and other work performed to ensure success of revegetation. *See* condition imposed under Finding 13.12 requiring modification of the beginning of the extended period of responsibility. Nowhere in the Surface Mining Act is there a provision for a waiver of the five-year period that is applicable to the State.

The exact pertinent language of ORC Section 1513.16(F)(3)(a) is as follows:

> except the Chief may adopt rules for a variance to operator period of responsibility considering vegetation success and probability of continued growth and consent of the landowner; however, no bond shall be fully released until all reclamation requirements of Chapter 1513. of the Revised Code are fully met.

Just as with the extended liability period in Section 515(b)(20) of the Surface Mining Act, the Ohio statute in Section 1513.16(a)(19) sets the same requirement. At issue is whether the just quoted provisions in the State statute can be reconciled with each other. On its face, there is no way that a bond can be fully released, relying on the last clause of Section 1513.16(F)(3)(a), by meeting all the requirements of Chapter 1513 unless the period of extended liability has expired. Furthermore, the provision for an exception merely authorizes the Chief to promulgate rules for granting waivers. The Chief has not done so. Therefore, a waiver authorized by Section 1513.16(F)(3)(c) cannot, in fact, be granted and the provision is, therefore, found to be in accordance with Section 519 of the Act. Should the Chief promulgate rules under Section 1513.16(F)(3)(c), such rules must be submitted to OSM as amendments to the State program under provisions of 30 CFR 732.17.

18.3. The State has added resoiling to the requirements for release of the bond upon completion of phase I reclamation,

ORC Section 1513.16(F)(3)(a). The Surface Mining Act in Section 519(c) does not require replacement of topsoil. However, the current Federal regulation, 30 CFR 807.12(e)(1), does add replacement of topsoil as a requirement for release of Phase I reclamation bond. The Ohio provision is consistent with the Federal permanent program rule.

18.4. The hearing to be held for a bond release pursuant to Section 1513.16(F)(4) is specifies to be an adjudicatory one. In addition, Section 1513.16(F)(8) specified an adjudicatory hearing but also adds that if an opponent to release puts in evidence to raise a genuine question the applicant shall have the burden of proving it should be released. The Surface Mining Act in Section 519 (f) and (h) is silent on whether the hearing may be adjudicatory or legislative in nature; however, an informal conference is authorized under Section 519(g). The present rules, 30 CFR 807.11(a), provide for a public hearing after the decision has been made to release the bond. Section 807.11(h)(ii) of the rules also provide that the hearing is to be adjudicatory.

The current bonding regulations, § 807.11(h)(ii), specify that if the public hearing is held after the decision is made to release or not release the bond, the party in opposition to the proposed decision has the burden of proving by a preponderance of evidence that the regulatory authority's proposed decision cannot be supported by the reasons given. The provision in the Ohio statute differs from this when the proposed decision is to release the bond since under the Ohio scheme the operator seeking release would have the burden, but only after having the opponent adduce evidence that a genuine question as to release was present.

The State's statutory provision is no less effective than the Secretary's regulation because it is the operator under both the State law and Federal regulation who has the ultimate burden of proving that reclamation has been successfully completed. The State has added the requirement that the opponent adduce evidence that reclamation has not been completed in order to eliminate frivolous claims. A bond release in the situation is not a matter of first impression for the State since it will have independently investigated the reclamation completed before making its decision to release. Therefore, requiring an opponent to that decision to present some evidence that the State's decision is wrong serves a legitimate purpose.

18.5. The Ohio bonding program gives the option to the permittee to post bonds for annual increments of the permit area, OAC 1501:13–07–01(B)(6). However, the rule omits the requirement to file a bond at least 30 days prior to commencement of mining operations on an incremental area, as in 30 CFR 800.11(b)(2). The Secretary, as a condition of approval, requires that Ohio amend the regulations to insure that bonds shall be filed at least 30 days prior to commencement of mining on the next incremental area.

18.6. Ohio omits any specific provisions in its regulation OAC 1501:13–7–01 relating to bonding of surface areas affected by underground mining and long-term facilities corresponsing to the reguation in 30 CFR Part 801. The Secretary notes that the key provisions of 30 CFR Part 801 have been suspended, 46 FR 59934, December 7, 1981. The Ohio program insures that bond coverage is provided for long term surface facilities and the surface areas of underground mines through the provisions of 1501:13–7–01, which require the posting of a bond for all coal mining and reclamation operations.

18.7. The Ohio regulations in 1501:13–7–03(B)(5)(g) and (B)(7)(h) do not require that the Division of Reclamation cause a cessation of operations in the event an operator does not replace bond coverage in the 90 day period as required in 30 CFR 806.12(e)(6)(iii). The Ohio rules allow discretion in suspending the permit until the bond coverage is replaced. Such discretion renders the program provision less effective than the Secretary's regulations. As a condition of approval, the Secretary requires either an amendment to the regulation or a statement of policy assuring that an operator will not be allowed to operate without bond coverage beyond a reasonable period in order to replace coverage.

18.8. Ohio rule OAC 1501:13–7–04 sets forth criteria for self-bonding. Ohio requires that the operator grant the State an unencumbered mortgage on real property with a fair market value equal to or greater than the operator's obligation under the indemnity agreement. The system provides adequate protection to the regulatory authority to collect on the self-bond in the event of operator default. The Secretary finds Ohio's self-bonding system consistent with the requirements of the Act, Section 509(c), and no less effective than the remaining Federal regulations, § 806.14; *see* 46 FR 59934 (December 7, 1981). OSM is currently developing new self bonding rules. Once these rules are issued and become effective, Ohio and other States may need to amend their State program provisions to be no less effective than the new regulations.

18.9. The provision of the State statute in ORC 1513.18 is worded in such a way that it could be construed to allow the Chief discretion in completing the reclamation with the bond and funds from the Reclamation Special Account. Ohio has submitted a policy statement to the Secretary stating that the Chief of the Division of Reclamation will use funds from the Reclamation Special Account to complete the reclamation on any forfeited area. The Secretary accepts this policy statement as the commitment that funds from the Reclamation Special Account will be used to complete reclamation.

Finding 19

In accordance with 30 CFR 732.15(b)(7), the Secretary finds that the Ohio program demonstrates that the State has sufficient provisions for civil and criminal sanctions for violations of State law, regulations and conditions of permits and exploration approvals consistent with Section 518 of SMCRA. Legislative authority relating to enforcement is discussed in Finding 2. Regulatory provisions related to Section 518 of SMCRA are found in Chapter 1501:13–14–03 of the Ohio Administrative Code. The State's system for implementing these sanctions is described in the narrative entitled "State Section 731.14(g) (4)–(7) and (15)." Significant issues discovered during the review of the systems and regulations pursuant to SMCRA Section 518 are as follows:

19.1. The penalties that may be imposed pursuant to ORC Section 1513.99(A) set a minimum fine of $100 for a knowing violation.

Sections 518 (a), (e), and (g) of SMCRA do not set minimum penalties, only maximums. The penalties in Section 1513.99(A) are tied to the violations in Section 1513.17. The latter section adds a violation in subsection (c) not found in the Surface Mining Act. It establishes a violation for the obstruction of an operator in completing reclamation. However, under Section 1513.99(c) there is only a fine for an obstruction conviction which may be no less than $100 and no more than $1000. This is a provision which provides for more stringent regulation of surface mining. Pursuant to Section 505(b) of the Act, it is not inconsistent with it.

19.2. The counterpart to Section 518(a) of the Surface Mining Act, Section 1513.02(F)(1), provides that for violation of a permit condition or any of the requirements of the State's Coal Mining Act a civil penalty may be assessed but if a cessation order is issued the penalty is to be assessed for each day the

violation continues until the operator initiates abatement action. Section 518(a) does not so qualify the period during which the penalty is to be assessed after issuance of a cessation order. However, it might be noted that the provision in the State statute requires the assessment of the penalty for each day of violation. Section 512(a) only allows each day to be considered a separate violation. Section 845.15(b) of the permanent program regulations in 30 CFR specifies that whenever a violation has not been abated within the period set, a civil penalty shall be assessed. This provision means that the abatement work must have been completed, not just initiated.

The State's explanation is that Section 1513.02(F)(1) does not require that the penalty of $750 per day be lifted once corrective steps are initiated. In their view, it could only allow the Chief of the Division of Reclamation discretion whether to not impose the penalty after steps have been initiated. But even if it merely conferred discretion on the Chief, that discretion could not be exercised because Section 1513.02(F)(4) *requires* the assessment of a penalty of $750 for each day a violation continues where an operator has failed to correct a violation within a period allowed for its correction. This interpretation of the two sections of the State statute was taken in a Report and Recommendation of the Hearing Officer and Decision of the Chief of the Division of Reclamation in the case entitled *Apex Mining Co. v. Chas. Call,* Nos. SHA–8–81 and SHA–10–81 (May 10, 1982). To read the two sections differently would result, in the Hearing Officer's opinion, in not giving full effect to each. *Id.* at pp. 14–16.

Given this construction of Section 1513.02(F)(2), it is no less stringent than Section 518(a) of the Act. It, therefore, meets the requirements of Section 518(i).

Finding 20

In accordance with 30 CFR 732.15(b)(8), the Secretary finds that the Ohio program demonstrates that the State can issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA and no less effectively than Subchapter L of 30 CFR Chapter VII.

Legislative authority relating to Section 521 of SMCRA is discussed under Finding 2. Provisions of 30 CFR Chapter VII, Subchapter L are incorporated in Chapter 1501:13–14 of the Ohio Administrative Code. The description of the State's system for issuing enforcement notices is contained in the narrative entitled "State Section 731.14(g) (4), (7), and (15)." No significant issues were raised during the review of the Ohio narrative and regulations.

Finding 21

In accordance with 30 CFR 732.15(b)(9), the Secretary finds that the Ohio program demonstrates that the State can designate areas as unsuitable for surface coal mining no less effectively than 30 CFR Chapter VII, Subchapter F. Ohio incorporated provisions of Subchapter F in Chapter 1501:13–3–02 through 07 of the Ohio Administrative Code. The State's description of the proposed system for designating lands unsuitable is located in the narrative entitled, "State Program Section 731.14(g)(11)." The State has sufficient legislative authority to carry out these requirements. A significant issue raised during the review of the Ohio statute is analyzed as follows:

21.1. Under the authority granted the Division Chief in Section 1513.02(B), natural areas listed on the Registry of Natural Areas, wild, scenic or recreational river areas, publically owned or dedicated parks, other areas of unique and irreplaceable natural beauty, and areas within certain distances of public facilities and occupied dwellings may be designated by rule as unsuitable for surface coal mining. Section 1513.073(A) (1) and (2) is the counterpart of Section 522(a) (2) and (3) of the Surface Mining Act. However, because of the authorization in Section 1513.02(B) to have the Division Chief, by rule, designate certain lands unsuitable—ones which to some extent coincide with those described in Section 522(a) (2) and (3) but to some extent do not—the question is raised whether by petition all the lands identified in Section 1513.02(B) may be designated unsuitable. At issue is whether the Chief is authorized to designate all lands required under the Surface Mining Act to be designated unsuitable. If Section 1513.02(B) is all of the Chief's authority and the petition process does not form a separate grant of authority, then the Chief lacks all the required power to designate. If the Chief may by rule designate some lands unsuitable which by petition cannot be, then the provision in Section 1513.02(B) is not in accordance with the Surface Mining Act.

The State has pointed out that Section 1513.073(A) authorizes the Chief to designate lands unsuitable as the result of a petition and that this authority is in addition to that granted in Section 1513.02(B). Section 1513.02(B) is not, in their view, all of the Chief's authority to designate lands unsuitable. Since the Chief has the authority required by Section 522(a) of the Act, the State statute is in accordance with the Act.

21.2. In the counterpart of the definitions for 30 CFR 761.5, the State in OAC 1501:13–3–02(a) has added to the definition of the term "cemetery." The definition in the Federal regulations extends to any area of land where human bodies are interred. The State has limited its definition to exclude "family burial grounds owned by private citizens or isolated grave sites."

This issue has been involved in litigation. In *Holmes Limestone Co. v. Andrus,* 655 F.2d 732 (6th Cir. 1981), The Court of Appeals held that the definition of "cemetery" could be challenged in Federal District Court in Ohio despite the language in Section 526(a)(1) limiting judicial review of national permanent program regulations to the Federal District Court for the District of Columbia. At issue was whether surface mining operations could be conducted within 25 feet of a private family burial ground. Section 522(e)(5) of the Act prohibits mining within 100 feet of a cemetery. The Court of Appeals did not rule on the issue; only the jurisdictional question was resolved. The Supreme Court on May 24, 1982, denied the Federal government's writ of certiorari. *Watt v. Holmes Limestone Co.,* 50 L.W. 3933.

With denial of certiorari the case will be remanded to the District Court for trial. The Court of Appeals stated that the issue of the Secretary's definition of "cemetery" is a mixed question of law and fact. 655 F.2d at 738. However, the Court intimated that the definition may well be arbitrary and capricious in that it allows operators to relocate some grave sites and mine through the area while other operators who respect such plots by agreeing not to mine within a limited distance cannot mine within 100 feet. 655 F.2d at 737.

Since the matter is in litigation in which the District Court will be deciding whether private family burial plots come within the definition of "cemetery", it would be unfair to the State and possibly prejudicial to the outcome of the litigation to require as a condition of approval that the State remove the exception. Thus, no condition will be imposed. However, if a final judgment is entered which does not allow the exception, the State will be required at that time to delete the exception.

Finding 22

In accordance with 30 CFR 732.15(b)(10), the Secretary finds that the Ohio program demonstrates that the State has provided for adequate public participation in the development and

revision of the State regulations and program and that the State program includes provisions consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Provisions for public participation in the development of the State program are discussed in the narrative entitled "State Program Section 731.14(g)(14)." The legislative authority for public participation is discussed in Finding 1.

Finding 23

In accordance with 30 CFR 732.15(b)(11), the Secretary finds that the Ohio program demonstrates that the State can monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations by the employees of the State regulatory authority consistent with the requirements of Subchapter A of 30 CFR Chapter VII. The State description of the proposed system for monitoring, reviewing and enforcing the prohibition against indirect or direct financial interests in coal mining operations by the employees of the State regulatory authority is located in the narrative entitled, "State program Section 731.14(g)(12)." Ohio has the legislative authority under Chapter 1513.04 of the Ohio Revised Code to restrict financial interests. Ohio incorporates provisions of 30 CFR Part 705 in Chapter 1501–13–1–03 of the Ohio Administrative Code.

Finding 24

In accordance with 30 CFR 732.15(b)(12), the Secretary finds that Ohio has sufficient legislative authority in ORC Chapter 1513.161(F) to require the training, examination, and certification of persons engaged in or responsible for blasting. The State program need contain only sufficient legal provisions to allow promulgation of rules in accordance with Section 719 of SMCRA until such time as the Federal rules on blaster certification are promulgated. No State program is required to implement a system for blaster certification until six months after Federal regulations have been promulgated.

Finding 25

In accordance with 30 CFR 732.15(b)(13), the Secretary finds that the Ohio program demonstrates that except for the minor exceptions listed below the State can provide for a Small Operator Assistance Program (SOAP) consistent with the requirements of 30 CFR Part 795. The State has adequate legislative authority to implement the SOAP. The proposed system described in the narrative entitled, "State Section 731.14(g)(16)" is also in accordance with SMCRA and consistent with 30 CFR Part 795. Regulations implementing 30 CFR Part 795 are contained in Chapter 1501:13–6–03 of the Ohio Administrative Code which are found to be consistent with the Federal requirements. Issues raised during review of the State program are analysed as follows:

25.1. Ohio rules have no provisions for data coordination and exchange such as those found at 30 CFR 795.4 (a)(4) and (c)(2). The Secretary believes that coordination and exchange help reduce data costs over a period of time. Receipt of a statement of policy by Ohio indicating they will develop and implement procedures for data coordination and exchange with State and Federal agencies would address this concern. The Secretary conditions approval of the program on receipt of such a policy statement.

25.2. Ohio's procedures for paying for SOAP services found at OAC 1501:13–6–03 contain options for contracting, similar to the requirement at 30 CFR 795.12, and an innovative approach whereby the operator is to pay the qualified laboratory for services and is later reimbursed by the Division of Reclamation. This second option, referred to as the subsidy option, was developed after it became clear that State contracting procedures were not amenable to timely processing of contracts. The Secretary recognizes the importance of timely contracting in the SOAP and has reviewed the procedures that the State will follow. The Secretary finds the subsidy approach as effective as provisions in the Federal regulations. The State provisions are summarized as follows:

a. Operators who do not wish to receive services under the subsidy option can receive SOAP services through the normal contracting option.

b. Operators under the subsidy option must secure a minimum of three technical/cost proposals from qualified laboratories.

c. Ohio assumes full responsibility for:

1. Laboratory selection;

2. Technical and cost evaluations of project proposals;

3. Maintenance of administrative and financial records of each project;

4. Development of an appropriate contract between the lab, Division, and small operator; and

5. Monitoring progress of each study.

d. Only qualified laboratories will be utilized in the subsidy approach and the State will not pay for past services provided to operators outside of the SOAP.

25.3. Under Ohio regulation 1501:13–6–03(E), entitled Filing for Assistance, several requirements are omitted. These deal with:

a. The anticipated termination date of operation;

b. A statement of coal seam thickness;

c. Information related to existing structures;

d. The legal right of entry for the office, Division, and qualified laboratory.

OSM believes "a" and "b" are necessary considerations in the event SOAP funds are limited and must be allocated according to a formula. A formula could take into consideration those operations which are to start sooner and those which might remove thicker seams of coal.

The Secretary agrees with the rationale provided by Ohio with respect to "c" above. Most of this information can be provided either by the operator or laboratory selected to provide the services.

Legal right of entry for the lab and the Division must be assured; otherwise, the contracted work could be delayed or never initiated, possibly with financial losses to the Program. Furthermore, the small operator could bear some financial responsibility, particularly under the subsidy approach. Without evidence of a right of entry, monitoring and oversight of the projects would be greatly impaired. The Secretary, therefore, conditions approval of the program on the State revising its requirements to include provisions corresponding to "a", "b" and "d" above.

25.4. Section 1501:13–6–03(I) of the Ohio rules indicate that costs for test borings, corings, and observation wells will be provided through the Ohio SOAP. Payment for such services is not authorized under the Federal rules. The State may pay for such services with its own funds, however. The Secretary conditions program approval on Ohio submitting a policy statement that such services will be paid for using funds other than SOAP operational funds provided by OSM.

25.5. Under Section 1501:13–6–03(J) on applicant liability, Ohio has omitted the provision that an operator must submit a permit application within one year of receiving approved SOAP reports. The Secretary believes that some of the findings in the reports could change with time, particularly in watersheds where mining is currently going on, and that some reasonable time should be indicated for submission of the permit application. The Secretary, therefore, conditions approval of the program on the State establishing a time period consistent with 30 CFR 795.19(a)(2).

Finding 26

In accordance with 30 CFR 732.15(b)(14), the Secretary finds that the Ohio program provides in Sections 1513.17(d) and 1513.99 of the ORC for the protection of State employees of the regulatory authority in accordance with the protection afforded Federal employees under Section 704 of SMCRA.

Finding 27

In accordance with 30 CFR 732.15(b)(15), the Secretary finds that the Ohio program demonstrates, except as noted below, that the Ohio Division of Reclamation has an administrative and judicial review process in accordance with Sections 525 and 526 of SMCRA and Subchapter L of 30 CFR Chapter VII. Legislative authority corresponding to Sections 525 and 526 of SMCRA are discussed under Finding 1. The State's description of the proposed system for administrative and judicial review is located in the narrative entitled "State Section 731.14(g) (4)–(7), and (15)." Ohio regulations related to administrative and judicial review are found in Chapter 1501:13–14–04 and 1513–1–01 to 1513–1–06 of the Ohio Administrative Code. Significant issues raised during the review of the statute and regulations related to administrative and judicial review are as follows:

27.1. Under Section 1513.02(F)(3), the counterpart to Section 518(c) of the Surface Mining Act, a person who wishes to contest either the amount of a penalty or the fact of violation has a right to seek review by the Chief in which event the amount of the penalty need not be prepaid. If the person seeking review is unsuccessful with respect to a penalty being assessed, there is a right of appeal to the Reclamation Board of Review. However, if appeal to the Board is to be taken, the amount of the penalty must be prepaid.

Under Section 518(c) of the Surface Mining Act, there is an appeal to the Secretary of either the assessment of a penalty or the fact of violation. In order to take an appeal to the Secretary on the assessment of a penalty, the operator must first pre-pay the penalty amount. However, before a penalty is assessed, under the permanent program regulations, 30 CFR Section 845.18, an informal conference may be held upon the request of the person to whom the notice or order was issued. No penalty need be pre-paid in order to request a conference.

The Ohio provision for review by the Chief without pre-paying any penalty does not meet the requirements of the Act. The State program is required to have the same or similar procedural requirements. SMCRA Section 518(i). The review by the Chief is not the same or similar to the informal conference afforded under the Secretary's regulations. Review by the Chief is a formal proceeding. *See* OAC 1501:13–14–04. As a condition of approval of the program, the State must amend its statute and regulation to require the pre-payment of a civil penalty in order to contest either the amount or the fact of the violation.

27.2. Under the State's regulations for administrative review, OAC 1513:13–14–04 for review by the Chief of the Division of Reclamation, and OAC 1513–1–01 to 1513–1–06 for review by the Reclamation Board of Review, the record developed at a hearing may be opened and new evidence taken. After a hearing before a hearing officer, a report to the Chief is prepared. OAC 1513:13–14–04(P)(1). However, before the Chief renders his decision additional testimony may be taken, OAC 1513:13–14–04(P)(2). The regulations governing appeals taken from an order or decision of the Chief to the Reclamation Board of Review provide for the Board taking any evidence the parties wish to present. OAC 1513–1–01(A)(1).

Section 525 of the Act on administrative review is silent on whether the record developed at a hearing may be opened on review. However, under Section 526(c) on judicial review of decisions of the Secretary of Interior, a court must limit its review to the administrative record. Ohio has provided for this limitation in Section 1513.14(C). Nevertheless, under 30 CFR 840.15, a State program must provide for public participation in enforcement consistent with 30 CFR Parts 842,843 and 845 and 43 CFR Part 4. In the discussion of the final rule notice for Part 840, 44 FR 1529–97 (March 13, 1979), the State program enforcement requirements are elaborated upon. One of the requirements is stated to be a public hearing on the record regarding a violation and the penalty, "with no opportunity for a trial *de novo* after the hearing * * *." The Office of Hearings and Appeals regulations, 43 CFR Subpt. L, do not provide for *de novo* hearings on administrative review. One reason for the requirement against a new hearing is that it induces operators charged with violations to delay proceedings in the hope that when a subsequent hearing is held witnesses would not be available or evidence would have been lost in the meantime. *Id.* at 15296.

The prohibition against a trial *de novo* in a State court reviewing an administrative proceeding was challenged by the State of Virginia in *In re: Permanent Surface Mining Regulation Litigation*, 14 ERC 1083, 1109 (February 26, 1980). While the prohibition was upheld, the decision of the court points out that the Secretary has adopted a flexible approach to the problem by allowing for *de novo* review if the State adopts safeguards that would prevent subversion of the enforcement program. 14 ERC at 1109.

The State has provided no safeguards to protect against abuses to the record developed at the initial hearing. The discretion allowed under the regulations to both the Chief and the Board is unlimited.

New hearings could be held in every instance of an appeal from a decision of the Chief. OSM is not so much concerned with the discretion afforded the Chief to allow new evidence as long as the method of taking new evidence is subject to the same public participation provisions as the initial hearing.The State must have enforcement procedures which are the same or similar to those of the Act and the Secretary's regulations, SMCRA Section 521(d), not just ones which are in accordance with the Act.

Approval of the program is, therefore, conditioned on the State amending the regulations on review by the Reclamation Board of Review to either eliminate the opportunity for a *de novo* hearing or to provide the safeguards that would prevent subversion of the enforcement program.

27.3. The regulations providing for formal review by the Chief, OAC 1513:13–14–04, are silent as to whether discovery is available against the Chief or the Division of Reclamation. The regulations do provide for discovery, 1513:13–14–04(H). However, the regulations do not indicate that the Chief or the Division of Reclamation is a party to a proceeding. The Office of Hearings and Appeals regulations, 43 CFR § 4.1105(a), do indicate that the Office of Surface Mining is a party in all proceedings; thus, discovery is available against it, § 4.1130–4.1141.

Failure to provide for discovery against the Chief or the Division does not meet the requirement for same or similar procedural enforcement provisions. SMCRA, Section 521(d). Thus, as a condition of approval the State must amend its administrative review regulations to provide for such discovery or otherwise demonstrate to the Secretary that discovery can be provided against the Chief or the Division.

27.4. The State's review regulations allow for intervention in administrative proceedings, OAC 1513:13–14–04(M), but there is no right intervention in certain

instances as provided for in 43 CFR 4.1110(c)(i) and (ii). The State must provide for intervention to a person who had a right to initiate a proceeding and to a person who has an interest which is or may be adversely affected by the outcome of the proceeding. Approval of the program is conditioned on the State amending its administrative review regulations to confer a right of intervention in such instances.

27.5. The State's regulations on formal review by the Chief, OAC 1513:13–14–04, do not indicate that the Chief or the Division of Reclamation has the burden of going forward in a civil penalty proceeding to establish a prima facie case and that either one has the ultimate burden of persuasion. The Federal rules, 43 CFR 4.1155, do have such a requirement.

The State has submitted a copy of the Report and Recommendation of the Hearing Officer and Decision of the Chief in *Apex Mining, Inc. v. Chas. Call,* Nos. SHA–8–81 and SHA 10–81 (May 10, 1982), which establishes that the Chief has assumed such burdens. Report at pp. 6–7. Therefore, the State's administrative review provisions are as effective as the Secretary's regulations in this regard.

However, the State's regulations lack counterpart provisions to 43 CFR 4.1171 for review of notices of violation and cessation orders and § 4.1193 on review of permit suspension or revocations. This omission renders the review provisions less effective than the Federal requirements. As a condition of approval, the State will be required to establish burden of proof provisions for the two types of proceedings the same or similar to those in §§ 4.1171 and 4.1193.

27.6. Section 526(b) of the Act establishes a standard for judicial review: The court is to uphold the Secretary's administrative decision if it is supported by substantial evidence. The State statute in ORC Section 1513.14(C) provides that a reviewing court shall affirm a decision of the Reclamation Board of Review unless it is arbitrary, capricious or otherwise inconsistent with law. This latter standard is found in the Act in Section 526(a)(1) on judicial review of Secretarial rulemaking. The State has the counterpart to Section 526(a)(1) in ORC Section 1513.14(C). At issue here is whether the arbitrary, capricious or otherwise inconsistent with law standard is in accordance with the substantial evidence test, and, for enforcement matters, the same or similar to the substantial evidence standard. In other words, could an administrative decision which is supported by substantial evidence be found by a reviewing court to be arbitrary, capricious or inconsistent with law? If it could be, then it would not be in accordance with the Act, nor would it be the same or similar.

The administrative decision under both standards is presumed valid. The substantial evidence standard only pertains to facts. The arbitrary, capricious or inconsistent with law standards goes beyond facts and is, therefore, broader. Administrative decisions will involve interpretations of law. Under Federal law, the Administrative Procedures Act (APA), 5 U.S.C. 706, both standards apply. In other words, for questions of law the inconsistency with law standard—the one adopted by Ohio—could be applied by a reviewing Federal court despite the provisions in Section 526(b).

There may be a fine distinction between the two standards, such that only in rare instances would a reviewing State court be able to conclude that an administrative decision is arbitrary, capricious or inconsistent with law when it is supported by substantial evidence. In view of the fact that a Federal court could apply both standards, the Secretary believes that the State's choice of the broader one is in accordance with the Act, and meets the requirements of Section 521(d).

27.8. Section 1501:13–14–01(K) provides for compliance reviews. The State rule provides that compliance reviews be performed by a "compliance review technician", who is an employee of the Division of Reclamation other than an inspection officer having sufficient technical expertise and familiarity with Chapter 1513 of the Revised Code and Chapters 1501:13–1 to 1501:13–14 of the Administrative Code to enable him or her to determine whether a coal mining and reclamation operation is in compliance. The compliance review technician will not be empowered to issue enforcement notices or orders but may call for an inspection officer to issue a cessation order if the circumstances of a violation are such that they create an imminent danger.

The Secretary understands that the request for the holding of a compliance review, and any opinion given under OAC 1501:13–14–01(K), shall not affect any rights or obligations of the State or of the permittee with respect to any inspection, notice of violation, or cessation order whether prior or subsequent to such compliance review; nor will it affect the validity of any notice of violation or cessation order with respect to any condition or practice observed at the compliance review.

Finding 28

In accordance with 30 CFR 732.15(b)(16), the Secretary finds that the Ohio program demonstrates that the State can coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. There is nothing in the Ohio legislation or regulations which would prohibit dissemination of information to OSM.

Finding 29

In accordance with 30 CFR 732.15(c), the Secretary finds that there are no other laws or regulations in addition to those discussed in the preceding findings which would preclude implementation of a program meeting the requirements of SMCRA and 30 CFR Chapter VII.

Finding 30

In accordance with 30 CFR 732.15(d), the Secretary finds that the Ohio Division of Reclamation and other agencies having a role in the State program will have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the State program.

C. Disposition of Agency of Public Comments

Comments have been accepted and considered on Ohio's program resubmission of January 22, 1982, and information provided by Ohio in connection with a reopened public comment period. The majority of the public comments were submitted by the United States Environmental Protection Agency (U.S. EPA), the Fish and Wildlife Service (FWS) and the Environmental Policy Institute (EPI). The comments of EPI on the May 7, 1982 submission were on behalf of the National Wildlife Federation, the League of Ohio Sportsmen, the Ohio Chapter of the Sierra Club, and the Ohio Environmental Council, as well as on its own behalf. Comments from these groups and agencies are identified by name, but names of individuals have not been used. Comments are organized into the following seven groups: General, Permitting, Performance Standards, Public Participation, Bonding, Inspection and Enforcement, and Lands Unsuitable.

General Public Comment

1. EPI noted that OAC 1501:13–1–01(E)(2) gives the Chief discretion to require that existing structures be modified to meet the design requirements or comparable performance standards, or both, of the

State regulations if the performance standard of prior adopted strip mining rules is less effective than the comparable performance standard of the program rules. EPI contended that 30 CFR 701.11(d)(1)(iii) provides no discretion.

In review of the Ohio program, OSM considered the difference noted by EPI and has conditioned approval of the program on Ohio revising OAC 1501:13–1–01(E)(2) to require that existing structures be modified under the circumstances contained in 30 CFR 701.11(d)(1)(iii). *See* Finding 12.1.

2. The National Forest Service of the U.S. Department of Agriculture commented on ORC 1513.25 concerning transfer of reclaimed lands. The Forest Service suspects there may be such lands within the boundaries of the Wayne National Forest and it would complement their program if such lands could be transferred to the United States as part of the Wayne National Forest.

The Secretary notes that the lands to be acquired and reclaimed under ORC 1513.20 and subject to transfer under 1513.25 are lands being acquired and reclaimed with State funds. They are not subject to Federal requirements, nor are they subject to the Secretary's consideration and review of this program.

3. EPI commented that in OAC 1501:13–4–02 and 1501:13–8–01, Ohio substitutes the general reclamation standards for mining operations set out at ORC 1513.16 for the performance standards for coal exploration contained in the Federal rules at 30 CFR 815.15. EPI states that this in itself does not seem objectionable, however Ohio provides two broadly worded exemptions from compliance with any standards. *See* OAC 1501:13–3–01(C). One authorizes an exemption for an area that will be permitted within twelve months; the other for an area that will be stabilized.

The Secretary notes this exemption and finds it inconsistent with the Federal rules and not in accordance with the provisions of SMCRA. Approval of the Ohio program is conditioned upon the State's commitment not to allow exemptions for coal exploration under OAC 1501:13–8–01(C) until such time as the State revises the regulations to eliminate the exemption. *See* Finding 15.3.

4. EPI commented that OAC 1501:13–1–01(B) appears to deem a mining permit to be issued on the date that a permittee is authorized to construct drainage controls. EPI states that the provision must be deleted for it suggests that permits can be deemed issued for reasons other than those required by the permit approval process. EPI also states that the reference to September 1, 1981, is hopelessly unclear.

The Ohio Division of Reclamation adopted a policy in January 1981 to issue an authorization to construct drainage controls for approved mining permit applications. This occurs once the bond is posted and acreage fee is paid by an operator. The authorization allows the operator to disturb the permit area only for the construction of drainage controls. The approval to begin coal extraction activities is given once the drainage systems are certified by a registered engineer as being constructed. The Secretary understands that this approval does not occur until after permit approval.

This provision does not have any effect on the permit approval process since all the requirements have to be met before the authorization to construct drainage controls is issued.

The reference to September 1, 1981, in the regulation is consistent with the requirements of 30 CFR 701.11. It only serves to distinguish between mining permits issued before and after the effective date of the revisions to the Ohio Coal Mining and Reclamation Law.

5. U.S. EPA commented that the U.S. Army Corps of Engineers has permit authority over the placement of dredged or fill materials into waters of the United States, and should be among those agencies notified if the applicant's plans involve any such activity, including stream diversion or the placement of riprap in streams. U.S. EPA was also helpful in pointing out the appropriate U.S. Army Corps Districts for the State of Ohio to be Buffalo, Huntington, Louisville and Pittsburgh. The Secretary notes that OAC 1501:13–5–01–(B)(3) requires notice to be sent to all Federal, State, and local government agencies with jurisdiction over, or an interest in, the area of the proposed operations. The U.S. Army Corps of Engineers reviewed the Ohio program submission areas that concerned the Corps and offered no comment.

6. U.S. EPA commented that the Division of Reclamation should also consult with the Ohio Environmental Protection Agency (OEPA) since it is concerned with acid mine drainage problems affecting water quality. The Secretary notes that such general consultation is not required under provisions of the national permanent program regulations.

7. EPI commented that Ohio fails to include persons required to hold permits within the scope of the term "permittee" and that this is inconsistent with 30 CFR 701.5. The Secretary notes that additional materials submitted by the State on May 7, 1982, included a revised regulation, 1501:13–1–02, changing the definition of "permittee" to be consistent with 30 CFR 701.5.

8. EPI commented that the copy of the Ohio resubmission that they reviewed did not include a page 82, which should have contained requirements consistent with 30 CFR 707.12 pertaining to government financed construction. The Ohio program does include provisions consistent with 30 CFR Part 707 which exempts coal extraction incident to government financed construction.

9. The Mine Safety and Health Administration (MSHA) stated that in review of the resubmitted Ohio regulatory program they found no conflicting requirements with MSHA regulations. However, they point out that operators must still meet all MSHA regulations and requirements.

10. A commenter stated that the revised State program standard using the phrase "as effective as," recently adopted by OSM to give the States more flexibility in developing their programs, appears to be, in practice, no more flexible than the former "state window" provision. The commenter stated that the existing Federal regulations are excessive and acknowledged OSM's efforts to revise or even eliminate most of them. The commenter questioned why the State must adopt a program in line with the existing "excessive" regulations when soon after approval OSM will issue its new regulations, thus causing Ohio and other States to subsequently revise their approved programs.

OSM has undertaken to revise regulations deemed excessively burdensome to the States and industry. OSM is now proposing changes and final rules are expected to be promulgated during late 1982. The cornerstone for the changed regulatory scheme was the issuance of a revised standard for approval of State programs on October 28, 1981, and became effective on November 27, 1981. It was the most expedient means of giving flexibility to the States. Under the new standard State programs must be no less effective than the Federal regulations in meeting the requirements of the Act. Under the former standard, State programs had to be no less stringent than and meet the applicable provisions of the Federal regulations. In addition, the change also removed the requirement that alternative State standards must be justified due to local requirements or local environmental or agricultural conditions. The Secretary believes the increased flexibility to States is evident under the new standard. A detailed explanation of the

standard is included in the preamble to the rule, 46 FR 53376.

Until the permitting and performance standard Federal regulations are changed, they remain the basis for evaluating State programs under the no less effective standard. SMCRA imposes strict deadlines on implementation of State programs and does not permit the Secretary's final decision to be delayed until the Federal regulations can be changed. In order to avoid being required to develop and promulgate a Federal program in lieu of a State program, the Secretary must consider the State program based on the existing regulations.

11. EPI has raised two issues with respect to the Attorney General's opinion submitted to OSM by letter dated May 7, 1982. First, they point out that the Attorney General's opinion does not state that Ohio will have the authority to implement the program in accordance with the Surface Mining Act and consistent with the Federal regulations. Second, they point out that the opinion lacks a section-by-section analysis of the differences between the State and Federal provisions.

A State Attorney General's opinion is a requirement of the regulations, 30 CFR 731.14(c), not the Act. The Surface Mining Act, in Section 503(b)(4), requires that in order to approve a program, the Secretary find that the State has the legal authority to enforce the program. Thus, it is the Secretary's ultimate responsibility to determine that the State has the necessary legal authority to implement a program in accordance with the Act and consistent with the Secretary's regulations. Omission of a statement as to the State Attorney General's opinion on the matter cannot be considered a deficiency because of the Secretary's ultimate responsibility in this regard.

The fact that the Attorney General's opinion lacks a section-by-section analysis of the differences between the State and Federal provisions can also not be considered a deficiency. The State has provided some analyses of the differences which, although not indicated on the face of them, were prepared by the Office of the Attorney General. Two issues which the EPI comments point to as ones which an opinion would resolve are adequately addressed in the discussion of the findings. With respect to the issue of whether a civil penalty will not be imposed once an operator initiates corrective steps, there is an adequate discussion in the explanation furnished by the State with the May 7, 1982 resubmission. Furthermore, the State has submitted a copy of an opinion by a Division of Reclamation Hearing Examiner on the issue which is a thorough legal analysis. Also, the State has submitted a sufficient analysis regarding the two contradictory provisions in ORC 1513.16(F)(3)(c) involving the issue of whether the Chief can grant an exemption from the period of extended liability for revegetation success.

Although review of the State program provisions has been rendered more difficult by the lack of the section-by-section analysis, it has not been rendered so difficult as to preclude an adequate review of the program provisions.

12. EPI comments that Ohio has omitted from its rules a definition of the term "surface coal mining operations" and related terms. It is contended that such an omission could lead to considerable confusion over the extent of the State's jurisdiction.

The State does not include in the definitions in its regulations, OAC 1501:13–1–02, a definition of "surface coal mining operations." However, in its statute it does include definitions of the terms "coal mining and reclamation operations," ORC 1513–01(B), "operations" or "coal mining operation," 1513–01(G), and "strip mining," 1513–01(R). The differences in these definitions with those in the Surface Mining Act are discussed under Findings 1.1 and 1.3. The pertinent definitions with respect to surface mining operations are found in the regulations at 30 CFR 700.5. The only difference in the definitions in Section 701 of the Surface Mining Act and the regulations is the provision added to 30 CFR 700.5 on surface coal mining operations under paragraph (a) for the excavation of coal from refuse piles. This proviso was added to make clear that when coal is removed from refuse piles it is subject to regulation. Ohio has added the phrase "the removal of coal from refuse piles" to 1513.01(G)(1). Therefore, the definitions are in accordance and consistent with the Act and Federal regulations.

13. One commenter expressed concern that some State regulations appear excessive when compared to the corresponding Federal regulations. The commenter stated the belief that OSM cannot approve the State's excessive provisions in light of Executive Order 12291 which provides that regulations must be clearly within authority delegated by law and consistent with congressional intent and viewed with full attention to comments of the public and persons directly affected by the rule in particular. The Secretary notes that 30 CFR 730.11(b) provides that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA and the Federal regulations or which provides for the control and regulation of coal exploration and surface coal mining and reclamation operations for which no provision is contained in SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. These requirements are based on the provisions of Section 505(a) and (b) of SMCRA. The Secretary, therefore, cannot disapprove State provisions simply because they are more stringent than corresponding Federal provisions.

14. One commenter stated that the Ohio program fails to consider adequately the difference between surface coal mining and underground coal mining as required in Section 516(b) and 516(b)(10) of SMCRA. The commenter points out that underground operations are subject to the same backfilling, grading and revegetation requirements as surface coal mines and that this is not practical for existing operations that utilize a surface area which has been active before 1977 for such functions as refuse disposal, slurry disposal and other areas used incidentally to normal operations.

The Secretary notes that the Ohio program in OAC 1501:13–12–01 requires underground operations to comply with rules 1501:13–1–01 through 1501:13–14–04 of the administrative code. This includes all other program regulations including permitting, bonding, and performance standards generally applicable to all coal mining. Ohio has established additional requirements for underground operations in 1501:13–12–02, addressing subsidence control, and in 1501:13–13–01 providing extensions to reclamation time periods for concurrent surface and underground mining. Ohio sets permit application requirements for underground subsidence control plans in 1501:13–4–05 (L) and in 1501:13–4–05(M) and (N). Otherwise, the operator of an underground mine is subject to the same requirements of the program as an operator of a surface mine. The Secretary does not find this inconsistent with the requirements of SMCRA or 30 CFR Chapter VII.

Permitting

1. EPI noted that the Ohio program fails to incorporate standards and requirements for ponds, embankments and impoundments as specified in 30 CFR 780.25. The Secretary notes that

OAC 1501:13–4–04(L)(1) requires each application to include a detailed design plan and map prepared by, or under the direction of, and certified by a registered professional engineer or registered surveyor. The plan and map are to be to an appropriate scale for each proposed sediment pond, water impoundment and coal processing waste bank or dam within the proposed permit area. OAC 1501:13–4–04(L)(2) requires designs under (L)(1) to comply with the requirements of paragraph (G) of OAC 1501:13–9–04 which contains the performance standards. As discussed under Finding 1.5, approval of the Ohio program is conditioned on the State revising its statute and regulations to require that the design under 1501:13–4–04(L)(1) be by a registered professional engineer. However, the Secretary believes that the provisions for design by registered professional engineers in compliance with applicable performance standards will produce a thorough, well planned design of the structures covered by the regulations in OAC 1501:13–4–04. The Secretary, therefore, has found OAC 1501:13–4–04 to be consistent with 30 CFR 780.25.

2. U.S. EPA commented that the Ohio program fails to require anything comparable to 30 CFR 780.15 or 30 CFR 816.95 concerning ambient air monitoring and air resource protection. The Secretary notes that both 30 CFR 780.15 and 30 CFR 816.95 have been suspended and State programs are not required to address air resources protection until revised rules are promulgated and become effective.

3. U.S. EPA commented that the Ohio program is missing a supporting agreement with the Ohio Environmental Protection Agency (OEPA). U.S. EPA contends that 30 CFR 731.14(f) requires such a supporting agreement. The Secretary notes that 30 CFR 731.14 establishes content requirements for State program submissions and subparagraph (f) requires copies of supporting agreements between agencies which will have duties in the State program. Ohio does not include a supporting agreement with OEPA and the Secretary could not find that OEPA will have a duty in the State program. The Ohio Division of Reclamation must coordinate the issuance of permits under the State program with issuance by OEPA of NPDES permits. This, however, is not a duty under the State program so that it cannot be made a condition of program approval.

4. U.S. EPA commented that the State program does not include a description of a system for coordinating the issuance of mining and reclamation permits with permits issued by OEPA. The Secretary notes that OAC 1501:13–4–01(D) establishes requirements for coordination with requirements under other laws. The Chief is to avoid duplication, and provide for the coordination of review and issuance of permits for coal mining and reclamation operations with any other Federal or State permit process applicable to the operations including, at a minimum, permits required under the Clean Air Act and the Clean Water Act, and the requirements of any water quality management plans which have been approved by the Administrator of the U.S. EPA. The State has also included a description of its proposed system for coordinating with other State and Federal agencies in the Volume I narrative under § 731.14(g)(9).

5. EPI commented that Ohio omits from its rules the requirements in 30 CFR 779.19–.21 and 783.19–.21 that permit applications contain vegetation, fish and wildlife resources and soil resources information. The Secretary notes that the regulations requiring the permit application to contain a study of fish and wildlife and a fish and wildlife reclamation plan have been suspended. In addition, 30 CFR 779.21 and 783.21 have been suspended to the extent they require soil survey information for lands not qualifying as prime farmland. (45 FR 51548, August 4, 1980.) State programs are, therefore, not required to include these suspended provisions.

6. EPI commented that Ohio's standards in 1501:13–4–01(K) and 13–13–03(H) determining when land shall not be considered prime farmland are inconsistent with 30 CFR 779.27 and 783.27 and go beyond that authorized by the decision of Judge Flannery in *In Re: Permanent Surface Mining Regulation Litigation*. The Secretary notes that additional materials submitted by the State on May 7, 1982, included revisions which render the State's provisions consistent with the Federal regulations.

7. EPI commented that Ohio fails to incorporate the standards for operation and reclamation plans contained in 30 CFR Parts 780 and 784. The Secretary notes that the May 7, 1982, revisions to Ohio's program included provisions nearly identical to those in 30 CFR 780 and 784 pertaining to reclamation plan requirements. Therefore, its provisions are no less effective than the Federal regulations.

8. EPI commented that Ohio fails to incorporate special permitting standards for special categories of mining that are contained in 30 CFR Part 785. The Secretary notes that the May 7, 1982, revision to the Ohio program included provisions in OAC 1501:13–4–12 consistent with 30 CFR Part 785. Therefore, these special permitting parts of the program are no less effective than the Federal regulations.

9. The FWS requested the opportunity to comment on any stripmine application which proposes any alteration to a stream, mining on Federal lands, involves federal monies, or may impact a federally threatened or endangered species. FWS stated that, at present, the Ohio Division of Reclamation and the FWS are operating under an informal and mutually understood review procedure but it would be receptive to formulating such an agreement concerning involvement in the Ohio surface mining program. The Secretary notes that OAC 1501:13–5–01(B)(3) requires the Division of Reclamation to send written notification of the filing of each permit application to Federal, State and local governmental agencies with jurisdiction over or an interest in the area of the proposed operations. OAC 1501:13–5–01(C) provides opportunity for submission of written comments on permit applications. Under this procedure the FWS will have the opportunity to comment on all permit applications. The Secretary cannot require that Ohio and the FWS develop a formal agreement regarding FWS involvement in the Ohio program. However, the FWS is encouraged to participate by reviewing and commenting on permit applications that are of interest.

10. The FWS stated that the Ohio program includes provisions for appropriate State and Federal fish and wildlife agencies to comment on proposed alternative land uses. FWS pointed out that the program does not specify a time period for review and comment. The Secretary notes that in 731.14(g)(10) Volume II of the program narrative submission Ohio describes procedures for notification to the FWS and the State Division of Wildlife when an application for a coal mining permit is submitted. These procedures do not establish a specific time allowed for review and comment but the Secretary is confident that the State will give all interested agencies adequate time for review.

Performance Standards

1. EPI commented that Ohio's counterpart to 30 CFR 816.25 fails to require that soil tests be performed by qualified laboratories. Instead, it requires that tests be taken in accordance with agronomically acceptable practices. EPI contends that the Federal rule for tests by qualified

laboratories better assures not only that tests will be conducted properly, but that adequate records will be kept and qualified personnel will handle the analysis.

The Secretary notes that the purpose for soil tests is to determine soil needs. Nutrients and soil amendments in the amounts specified by the soil tests are then applied to the redistributed surface soil layer so that it will support the approved postmining land use and meet the revegetation requirements. In this regard, the Ohio provisions are essentially the same as the Federal regulations.

Ohio has required soil tests to be performed on the redistributed surface layer since 1972. These tests have been conducted in accordance with agronomically accepted practices. This practice has continued during the interim program and OSM has not been made aware of any faulty or inadequate analysis having been conducted during the 10 year period. The Secretary is confident that only qualified laboratories will carry out agronomically accepted practices, that adequate records will be kept and that qualified personnel will handle the analyses. The Secretary, therefore, has found OAC 1501:13–9–3 to be consistent with 30 CFR 816.25.

2. EPI commented that in OAC 1501:13–9–04(F)(1), Ohio fails to make violations of Federal and State water quality standards a violation of the surface mining program. The Federal regulations at 30 CFR 816.41(c) provide that Federal and State water quality standards are not to be violated and at § 816.45(a)(2) that the more stringent of applicable State or Federal water quality standards are to be met. Thus, by the omission, in EPI's view, the right of citizens to complain about such violations and to exercise their rights under the program would be lost. Further, they contend that the ability of the regulatory authority to use the enforcement mechanisms of the surface mining program to abate such violations is lost.

The corresponding provision of the State statute, ORC 1513.16(A)(10)(6), is in accordance with Section 515(b)(10) of SMCRA. Subsection (b)(10)(B)(i) of Section 515 requires coal mining operations to be conducted so as to prevent additional contributions of suspended solids to streamflow outside the permit area, and in no event are contributions to be in excess of requirements set by applicable State or Federal laws. While the State has omitted statements from the counterpart regulations to Sections 816.41(c) and .45(a)(2), these provisions are general references to other applicable State and Federal water quality laws. The State has included the requirement that sedimentation ponds and drainage from the disturbed area meet applicable State and Federal water quality standards. OAC 1501:13–9–04(B)(2) which is the counterpart to § 816.42(a)(2). It has also included a requirement that point source discharges from a disturbed area meet applicable State and Federal effluent limitations in OAC 1501:13–9–04(B)(6) which is the counterpart to Section 816.42(a)(7). And it has included the requirement from § 816.49(a)(1) that effluent from impoundments meet applicable State and Federal laws. OAC 1501:13–4–04(J)(1)(a). Violation of these provisions in the regulations would give the citizen the right to complain and to have his or her complaint pursued under the State program. Therefore, the provisions on compliance with other applicable State and Federal water quality laws with respect to a citizen's right to complain and to have the complaint pursued through the State program is no less effective than the provisions of the Federal regulations.

3. EPI comments that Ohio fails in OAC 1501:13–9–04(D)(5)(a) and (c) to require the use of energy dissipators where the exit velocity of a discharge exceeds the velocity of the entering stream as required in 30 CFR 816.43(f)(3). EPI also states that Ohio fails to require riprap to meet the standards of 30 CFR 816.72(b)(4) under 30 CFR 816.43(f)(1). The Secretary notes that diversions for conveyance of overland, shallow ground water and ephemeral stream flows are an important environmental tool. They may not be necessary in all cases, but are required where needed to prevent or minimize water pollution, maintain the stability of fills and protect treatment facilities. In OAC 1501:13–9–04(D)(5)(a) and (c) Ohio requires that diversion designs incorporate channel lining using standard engineering practices to pass safely the design velocities and that energy dissipators must be installed when necessary at discharge points. The Secretary is confident that under this standard energy dissipators will be required where the resulting flow without dissipators would cause disruption to the stream channel or ecology. The Secretary is also confident that the use of standard engineering practices as required under OAC 13–9–04(D)(5)(a) will ensure that channel linings effectively resist erosion and scouring. Therefore, the provisions in the State regulations are no less effective than the Federal regulations in meeting the requirements of the Act.

4. The FWS, U.S. EPA and EPI commented that Ohio regulation 1501:13–9–04(E)(4) fails to require restoration of the stream channel to its natural meandering shape and approximate pre-mining characteristics. The Secretary notes that the purpose for 30 CFR 816.44(d)(2) and (3) dealing with channel restoration is to enhance and protect fish and wildlife considerations. Ohio has included provisions consistent with 30 CFR 816.97, on protection of fish, wildlife and related values, in OAC 1501:13–9–11. Specifically, in 13–9–11(C)(4), Ohio requires that each person who conducts coal mining operations is to afford protection to aquatic communities by avoiding stream channels or restoring stream channels as required pursuant to 1501:13–9–04. The Secretary, therefore, concludes that Ohio provisions 1501:13–9–04(E)(4) and 13–9–11(C)(4) are as effective as 30 CFR 816.44(d)(2) and (3) with regard to the enhancement and protection of fish and wildlife values.

5. EPI and U.S. EPA commented that Ohio regulation 1501:13–9–04(G) fails to require that sediment ponds be designed to provide the required theoretical detention time for the water inflow or runoff from a 10-year, 24-hour precipitation event as required under 30 CFR 816.46(c). The Secretary notes that Federal requirements for detention time are established to provide that sediment-laden water be detained for a sufficient period of time to allow the water to come to rest and clarify so as to assure that the discharge from the pond meets the applicable effluent limitations and water quality standards. Ohio regulation 1501:13–9–04(G)(5) requires sediment ponds to be designed, constructed and maintained so that compliance with applicable effluent limitations will be achieved. Under this scheme, the designer of the sediment pond must take into consideration site specific conditions, such as soil type, particle size, particle specific gravity, slope, moisture conditions and other physical conditions. Additionally, the existing effluent limitations at 40 CFR Part 434 rely upon consideration of a design based on a 10-year, 24-hour event, and specifically include such a standard in the applicable regulation. Design of sediment ponds to achieve the applicable effluent limitations will necessarily result in employment of detention times consistent with the Federal regulations.

6. EPI also comments that Ohio fails to require that the construction height for sediment pond embankments be at least 5 percent over the design height to allow for settling as required under 30

CFR 816.46(k). The Secretary notes that Ohio regulation 1501:13–9–04(G)(9) requires that the minimum elevation at the top of the settled embankment be one foot above the water surface in the pond with the emergency spillway flowing at a design depth. For embankments subject to settlement, the one foot minimum elevation requirement applies at all times, including the period after settlement. The Secretary concludes that the Ohio requirement ensures consideration of settlement consistent with the Federal regulations.

7. EPI commented that Ohio fails to establish standards for upstream and downstream side slopes as required by 30 CFR 816.46(m). The Secretary notes that Ohio regulation 1501:13–9–04(G)(15) requires each pond to be designed and inspected during construction under the supervision of a qualified registered professional engineer. OAC 1501:13–9–04(G)(13) requires the fill to be built up in horizontal layers of such thickness as are required to facilitate compaction and meet the design requirements. In addition, compaction is to be conducted as specified in the design. For embankments greater than twenty feet in height OAC 1501:13–9–04(G)(14) establishes that design and construction shall achieve a static safety factor of 1.5 or higher. The Secretary finds that these requirements will assure embankment stability no less effective than that for allowable side slopes in the Federal regulations.

8. EPI noted that in OAC 1501:13–9–07(A) the reference to mass instability was probably a typographical error. As discussed immediately before the Secretary's Findings, Ohio has corrected typographical and other non-substantive errors in the set of regulations forwarded for promulgation under their emergency procedures. The proper phrase is "mass stability."

9. EPI commented that Ohio allows operators to treat spoil from first cuts as excess in certain situations and that this could lead to serious abuse of reclamation requirements. The Secretary notes that Ohio regulation 1501:13–9–07(B) allows, with approval of the Chief, that spoil from first cuts in areas where average finish slopes will not exceed fourteen degrees may be exempted from specific excess spoil requirements. The Secretary believes that even though the spoil in these cases is disposed of in a location other than the mined out area, and technically could be considered excess spoil, the material can, at times, be better utilized by blending it into the surrounding terrain, provided it is used to achieve the approximate original contour and is disposed of in accordance with the standards for backfilling and grading. The Secretary has, therefore, found the provisions for first cut spoil no less effective than Federal regulations.

10. EPI commented that Ohio fails to require several design requirements for excess spoil fills including placement in horizontal lifts for Class II placements, keyway cuts or rock toe buttresses for disposal on slopes that exceed 1v to 2.8h, and underdrains in disposal areas that contain springs, seeps or watercourses. All of these are required under 30 CFR 816.71. EPI also notes that Ohio does not require quarterly inspections, as required by 30 CFR 816.71(j), or foundation investigation and laboratory testing, as required by 30 CFR 816.71(m). The Secretary notes that Ohio regulation 1501:13–4–05(O) establishes that provisions for the design of disposal of excess spoil are to be contained in applications. These provisions cover descriptions, maps and cross section drawings of the proposed disposal site and require design of the spoil disposal structure. Applicants are required to describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the site and structures. Details required, include the character of the bedrock, survey of springs, and a stability analysis. A description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design are also required.

In sum, Ohio regulation 1501:13–4–05 addresses all the requirements of 30 CFR 780.35. In addition, OAC 1501:13–9–07 addresses virtually all the requirements of SMCRA Section 515(b)(22), except 515(b)(22) (E) and (F) which are addressed in ORC 1513.21 (E) and (F). The Secretary concludes that the State requires controlled placement of excess spoil material from surface coal mining operations and provides for sound engineering practices to ensure long-term stability of the constructed fill to a degree no less effective than requirements of the Federal regulations. The Secretary believes that the Ohio approach to excess spoil placement will allow more innovative designs. These designs must still be approved by the State. Such designs may result in more efficient, cost effective and environmentally sound fills.

11. EPI commented that Ohio fails to set standards for disposal of coal processing wastes in fills as required by 30 CFR 816.71(k). The Secretary notes that approval of the Ohio program is conditioned on Ohio adopting regulations consistent with 30 CFR 816.71(k). *See* Finding 13.4. These provisions are necessary so that if coal waste is used in fills the design must take into account the physical, chemical and engineering qualities so as to assure stability and environmental protection.

12. EPI commented that rather than setting standards for measuring revegetation success based on pre-mining productivity of the land, Ohio provides only that operations on prime farmlands meet the same ground cover and cropping requirements as approved by the Chief in the permit application. EPI stated that this is inconsistent with the Act. EPI also stated that in *In re: Permanent Surface Mining Regulation Litigation*, Civ No. 79–1144, U.S.D.C. D.C. (February 26, 1978), Judge Flannery held that the Act "directs the operator to demonstrate capability of prime farmlands to support pre-mining productivity."

The Secretary considered this area of the Ohio program, *see* Finding 13.5. The Secretary notes that Section 510(d)(1) of the Act establishes requirements and criteria for permit approval; specifically, if the area proposed to be mined contains prime farmland pursuant to Section 507(b)(16), the regulatory authority is to grant a permit to mine on the prime farmland if it finds that the operator has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in Section 515(b)(7). The requirement in Section 507(b)(16) is one dealing with the permit application. It is not a performance standard. The prime farmland performance standard of Section 515(b)(7) establishes requirements for soil removal, storage and reconstruction. The Secretary believes that the applicable revegetation requirements are established by Section 519(c)(2) for prime farmlands requiring that prime farmlands achieve equivalent levels of yield as nonmined land of the same soil type in the surrounding area. In addition, Ohio regulation 1501:13–7–05(B)(1)(b)(iii) establishes as a criterion for phase II bond release for prime farmlands that soil productivity has been returned to the level of yield as required by 1501:13–4–12(F). This provision is consistent with 30 CFR 807.12(e) criteria for release of bond for prime farmlands.

13. EPI commented that in OAC 1501:13–9–13, Ohio proposes to allow various exemptions and variances to contemporaneous reclamation standards of the Federal Act and rules. EPI noted

that the provision regarding removal of limestone and clay may have been adequately justified in the Ohio program under explanation R–17, but the others clearly were not.

The Secretary notes that OAC 1501:13–9–13(A)(4)(a) provides an exemption for labor disputes which is consistent with 30 CFR 843.12(f)(3), as amended, allowing extensions of time to abate violations beyond the 90-day limit due to labor disputes. *See* 46 FR 41702 (August 17, 1981).

OAC 1501:13–9–13(A)(4)(c) provides that the Chief may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis in the permit application reclamation plan, that additional time is necessary. The Secretary finds the terms of this exemption consistent with that allowed pursuant to 30 CFR 816.101(a)(3).

OAC 1501:13–9–13(B) provides that the Chief may grant a variance to the requirements for contemporaneous reclamation where the applicant proposes to combine strip mining and underground coal mining operations, or where required by the method of mining. 30 CFR Part 818 establishes special performance standards for concurrent surface and underground mining and provides for a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable for specific areas within the permit area. The Secretary finds the Ohio exemption in 1501:13–9–13(B) to be consistent with 30 CFR Part 818 except for the last phrase in the State provision, "or where required by the method of mining." The Secretary has conditioned approval of the Ohio program of the State adopting amendments to delete the last phrase in 1501:13–9–13(B). *See* Finding 13.7 which concludes that the last phrase is not specific and lacks a basis for granting the exemption.

14. EPI commented that the Ohio program does not include an explanation of how the rule for measuring revegetation success compares with the Federal standards. EPI states that this failure makes public comment on such alternative standards more difficult and approval of the provision unlawful since Ohio has the burden of showing that its rules are as effective as the Federal rules under the revised state window rule. EPI noted they are not necessarily opposed to Ohio's alternative standards for measuring revegetation success.

The Secretary directs the commenter to amendments to 30 CFR Parts 730 and 732, published on October 28, 1981 (46 FR 53376–53384), commonly called the "state window." As discussed in the preamble to the amendments, States are not required to adopt the Secretary's regulations; within limits, they are free to develop and adopt regulations which meet their special needs. Under the amendments, States are no longer required to demonstrate that each alternative is necessary because of local requirements or local environmental or agricultural conditions. In addition, States are not required to mirror all applicable provisions of the Secretary's regulations. A State program, including its laws and regulations, will, however, have to be as effective as the Secretary's regulations in meeting the requirements of the Act in order to be approved.

Ohio establishes provisions for measuring success of revegetation in 1501:13–9–15(E). Reading of the Ohio regulation shows that it ensures evaluation of the effectiveness and permanency of the vegetative cover as required under Section 515(b)(19) of the Act. The Ohio scheme for measuring success requires a minimum allowable percent cover sufficient to prevent erosion and cover which is capable of regeneration and plant success.

Based on the regulation itself, the Secretary concludes that Ohio provides a method for measuring success of revegetation that is no less effective than 30 CFR 816.116.

15. U.S. EPA comments that there are numerous departures in Ohio regulation 1501:13–9–04(D) which makes this section appear incomplete. The Secretary notes that 1501:13–9–04(D) establishes provisions for erosion control structures, diversions and conveyance of overland flow, shallow ground water flow, and ephemeral streams. The Secretary finds the section to be consistent with 30 CFR 816.43 establishing corresponding requirements, and, therefore, as effective as it.

16. U.S. EPA commented that the Ohio program does not include provisions equivalent to 30 CFR 816.45(a)(2) that appropriate sediment control measures shall be designed, constructed and maintained using the best technology currently available to meet the more stringent of applicable State or Federal effluent limitations. The Secretary finds OAC 1501:13–9–04(B)(6), requiring that point source discharge of water from areas disturbed by coal mining operations shall be made in compliance with effluent limitations with applicable Federal and State laws and regulations, to be consistent with § 816.45(a)(2) and, therefore, as affective as it.

17. U.S. EPA comments that 30 CFR 816.41(c) does not itemize standards and effluent limitations. The Secretary notes that it is the State program that is under consideration and not the national permanent program regulations.

18. U.S. EPA and EPI commented that the significance of a 25-year event versus a 10-year event requires clarification as presented in Ohio regulation 1501:13–9–04(G) (4) and (5). The Secretary notes that OAC 1501:13–9–04(G) (4) and (5) pertain to provisions minimizing the opportunity for sediment ponds to short-circuit and provisions requiring overall compliance with applicable effluent limitations. Neither provision includes reference to 25 year or 10 year events and, therefore, no clarification is required.

19. U.S. EPA commented that OAC 1501:13–9–04(I)(3) does not provide temporary storage of spoil material as indicated in Federal regulations. The Secretary, however, notes that OAC 1501:13–9–04(I)(3) allows temporary storage of the spoil upon a finding by the Chief that burial or treatment within thirty days is not feasible and will not result in any material risk of water pollution or other environmental damage. The Secretary also notes that OAC 1501:13–9–04(I)(3) is consistent with provisions for temporary storage of spoil material contained in 30 CFR 816.48(c).

20. U.S. EPA commented that it could not find that the Ohio program includes an equivalent to 30 CFR 816.50(b). The Secretary finds that OAC 1501:13–9–04(K) is identical to 30 CFR 816.50(b) requiring control of the effects of mine drainage, pits, cuts and other mine disturbances.

21. U.S. EPA commented that Ohio regulation 1501:13–9–04(F)(3) does not contain special conditions for a stream with a biological community and is, therefore, inadequate. U.S. EPA and EPI commented that the Ohio program also fails to mention conditions required for the Chief's approval of activities in or near a stream and omits mentioning stream buffer zones. The Secretary assumes that the commenters intended the comments to be directed at State regulation 1501:13–9–04 pertaining to the protection of the hydrologic balance. Contained in this section are provisions for stream channel diversions and restoration. The Federal regulations in 30 CFR 816.57 establish that no land within 100 feet of a stream with a biological community shall be disturbed except in accordance with Federal regulations regarding diversion of flows and stream channel diversions. The Ohio program requires all operations to comply with State regulations. The State's regulations include provisions consistent with 30 CFR 816.43 and 816.44 and, thus, afford the required protection

whether or not the stream exhibits a biological community.

22. U.S. EPA commented that the Ohio program fails to provide for meeting the more stringent of applicable State or Federal effluent limitations. The Secretary notes that Ohio regulation 1501:13–9–04(B) sets water quality standards and effluent limitations. In (B)(6) the State requires that point source discharges from areas disturbed by coal mining operations be made in compliance with effluent limitations set by applicable Federal and State laws and regulations. The Secretary finds this provision consistent with 30 CFR 816.45 regarding sediment control measures. *See* the discussion in response to comment No. 2, Performance Standards.

23. U.S. EPA commented that the Ohio program fails to include an equivalent regulation to 30 CFR 817.50 pertaining to underground mine entry and access discharges. The Secretary notes that Section 1513.35(A)(2) of the ORC requires that openings for all new drift mines working acid-producing or iron-producing coal seams to be located in such a manner so as to prevent gravity discharge of water. The Secretary finds that the State provisions preclude uncontrolled discharge of mine water and, therefore, are no less effective than the Federal regulations.

24. U.S. EPA and EPI commented that Ohio regulation 1501:13–9–04(P) addresses the discharge of water into an underground mine only in general terms and notes that conditions for approval of discharges into underground mines are not provided. Ohio regulation 13–9–04(P) provides protection to the hydrologic balance of the mining area by restricting the discharge or diversion of water from the surface into underground workings consistent with 30 CFR 817.55. The program provisions are no less effective than the Federal regulations.

25. EPI commented that Ohio's topsoil rules differ from the Federal rules in two respects. First, they fail to include standards for protecting topsoil not immediately used as required in 30 CFR 816.23(b). Further, the Ohio rules exempt long term underground operations from all topsoil handling requirements in a manner consistent with 30 CFR 817.21–.24. Second, Ohio deletes the provision contained in 30 CFR 816.22(f) limiting the removal of vegetation, topsoil and other materials where such removal may cause air and water pollution.

The Secretary notes that new materials submitted by the State on May 7, 1982, include provisions at 1501:13–9–03(D) that are consistent with 30 CFR 816.23(b) for protecting topsoil which is not used immediately. The new materials submitted on May 7, 1982, also delete the provision exempting long term underground operations from the topsoil handling requirements. In addition, the State has added a provision to 1501:13–9–03(B)(5) which limits the removal of vegetation, topsoil and other materials consistent with 30 CFR 816.22(f).

26. EPI commented that Ohio fails to adopt general hydrology standards that even approach the Federal standards at 30 CFR 816.41. The Secretary believes that Ohio regulation 1501:13–9–04 in its entirety is consistent with the general requirements set out in 30 CFR 816.41. Therefore, the provisions in the State program are found to be no less effective than the Federal regulations.

27. EPI commented that Ohio provides for exemptions from sediment pond requirements for small areas without requiring adherence to the standards at 30 CFR 816.42(a)(3)(B). The Secretary notes that 1501:13–9–04(B)(3) provides that the Chief may grant exemptions only when the disturbed drainage area within the total disturbed area is small. The Secretary finds that the State's basis for granting the exemption—when the disturbed drainage area within the total disturbed area is small—is consistent with criteria contained in 30 CFR 816.42(a)(3)(B) concerning effluent limitations and is, therefore, no less effective than the Federal requirements.

28. EPI comments that Ohio deletes all but the first sentence from the Federal rules at 30 CFR 816.49(g). The Secretary notes that Ohio regulation 1501:13–9–04(J)(7) requires routine maintenance of impounding structures. The Secretary is confident that routine maintenance means that vegetative growth will be cut where necessary, that ditches and spillways will be cleaned and other requirements of 30 CFR 816.49(g) will be met. Therefore, this provision of the State program is no less effective than the Federal requirements.

29. EPI comments that Ohio fails to limit exemptions from pH and total suspended solids for discharges into underground workings to the six categories of effluent listed at 30 CFR 816.55(b) (1) through (6). The Secretary notes that Ohio regulation 13–9–04(P) requires the Chief to approve any exemption from the pH and total suspended solids limitations after finding that the discharge will not cause, result in or contribute to a violation of applicable effluent limitations or applicable water quality standards and will minimize disturbance to the hydrologic balance. The Secretary finds these limitations as effective as the six category limitation in 30 CFR 816.55(b).

30. EPI comments that several paragraphs and provisions appear to have been inadvertently deleted between pages 226 and 227 of the Ohio submission pertaining to requirements of 30 CFR 816.62–816.64. The Secretary notes that these pages have now been included and the contents are consistent with 30 CFR 816.62–816.64.

31. EPI comments that Ohio omits standards for blasting between sunset and sunrise which are contained in the Federal rules at 30 CFR 816.65(a)(2). Ohio regulation 1501:13–9–06(E) precludes blasting between sunset and sunrise. It is, thus, more stringent than the Federal provisions.

32. EPI comments that Ohio's rules at 1501:13–9–06(E)(2) appear to allow blasting outside the times set by the blasting schedule for reasons other than those unavoidable and hazardous situations for which deviations from the blasting schedule are allowed by the Federal rules in 30 CFR 816.65 (a)(2)(i) and (b). The Secretary notes that new materials submitted by Ohio on May 7, 1982, include provisions consistent with 30 CFR 816.65 (a)(2)(i) and (b) governing blasting outside times set by the blasting schedule. These provisions are no less effective than the requirements of the Federal rules.

33. EPI comments that Ohio regulations 1501:13–9–06(E) (4) and (6) fail to meet the standards set by the corresponding Federal rules at 30 CFR 816.65 (d) and (e). The Secretary notes that 30 CFR 816.65(d) establishes provisions restricting access to areas subject to flyrock from blasting to protect the public and livestock. OAC 1501:13–9–06(E)(4) regulates access to any area that would be subject to the effects of blasting. The Secretary finds this consistent with 30 CFR 816.65(d). Ohio also incorporates air blast limits that are more stringent than the limits established in 30 CFR 816.65(e). Ohio limits airblast to 128dB, whereas the Federal limit is 130–135dB. Ohio provisions do limit the application of the standard to structures within one-half mile of the permit; the Federal rules do not place a limit on distance. The Secretary believes that the one-half mile limit is justified due to the preblast survey limit for structures within one-half mile. Therefore, the Secretary finds the Ohio rules to be no less effective than the Federal standards.

34. EPI commented that Ohio omits flyrock standards established by the Federal rule at 30 CFR 816.65(g). The Secretary notes that § 816.65(g) prohibits flyrock being cast from the blasting vicinity more than half the distance to the nearest dwelling or in no case beyond the line of property owned or leased by the applicant. Ohio regulation

1501:13–9–06(E) limits flyrock being cast to within the permit or lesser distances if required by the Chief. The Secretary believes that if dwellings are within the area, the Chief would require more restrictive limits. Therefore, 1501:13–9–06(E) is consistent with 30 CFR 816.65(g) in limiting flyrock.

35. EPI commented that Ohio fails in regulation 1501:13–9–11 to require that powerlines and other transmission facilities used in connection with mining activities be designed and constructed to insure the protection of raptors as required by 30 CFR 816.97(c). In addition, Ohio fails to require that operators conduct their activities by fencing roadways to guide wildlife to safe passageways, using methods to exclude wildlife from ponds containing hazardous or toxic materials, and to refrain from the use of persistent pesticides as required in 30 CFR 816.97(d) (2), (3) and (7).

The Secretary is not aware of specific problems in Ohio regarding the placement of powerlines and other transmission facilities. Nor is the Secretary aware of the specific need for fencing provisions in Ohio. The Secretary believes that Ohio's general provisions in 1501:13–9–11(A) which provide that any person conducting coal mining operations shall minimize disturbances and adverse impacts of the mining activities on fish, wildlife and related environmental values, and achieve the enhancement of such resources where practicable is as effective as the specific provisions of the Federal regulations.

36. EPI commented that the Federal rules at 30 CFR 816.99(b) require operators to notify the regulatory authority whenever a slide occurs that may have a potential adverse impact. Ohio regulation 1501:13–9–12 requires notice only for slides which may have an imminent adverse impact. The Secretary notes this difference and has conditioned approval of the Ohio program on the State amending regulation 1501:13–9–13(B) to require notification to the Chief at any time a slide occurs which may have a potential adverse effect consistent with 30 CFR 816.99(6). This notification is necessary to prevent damage caused by slides and to ensure that steps will be taken any time a slide occurs which may adversely affect life, property, health or safety. *See* Finding 13.10.

37. EPI commented that Ohio regulation 1501:13–9–13 fails to require contemporaneous reclamation of surface coal mining activities as required by 30 CFR 816.100. Moreover, according to EPI, Ohio's provision for contemporaneous reclamation of underground activities is unclear and may be inconsistent with 817.100. The Secretary notes that revised materials submitted by Ohio on May 7, 1982, included changes to 1501:13–9–13 which the Secretary finds consistent with 30 CFR 816.100, 816.101 and 817.100.

38. EPI commented that Ohio regulation 1501:13–9–14, for backfilling and grading, provides considerably less detail than the Federal rules at 30 CFR 816.101–.105 to insure that backfilling and grading will be carried out in a manner that protects the environment. Among other things, Ohio's rules fail to meet the time and distance criteria for backfilling and grading established by 30 CFR 816.101(a). The Secretary notes that revised materials submitted by Ohio on May 7, 1982, include changes to 1501:13–9–14 which the Secretary finds consistent with 30 CFR 816.101–.105. The Secretary notes that approval of the Ohio program is conditioned on the State adopting amendments to require resoiling to be as contemporaneous with mining as practicable. *See* Finding 13.9.

39. EPI commented that Ohio requires "adaptive" rather than "native" species in 1501:13–9–15(A)(1). The Secretary notes that materials submitted by Ohio on May 7, 1982, incorporated the term "native" in regulation 1501:13–9–15(A)(1).

40. EPI commented that Ohio omits the requirements of 30 CFR 816.111(b)(3). The Secretary notes that (b)(3) in essence defines "vegetative cover of the same seasonal variety." However, the Federal rule does not set a specific requirement. Therefore, it is not necessary that Ohio include a similar provision in its program.

41. EPI commented that Ohio fails to require appropriate field tests for introduced species as required by 30 CFR 816.122(a). The Secretary notes that Ohio regulation 1501:13–9–15(A)(8) allows use of introduced species if approved by the Chief and based on criteria consistent with 30 CFR 816.112 (b), (c) and (d). The Ohio regulation does not include a counterpart to 816.112(a), which requires that field trials be used to demonstrate that the introduced species are desirable and necessary to achieve the postmining land use. The Secretary believes that the Ohio Division of Reclamation will be aware of research findings and the characteristics of species that are desirable and necessary to achieve a specific post-mining land use so that field trials would be unnecessary. Hence, the Secretary finds Ohio regulation 1501:13–9–15(B) to be no less effective than 30 CFR 816.112. *See* Finding 13.2.

42. EPI commented that Ohio omits provisions for anchoring mulches to the soil surface as included in 30 CFR 816.114. The Secretary notes that 30 CFR 816.114(b) provides for anchoring mulches when required by the regulatory authority. The Secretary believes that the mulching requirements should be flexible and the type, use, benefits, and necessity of mulch and soil stabilizing materials should be at the discretion of the regulatory authority. The provision in the State program is no less effective than the Federal requirements.

43. EPI commented that Ohio omits the Federal provision at 30 CFR 816.115 setting revegetation standards when the approved post-mining land use is for pastureland. The Secretary notes that Sections 816.115 and 817.115 have been suspended to the extent they require that land must be used for livestock grazing when the approved postmining land use is range or pasture. Therefore, the State need not have revegetation standards in such an instance.

44. EPI has commented that provisions for coal processing waste used in embankments fail in five separate ways to be as effective as the Federal requirements in 30 CFR 816.81–93.

EPI first points out that the State regulations, OAC 1501:13–9–09, fail to set construction and maintenance standards consistent with 30 CFR 816.81(a). The provision in the Ohio regulation is as effective as the Federal regulation except that it does not apply the excess spoil regulations, 30 CFR 816.71, to disposal of coal processing waste. This is made a condition of approval of the program. *See* Finding 13.4 and discussion under Performance Standards comment number 11.

EPI next points out the State's regulation fails to require site inspections consistent with the Federal regulations. The Federal regulations require an inspection at least quarterly beginning within 7 days after preparation of the disposal site begins. 30 CFR 816.82(a)(1). The State regulation provides that the Chief may impose inspection requirements.

EPI also points out that the State regulation fails to require a subdrainage system consistent with 30 CFR 816.83(c). However, the State regulation, OAC 1501:13–9–09(B), does require underdrains in all wet seep areas and in all defined waterways. This is as effective as the Federal regulation which requires a subdrainage system unless the operator can satisfactorily demonstrate that one is not needed to insure the structural integrity of the waste bank. EPI, in addition, points out that the State

regulations do not require the diversion of surface drainage around the waste bank. It also does not require compliance with the water quality standards established in the Federal regulation, 30 CFR 816.83 (b) and (d). However, the State regulation does provide that surface drainage from outside the disposal site shall be prevented from contacting the coal waste. The regulation has general provisions which are as effective as the water quality standards set in the Federal regulation.

Finally, EPI points out that the State has not set construction standards for waste banks consistent with the Federal regulations at 30 CFR 816.89 and 816.91–816.92. Section 816.89 of the Federal regulations deals with disposal of non-coal waste. The State has the same regulation at OAC 1501:13–9–09(G). The State has the same provisions for coal processing waste used in dams and embankments as in 816.91–816.93 of the Federal Regulations in a separate part of its rules, OAC 1501:13–13–09.

Approval of the program is conditioned on the State revising OAC 1501:13–9–09(A) to require inspection of coal waste banks consistent with the requirements of 30 CFR 816.82.

45. EPI commented that Ohio omits the provision for public notice of the underground mining schedule that is specifically provided for in the Federal rules at 30 CFR 817.122. The Secretary notes that 30 CFR 817.122 requires the operator to distribute the mining schedule by mail to all property owners and residents in the affected and adjacent areas, and specifies that each person shall be notified at least six months prior to mining beneath that person's property or residence. The mining schedule should include all future mining planned to occur which might cause subsidence damage to the property. The Secretary has conditioned approval of the Ohio program on the State adopting provisions requiring such public notice. *See* Finding 13.11.

46. EPI commented that Ohio fails to insure surface owner protection where subsidence from underground mining causes material damage to property as provided in 30 CFR 817.124(b) of the Federal rules. The Secretary notes that Ohio regulation 1501:13–12–02(B) requires the operator to correct material damage resulting from subsidence using appropriate means as set out in the operator's approved subsidence control plan under 1501:13–4–05(L)(4)(c). The Secretary believes the State's general requirement provides protection of the owners' rights of surface lands or structures consistent with 30 CFR 817.124(b).

47. USEPA and EPI commented that Ohio fails to provide for buffer zones to insure that underground mining activities are not conducted where damage to water sources or private structures would be likely to occur as provided for at 30 CFR 817.126. The Secretary notes that the Ohio program does not establish buffer zones beneath or adjacent to water resources or structures where underground mining will not be conducted unless additional findings are made that subsidence will not cause material damage. Ohio's position is that applicants for underground operations must meet criteria for permit approval which include findings consistent with the Federal rules for buffer zones. The State's findings for underground operations will include information generated by the applicant's subsidence control plan. The Secretary notes that Ohio incorporates provisions consistent with 30 CFR 817.126(d) into 1501:13–12–02(C)(1) requiring that the Chief suspend underground coal mining under urbanized areas, cities, towns and communities, and adjacent to industrial or commercial buildings, major impoundments and permanent streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities. In addition, OAC 1501:13–12–02(C)(3) requires the operator to minimize disturbances to the prevailing hydrologic balance when subsidence will affect an aquifer serving as a significant source for a municipal water supply, or the operator may provide an alternative water supply.

Ohio criteria for approval does lack provisions consistent with 30 CFR 817.126(a) requiring the subsidence plan to include information on subsidence and potential material damage to streams, water bodies and associated structures. OAC 1501:13–13–02 does not include such provisions and the Secretary conditions approval of the Ohio program on the State adopting regulations incorporating provisions consistent with 30 CFR 817.126(a) requiring the operator to demonstrate that subsidence will not cause material damage when underground mining is conducted beneath or adjacent to any perennial stream or impoundment having a storage capacity of 20 acre-feet or more.

48. EPI commented that Ohio authorizes in regulation 1501:13–13–01, a variance from the contemporaneous reclamation requirements of the Federal Act, and regulations 30 CFR Parts 816, 817 and 818 for concurrent surface and underground operations. The Secretary notes that 30 CFR Part 818 provides a variance for persons who combine surface mining activities with underground mining activities. The variance applies to the requirements that reclamation efforts proceed as contemporaneously as practicable for specific areas within the permit area. The Secretary finds OAC 1501:13–13–01 consistent with 30 CFR Part 818.

49. EPI commented that Ohio fails to provide for soil replacement for prime farmland consistent with the requirements of 30 CFR 823.14(b), which requires soil replacement only on land which has been first returned to grade and scarified. The Secretary notes that the revised provisions to 1501:13–13–03(D)(2) are consistent with 30 CFR 823.14(b).

50. EPI commented that Ohio's standards for mountaintop removal operations are less effective than Federal standards in at least two significant respects:

a. Ohio modifies the provision for a waiver of the outcrop barrier requirement in a manner inconsistent with 30 CFR 824.119(a)(6); and

b. Ohio requires only that damage to natural watercourses be minimized; the Federal rules preclude mountaintop operations in any case where natural watercourses are damaged under 30 CFR 824.11(a)(9).

The Secretary notes that revised materials submitted by the State on May 7, 1982, modify the requirements of 1501:13–13–07, making provisions for mountaintop removal consistent with 30 CFR Part 824.

51. EPI commented that under OAC 1501:13–13–05 Ohio fails to require that spoil used to cover the highwall be compacted, and fails to require that the backfilled area achieve a static safety factor of 1.3 as required by the Federal rules at 30 CFR 826.12(b). The Secretary notes that revised materials submitted by the State on May 7, 1982, incorporate provisions in 1501:13–13–05 to require the highwall to be completely covered with compacted spoil and that the minimum static safety factor of 1.3 be attained for all portions of the reclaimed area. The revisions render the State's rule no less effective than the Federal requirements.

52. EPI commented that Ohio's standards for dams constructed of waste material in 1501:13–13–08 fail to meet the Federal standards established at 30 CFR 816.49 and 816.91–.93 The Secretary in reviewing Ohio regulation 1501:13–13–08 finds that Ohio regulates all waste material to be used in existing or new dams. No waste material may be used without the approval of the Chief of the Division of Reclamation. The operator

must design, locate, construct, operate, maintain, modify and abandon or remove all dams, used either temporarily or permanently, which are constructed of waste materials in accordance with Ohio regulations. Ohio requires an appropriate engineering analysis to demonstrate no adverse effect on stability and no detrimental effect on downstream water quality or the environment due to acid or toxic seepage through the dam. Plans for dams must be approved by the Chief before construction and must contain the minimum requirements established by MSHA pursuant to 30 CFR 77.216. Ohio establishes construction requirements in 1501:13–13–08(B)(3) consistent with Federal regulations. These regulations address flood design, freeboard, factor of safety, foundation investigation, seepage, settlement and drawdown. Ohio requires inspection and certification of the dams by registered professional engineers. The Secretary believes that the Ohio provisions will prevent the instability and failure of coal processing waste dams. Thus, the provisions in the State regulations are no less effective than the Federal regulations.

53. USEPA commented that Ohio regulation 1501:13–9–04(G)(18) authorizes the granting of a variance from meeting the effluent limitations of applicable Federal and State laws. USEPA noted that the variance is not found in the Federal regulations. The Secretary has conditioned approval of the Ohio program on the State deleting the variance. *See* Finding 13.13.

54. The FWS commented that intensive grazing and hay production practices have adverse impacts on fish and wildlife resources similar to those associated with crop production. FWS believes the practice of planting trees, shrubs, and fence rows as described in OAC 1501:13–0–11(C)(7) is a sound wildlife management practice which would be of value to wildlife in large areas of pasture and grazing land as well as on cropland. The Secretary agrees with the FWS recommendation that certain plantings and fence rows could be of value to wildlife in pasture and grazing lands. However, the Federal regulations in 30 CFR 816.97 do not require the practice and therefore Ohio can not be required to include such a provision in the State program.

55. The FWS reviewed the State program submission for Ohio and submitted a biological opinion under Section 7 of the Endangered Species Act that the program is not likely to jeopardize the continued existence of federally listed species or destroy, or adversely modify their critical habitats.

Public Participation

1. EPI commented that Ohio fails to incorporate any of the standards for review, public participation and decision-making on permit applications that are contained in the Federal rules at 30 CFR Part 786. The Secretary notes that revised materials submitted by the State on May 7, 1982, include provisions in 1501:13–5–01 consistent with 30 CFR Part 786.

2. EPI points out that the State has failed to allow for intervention in administrative proceedings consistent with 43 CFR 4.1110. This is discussed under Finding 27.4 above, and is being made a condition of the Secretary's approval of the program.

Bonding

1. EPI comments that the State's regulations, OAC 1501:13–7–05(B)(2), allow partial release of a reclamation bond based on complete reclamation of only a portion of the permitted area. EPI contends that release of a portion of the bond for an increment of the permit area is contrary to the Federal rules as stated in the preamble to the regulations in 30 CFR 807.13, citing the preamble for the rule in the final **Federal Register** notice, 44 FR 15121.

The statement on which the commenter relies has been repudiated by OSM. Today if a bond is posted for an increment, liability under that bond does not extend to any other portion of the permit area other than that increment. A petition for rulemaking was responded to in 1981 and resulted in the suspension of the regulation in 30 CFR 808.12(c) that liability of the bond extended to the whole permit area, including liability for the hydrologic balance. *See* 46 FR 16276 (March 12, 1981) and 46 FR 42063 and 42082 (August 19, 1981).

2. EPI comments that the State has failed to include a provision in its regulations, OAC 1501:13–7–02(A), which requires that the bond amount be determined in accordance with the estimated cost of performing the reclamation. They also point out that the State limits the reclamation bond to an amount of $2,500 per acre.

These two points are not deficiencies in the Ohio Program. The State is offering an alternative bonding scheme pursuant to Section 509(c) of the Act. A separate fund is established to cover the cost of reclamation above the bond amount. *See* the discussion under Finding 18.1 above.

3. EPI has commented that the State's bonding regulations make no provision for the identification of incremental areas to be bonded. The Ohio rules define the term "incremental area," OAC 1501:13–7–01(A)(6), and provide in OAC 1501:13–7–01(B)(6)(c) that if the permittee elects to bond increments, each year a bond is to be posted to cover the amount of acreage within each increment. In informal discussions with State officials, the reason given for the failure to tie the bond for an increment to a particular incremental area is that in the past the State has found that operators sometimes mine slightly outside the area they have identified annually. In order to provide flexibility in successive years in posting bond and to avoid an overlap of bonds, the State has provided that the bond be applied to the amount of acreage without tying it to the specific affected acreage. This seems a rational solution to a minor problem. There is no requirement in the Secretary's regulations that requires a bond to be posted for specific acreage within the permit area. However, a bond is released in accordance with reclamation being completed on specific acreage. The State's regulations provide for release in such a manner.

EPI also states a concern that this provision reveals a laxity towards revisions of permits. However, the State has pointed out that this only applies to the acreage identified annually by the permittee and that significant revisions to the mining and reclamation plans are not involved. The Act only requires that a revision, which involves formal procedures, be undertaken when a significant revision to the reclamation plan is involved. SMCRA, Section 511(a)(2).

Inspection and Enforcement

1. U.S. EPA commented that the program resubmission states that documents or information obtained under Chapter 1513 of the Ohio Revised Code shall be made available to the public at central and sufficient locations. In EPA's view, there should also be adequate notice provided to the public announcing the availability and location of such documents or information. The Secretary notes that the Ohio provisions for the availability of all records, reports, inspection materials or information obtained by the State under provisions of the State program will be made available to the public in the area of mining so that they are conveniently available to residents in the area. These provisions of the State program are consistent with 30 CFR 842.16 on availability of records. The Secretary would note that State

program need only comply with the national permanent program regulations.

2. EPI comments that the State has failed to set any standards for the assessment of civil penalties that will insure a fair and uniform system. It recognizes that the point system for assessing civil penalties cannot be required.

The State has adopted the four criteria set in Section 518(a) of the Act in OAC 1501:13–14–02(C). There is no explicit requirement that a State have a rational scheme for the assessment of penalties. All a State must have in its program are rules as effective as those of the Secretary's regulations. That the State does have. If the State does not assess penalties in a fair and uniform manner, it is a matter that can be uncovered and dealt with in oversight.

3. EPI has commented on the provisions in the State program on the administrative process. They are concerned with the provisions in the State statute, ORC 1513.13 and 1513.14, that allow, in the latter instance, the Chief of the Division of Reclamation to take new evidence before rendering a decision based on a recommended decision of a hearing examiner and, under the former, the ability of the Reclamation Board of Review to re-open the record on administrative appeal. The discussion of these problems with respect to the State's regulations is contained in Finding 27.2, above. The condition being imposed for the Board of Review reopening the record should dispose of EPI's comment on this point.

However, EPI does state that under the Administrative Procedure Act (APA), 5 U.S.C. 554(d), an administrative law judge is to make the recommended decision and that a person such as the Chief is not to participate in a recommended decision, 5 U.S.C. 557.

The administrative process of the State program is different from that of OSM. OSM's process is structured in accordance with the Federal requirements. The administrative law judge who conducts the evidentiary hearing makes a recommended decision which may be appealed to the Board of Surface Mining and Reclamation Appeals. The end result of the Federal administrative process is a final decision by the Secretary of the Interior. However, under the structure of the Ohio administrative process the Chief of the Divison of Reclamation is not the final arbiter. The Reclamation Board of Review is above him. The Board is independent and it is that independence which offsets the ability of the Chief to reject the recommended findings of the hearing examiner. Thus, the net result is that the State's administrative process is as effective as the Secretary's.

4. EPI commented that Ohio fails to provide that complete and partial inspections must be made onsite as required by the current Federal rules at 30 CFR 840.11 (a) and (b). The Secretary notes that Ohio regulation 1501:13–14–01(C) requires the Chief to conduct an average of at least one partial inspection per month of each coal mining and reclamation operation under his jurisdiction. Ohio defines a partial inspection to be an onsite review of an operator's compliance. Ohio omits the word "onsite" with regard to requirements for complete inspections. However, the Secretary does not believe it would be possible to conduct a complete inspection except onsite and therefore finds Ohio regulation 1501:13–14–01 consistent with Federal regulations.

5. EPI commented that Ohio provides for a so-called "compliance review" by inspectors for the purpose of achieving voluntary compliance with the State rules. EPI maintains that this provision directly violates the mandatory enforcement standards pursuant to Section 521(a)(3) of SMCRA. The Secretary notes that Ohio regulation 1501:13–14–01(K) provides for compliance reviews to be performed by a "compliance review technician," not an authorized representative. The compliance review technician will call for an inspection officer to issue a cessation order if the circumstances of a violation are such that it creates an imminent danger. The compliance review shall not affect any rights or obligations of the State or the permittee with respect to any inspection, NOV or CO whether prior or subsequent to such compliance review. Nor will it affect the validity of any NOV or CO with respect to any condition or practice viewed at the compliance review. *See* Finding 27.8.

6. EPI commented that Ohio provides for expiration of a notice or order requiring a cessation of mining unless an adjudicatory hearing has been held within 30 days. SMCRA, Section 521(a)(5), and Federal regulations, 30 CFR 843.15, require only that an informal hearing be held. Moreover, the Federal rules provide for an automatic waiver of the hearing requirement (30 CFR 843.15(b)(1)) where a hearing is not requested. Ohio fails to incorporate this requirement into its rules. The Secretary notes that Ohio regulation 1501:13–14–02(E) establishes that, except as provided in paragraph (E)(2) of the rule, a notice of violation or order which requires cessation of mining is to expire within thirty days after it is served unless a hearing has been held pursuant to OAC 1501:13–14–04. The Secretary believes the difference between the Ohio adjudicatory hearing and the informal hearing in the Federal regulations appears to be only a wording change since the procedures are the same. In addition, not allowing for an automatic waiver of a hearing is not in conflict with the Federal requirements.

7. EPI commented that Ohio regulation 1501:13–14–01(M) fails to provide for the right of intervention in administrative proceedings consistent with the requirements of 43 CFR 4.1110(c). The Secretary notes that the State's review regulations allow for intervention in administrative proceedings but there is no right of intervention in certain instances provided for in 43 CFR Section 4.1110(c) (i) and (ii). The State must provide for intervention to a person who had a right to initiate a proceeding and to a person who has an interest which is or may be adversely affected by the outcome of the proceeding. Accordingly, approval of the Ohio Program is conditioned on the State amending its administrative review regulations to confer a right of intervention in such instances. *See* Finding 27.4.

8. EPI commented that Ohio fails to adopt standards for award of costs and expenses, including attorneys fees, for participation in administrative proceedings under the program consistent with 43 CFR 4.1290 *et seq.* The Secretary notes that revised materials submitted by the State on May 7, 1982, included provisions allowing for award of costs and expenses, including attorneys' fees reasonably incurred as a result of participation in any administrative proceeding under Chapter 1513 of the Revised Code, which result in a final order being issued by the Chief or the Board of Reclamation Review. These provisions are contained in OAC 1501:13–14–04(Q) and 1513–1–06.

9. EPI commented that Ohio appears to have grossly underestimated the number of inspectors that it needs to meet its mandate of one inspection per month per operation. The Secretary has reviewed the number of inspectors proposed for the permanent program in Ohio and finds it adequate. In some Ohio counties where coal is mined there are many operations in close proximity to one another. In these counties one inspector is capable of conducting a higher number of inspections than the national average. The Secretary accepts the State's analysis of how the staffing for the proposed State program will be adequate to carry out the functions, including performing inspections. The

adequacy of a State's staffing will receive considerable emphasis by OSM during oversight evaluation of the State's performance implementing its approved program.

10. EPI has commented that Ohio in OAC 1501:13–14–02 allows an inspector to vacate a cessation order for good cause if the failure to abate within the time previously set was not caused by lack of diligence. The commenter simply misreads the provisions of the current Federal regulations, 30 CFR 843.12 (c) and (f). Ohio has adopted the same rule as was promulgated by OSM in final on August 17, 1981. *See* 46 FR 41702, 41705. The State does not allow for vacating a cessation order. It does provide, like with the Federal rule, for the extension of the period.

Lands Unsuitable

1. EPI commented that Ohio regulation 1501:13–3–02(A)(1) provides a loophole in the definition of valid existing rights. Essentially, the State definition does not include the second part of the two-part test established under the Federal rules, 30 CFR 761.5. The Secretary notes that additional materials submitted by the State on May 7, 1982, included a revised regulation 1501:13–3–02(A)(1), which now includes the two-part test consistent with 30 CFR 761.5.

2. EPI commented that Ohio's definition of the term "cemetery" in regulation 1501:13–3–02(G) fails to include family burial grounds owned by private citizens or isolated grave sites. EPI recognizes that the burial practices of the Amish people who reside in Ohio may warrant some alteration of the Federal definition. EPI is, however, concerned that the definition goes well beyond congressional intent by authorizing mining near and through cemeteries owned by private citizens who may in fact reside hundreds of miles from the site. *See* Finding 21.2 for discussion of the State's definition of "cemetery".

3. EPI commented that Ohio limits the concept of "adjacent areas" to those resources within 500 feet of the permit area that may be adversely affected by mining. The Secretary notes that additional materials submitted by the State on May 7, 1982, included revised regulations in 1501:13–1–02(D) and 13–4–01(V)(1) that are consistent with the Federal rules.

4. EPI has commented that the Ohio regulations on administrative appeals to the Reclamation Board of Review dealing with the designation of lands unsuitable provides for an adjudicatory hearing, OAC 14–13–1–01(A)(2). EPI states that this is inconsistent with 30 CFR 764.17(a).

The hearing provided for in 30 CFR 764.17(a) is the initial hearing in response to a petition to designate lands unsuitable. That hearing is to be legislative and fact-finding in nature, not adjudicatory. The Office of Hearings and Appeals regulations, 43 CFR 4.1100 *et seq.*, do not have any particular provisions for proceedings, either initial or on review, for designating lands unsuitable. The provision in the Ohio regulations for appeals to the Reclamation Board of Review allowing the Board to re-open the record is discussed under Finding 27.2 above, and is made a condition of approval of the State's program. The State has the precise provision of 30 CFR 764.17(a) in OAC 1501:13–3–07(C). Therefore, the provisions in the State program for the initial hearing on a petition are as effective as the Secretary's regulations.

5. EPI commented that Section 522(a) of SMCRA provides that to be eligible to assume primary regulatory authority, a State must establish a planning process enabling objective decisions as to whether certain lands in the State should be designated unsuitable for mining. EPI contends that to comply with this requirement a State must demonstrate, among other things, that it has developed or is in the process of developing a data base and inventory system which will permit proper evaluation of the capacity of different lands to support and permit reclamation. EPI points out that the Ohio narrative states that such a system "will be developed," and Ohio thus has not and is not now developing the system as required by SMCRA. The Secretary, through conversations with Ohio officials is aware that the State has begun development of its data base as required. Much of the information is already available and could be utilized should petitions be filed soon after the State is granted primacy.

D. Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and for the Secretary to assist the States in becoming the primary regulators under the Act. To enable the States to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several State organizations such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with State regulatory authority personnel to discuss informally how the Act should be administered, with particular reference to unique circumstances in individual States. Often these meetings have been a way for OSM and the States to test new ideas and for OSM to explain portions of the Federal requirements and how the States might meet them. Alternative State regulatory options, the "state window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has disbursed over $8.5 million in program development grants and over $54.8 million in initial program grants to help the States develop their programs, to administer their initial regulatory programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances, OSM detailed its personnel to States to assist in the preparation of their permanent program submissions. OSM has also met with individual States to determine how best to meet the Act's environmental protection standards.

Equally important, the Secretary structured the State program approval process to assist the States in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each State program to identify needed changes and to allow them to be made without penalty to the State. The Secretary adopted a special policy to ensure that communication with the States remained open and uninhibited at all times. This policy was critical in avoiding a period of enforced silence with a State after the close of the public comment period on its program and has been a vital part of the program review process (*See* 44 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a State program. Under the Secretary's regulations, conditional approval gives full primacy to a State even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under Sections 301(c), 502(b), and 503(a)(7) of SMCRA.

The Act expressly gives the Secretary only two options—to approve or disapprove a State program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that

result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program, 30 CFR 732.(13)(i).

Conditional approval has had a vital effect for programs approved in the Secretary's initial decision: It has resulted in the implementation of the permanent program in a State months earlier than might otherwise be anticipated. It has avoided the unnecessary imposition of a Federal program in a State which has indicated an intention and capability of implementing and enforcing a State program. While this may not be significant in States that already have comprehensive surface mining regulatory programs, in many States earlier implementation initiated a much higher degree of environmental protection. Conditional approval has also implemented the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability. A Federal program in a State imposes a delay of a year's time for the designation process. SMCRA Section 504(a).

As provided in 30 CFR 732.13(i), the Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the State's willingness to actively proceed with steps to correct the deficiencies. Without the State's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulation states, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a State must be able to operate the basic components of the permanent program: The designation process; the permit and coal exploration system; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition, there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular State in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through Attorney General's opinions, revised regulations, policy statements, changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would be likely be major.

The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. 30 CFR 732.13(i) gives the Secretary little discretion in terminating programs where the State, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist the States in achieving primacy.

E. The Secretary's Decision

As indicated above under "Secretary's Findings," there are deficiencies in the Ohio program which the Secretary requires to be corrected. In all other respects, the Ohio program meets the criteria for approval. The deficiencies identified in prior findings are summarized below and an explanation is given to show why each deficiency is minor, as required by 30 CFR 732.13(i).

1. As discussed in Finding 1.2, the Ohio program definition for "coal mining operations" in ORC Section 1513.01(g)(2) adds the phrase, "but does not include public roadways." This deficiency is considered minor because the Secretary believes that only rarely do surface coal mine operators in Ohio construct new public roads or improve existing public roads in order to gain access to the site.

2. As discussed under Finding 1.12, Ohio has a provision, Section 5 of Chapter 1513 of the ORC, which would nullify the effect of any provision of the Surface Mining Act or the Secretary's regulations if a Federal court in a jurisdiction outside Ohio were to overturn a provision of the Act or the Secretary's regulations. This deficiency is considered minor because the Secretary believes that few provisions are expected to be struck down by other courts prior to the State effecting the necessary change.

3. As discussed in Findings, 1.5, 1.9 and 13.6, the Ohio program allows certain work involving engineering matters, including preparation of plans, design of structures and construction certification, to be performed by surveyors. This deficiency is considered minor since Ohio has agreed that until the statute and regulations can be amended, the State will only accept work from surveyors which the current Ohio law for registration of surveyors authorizes. This includes, under Chapter 4733.01(D) of the ORC, measuring the area of any portion of the earth's surface, the lengths and directions of the bounding lines, and the contour of the surface, for their correct determination and description and for conveyancing for recording, or for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions; and like measurements and operations involved in surveying mines, commonly known as "mine surveying."

4. As discussed in Finding 12.1 the Ohio program allows the Chief of the Division of Reclamation discretion to require modification of existing structures which do not meet the performance standards of the State program. This deficiency is considered minor because the Chief has agreed to require modification until such time as the State regulation is amended.

5. As discussed in Finding 12.2, the State program, in regulation 1501: 13–1–01(A), exempts persons who obtained a permit after September 1, 1981, from applying for a new permit after approval of the program. This deficiency is considered minor because the State has other authority to require modification of permits and has agreed to utilize it.

6. The deficiencies listed below relate to Ohio's performance standards:

a. As discussed in Finding 13.4 the Ohio program does not include provisions governing the disposal of coal waste in excess spoil fills. this deficiency is considered minor because the State will require descriptions, including appropriate maps and cross sections of the proposed disposal site and design of the spoil disposal to include consideration for use of coal waste, if any, in the excess spoil fill. The design would be required to show compliance with performance standards including stability.

b. As discussed in Finding 13.7, the State program allows an exemption to requirements for contemporaneous reclamation where required by the "method of mining". This deficiency is considered minor because the exemption can only be granted by the

Chief and he has agreed not to grant any until the regulation can be amended.

c. As discussed in Finding 13.8, the State program provides that areas affected by underground mining operations that have become stabilized may be retained in their existing configuration. This deficiency is considered minor because the regulations will be amended deleting the exemption before any underground mining operation would make use of it.

d. As discussed in Finding 13.9, the State program does not require that resoiling occur as contemporaneously as practicable with mining operations. This deficiency is considered minor because the regulation will be amended to require contemporaneous resoiling prior to the need for resoiling on most operations permitted under the approved State program.

e. As discussed in Finding 13.10, the State program does not require persons conducting surface mining activities to notify the regulatory authority at a time when a slide occurs which may have a potential adverse effect on public property, health, safety, or the environment. This deficiency is considered minor because the existing State rule requires notification in cases where slides occur that may have an imminent adverse effect. In addition, the regulation will be amended to require notification in the additional situations before many such situations could arise as a result of operations conducted pursuant to the approved State program.

f. As discussed in Finding 13.11, the Ohio program does not require operators of underground mines to distribute a notice of mining. This deficiency is considered minor because few, if any, operators of underground mines will be operating under permits issued pursuant to the approved State program prior to the rule change.

g. As discussed in Finding 13.12, the Ohio program contains provisions allowing the period of extended responsibility under the performance bond requirement to begin at the last time of seeding, planting, fertilizing and other work and the program contains examples expanding the meaning of augmented work. This deficiency is considered minor because the period of extended responsibility will not begin for permits issued under the program until the regulations have been amended.

h. As discussed in response to comment number 44 under Performance Standards, the Ohio program does not include requirements for inspection of coal waste banks as required under 30 CFR 816.82. This deficiency is considered minor because only a moderate number of coal waste banks are expected to be constructed prior to the State establishing a regulation.

i. As discussed in Finding 13.13, the Ohio program contains provisions allowing the Chief to grant a variance from the applicable Federal and State effluent limitations at the time for removal of sediment ponds. This deficiency is considered minor because the regulations will be amended to delete the variance before a significant number of sediment ponds constructed under the permanent program will be removed.

j. As discussed in comment number 47 related to performance standards, the Ohio program does not include provisions requiring the applicant's subsidence control plan to consider material damage to streams, water bodies and associated structures and to require that measures be taken to correct the damage. This deficiency is considered minor because only a moderate number of underground operations are expected to be permitted before the State establishes a regulation.

7. As discussed in Finding 15.3, the Ohio program contains provisions allowing the Chief to exempt persons conducting coal exploration from compliance with the performance standards. This deficiency is considered minor because the Chief has agreed not to exempt those conducting coal exploration from compliance with performance standards until such time as the regulations are modified to delete the exemption.

8. The deficiencies listed below relate to Ohio's bonding provisions:

a. As discussed in Finding 18.1, the Ohio program, through its current bonding system, will not assure timely reclamation at the site of all operations upon which bond has been forfeited. This deficiency is considered minor because forfeitures are not likely under permits issued pursuant to the approved State program until the State amends its bonding system.

b. As discussed in Finding 18.5, the Ohio program does not include requirements to file a bond at least 30 days prior to commencement of mining operations. This deficiency is considered minor because existing regulations require a bond, or bonds to be filed before mining commences.

c. As discussed in Finding 18.7, the Ohio program does not require cessation of operations in the event an operator does not replace bond coverage within a reasonable time. This deficiency is considered minor because very few, if any, operators are likely to experience loss of bond coverage before the rule can be changed.

9. As discussed in Findings 25.1, 25.3 and 25.5, the Ohio program omits certain requirements for the exchange of SOAP data, the filing for assistance, and a requirement for applying for a permit. These deficiencies are considered minor because the regulations will be amended within six months of the date of approval.

10. As discussed in Finding 25.4, the State program authorizes use of SOAP operational funds for test borings, corings and observation wells. This deficiency is considered minor because the State has agreed not to utilize Federal funds for these services until it submits a policy statement that such services will be paid for using funds other than funds provided by OSM.

11. The deficiencies listed below relate to Ohio's provisions for administrative and judicial review:

a. As discussed in Finding 27.1, the State program does not require the prepayment of a civil penalty in order to contest the amount or the fact of a violation. This deficiency is considered minor because persons seeking review by the Chief who will not prepay the penalty will have the decision of the Chief within the same time period as provided under the Federal rules for an informal conference. Prepayment is then required for appeals to the Reclamation Board of Review.

b. As discussed in Finding 27.2, the Ohio program allows opportunity for *de novo* hearings for review by the Chief and the Reclamation Board of Review. This deficiency is considered minor because the Secretary does not expect a significant number of hearings to be held before the State can effect a regulation change.

c. As discussed in Finding 27.3, the Ohio program fails to provide for discovery against the Chief or the Division of Reclamation for administrative review. This deficiency is considered minor because although the State does not have any formal regulation providing for it, they have allowed discovery in all administrative proceedings that have been conducted to date.

d. As discussed in Finding 27.4, the Ohio program does not confer a right of intervention on a person who had a right to initiate a proceeding and to a person who has an interest which is or may be adversely affected by the outcome of the proceeding. This deficiency is considered minor because there will not be a significant number of administrative proceedings prior to the time the State effects a regulation change in which intervention is sought by persons having a right under Federal

regulation. The Chief has the discretion to grant intervention to such persons.

e. As discussed in Finding 27.5, the Ohio program does not include provisions for the burden of proof in review of notices of violations, cessation orders and orders for permit suspension or revocation. With respect to burden of proof in permit suspensions and revocations, this deficiency is considered minor because no permanent program permits will be issued, let alone suspended, before the deadline for amending the State's administrative review provisions. With respect to review of notices of violations and cessation orders, few such proceedings are expected before the deadline for meeting the condition.

Given the nature of the deficiencies set forth in the Secretary's Findings and their magnitude in relation to all the other provisions of the Ohio program, the Secretary of the Interior has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size, number and nature as to render no part of the Ohio program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII and the deficiencies will be promptly corrected.

2. Ohio has initiated and is actively proceeding with steps to correct the deficiencies; and

3. Ohio has agreed, by letter dated July 28, 1982, to correct the regulatory and statutory deficiencies by the dates specified in 30 CFR Part 935.

Accordingly, the Secretary is conditionally approving the Ohio program. The Secretary shall initiate steps to terminate approval if regulations correcting the deficiencies are not promulgated by the dates specified above.

This conditional approval is effective August 16, 1982. Beginning on that date, the Ohio Department of Natural Resources shall be deemed the Regulatory Authority in Ohio and all Ohio surface coal mining and reclamation operations on non-federal and non-Indian lands and all coal exploration on non-federal and non-indian lands in Ohio shall be subject to the permanent regulatory program.

On non-federal and non-Indian lands in Ohio, the permanent regulatory program consists of the State program approved by the Secretary. Following this approval, in accordance with section 523(c) of SMCRA, Ohio may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State.

The Secretary's approval of the Ohio program in this notice relates only to the permanent regulatory program under Title V of SMCRA. This approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program. Approval of the State's Reclamation Plan is being given in a separate notice.

F. Additional Information

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 6 and 8 of Executive Order 12291 for all actions taken to approve or conditionally approve, State regulatory programs, actions, or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this action.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Indexing Requirements

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 1982.

James G. Watt,

Secretary of the Interior.

Therefore, 30 CFR Chapter VII is amended by adding a new Part 935 as set forth herein.

PART 935—OHIO

Sec.

935.1 Scope.
935.10 State Regulatory Program Approval.
935.11 Conditions of state regulatory program approval.

Authority: Public Law 95–87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*)

§ 935.1 Scope.

This Part contains all rules applicable only within Ohio that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 935.10 State regulatory program approval.

The Ohio state program as submitted on February 29, 1980, and resubmitted on January 22, 1982, is conditionally approved, effective August 16, 1982. Beginning on that date, the Department of Natural Resources shall be deemed the regulatory authority in Ohio for all surface coal mining and reclamation operations and for all exploration operations on non-federal and non-Indian lands. Only surface coal mining and reclamation operations on non-federal and non-Indian lands shall be subject to the provisions of the Ohio permanent regulatory program.

Copies of the approved program, together with copies of the letter of the Department of Natural Resources agreeing to the conditions in 30 CFR 935.11 are available at:

(a) Division of Reclamation, Ohio Department of Natural Resources, Fountain Square, Bldg. B, Columbus, Ohio 43224, Telephone: (614) 265–6633

(b) Office of Surface Mining, Rm. 5315, 1100 L St., NW., Washington, D.C. 20240, Telephone: (202) 343–4728

§ 935.11 Conditions of State regulatory program approval.

The approval of the Ohio State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary requires the change be made.

(a) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by August 8, 1983, copies of enacted legislation amending ORC Section 1513.01(G)(2) to eliminate the phrase "but not to include public roadways."

(b) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by August 8, 1983, copies of enacted legislation or a statement from the Attorney General limiting the effect of Section 5, ORC Chapter 1513, to Federal courts with jurisdiction in the State.

(c) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by August 8, 1983, copies of enacted legislation amending Chapter 1513 of the ORC and promulgated regulations to require work to be performed by registered professional engineers in instances required by SMCRA and the Federal regulations.

(d) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by

February 8, 1983, copies of promulgated regulations which would require modification of existing structures under the circumstances contained in 30 CFR 701.11(d)(1)(iii).

(e) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by September 16, 1982, copies of promulgated regulations deleting the provision in OAC 1501:13–1–01(A) exempting persons holding permits issued after September 1, 1981, from the requirement to apply for a new permit after approval of the program.

(f) Steps will be taken to terminate the approval found in § 935.10:

(1) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations providing for regulation of disposal of coal waste in excess spoil fills consistent with 30 CFR 816.71(k).

(2) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations deleting the exemption from contemporaneous reclamation where required by "method of mining".

(3) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations deleting the provision in OAC 1501:13–9–14(C)(4) allowing areas affected by underground mining operations that have become stabilized over the long term to be retained in their existing configuration.

(4) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations requiring resoiling as contemporaneously as practicable with mining.

(5) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations requiring notification to the Division of Reclamation of slides that may have a potential adverse effect on public property, health, safety, or the environment.

(6) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations requiring public notice of underground mining schedules consistent with 30 CFR 817.122.

(7) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations establishing the beginning of the period for extended responsibility consistent with 30 CFR 816.116(b)(1) and deleting or limiting the examples of normal management practices and minor regrading.

(8) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations amending OAC 1501:13–9–09(A) to require inspection of coal waste banks consistent with 30 CFR 816.82.

(9) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations amending OAC 1501:13–9–04(G)(18) to delete authority to grant a variance from applicable Federal and State effluent limitations at the time for removal of sediment ponds.

(10) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations consistent with 30 CFR 817.126(a) requiring subsidence control plans to include consideration of damage to streams, water and associated structures.

(g) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations deleting the provision in OAC 1501:13–8–01(C), exempting persons who conduct coal exploration from complying with performance standards.

(h) Steps will be taken to terminate the approval found in § 935.10:

(1) Unless Ohio submits to the Secretary by August 8, 1983, copies of amendments to its program revising the current bonding system to provide assurance of more timely reclamation at the site of all operations upon which bond has been forfeited.

(2) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations consistent with 30 CFR 800.11(b)(2) insuring that bonds shall be filed at least 30 days prior to commencement of mining on the next incremental areas.

(3) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations consistent with 30 CFR 806.12(e)(6)(iii) assuring that an operator will not be allowed to operate without bond coverage beyond a reasonable period in order to replace coverage.

(i) Steps will be initiated to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by February 8, 1983:

(1) A statement of policy indicating that Ohio will develop and implement procedures for data coordination and exchange with State and Federal agencies.

(2) Copies of promulgated regulations requiring additional information to be submitted by applicants for SOAP assistance including:

(i) The anticipated termination date of the operation,

(ii) A statement of coal seam thickness,

(iii) The legal right of entry.

(3) Copies of promulgated regulations requiring small operators to submit a permit application within one year of receiving approved SOAP reports.

(j) Steps will be initiated to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by February 8, 1983, a statement of policy that costs to small operators for test borings, corings, and observation wells will be paid using funds other than SOAP operational funds provided by OSM.

(k) Steps will be initiated to terminate the approval found in § 935.10:

(1) Unless Ohio submits to the Secretary by August 8, 1983, copies of enacted legislation and promulgated regulations to require the pre-payment of a civil penalty in order to contest either the amount or the fact of the violation.

(2) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations eliminating the opportunity for a *de novo* hearing or providing safeguards against abuses to the record developed at the initial hearing in an administrative appeal to the Reclamation Board of Review.

(3) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations amending administrative review provisions to formally provide for discovery against the Chief or the Division of Reclamation.

(4) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations amending provisions to allow for intervention in instances provided for in 43 CFR 4.1110(c) (i) and (ii).

(5) Unless Ohio submits to the Secretary by February 8, 1983, copies of promulgated regulations establishing burden of proof provisions consistent with 43 CFR 4.1171 and 4.1193.

[FR Doc. 82–21471 Filed 8–9–82; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 935

Approval of the Abandoned Mine Reclamation Plan for the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On October 20, 1980, the State of Ohio, Department of Natural Resources (DNR), submitted to OSM its proposed Abandoned Mine Land Reclamation Plan (Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the State's intent and capability to assume responsibility for administering and

conducting the Abandoned Mine Land Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, 43 FR 49932–49952, October 25, 1978). After opportunity for public comment and review of the Plan submission, the Assistant Secretary for Energy and Minerals of the Department of the Interior has determined that the Ohio Abandoned Mine Reclamation Plan meets the requirements of SMCRA and the Abandoned Mine Land Reclamation Program. Accordingly, the Assistant Secretary has approved the Ohio Plan.

EFFECTIVE DATE: This approval is effective August 10, 1982.

ADDRESSES: Copies of the full text of the Ohio Plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region III, 46 East Ohio Street, Indianapolis, Indiana 46204

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Don Willen, Chief, Division of Abandoned Mine Lands, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone (202) 343–7951.

SUPPLEMENTARY INFORMATION:

General Background of the Abandoned Mine Land Reclamation Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State reclamation plan demonstrating its capability for administering an abandoned mine land reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49947–49949, October 25, 1978). Under those regulations, the Director is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to the OSM on an annual basis a grant application for funds to be expended in that State on specific reclamation projects, which are necessary to implement the State reclamation plan as approved. Annual grant requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new subchapter T to 30 CFR Chapter VII. Subchapter T consists of parts 900 through 950. Provisions relating to Ohio are found in 30 CFR Part 935.

Background on the Ohio Abandoned Mine Land Reclamation Plan Submission

On July 5, 1979, a cooperative agreement between the Ohio Department of Natural Resources and the OSM was approved. The purpose of this agreement was to assure that information required for the preparation of the Ohio Abandoned Mine Land Reclamation Plan would be assembled.

The Ohio Department of Natural Resources held public meetings on Ohio's proposed Abandoned Mine Land Reclamation Plan at the following locations:

St. Clairsville, May 8, 1980
Cambridge, May 13, 1980
Athens, May 15, 1980
Rio Grande, May 27, 1980
Youngstown, May 29, 1980

On November 10, 1980, and June 26, 1981, representatives of the DNR and OSM met to discuss amendments and modifications to the original Plan.

On December 1, 1980, the Office of Surface Mining conducted a public hearing in Zanesville, Ohio. No comments were received.

On November 21, 1980, November 2, 1981, and January 22, 1982, the DNR submitted revisions to the Ohio Abandoned Mine Lands Reclamation Plan. These revisions were incorporated into the Reclamation Plan.

The revised pages contained several amendments and modifications to the original plan as a result of the discussions between representatives of the DNR and OSM.

All of the documents mentioned above are available for public inspection at the offices of OSM and the Department of Natural Resources listed under "**ADDRESSES.**"

Notice of receipt of the submission initiating the Plan review was published October 28, 1980 (45 FR 71371–71373). The announcement requested public comments and scheduled a public hearing for December 1, 1980. The public hearing was held as scheduled and there were no public comments.

On August 26, 1981, the Regional Director and on December 24, 1981, the Assistant Director for Program Operations and Inspection recommended to the Director that the Assistant Secretary approve the Ohio Plan.

The administrative record on the Ohio Plan is available for review during regular business hours at the Office of Surface Mining Reclamation and Enforcement, Region III, 46 East Ohio Street, Indianapolis, Indiana 46204.

Assistant Secretary's Findings

1. In accordance with Section 405 of SMCRA, the Assistant Secretary finds that Ohio has submitted a Plan for reclamation of abandoned mine lands and has the ability and necessary State legislation to implement the provisions of Title IV of SMCRA.

2. The Assistant Secretary has determined, pursuant to 30 CFR 884.14, that:

(a) The Department of Natural Resources has the legal authority, policies and administrative structure necessary to carry out the Plan;

(b) The Plan meets all the requirements of 30 CFR Chapter VII, Subchapter R;

(c) The State has an approved regulatory program; and

(d) The Plan is in compliance with all applicable State and Federal laws and regulations.

3. The Assistant Secretary has solicited and considered the views of other Federal Agencies having an interest in the Plan as required by 30 CFR 884.13(a)(2). These agencies include the Bureau of Mines (BOM), Bureau of Land Management (BLM), Soil Conservation Service (SCS), U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (FWS), U.S. Geological Survey (USGS), U.S. Army Corp. of Engineers (COE), and the Environmental Protection Agency (EPA).

Disposition of Comments

1. The BOM commented that a 1978 report that pertains to nonfuel mineral resources is available rather than the 1977 statistics quoted in the Plan. This has been brought to the attention of the regulatory authority for use in updating the Plan.

2. The FWS commented that the Ohio Department of Natural Resources policy to: "Inventory all natural areas, habitats of rare and endangered species, and geological features which have State or National significance and maintain a registry" should be more specific and include a reference to Federally listed or threatened and endangered species and those proposed to be listed. OSM's response is that the Ohio Plan includes a list of endangered species and the methodoloy for insuring that any chance encounter with rare and/or endangered species will be properly addressed. The State's Ranking and Selection process provides for the consideration of rare or endangered species in the Site Evaluation Matrix, the A–95 review process and the State's annual work plan.

The OSM is satisfied that adequate opportunity for consideration for rare and endangered species will be provided.

3. The FWS commented that the Ohio Plan should identify the administering agency as provided in Section (c)(9)(a) of the Abandoned Mine Land Reclamation Program Final Guidelines as published in the **Federal Register** (45 FR 14810–14819). OSM's response is that the guidelines in "A. Definitions," define the administering agency as "the agency that has the responsibility for carrying out a reclamation program or project." This includes "designated State reclamation agencies for projects carried out under an approved State Reclamation Plan." Sections 1.1 and 1.2 of the Ohio Abandoned Mine Lands Reclamation Plan identifies the Department of Natural Resources, Division of Reclamation as the designated State agency responsible for administering Title IV of SMCRA.

4. The FWS commented that the "timing and means of coordination pursuant to the statute," Section (c)(9)(a) of the Abandoned Mine Land Program Final Guidelines, "should be clearly stated." OSM's response is that the reference to the Abandoned Mine Land Reclamation Program Final Guidelines as statutory authority is incorrect. The "Guidelines" are not intended as law.

The Ohio Plan provides for an annual submission of proposed projects that is reviewed by State and area clearinghouses under the A–95 process. The "Administration and Management" section of the Ohio Plan specifically provides for assistance of the Division of Wildlife and for other entities of State government to be consulted when appropriate. In Table 5.1.1 the Division of Wildlife is charged with endangered species responsibility for each project area. The Memorandum of Understanding (MOU) between OSM and FWS on Coal Programs signed on June 10, 1980, for a five year period provides for Abandoned Mine Lands (AML) Programs under Section III C.

5. The FWS commented that the project selection process and site evaluation matrix do not give adequate consideration to fish and wildlife values, and that endangered and threatened species should be ranked as a separate feature. OSM's response is that the project ranking and selection process is detailed in Section 4.5 of the Ohio Plan. The process provides for identification of projects by public participation, State program participation and Federal program participation. Identified projects are ranked and selected in a three stage process. The first is in compliance with the priorities of SMCRA, the second considers 30 CFR 874.14, and the third stage provides preference to projects which incorporate as part of reclamation the improvement of the use of natural resources. In all cases review and input is provided through the A–95 process, public participation and the development of an environmental analysis for projects.

The Site Evaluation Matrix under the environmental parameter specifically provides for the consideration of rare and endangered species. The OSM is satisfied that the ranking and selection process and the Site Evaluation Matrix will provide for adequate consideration of fish and wildlife values.

6. The U.S. Geological Survey had no adverse comments on the Ohio Plan. It provided geologic and topographic information on landslides and related features which were brought to the attention of the regulatory authority.

7. The COE commented that, based on its water quality analysis results explained on page 75 of its Phase II Acid Mine Drainage report for the Metro Wheeling Urban Study, the second paragraph of page 109 of Section III be revised. The following would replace the sentence: "Of the three, Captina Creek's Drainage was found to be the most severely affected." It was found that the Captina Creek's watershed streams carry approximately 57% of the total amount of daily pollutional loads in the entire Metro Wheeling study area. However, this does not necessarily reflect that all, or most streams in this watershed, are classified as "Severely Affected" by acid mine drainage. It was noted that other factors such as the availability of stream flow for dilution purposes were considered in arriving at the final classification of each stream or stream segment.

This change has been provided to the State for incorporation into the Plan. COE also had several editorial comments regarding dates of publication of reports. These were brought to the attention of the State.

8. The USFS and SCS commented that the USFS should be a member of the State Reclamation Committee because the Wayne National Forest has sizeable acreage of abandoned mine lands within its boundaries. OSM's response is that there is no requirement that the USFS be included as a member of the State Reclamation Committee. However, the Ohio DNR will maintain close coordination with the USFS on AML projects associated with or involving Forest Service Lands.

9. The USFS commented that the Ohio Division of Forestry should be active on the Technical Advisory Committee. OSM's response is that the Ohio Plan in the "Administration and Management" section provides for assistance of other entities of State government to be consulted when appropriate. The Ohio Division of Forestry is within the Department of Natural Resources and will have opportunity to participate in review of proposed projects through the annual submission and A–95 State and Area Clearinghouse procedures. The suggestion that the Ohio Division of Forestry be a member of the Technical Advisory Committee has been presented to the State for consideration.

10. The Environmental Protection Agency (EPA) raised the question of how will the many miles of tributaries for which no water quality data is available be incorporated in the reclamation program? This comment stems from page 326 of the Plan which states that streams identified as "mine

drainage affected" were based on two studies which considered only those streams for which water quality data were available. The Office's response is that the State Plan only need contain existing and readily available information (43 FR 49938). It is recognized, however, that additional information may have to be obtained in future years to either update the State Plan or to fill in minor gaps.

11. The EPA commented that, in table 4.5.1 (page 35 and 204) of the Plan, a number of parameters used for conducting a site evaluation are listed and that the impact scoring system for the water quality parameter only addresses surface groundwaters. OSM's response is that the reference to surface waters in the table is only meant to serve as an example. Other parts of the Plan, in defining water quality and considering hydrologic impact, clearly consider groundwater as well as surface water. It is clear that, on a site which impacts groundwater, groundwater should be one of the project evaluation factors. The OSM is satisfied that groundwater will receive adequate consideration under the Plan.

12. The EPA commented that the Attorney General's opinion (p. 43 of the Plan) is prospective because the enabling legislation has not yet passed the Ohio legislature and therefore the requirement of 30 CFR 884.13(b) for present authority is lacking. OSM's response is that this requirement was met in February 1981.

Additional Findings

The Office of Surface Mining has examined this rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981), and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have a significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Ohio Abandoned Mine Land Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to policies, procedures and organization of the State's Abandoned Mine Land Reclamation Program. Therefore, under the Department of Interior Manual DM 516.2.3(A)(1), the Assistant Secretary's decision on the Ohio Plan is categorically excluded from the National Environmental Policy Act requirements. As a result, no environmental assessment (EA) or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also, an EA or an EIS will be prepared for the approval of grants for the abandoned mine lands reclamation projects under 30 CFR Part 886.

This approval is effective upon publication (August 10, 1982). The good cause for making this rule effective upon date of publication is: (1) OSM desires to minimize the time between the approval of the Title V regulatory programs and the Title IV State reclamation program plans, and (2) Grants are awarded pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act.

Dated: August 3, 1982.

J. R. Harris,

Director, Office of Surface Mining.

Dated: August 3, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, and Underground mining.

PART 935—OHIO

Therefore, Part 935 is amended by adding § 935.20 to read as follows:

§ 935.20 Approval of the Ohio Abandoned Mine Reclamation Plan.

The Ohio Abandoned Mine Reclamation Plan as submitted on October 20, 1980, is approved. Copies of the approved program are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region III, 46 East Ohio Street, Indianapolis, Indiana 46204;

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Columbus, Ohio 43224;

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240.

[FR Doc. 82-21532 Filed 8-9-82; 8:45 am]

BILLING CODE 4301-05-M

federal register

Tuesday
August 10, 1982

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Approval of the State of Tennessee Reclamation Plan for Land and Waters Affected by Past Mining; and Conditional Approval of the Permanent Regulatory Program Submission From the State of Tennessee Under the Surface Mining Control and Reclamation Act of 1977

DEPARTMENT OF THE INTERIOR

30 CFR Part 942

Conditional Approval of the Permanent Regulatory Program Submission From the State of Tennessee Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: On February 3, 1982, the State of Tennessee resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* This followed an initial approval in part and disapproval in part of the proposed program which was published in the **Federal Register** on October 10, 1980, (45 FR 67372–67395). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

Only those portions of the State's original submission which were initially not approved or which were changed are considered in this decision. This rule grants conditional approval of the Tennessee permanent regulatory program.

A new Part 942 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective August 10, 1982. This conditional approval will terminate as specified in 30 CFR 942.11 unless the deficiencies identified below have been corrected in accordance with the dates specified in 30 CFR 942.11.

ADDRESSES: See "Supplementary Information" for addresses where copies of the Tennessee program and administrative record on the Tennessee program are available.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–5361.

SUPPLEMENTARY INFORMATION:

Availability of Copies. Copies of the Tennessee program and the administrative record on the Tennessee program are available for public inspection and copying during regular business hours at:

Administrative Record Room, Office of Surface Mining, Room 5315, 1100 L Street, NW., Washington, D.C. 20240 Telephone: (202) 343–4728;

Administrative Record Room, Office of Surface Mining, Region II, 530 Gay Street, S.W., Suite 500, Knoxville, TN 37902;

Division of Surface Mining, 701 Broadway, Nashville, Tennessee 37203;

Division of Surface Mining, Dempster Building, 305 West Springdale Avenue, Knoxville, Tennessee 37919.

Background

The general background on the permanent program, the program approval process, and the Tennessee program submission were discussed in the **Federal Register**, October 10, 1980 (45 FR 67372–67375). Subsequent to publication of that **Federal Register** notice, amendments to the federal regulations were published December 12, 1980 (45 FR 82084–82100); July 17, 1981 (46 FR 37232); September 29, 1981 (46 FR 47720), October 8, 1981 (46 FR 50018–50019); October 28, 1981 (46 FR 53376) and December 7, 1981 (46 FR 59934–59936). An interpretive rule was published November 7, 1980 (45 FR 73945–73946). Additional regulations were suspended pending further rulemaking August 19, 1981 (46 FR 42063).

Also, in the October 10, 1980 **Federal Register** notice, the Secretary announced his partial approval and partial disapproval of the Tennessee program. The rules in the State's initial submission were disapproved and the legislative provisions were approved with the exceptions noted under the heading "Approval in Part/Disapproval in Part", October 10, 1980 (45 FR 67394–67395).

Background on the Tennessee Resubmission

In accordance with the procedures set forth in 30 CFR 732.13(f), the State of Tennessee originally had 60 days from the date of publication of the Secretary's partial approval decision on October 10, 1980, to resubmit a revised program for consideration. On December 5, 1980, the Tennessee Chancery Court enjoined the Tennessee Department of Conservation (DOC) from submitting or resubmitting to the Office of Surface Mining (OSM) the Tennessee Permanent State Program. On February 2, 1982, acting upon a motion by Tennessee, the Court terminated the injunction. The State submitted its revised program for consideration on February 3, 1982. Announcement of Tennessee's resubmission was made in newspapers of general circulation within the State of Tennessee and published in the **Federal Register** on February 10, 1982 (47 FR 6031). That **Federal Register** notice also announced a public comment period extending to March 12, 1982, and a public hearing which was held on March 10, 1982, in Knoxville, Tennessee. As a result of preliminary review by OSM and the comments received during the public comment period in March 1982, a number of changes were identified as necessary to make the Tennessee program no less effective than the Federal requirements in SMCRA and 30 CFR Chapter VII. The State was advised of the need to make these changes by letters of April 9 and April 30, 1982 (Administrative Record Nos. TN–503 and 510). The April 30, 1982, letter dealt mainly with typographical and reference errors in the State regulations. OSM met with the DOC on April 22, 1982, at which time agreement was reached on the final form for all but a few of the changes. The meeting summary describing the changes and agreements was entered into the Administrative Record on April 30, 1982 (TN–509). A letter following up on two issues was sent to the State on May 10, 1982 (Administrative Record No. TN–514). Tennessee submitted modifications to the resubmission on May 13 and a public comment period was opened on these modifications from May 17 through May 27, 1982. During the review of the regulations by the Tennessee Attorney General, all or portions of three chapters were deleted from the final regulations which the Attorney General certified. Notice of these changes in the regulations will be made through the program amendment procedure in order to provide opportunity for public review and comment. The Administrator of the Environmental Protection Agency transmitted her written concurrence on the February 3, 1982 Tennessee program submission on April 19, 1982. A separate letter of concurrence dated June 23, 1982, was submitted by EPA for the program modifications submitted by Tennessee on May 13, 1982. The Regional Director completed his program review on June 7, 1982, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

The Director recommended to the Secretary that the Tennessee program be conditionally approved.

The statement of the basis and purpose for the Secretary's decision to conditionally approve Tennessee's

program consists of this notice and the October 10, 1980 **Federal Register** notice announcing the Secretary's initial decision. The Tennessee program consists of the formal submission of February 28, 1980, (Administrative Record No. TN–17), as amended on June 11, 1980, June 19, 1980, February 3, 1982 and May 13, 1982 (Administrative Record Nos. TN–192, 200, 463 and 515).

Throughout the remainder of this notice, "Tennessee program" or "Tennessee submission" is used to mean the documents cited above together with those parts of the initial submission partially approved on October 10, 1980. The term "resubmission" only refers to those portions of the Tennessee program resubmitted on February 3, 1982, as modified on May 13, 1982 (Administrative Record Nos. TN–463 and 515). References to the meeting of April 22, 1982, allude to the meeting between OSM and DOC on that date, the summary of which is dated April 30, 1982, and modified by letter of May 10, 1982 (Administrative Record Nos. TN–509 and 514). Citations which include "TCA" and "TR" are references to the Tennessee Code Annotated and Tennessee Regulation respectively. The TCA contains the State's statutory law, and the TR the DOC's regulations.

The Secretary's Findings below are organized to follow the order set forth in Section 503 of SMCRA and 30 CFR 732.15, respectively. These sections specify the findings which the Secretary must make before he may approve a regulatory program. When the Secretary announced his initial decision on the Tennessee program, he included with the analysis his findings on the program provisions. The resolution of the previous findings which called for action from the State is addressed within the new findings. Previous findings which were positive in nature and did not require further action are not rediscussed in this decision. Where appropriate, the reader is referred to specific findings in the October 10, 1980, **Federal Register** notice for a complete discussion of the issues.

Secretary's Findings

Section 503(a)

In accordance with Section 503(a) of SMCRA, the Secretary finds that Tennessee has the capability to carry out the provisions of SMCRA. Findings made in accordance with Section 503(a) of SMCRA are set forth in Findings 1 through 7 below:

Finding 1

The Secretary finds that the Tennessee Coal Surface Mining Law of 1980 (TCSML) provides for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in Tennessee in accordance with SMCRA, except as discussed below in Finding 29.

Finding 2

The Secretary finds that the TCSML provides sanctions for violations of Tennessee laws, regulations and conditions of permits concerning surface coal mining and reclamation operations which meet the minimum requirements of SMCRA, except as discussed in Finding 29.

Findings 2.1 through 2.11, in the Secretary's October 10, 1980 decision, discussed provisions which may be interpreted as not in accordance with SMCRA. At that time these provisions were disapproved until corrected or clarified by Tennessee Attorney General's opinion, by enacted regulations, or by statutory change, as appropriate. The Secretary has determined that the concerns in Findings 2.1 through 2.11 have been adequately corrected or clarified as discussed below.

2.1 The Secretary was previously concerned (Finding 2.1, 45 FR 67375, October 10, 1980) that TCA 59–8–318(a) contains the language "The Commissioner shall assess a penalty in all cases in which a second notice of violation for any singular violation, cease order, suspension, or revocation is issued." The Secretary assumed that the word "second" relates only to "notice of violation," and that a penalty shall be assessed for every cease order issued pursuant to TCA 59–8–317. This provision corresponds to Section 518(a) of SMCRA. The Secretary requested additional comment or clarifying information.

TR 0400–1–29–.04(1) clearly states that "the Director shall assess a penalty for each cessation order." Therefore, the Secretary finds the concerns in Finding 2.1 of the October 10, 1980, **Federal Register** clarified and resolved.

2.2 The Secretary was previously concerned (Finding 2.2, 45 FR 67375, October 10, 1980) that TCA 59–8–318(c) contained the clause "violation of the amount of the penalty" instead of the clause "violation or the amount of the penalty." This could allow contesting of the fact of the violation as part of the review of a proposed civil penalty without a prepayment of the penalty amount in escrow. This would not be as stringent as Section 518(c) of SMCRA. The Secretary requested clarification. TCA 59–8–318(c) was amended to change "violation of" to "violation or" by Senate Bill No. 754, passed in the 1981 session of the Tennessee General Assembly. Therefore, the Secretary finds the concern in Finding 2.2 of the October 10, 1980, **Federal Register** corrected and resolved.

2.3 The Secretary was previously concerned (Finding 2.3, 45 FR 67375, October 10, 1980) that TCA 59–8–317 appears to provide for issuance of both a notice of violation and a cease order in situations where a cease order is required. To the extent that a notice of violation can be a substitute for a cease order in each situation where a cessation order is required in Section 521 of SMCRA, TCA 59–8–317 is not in accordance with SMCRA. The Secretary requested clarification.

TR 0400–1–31–.02 and 0400–1–31–.03(1) provide specific requirements for the issuance of cessation orders in the same or similar manner as Section 521 of SMCRA. Therefore, the Secretary finds the concerns in Finding 2.3 of the October 10, 1980, **Federal Register** clarified and resolved.

2.4 The Secretary was previously concerned (Finding 2.4, 45 FR 67375, October 10, 1980) that in TCA 59–8–317(a), the use of the word "agreement" is ambiguous and can result in unacceptable extensions of time for abatement or in nonabatement. This would not be as stringent as Sections 521(a)(2), (a)(3) and (a)(5) of SMCRA concerning orders or notices of violation other than modifications, vacations, terminations or extensions for good cause. The Secretary requested clarification.

TR 0400–1–31–.03(3) and (4) provide specific requirements for setting and extending abatement periods in accordance with the requirements of SMCRA. Therefore, the Secretary finds the concerns in Finding 2.4 of the October 10, 1980, **Federal Register** clarified and resolved.

2.5 the Secretary was previously concerned (Finding 2.5, 45 FR 67376, October 10, 1980) that in TCA 59–8–317(b), the use of the word "operations" might be interpreted to exclude reclamation operations from being subject to a cease order since the word is defined by TCA 59–8–303(15) as including only coal removal. This would conflict with Section 521(a)(2) of SMCRA. However, when "operations" is viewed in its broadest sense in the context of TCA 59–8–317 and the language in TCA 59–8–322(b), authority is, in fact, provided to issue cease orders for surface coal mining and reclamation operations as required in Section 521 of SMCRA. TCA 59–8–322(b) provides that temporary relief may be granted by the court on "an order or decision issued

pursuant to Section 59–8–321(g)(9) pertaining to any order issued under Section 59–8–317 for cessation of coal mining and reclamation operations." The Secretary requested clarification regarding the extent to which the word "operations" in TCA 59–8–317(b) includes reclamation operations.

TR 0400–1–31–.02(1) provides specific requirements for issuance of cessation orders on surface coal mining and reclamation operations in cases of imminent danger or imminent environmental harm. This provides for sanctions no less stringent than Section 521(a)(2) of SMCRA. Therefore, the Secretary finds the concerns in Finding 2.5 of the October 10, 1980, **Federal Register** clarified and resolved.

2.6 The Secretary was previously concerned (Finding 2.6, 45 FR 67376, October 10, 1980) that TCA 59–8–317 does not specifically state that cease orders remain in effect until the Commissioner or his designee determines that the condition, practice or violation has been abated, or until modified, vacated, or terminated as required in Section 521(a)(2) of SMCRA. However, Tennessee has clear authority in TCSML to include such a provision in regulations. The Secretary found that the Tennessee program could be made no less stringent than Section 521(a)(2) of SMCRA by including a provision in the regulations defining the effective period of cease orders.

TR 0400–1–31–.02(5) provides specific requirements for determining the effective period of cease orders. Therefore, the Secretary finds the concerns in Finding 2.6 of the October 10, 1980, **Federal Register** clarified and resolved.

2.7 The Secretary previously indicated his concern (Finding 2.7, 45 FR 67376, October 10, 1980) that TCA 59–8–322(b) does not specifically state that temporary relief granted by the Commissioner is subject to judicial review as required in Section 526(c) of SMCRA. The Secretary requested additional clarification.

No additional clarification of this finding was submitted with the February 3, 1982, or May 13, 1982, program revisions. However, after further review the Secretary has determined that additional clarification from the State is unnecessary. Temporary relief from the Commissioner is only available under TCA 59–8–321(a)(9) after: 1) An intitial decision has been made by the Commissioner, and 2) an appeal has been filed with the Board. Thus, the temporary relief is granted by the Commissioner in a proceeding before the Board. All decisions of the Board are subject to judicial review under TCA 59–8–322(b). Since the Commissioner's temporary relief decision is a part of a proceeding before the Board, it will be subject to judicial review under TCA 59–8–322(b). Therefore, TCA 59–8–322(b) is in accordance with Section 526(c) of SMCRA.

2.8 The Secretary was previously concerned (Finding 2.8, 45 FR 67376, October 10, 1980) that TCA 59–8–317(a) requires show cause hearings to be "subject to 5 USC Section 554" which applies to Federal proceedings and not State proceedings. This reference would subject State hearings to Federal law rather than analogous State law. The Secretary requested clarification.

TR 0400–1–26 concerning hearings and appeals is compatible with 5 USC 554 and is, therefore, in accordance with SMCRA and TCSML. The State has chosen to use the Federal Law (5 USC 554) as a model for its hearings and appeals, but may at some time wish to use its own Tennessee Uniform Administrative Procedures Act. Therefore, the Secretary finds the concerns in Finding 2.8 of the October 10, 1980, **Federal Register** clarified and resolved.

2.9 The Secretary was previously concerned (Finding 2.9, 45 FR 67376, October 10, 1980) that the phrases "other parties aggrieved" and "any person aggrieved," or similar wording appearing in TCSML, with respect to standing, are more restrictive than the phrase "any person with an interest which is or may be adversely affected" and similar wording as used in SMCRA and TCSML. The State language referred to past action, rather than past and possible future action. In addition, the State language by specifying "parties," may have limited challenges to previous participants.

House Bill No. 835, passed in the 1981 session of the Tennessee General Assembly, amended TCSML to substitute the language, "any person with an interest which is or may be adversely affected" or "persons with an interest which is or may be adversely affected" as appropriate in Sections 59–8–313(e), 59–8–321(f)(1) and 59–8–321(g)(9). Therefore, the Secretary finds the concerns in Finding 2.9 of the October 10, 1980, **Federal Register** corrected and resolved.

2.10 The Secretary was previously concerned (Finding 2.10, 45 FR 67376, October 10, 1980) that TCA 59–8–321(g)(9) provides temporary relief from a notice or order by the Commissioner (upon the required showing), pending determination of an appeal to the Board of Reclamation review. It does not clearly provide temporary relief from a decision on a permit application or other decisions by the Commissioner. The Secretary required clarification.

TR 0400–1–27–.01(2) provides for granting temporary relief from decisions on permit applications and other decisions by the Division. Therefore, the Secretary finds the concerns in Finding 2.10 of the October 10, 1980, **Federal Register** clarified and resolved.

2.11 The Secretary was previously concerned (Finding 2.11, 45 FR 67376, October 10, 1980) that the State uses the phrase "the probability of significant, imminent environmental harm" in TCA 59–8–317(b) in lieu of the phrase "can reasonably be expected to cause significant, imminent environmental harm" in Section 521(2) of SMCRA. The Secretary requested an attorney general's opinion to establish that the phrase used in TCSML is no less stringent than the phrase found in SMCRA.

TR 0400–1–31–.02(1) provides specific requirements for issuance of a cessation order where a situation "is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources". Therefore, the Secretary finds the concerns in Finding 2.11 of the October 10, 1980, **Federal Register** clarified and resolved.

Finding 3

The Secretary finds that the State regulatory authority will have sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA, except as discussed in Finding 30.

Finding 4

The Secretary finds that the State has laws which provide for effective implementation, maintenance and enforcement of a permit system meeting the requirements of SMCRA except as discussed in Finding 29.

Finding 5

The Secretary finds that the State has adequate processes for the designation of lands unsuitable for surface coal mining in accordance with Section 522 of SMCRA. See also Finding 21.

Finding 6

The Secretary finds that the State has an adequate process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with all of the federal and state permit processes applicable to the proposed operations, except as

discussed in Finding 12.5. The federal regulations on permitting are discussed under Finding 14.

Finding 7

The Secretary finds that the State has rules and regulations which, except for minor deficiencies discussed in the Findings, are no less effective than 30 CFR Chapter VII. Significant issues discovered during the review of the State regulations are explained under Findings 12 through 29, below. During the review of the regulations by the Tennessee Attorney General, all or portions of three chapters were deleted from the final regulations which the Attorney General certified. Chapter 0400–1–23, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, was deleted as having no basis in Tennessee Law. The Secretary has made an initial determination that the absence of this provision is not a problem since SMCRA does not require its inclusion in a State program and further that State programs may be more stringent than SMCRA. Chapter 0400–1–24, Plan for Reclamation of Abandoned Mines Using Federal Funds, was deleted since it is not required under Title V of SMCRA and will be included in Tennessee's Title IV program. Seven paragraphs of Chapter 0400–1–26, Hearings and Appeals, were deleted: 0400–1–26–.04, .18, .41, .48, .51, .79, and .80 which correspond to 43 CFR 4.1103, 4.1122, 4.1154, 4.1163, 4.1166, 4.1280, and 4.1281. Deletion of these paragraphs is the subject of Condition 11. Notice of the changes specified above and any other changes in the regulations will be made through the program amendment procedure in order to provide for public review and comment.

Section 503(b) of SMCRA Findings

As required by Section 503(b)(1)–(3) of SMCRA, and 30 CFR 732.11–732.13, the Secretary has, through OSM, fulfilled the requirements set forth in Findings 8 through 10 below:

Finding 8

In accordance with Section 503(b)(1) of SMCRA the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other federal agencies concerned with or having special expertise pertinent to the proposed Tennessee program.

Finding 9

Pursuant to Section 503(b)(2) of SMCRA the Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Tennessee program which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act as amended (42 U.S.C. 7401 *et seq.).*

Finding 10

In accordance with Section 503(b)(3) of SMCRA the Secretary held a public review meeting in Knoxville, Tennessee, on April 15, 1980, to discuss the completeness of the Tennessee submission; held a public hearing on the submission at Knoxville, Tennessee on July 21, 1980, and held a public hearing on the resubmission at Knoxville, Tennessee on March 10, 1982.

Finding 11

In accordance with Section 503(b)(4) of SMCRA, the Secretary finds that Tennessee has the legal authority, except as discussed in Finding 29, and has sufficient qualified personnel, except as discussed in Finding 30, to enforce the environmental protection standards in accordance with SMCRA.

30 CFR 732.15 Findings

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30 below on the basis of information in the Tennessee Program submission, resubmission, public comments and testimony, written presentation at public hearings and other relevant information within the administrative record.

Finding 12

In accordance with 30 CFR 732.15(a), the Secretary finds that the program provides for the States to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII except for the minor deficiencies discussed in this decision. The State legislative authority is discussed in Findings 1, 2 and 4. State regulations and narrative descriptions are discussed in Findings 7, and 12 through 30. Issues which are general in nature and apply to several individual program sections only are analyzed below:

12.1 The Secretary finds adequate the legal opinion submitted pursuant to 30 CFR 731.14(c) from the chief legal officer of the Tennessee Department of Conservation stating that Tennessee will have legal authority through existing law and enactment of new regulations to implement, administer and enforce the program in accordance with SMCRA and consistent with 30 CFR Chapter VII.

12.2 The Secretary finds adequate the letter submitted pursuant to 30 CFR 731.14(d) from the Governor of Tennessee which designates the Tennessee Department of Conservation as the regulatory authority and authorizes DOC to implement, administer and enforce the State program, and to submit grant applications and receive and administer grants, pursuant to SMCRA.

12.3 The term "surface mining activities" is defined in TR 0400–1–1–.03(82). The language is comparable to the Federal definition in 30 CFR 701.5 except the State has added a final sentence which reads, "this term is included within the term surface mining operations." This added sentence confuses the meaning of "surface mining activities" which is intended to distinguish surface mines from underground mines, and "surface mining operations", which is intended to identify surface operations of underground mines and surface mines.

Also, the term "surface mining operations" is defined in TR 0400–1–1–.03(83) in the same way as in the State's law, TCA 59–8–303(33), which is in accordance with SMCRA. However, the State regulations used this term interchangeably with "surface coal mining operations", which is not defined. "Surface coal mining operations" is also used to define other terms used in the regulations and thus its meaning should be clearly defined as being the same as "surface mining operations" in TR 0400–1–1–.03(83).

Therefore, the Secretary finds TR 0400–1–1–.03 (82) and (83) less effective than Federal requirements. In the April 22, 1982 meeting, Tennessee agreed to provide appropriate definitions of "surface mining activities" and "surface coal mining operations". Approval of the Tennessee program is conditioned upon the State revising the definition of: (1) the term "surface mining activities" by deleting the last sentence, and (2) the term "surface mining operations" by adding a clarification that "surface coal mining operations" has the same meaning.

12.4 Tennessee's regulations contained a significant number of typographical and editorial errors which create confusion and inconsistency in portions of the regulations. Taken collectively, these errors represent a deficiency significant enough to require correction in order to ensure proper understanding and use of the regulations by the State, operators and the public.

Therefore, the Secretary finds Tennessee's regulations less effective than Federal requirements to the extent they contain the typographical and editorial errors communicated to the

State by letter on June 4, 1982, (Administrative Record No. TN–526). Tennessee has indicated a desire to correct errors and inconsistencies in its regulations. Approval of the Tennessee program is conditioned upon the State revising the regulations to correct the typographical and editorial errors identified in the June 4, 1982, letter (Administrative Record No. TN–526).

12.5 Some of the narrative descriptions in the Tennessee program concerning permitting, inspections, enforcement and administering and enforcing the performance standards, pursuant to 30 CFR 731.14(g), are incomplete as discussed below. A more detailed discussion of the particular problems is found in the summary of the April 22, 1982 meeting (Administrative Record No. TN–509).

Chapter VII(1) of the Tennessee program, pursuant to 30 CFR 731.14(g)(1), does not include an adequate discussion of how the State expects to handle existing permits immediately after obtaining program approval, pursuant to 30 USC 1256. Also, forms for permitting and bonding were omitted. In the April 22, 1982 meeting, the State agreed to add a policy statement in the program to clarify its procedure. The State also agreed to submit its permit application and bonding forms in order to show that operators are made aware by notice on the forms that all persons issued a permit shall comply with the terms and conditions of the permit, Act and the State program.

Chapter VII(4) of the Tennessee program concerning inspection and monitoring, pursuant to 30 CFR 731.14(g)(4), addresses the interim program and is not sufficient to cover the requirements of the permanent program. Also, forms required for inspection and monitoring activities were not included. In the April 22, 1982 meeting the State said it had already recognized the need for expanding the discussion of procedures and agreed to include in the program additional policy, procedures and forms.

Chapter VII(5) of the Tennessee program concerning enforcement, pursuant to 30 CFR 731.14(g)(5), addresses the interim program and is not sufficient to cover the requirements of the permanent program. Also, forms required for the various enforcement actions were not included. In the April 22, 1982 meeting, the State agreed to provide, in the program, additional explanation of procedures and forms for enforcement of the permanent program.

Chapter VII(6) of the Tennessee program concerning administering and enforcing the permanent program performance standards, pursuant to 30 CFR 731.14(g)(6), discusses inspection and enforcement procedures for the interim program. The discussion does not include permitting, inspection and enforcement as they would be performed in the permanent program, nor does it include any of the forms the State expects to use. In the April 22, 1982 meeting, the State said it had recognized the need, is in the process of expanding the discussion of procedures, and agreed to include in the program additional policies, procedures and forms.

Chapter VII(7) of the Tennessee program concerning assessing and collecting civil penalties, pursuant to 30 CFR 731.14(g)(7), does not show the procedures the State will follow, the forms to be used, or the staff who will be performing these functions. In the April 22, 1982 meeting, the State said that it is in the process of redesigning its penalty assessment and appeals process, and agreed to include additional material, including forms, in the State program to explain how the assessment and appeals process will work.

Chapter VII(8) of the Tennessee program concerning issuing public notices and holding public hearings, pursuant to 30 CFR 731.14(g)(8), is inconsistent with the State regulations (See Summary of April 22, 1982 meeting—Administrative Record No. TN–509). The discussion summarizes Tennessee's procedures without referencing applicable law or regulation from which the procedures are derived. In the April 22, 1982 meeting, the State agreed to review and revise the discussion of procedures for public notices and hearings and to submit such revised procedures as part of the State program.

Chapter VII(9) of the Tennessee program concerning coordinating permit issuance with other State, Federal and local agencies, pursuant to 30 CFR 731.14(g)(9), contains a general discussion of the notice and comment procedure for permit applications, but there is no discussion of procedures to be used for coordinating with other permit processes, EPA water quality management plans, and the applicable provisions of the Endangered Species Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, and Executive Order 11593, as required by 30 CFR 770.12. In the April 22, 1982 meeting, the State agreed to provide a policy statement and additional discussion of these coordination procedures for the State program.

Chapter VII(15) of the Tennessee program concerning administrative and judicial review of State program actions, pursuant to 30 CFR 731.14(g)(15), has not addressed procedures for minesite hearings, assessment conferences, formal hearings and temporary relief hearings, all of which are administrative review options available to operators. In the April 22, 1982 meeting, the State said it has internal guidelines on these subjects and agreed to provide additional material to explain these guidelines to be included in the State program.

Chapter VII(16) of the Tennessee program concerning a small operator assistance program, pursuant to 30 CFR 731.14(g)(16), does not include a statement that the State shall seek reimbursement of cost of laboratory services performed under certain circumstances as required in TR 0400–1–28–.12. In the April 22, 1982 meeting, the State agreed to include such a provision in the Chapter VII(16) discussion of procedures.

Therefore, the Secretary finds Chapters VII (1), (4), (5), (6), (7), (8), (9), (15) and (16) of the Tennessee program do not meet the Federal requirements. The Secretary notes that the deficiencies outlined above have been discussed in more detail with and acknowledged by the State in the April 22, 1982 meeting, and that the State agreed at that time to provide sufficient additional and revised material to resolve the deficiencies. Approval of the Tennessee program is conditioned upon the State revising Chapters VII (1), (4), (5), (6), (7), (8), (9), (15) and (16) by providing the additional and revised information discussed above and at the April 22, 1982 meeting (Administrative Record No. TN–509).

Finding 13

In accordance with 30 CFR 732.15(b)(1), the Secretary finds that the Tennessee program submission demonstrates, except as noted below, that the Tennessee DOC can implement, administer and enforce all applicable requirements of Subchapter K of 30 CFR Chapter VII under existing authority in Tennessee laws, regulations and descriptive elements of the program submission, except as discussed below. Tennessee incorporated provisions of 30 CFR Chapter VII, Subchapter K in TR 0400–1–12 through 0400–1–22. Tennessee's description of its system to administer and enforce the performance standards, found in Chapter VII(6) of the Tennessee program, is sufficient, except as discussed in Finding 12.5. Issues related to the State legislative authority are discussed under Findings 1, 2 and 4 above. Significant issues discovered during the review of Tennessee

regulations corresponding to Subchapter K of 30 CFR Chapter VII are discussed below.

TR 0400–1–15–.62(1), in the underground mining performance standards concerning evaluation of vegetation survival, contains a limitation on bare areas of 1/8 acre in size and total no more than ten percent of the area seeded *"unless such areas are too stony to support vegetation."* The underlined language creates the potential for an unlimited exemption from the ten percent bare area limit without any specific criteria. This could encourage operators to leave areas too stony to support vegetation while the goal of reclamation is to make the land capable of supporting vegetation as required in 30 U.S.C. 1265. The State's surface mining counterpart to this regulation, TR 0400–1–14–.67(1), does not contain the exempting language underlined above.

Therefore, the Secretary finds TR 0400–1–15–.62(1) less effective than Federal requirements. At the April 22, 1982 meeting, the State agreed to revise TR 0400–1–15–.62 to be consistent with TR 0400–1–14–.67 which is no less effective than Federal requirements in 30 CFR 816 and 817. Approval of the Tennessee program is conditioned upon the State revising TR 0400–1–15–.62(1) by deleting the language "unless such areas are too stony to support vegetation."

Finding 14

In accordance with 30 CFR 732.15(b)(2), the Secretary finds that the Tennessee program demonstrates, except as noted below, that the Tennessee DOC can implement, administer, and enforce a permit system consistent with Subchapter G of 30 CFR Chapter VII. The description of the permit system, found in Chapter VII (1), (2), (8), (9) and (10), is adequate, except as discussed in Finding 12.5. The State legislative authority relating to permitting is discussed in Findings 1, 2 and 4 above. Tennessee incorporated provisions of 30 CFR Chapter VII, Subchapter G, in TR 0400–1–1 through 0400–1–6. Significant issues discovered during the review of Tennessee regulations corresponding to Subchapter G of 30 CFR Chapter VII are as follows:

14.1 TR 0400–1–2–.23 and TR 0400–1–5–.22 concerning a water quality protection plan do not require the plan to contain "a detailed description, with appropriate maps and cross section drawings of the" measures to be taken to protect the quality and quantity of the water resources. This information is necessary in the format of maps and cross section drawings in order to properly identify and evaluate potential adverse impacts and determine the means intended by the operator to protect against them as required in 30 U.S.C. 1258 and 1265 and 30 CFR 780.21 and 784.14. TR 0400–1–5–.32, the counterpart for underground mining activities includes this requirement. Also TR 0400–1–5–.22, which consists of part of the requirements of TR 0400–1–5–.32, is superfluous and is less effective than the Federal requirements.

Therefore, the Secretary finds TR 0400–1–2–.23 and TR 0400–1–4–.22 less effective than Federal requirements. At the April 22, 1982 meeting, the State agreed to correct the deficiencies discussed above by revising TR 0400–1–2–.23 to include the requirement for "a detailed description, with appropriate maps and cross section drawings," and by deleting TR 0400–1–5–.22. Approval of the Tennessee program is conditioned upon the State revising TR 0400–1–2–.23 as described above, and upon the State either deleting TR 0400–1–5–.22 or providing assurance that TR 0400–1–5–.32 is the controlling regulation for the water quality protection plan for underground mining.

14.2 TR 0400–1–2–.32(2)(c)9 and TR 0400–1–5–.34(2)(c)9 require the location on a mining plan map of manmade and natural features as required in 30 CFR 779.24 (d), (e), (h) and (j), and 30 CFR 783.24 (d), (e), (h) and (j), except that there are no criteria defining where the feature must be in relation to the proposed permit area in order to be required on the map. Indication of the features listed in 30 CFR 779.24(e) and 783.24(e) is required within the proposed permit area. The features listed in 30 CFR 779.24 (h) and (j), and 783.24 (h) and (j) are required within 100 feet of the proposed permit area. The features listed in 30 CFR 779.24(d) and 783.24(d) are required to be indicated if located within 1000 feet of the proposed permit area. Also, these State regulations have the same deficiency regarding the requirement to show locations of gas and oil wells *within the permit area* pursuant to 30 CFR 779.25(j) and 783.25(j). Further, these State regulations fail to include the requirement of 30 CFR 779.25(j) and 783.25(j) to show the location, and depth if available, of water wells within the proposed permit area and adjacent area. These mapping requirements are necessary to have sufficient information in the permit application to implement 30 U.S.C 1257, 1258, 1260, 1265, 1266, 1276 and 30 CFR Chapter VII.

Therefore, the Secretary finds TR 0400–1–2–.32(2)(c)9 and TR 0400–1–5–.34(2)(c)9 less effective than Federal requirements. At the April 22, 1982 meeting, the State agreed to correct the deficiencies described above by revising TR 0400–1–2–.32(2)(c)9 and TR 0400–1–5–.34(2)(c)9 to require that the features be located on a map, at a minimum, if within the distances in relation to the proposed permit area required in 30 CFR 779.24(d), (e), (h) and (j), 779.25(j), 783.24(d), (e), (h) and (j), and 783.25(j), and further to include requirements equivalent to 30 CFR 779.25(j) and 783.25(j) concerning location of oil, gas and water wells. Approval of the Tennessee program is conditioned upon the State revising TR 0400–1–2–.32(2)(c)9 and TR 0400–1–5–.34(2)(c)9 as described above.

14.3 TR 0400–1–3–.17 concerning permit revisions lacks parameters for determining when permit revisions constitute "significant departures" from the method of conduct of mining or reclamation operations approved in the original permit. Revisions constituting a "significant departure" are required to undergo a formal revision procedure including public notice and review. Revisions considered insignificant may be approved by the Division without public notice and review. Therefore, it is necessary that the State identify the parameters to be used in making the "significant departure" determination, as required by 30 USC 1261 and 30 CFR 788.12(a)(1), in order that operators and the public have a clear understanding of their rights and limitations. The State regulation currently reads that the "significant departure" determination will be made on a "case-by-case basis". This does not constitute a parameter since it gives no criteria or guidance for the handling of each case. Furthermore, the "case-by-case basis" is merely a statement of the obvious, which is that each case will be evaluated on its own merits, but there is no standard (parameters) against which each case will be judged.

Therefore, the Secretary finds TR 0400–1–3–.17 less effective than Federal requirements. At the April 22, 1982 meeting, the State recognized this problem and indicated an intention to prepare the necessary parameters. Approval of the Tennessee program is conditioned upon the State revising its program to include parameters for determining when permit revisions constitute significant departures from the original approved permit, as required by 30 CFR 788.12(a)(1).

Finding 15

In accordance with 30 CFR 732.15(b)(3), the Secretary finds that the Tennessee program demonstrates that the Tennessee DOC can regulate coal

exploration consistent with 30 CFR Parts 776 and 815. The State's legislative authority is discussed in Findings 1, 2 and 4, above. Tennessee has incorporated the provisions of 30 CFR Parts 776 and 815 into TR 0400–1–4 and 0400–1–13. The narrative description of the State systems found in Chapter VII (1), (2) and (6) is sufficient, except as discussed in Finding 12.5.

Finding 16

In accordance with 30 CFR 732.15(b)(4), the Secretary finds that the Tennessee program demonstrates that the Tennessee DOC can regulate the extraction of coal incident to Government-financed construction since it does not provide an exemption corresponding to 30 CFR 707 and therefore treats such operations as any other surface mining operation.

Finding 17

In accordance with 30 CFR 732.15(b)(5), the Secretary finds that the Tennessee program demonstrates that the Tennessee DOC can enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations consistent with Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII. The State's legislative authority is discussed under Finding 2. Provisions of 30 CFR Chapter VII, Subchapter L are incorporated in TR 0400–1–30. The description of the State's inspection system found in Chapter VII(4) is adequate, except as discussed in Finding 12.5.

Finding 18

In accordance with 30 CFR 732.15(b)(6), the Secretary finds that the Tennessee program demonstrates, except as noted below, that the Tennessee DOC can implement, administer and enforce a system of performance bonds and liability insurance consistent with the requirements of Subchapter J of 30 CFR Chapter VII. Legislative authority related to bonding is considered in Finding 4. The description of the proposed system for bonding and insurance located in Chapter VII(3) is acceptable. Tennessee has incorporated the provisions of Subchapter J of 30 CFR Chapter VII in TR 0400–1–7, 0400–1–8, 0400–1–10 and 0400–1–11. A significant issue discovered during the review of the Tennessee program corresponding to Subchapter J of 30 CFR Chapter VII is discussed below:

TR 0400–1–7–.05(2), concerning period of bond liability, requires that "liability under performance bond shall continue for a minimum period of five (5) years beginning *with the first year* of augmented seeding, fertilizing, irrigation, or other work." This is not in accordance with Federal requirements in 30 U.S.C. 1259(b) and 1265 (b)(20), and less effective than 30 CFR 805.13(b) and with State law in TCA 59–8–316(d)(l) which specifically require the five year liability period to begin *"after the last year* of seeding, fertilizing, irrigation, or other work." Both Federal and State laws require the operator's five year liability period to begin again after each occasion of augmented work on a site. The State regulation conflicts with this requirement.

Therefore, the Secretary finds TR 0400–1–7–.05(2) inconsistent with the Federal requirements. At the April 22, 1982 meeting, the State recognized this discrepancy and requested additional time to consider how it might revise the regulation to be consistent with Federal requirements while at the same time require routine soil analysis and augmentation as normal conservation practices without extending the liability period. Approval of the Tennessee program is conditioned upon the State revising the requirement for the beginning of the five year bond liability period in TR 0400–1–7–.05(2) by requiring the period to begin "after the last year" instead of "with the first year" of augmented seeding, fertilizing, irrigation or other work.

Finding 19

In accordance with 30 CFR 732.15(b)(7), the Secretary finds that the Tennessee program demonstrates that the State has sufficient provisions for civil and criminal sanctions for violations of State law, regulations and conditions of permits and exploration approvals consistent with Section 518 of SMCRA and 30 CFR 845. Legislative authority relating to enforcement is discussed in Finding 2. Regulatory provisions related to Section 518 of SMCRA and 30 CFR 845 are found in TR 0400–1–29. The State's system for implementing these sanctions described in Chapter VII(7) is acceptable, except as discussed in Finding 12.5.

Finding 20

In accordance with 30 CFR 732.15(b)(8), the Secretary finds that the Tennessee program demonstrates that the State can issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA and Subchapter L of 30 CFR Chapter VII. Legislative authority relating to Section 521 of SMCRA is discussed under Finding 2. Provisions of 30 CFR Chapter VII, Subchapter L are incorporated in TR 0400–1–31. The description of the State's system for issuing enforcement notices contained in Chapter VII(5) is sufficient, except as discussed in Finding 12.5.

Finding 21

In accordance with 30 CFR 732.15(b)(9), the Secretary finds that the Tennessee program demonstrates that the State can designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. Tennessee incorporated provisions of Subchapter F in TR 0400–1–9. The State's description of the proposed system for designating lands unsuitable located in Chapter VII(11) is sufficient. The State has sufficient legislative authority to accomplish this requirement as discussed in Findings 1, 2 and 4.

Finding 22

In accordance with 30 CFR 732.15(b)(10), the Secretary finds that the Tennessee program demonstrates that the State provides for adequate public participation in the development, revision, and enforcement of State regulations and that the State program is consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Provisions for public participation in the development and revision discussed in Chapter VII(14) are adequate. The legislative authority for public participation is discussed in Finding 1.

Finding 23

In accordance with 30 CFR 732.15(b)(11), the Secretary finds that the Tennessee program demonstrates that the State can monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations by the employees of the State regulatory authority consistent with the requirements of Subchapter A of 30 CFR Chapter VII. The State description of the proposed system of monitoring, reviewing and enforcing the prohibition against indirect or direct financial interest in coal mining operations by the employees of the State regulatory authority located in Chapter VII(12) is adequate. Tennessee has the legislative authority to restrict financial interests as discussed in Findings 1, 2 and 4. Tennessee has included provisions of 30 CFR Part 705 in TR 0400–1–25.

Finding 24

In accordance with 30 CFR 732.15(b)(12), the Secretary finds that Tennessee has sufficient legislative

authority to require the training, examination, and certification of persons engaged in or responsible for blasting. The State program need contain only sufficient legal provisions to allow promulgation of rules in accordance with Section 719 of SMCRA until such time as the federal rules on blaster certification are promulgated.

Finding 25

In accordance with 30 CFR 732.15(b)(13), the Secretary finds that the Tennessee program demonstrates that the State can provide for a Small Operator Assistance Program (SOAP) consistent with the requirements of 30 CFR Part 795. The State has adequate legislative authority to implement the SOAP as discussed in Findings 1, 2 and 4. The proposed system described in Chapter VII(16) is adequate except as discussed in Finding 12.5. Regulations implementing 30 CFR Part 795 are contained in TR 0400–1–28, which are found to be no less effective than federal requirements.

Finding 26

In accordance with 30 CFR 732.15(b)(14), the Secretary finds that the Tennessee program provides, through TCA 59–8–318, for the protection of State employees of the regulatory authority in accordance with the protection afforded federal employees under Section 704 of SMCRA.

Finding 27

In accordance with 30 CFR 732.15(b)(15), the Secretary finds that the Tennessee program demonstrates that the Tennessee DOC has an administrative and judicial review process in accordance with Sections 525 and 526 of SMCRA and Subchapter L of 30 CFR Chapter VII. Legislative authority corresponding to Sections 525 and 526 of SMCRA are discussed under Finding 1. The State's description of the proposed system for administrative and judicial review located in Chapter VII(15) is adequate, except as discussed in Finding 12.5. Tennessee regulations related to administrative and judicial review are found in TR 0400–1–26 and 0400–1–27.

Finding 28

In accordance with 30 CFR 372.15(b)(16), the Secretary finds that the Tennessee program demonstrates that the State can coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. Further, the State regulations on permitting in TR 0400–1–1 through 0400–1–6 specifically provide for permit information to be provided to OSM.

Finding 29

In accordance with 30 CFR 732.15(c), the Secretary finds that neither the Tennessee Coal Surface Mining Law of 1980 nor any other Tennessee law, or Tennessee regulations, included in the Tennessee resubmission, as revised, contain provisions which would interfere with or preclude implementation of a program which is in accordance with SMCRA and consistent with provisions in 30 CFR Chapter VII, except as set forth below. The Secretary made Findings 29.1 to 29.4 in the October 10, 1980, initial decision, which are similar to those herein. At that time the Secretary requested additional clarifying information. Since not all the requested information was submitted with the February 3, 1982 or May 13, 1982, program revisions, the Secretary finds that the concerns raised in Findings 29.1, 29.2, 29.3 and 29.4 are either resolved or unresolved as discussed below.

The Secretary was previously concerned (Finding 29.1, 45 FR 67378, October 10, 1980) that the Tennessee Blasting Standards Act of 1975, by allowing, among other things, a greater peak particle velocity and a greater maximum charge per delay, contains provisions which are not in accordance with SMCRA and 30 CFR Chapter VII. As the State did not submit additional clarifying information with the February 3, 1982, or May 13, 1982, program revisions, the Secretary has concluded that upon full approval of the Tennessee program those provisions shall be superseded, to the extent that they are not in accordance with SMCRA, by operation of TCA 59–8–334.

The Secretary was previously concerned (Finding 29.2, 45 FR 67378, October 10, 1980) that the Tennessee Uniform Administrative Procedures Act (TUAPA) appears to conflict with 30 CFR 700.12 in two regards: requiring five persons to petition for rule change rather than one, and not specifying a time limit for a decision on a petition rather than a 90-day time limit. The TUAPA also appears to conflict with Section 526(a)(1) in that Section 4–512 of the TUAPA allows challenges to Tennessee rulemaking at any time, rather than only within 60 days.

The Secretary was previously concerned (Finding 29.3, 45 FR 67378, October 10, 1980) that there are several references to Tennessee's bonding laws and practices in the section-by-section comparison of laws and regulations, Chapter III of the Tennessee program (731.14(c)), yet no such bonding laws or regulations were submitted pursuant to 30 CFR 731.14(b). Therefore, the Secretary cannot determine if a conflict exists with such bonding laws or regulations.

The Secretary was previously concerned (Finding 29.4, 45 FR 67378, October 10, 1980) that the Tennessee Safe Dams Act, UCA 70–2501 *et seq.*, and the Coal Severance Tax Act, TCA 67–5901 *et seq.*, were not submitted pursuant to 30 CFR 731.14(b). The Secretary found that it cannot be determined if a conflict exists with these existing and potential laws until they are reviewed. However, the Coal Severance Tax Act, TCA 67–5901 *et seq.*, was included in the February 3, 1982, resubmission and the Secretary finds that it does not contain provisions which would interfere with or preclude implementation of SMCRA and 30 CFR Chapter VII.

Therefore, the Secretary finds that the Tennessee Uniform Administrative Procedures Act appears to contain provisions, as discussed above, which conflict with SMCRA and 30 CFR Chapter VII. Also, the Secretary finds that he cannot determine if Tennessee's bonding laws referenced above and the Tennessee Safe Dams Act contain provisions which conflict with SMCRA and 30 CFR Chapter VII since they have not been submitted with the Tennessee program.

Approval of the Tennessee program is conditioned upon submission of the bonding laws and procedures referred to in Chapter III of the Tennessee program, and the Tennessee Safe Dams Act, along with an opinion by the Attorney General for the State of Tennessee that these laws and the Tennessee Uniform Administrative Procedures Act are superseded by SMCRA to the extent they conflict with SMCRA or that the State will amend such laws to avoid the conflict.

Finding 30

In accordance with 30 CFR 732.15(d), the Secretary finds that the Tennessee Department of Conservation and other agencies having a role in the State program will have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the State program, as required by 30 CFR 732.15(b), and other applicable State and Federal laws, except as discussed below.

The Secretary previously found (Finding 30, 45 FR 67378, October 10, 1980) that the Tennessee program did not contain sufficient information to demonstrate that any of the State

agencies with a role in the State program would have sufficient personnel and funding pursuant to 30 CFR 732.15(d). Some additional information was provided in the February 3, 1982, resubmission, but the State program remains incomplete in its information on personnel and funding to carry out the program, as discussed below. A more detailed discussion of the particular problems is found in the summary of the April 22, 1982 meeting (Administrative Record No. TN–509).

Chapter V of the Tennessee program, pursuant to 30 CFR 731.14(e), contains a series of organization charts for many of the agencies with a role in the State program, but fails to include such agencies as Division of Forestry, Department of Agriculture, Division of Parks and Recreation, Tennessee Wildlife Resources Agency, Historical Commission and Tennessee Bureau of Investigation, and further omits an explanation of the coordination system between the agencies included or omitted in this chapter and the lines of authority and staffing functions within each agency and between agencies. The intended role of the agencies involved in the program is not described, but is necessary in order to show who will be responsible for implementing the various parts of the State program and that all aspects of the State program have been assigned. In the April 22, 1982, agreement meeting, the State agreed to provide additional material to address the deficiencies described above.

Chapter VI of the Tennessee program, pursuant to 30 CFR 731.14(f), failed to include a memorandum of agreement with either the Tennessee Attorney General (AG) or the Tennessee Bureau of Investigation (TBI) both of which are expected to receive Federal grant funds, through DOC, to perform duties under the State program. In the April 22, 1982, agreement meeting, the State agreed to provide additional explanation of the roles of and cooperative agreements with the AG and TBI.

Chapter X of the Tennessee program, pursuant to 30 CFR 731.14(j), contains a brief description of major functional components of the organizational structure of the Division of Surface Mining. However, there is no discussion of staffing each of the functional components, how the proposed staffing will be adequate to carry out the functions of the State program, or how the staffing of other agencies with a role in implementing the State program, such as the AG and TBI, will be adequate. Also, the State's proposed staffing does not provide for penalty assessment conferences or penalty collection, and only provides one attorney on a part time basis for penalty assessments. In the April 22, 1982, agreement meeting, the State agreed to address these problems by providing additional material for inclusion in the State program.

Chapter XI of the Tennessee program, purusant to 30 CFR 731.14(k), contains a brief statement that the Division of Surface Mining will call on TBI, AG and various other government agencies for professional assistance. However, there is no discussion of how, to what extent, and on which functions this assistance will be used, and who will be assisting with the various functions (except for AG & TBI). While the Tennessee program indicates a need for such assistance, it fails to show the extent of the need or that such assistance is available. Also, missing is the information required in 30 CFR 731.14(i) for the agencies listed in Chapter XI. In the April 22, 1982, agreement meeting, the State agreed to address these problems by providing additional material for the State program.

Chapter XII of the Tennessee program, purusant to 30 CFR 731.14(l), contains only the budget of the Division of Surface Mining (DSM). It includes costs not applicable to the State program, since DSM also regulates noncoal mining. The budget also excludes applicable costs, such as funds to be given by cooperative agreement to the Attorney General and Tennessee Bureau of Investigation. No source of funds was identified with the budget. The budget information submitted is insufficient to show that available funds and planned expenditures are adequate to support the proposed staffing and to administer the State program. Furthermore, this budget information is intended to form the basis for a Federal Administration and Enforcement Grant, but is inadequate to do so. In the April 22, 1982, agreement meeting, the State agreed to revise the budget to correct the problems discussed above.

Therefore, the Secretary finds Chapters V, VI, X, XI, and XII of the Tennessee program do not meet the Federal requirements. The Secretary recognizes that the deficiencies discussed above have been discussed in more detail with and acknowledged by the State in the April 22, 1982 meeting, and that the State agreed at that time to provide sufficient additional and revised material to resolve the deficiencies. Approval of the Tennessee program is conditioned upon the State revising Chapters V, VI, X, XI, and XII by providing the additional and revised information discussed above and at the April 22, 1982 meeting (Administrative Record No. TN–509).

Response To Agency And Public Comments

Comments have been accepted and considered on Tennessee's program resubmission of February 3, 1982, (Administrative Record TN–463) and revised regulations provided by Tennessee on May 13, 1982, (Administrative Record TN–515) in connection with a reopened public comment period. The periods during which comments were accepted are described in this notice under "Background on the Tennessee Resubmission". All comments received were considered in evaluating the Tennessee program. Responses to the comments are included below. Comments from groups or agencies are identified by name but names of individuals have not been used. Comments are organized into the following eleven groups: Tennessee Law, General, Definitions, Permitting, Bonding and Insurance, Lands Unsuitable, Performance Standards, Financial Interests, Hearings/Appeals and Administrative/Judicial Review, Inspection and Enforcement, and Program Revision.

I. Tennessee Law

1. Environmental Policy Institute (EPI) commented that industry representation on Tennessee's Board of Reclamation Review violates the requirements of Section 517(g) of SMCRA, concerning conflict of interest. Therefore, EPI contended that Section 59–8–321 of the Tennessee Coal Surface Mining Law must be disapproved.

In implementing Section 517(g) of SMCRA, the Office defined the term "employee" at 30 CFR 705.5 to mean "(a) any person * * * who performs any function or duty under the Act, and (b) advisory board and commission members * * * if they perform decisionmaking function * * * under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees". Section 59–8–321(a), of the Tennessee Coal Surface Mining Law establishes that the Board of Reclamation Review shall be composed of seven members: the Commissioner of the Department of Public Health, The Commissioner of the Department of Agriculture, and five citizen members. Two of the citizen members must be

from the public at large, neither of whom shall have a financial interest in the mining industry nor in any related industry. Two other citizen members shall be representatives of the mining industries, and one member shall be a representative of an environmental organization. Section 59–8–321(b)(2) further specifies that the Board members shall be responsible for representing the unified interests of government, industry, environmental groups and private individuals. Inasmuch as Tennessee's provision for the Board of Reclamation Review at T.C.A. 59–8–321 provides that the Board shall represent multiple interests, the Secretary finds the State's provisions to be in accordance with the Federal law and consistent with the Federal regulations.

2. Environmental Policy Institute (EPI) pointed out that in the initial decision on the Tennessee program, OSM identified several defects in Tennessee's law. Tennessee's resubmission failed to correct or otherwise resolve the inconsistencies in some of these areas. EPI specifically cited Secretarial findings 2.1, 2.3–2.8, 2.10 and 2.11, as published at 45 FR 67375–76.

Tennessee's response to the earlier Secretarial findings is addressed elsewhere in this notice in the section titled "Background on the Tennessee Resubmission".

3. According to Save Our Cumberland Mountains (SOCM), the State bonding system is totally inadequate and SOCM does not believe the program will improve the situation; therefore, SOCM contended the State's bonding process will continue to be less effective than the Federal requirements. Specifically, SOCM pointed out that Section 509(a) of SMCRA does not permit discretion in determining the amount of bond. TCA 59–8–309(b), in contrast, requires a sufficient bond amount, as determined by the Commissioner. The discretionary language "as determined by the Commissioner", asserted SOCM, will permit inconsistency and possible abuse in the bonding system. SOCM supported this argument by providing several examples where bond amounts have been insufficient to cover reclamation costs.

The Secretary does not agree that Tennessee's bonding system will be less effective than Federal requirements. On the contrary, the Secretary concludes that Tennessee's law and implementing regulations will provide an effective system for ensuring reclamation and compliance with the Federal law and regulations.

Quoted more fully, the Tennessee law provides that "[t]he amount of the bond * * * shall be sufficient, as determined by the Commissioner, to assure the completion of the reclamation plan if the work had to be performed by the Commissioner in the event of forfeiture." In context, the assailed discretionary language does not diminish the regulatory authority's obligation to set the bond at an adequate level. Moreover, Section 509(a) of SMCRA provides that the amount of the bond is to be determined by the regulatory authority after considering enumerated factors.

SOCM's argument was based largely on the State's past performance. In this regard, the Secretary recognizes that bonding problems have occurred and, in some cases, the State has not always responded in a timely manner. The Secretary believes, however, that many of these problems will be resolved when the State assumes primacy for regulating surface coal mining operations within the State.

It should also be noted that the Secretary did not base his determination of the adequacy of the State program on past performance, because past performance may have been determined by factors which may not necessarily relate to the future intentions or capabilities of the State. The Secretary's decision on Tennessee's program was based on his determination of whether the State's program resubmission was in accordance with the Act and consistent with the Secretary's regulations at 30 CFR Chapter VII. In this regard Tennessee's requirements dealing with establishing the amount of bonds have been determined to be in accordance with the Federal statute in meeting the purposes of the Act.

II. General

1. Save Our Cumberland Mountains (SOCM), U.S. Bureau of Mines and Tennessee Valley Authority (TVA) identified numerous reference and editorial errors in Tennessee's regulations. This Office compiled a list of these mistakes and forwarded it by letter dated June 4, 1982, to State officials for necessary action. As noted in Finding 12.4, the Secretary has conditioned his approval of Tennessee's program on the State's correction of the editorial and typographical errors identified in OSM's June 4, 1982, letter to the State.

2. Save Our Cumberland Mountains stated that the Tennessee submission did not include a detailed plan for reclamation of abandoned mine lands. This, asserted SOCM, makes it difficult to determine if the plan is adequate; therefore, a final copy of the reclamation plan should be made available by OSM for citizen comment.

This rulemaking addresses only the Secretary's review and approval of Tennessee's regulatory program under Title V of SMCRA. Review of Tennessee's Abandoned Mine Land Reclamation Plan (under Title IV) is being handled under separate rulemaking.

A notice of receipt and availability of Tennessee's proposal, which was submitted to OSM on March 24, 1982, was published on April 23, 1982 (see 47 FR 17576). That notice indicated that OSM would not hold public meetings on the plan unless specifically requested by the public. This notice further indicated that the Office would receive and consider public comments before the decision to approve or disapprove the State's reclamation plan.

In addition, the State itself provided interested groups, organizations and individuals opportunity to review and comment on the proposed State Abandoned Mine Land Reclamation Plan. Public notice of the plan's availability was published in several Tennessee newspapers and public meetings were held in Dunlap and Jacksboro, Tennessee. Copies of the plan were delivered to several groups for review and comment.

3. U.S. Bureau of Mines (BOM) pointed out that the agreement between the Department of Health and the Department of Conservation suggests that the surface mining program will be administered jointly by the Division of Surface Mining (DSM) of the Department of Conservation and the Division of Water Quality Control (WQC) of the Department of Health. This, asserted BOM, contradicts the requirements of 30 CFR 731.14(d) which state that one agency will administer the program. BOM suggested that the terms "regulations" and "rules" may need clarification. BOM stated that Sections 59–8–201 through 59–8–228 of Tennessee's Mineral Surface Mining Law of 1972 (TMSML) may be deleted, if they are superseded by Sections 59–8–301 through 59–8–336 of Tennessee's Coal Surface Mining Law of 1980 (TCSML).

Implementation, administration, and enforcement of Tennessee's surface coal mining program will be the responsibility of the Department of Conservation. By letter of December 8, 1981, the Governor of Tennessee designated that agency as the regulatory authority for the State pursuant to Title V of SMCRA. This fulfills the requirements of 30 CFR 731.14(d). The Division of Surface Mining, within the Department of Conservation, will have principal authority for carrying out the

Department's regulatory responsibility. Other State agencies will retain their historic role for administering and enforcing programs under their jurisdiction. The National Pollutant Discharge Elimination System (NPDES) is one of those programs. Although the NPDES permitting will be closely integrated and coordinated with surface coal mining permitting, the WQC Division will retain functional responsibility to insure that NPDES permits are issued and enforced in accordance with water quality regulations. Therefore, the agreement BOM refers to does not establish dual regulatory authority over surface coal mining activities in Tennessee. It merely identifies the means by which DSM and WQC will coordinate their activities to eliminate unnecessary redundancy and expense to the State and to permit applicants.

The Secretary sees no need for clarification of the use of the terms "rules" and "regulations" as used in the Tennessee program. The terms are used interchangeably in the submission, and no apparent significance attaches to the use of one as opposed to the other.

The Secretary does not find any redundancy or conflict between cited portions of Tennessee law. TCA 59–8–301 through 59–8–336 were enacted by the State to govern surface coal mining operations. Sections 59–8–201 through 59–8–228 will remain in effect for surface mining of minerals other than coal.

4. The Fish and Wildlife Service (FWS) furnished a Biological Opinion pursuant to Section 7 of the Endangered Species Act which stated that the program was not likely to jeopardize the continued existence of endangered or threatened species or result in the adverse modification of their critical habitat. However, the FWS recommended that OSM work with Tennessee to develop procedures to address the impacts of proposed surface coal mining operations on endangered and threatened species and their critical habitats. FWS advised that its Biological Opinion extended only to the approval of the Tennessee program and that another Biological Opinion was needed for OSM's oversight program.

Although the Federal regulations at 30 CFR 779.20 and 780.16 requiring the permit applicant to submit fish and wildlife resources information and a fish and wildlife plan were remanded in *In re: Permanent Surface Mining Regulation Litigation*, 14 E.R.C. 1083 CD. D.C., Feb. 26, 1980 (Round 1) by the court, State programs still must include a provision comparable to 30 CFR 786.19(o) which provides that prior to permit approval the regulatory authority must find in writing that the mining activities would not affect the continued existence of threatened or endangered species, or result in the destruction or adverse modification of their critical habitats. Tennessee's counterpart to 30 CFR 786.19(o) is TR 0400–1–3–.04(13). Under 30 CFR 840.14(a) each State regulatory authority is required to send OSM any final determinations prepared in accordance with TR 0400–1–3–.04(13) as they relate to threatened or endangered species. OSM will forward these documents to FWS for review. If any problems are detected with the written determinations prepared by the State, FWS may alert OSM or the State regulatory authority, and recommend appropriate remedial action.

Furthermore, while the court in *In re: Permanent Surface Mining Regulation Litigation*, Round 1, supra, remanded the permit requirements for a fish and wildlife plan, the performance standards at 30 CFR 816.97 are still in effect. These requirements are included in Tennessee's program under Section 0400–1–14–.53. If at any time FWS has reason to believe that Tennessee is not enforcing these provisions of its approved program, it may consult with OSM regarding appropriate corrective actions.

5. The Minerals Management Service (MMS) commented that Tennessee's applicability provisions at TR 0400–1–1–.08 do not adequately define the limitations of Tennessee's program. The commenter contended that Tennessee's regulations should explicitly indicate that Tennessee does not have regulatory authority over Federal lands in the State, unless delegated through the State/Federal Cooperative Agreement. MMS further stated that it would like to participate in the review and approval of any State/Federal Cooperative Agreement.

Tennessee's regulations do not explicitly define the scope of Tennessee's regulatory authority. This is not significant, however, as the Secretary believes that the State is fully aware of Federal regulations at 30 CFR 740–745 which govern coal mining operations on Federal lands. In the event Tennessee should seek a cooperative agreement with OSM to allow the State to regulate surface coal mining operations on Federal lands within its borders, MMS will be provided an opportunity to comment on any such proposed agreement through the rulemaking process.

6. The Advisory Council of Historic Preservation contended that the program does not meet the requirements of 30 CFR 770.12(c), which provides for coordination with Section 106 of the National Historic Preservation Act, or 30 CFR 810.2(h), which requires that programs provide for protection of historic land.

The Council objected to Tennessee regulations 0400–1–2–.6(4) and 0400–1–5–.06(4) as they limit identification of historic sites to those properties turned up by review of available data only, and to 0400–1–2–.28 and 0400–1–5–.28 which limit consideration to only those properties that are on the National Register and publicly owned. The agency also commented that Tennessee's regulations at 0400–1–4–.02(1)(j) and 0400–1–4–.03(5)(c), pertaining to coal exploration, are similarly less effective than their Federal counterparts. The Council also asserted that because of certain failings the Tennessee program does not comply with the programmatic memorandum of agreement (PMOA) between OSM and the Council and that OSM should initiate consultation under 36 CFR Part 800.

The PMOA referred to in the Council's comments relies on regulations that were suspended by the Director of OSM. Specifically, the Director suspended 30 CFR 761.11(c) and 761.12(f)(1) insofar as these regulations place limitations on surface mining operations under approved State programs which affect places eligible for listing on the National Register of Historic Places and insofar as they would apply to privately owned places listed on the Register in addition to publicly-owned places (See 44 FR 67942). The PMOA referred to by the Council is currently inoperative due to its inconsistency with the Director's suspension of these regulations. Presently, OSM is developing its own counterpart regulations to those of the Council at 36 CFR 800. Promulgation of those regulations will fully establish OSM's regulatory obligations under SMCRA and will provide a clear guide to coal mining states when updating their programs. Pending promulgation of those regulations the Secretary is relying on Section 522(e)(3) of SMCRA to evaluate the acceptability of State program provisions. Section 522(e)(3) of SMCRA prohibits surface coal mining operations which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless jointly approved by the regulatory authority and the agency with jurisdiction over the park or places. The Tennessee regulations require the identification of publicly owned places listed on the National Register of Historic Sites and they reflect the prohibition found in Section 522(e)(3). The Secretary, therefore, has concluded

that the Tennessee regulations are no less effective than the Federal regulations in meeting the requirements of the Act.

7. One commenter testified that protection of threatened and endangered species will not receive adequate consideration under the Tennessee program. According to the commenter, either the Office of Surface Mining (OSM) or the Fish and Wildlife Service (FWS) should have an opportunity to review each mining or exploration permit application. The commenter also contended that a field monitoring program needs to be employed during and after mining operations to prevent the possible elimination of some species.

The Secretary has determined that Tennessee's program requirements for the protection of threatened and endangered species (TR 0400–1–3–.04(13) and 0400–1–14–.53) are in accordance with Section 515(b) of SMCRA and consistent with OSM's regulations at 30 CFR 770.12, 786.19(o) and 816.97. OSM will be responsible, in an oversight role, for ensuring that Tennessee implements the approved provisions of its program. In carrying out its oversight function, OSM will coordinate with the FWS concerning the State's implementation of program provisions relating to the protection of fish and wildlife. *See* the response to comment number 4 above for further discussion relating to the oversight activities of OSM and FWS. As the Federal law and regulations do not require a field monitoring program for fish and wildlife, the Secretary cannot require the State to include in its program provisions which are not required by the Federal standards.

8. One commenter recommended that the State develop a system to measure the potential quantitative effect of mining on wildlife value. For a responses to this comment, see the response to comments 4 and 7 above.

9. The Office received a number of comments concerning the State's "systems" submission under 30 CFR 731.14(g). These comments can be grouped into three general categories: (1) Organizational concerns—funding, staffing and training; (2) functional concerns—permitting, bonding, and inspections and enforcement; and (3) citizen participation. By and large the comments expressed a desire for more detail and elaboration. While these comments are not necessarily invalid, they do not raise matters of such seriousness that a determination that the Tennessee program submission is inadequate is warranted. On the other hand, some of the comments raise questions that, while they do not require program disapproval, do clearly warrant submission of further explanation by the State. The areas where additional information is needed include procedures and forms for permitting, inspection, enforcement, and adequacy of staffing and funding. Findings 12.5 and 30 discuss these deficiencies in more detail, and conditions 9 and 10 impose the requirements for this additional information.

III. Definitions

1. The Environmental Policy Institute (EPI) stated that Tennessee's program at TR 0400–1–1–.03 omits the definition of "affected area", and, thereby, fails to insure that the State will treat the surface over underground mine workings as "affected area". Therefore, stated the commenter, the Tennessee rules are less effective than 30 CFR 701.5.

The definition of the term "affected area" is contained in Section 59–8–303 of the Tennessee Coal Surface Mining Law of 1980, and is included in the May 13, 1982, revised regulations.

2. According to the Environmental Policy Institute (EPI) 30 CFR 776.15(a) is more effective than TR 0400–1–4–.04(3) because it requires compliance with performance standards for all coal exploration activities that substantially disturb the surface or which remove more than 250 tons of coal. The State rule limits the applicability of performance standards to those coal exploration activities that substantially disturb the surface.

Further, EPI pointed out, the State rules omit the requirement of 30 CFR 776.12(a)(3)(v) for a description of the measures to be taken to comply with the performance standards.

The Secretary does not agree that Tennessee's rules are less effective. Section 0400–1–4–.01(2) of the State's program defines the term "substantially disturb" to mean any activity in which overburden is removed to expose the coal, or in which heavy equipment such as drills, bulldozers, graders, or front-end loaders are used or in which roads are constructed or upgraded to allow access. This definition is sufficiently detailed and comprehensive to virtually include all coal exploration operations. Further, Tennessee has not omitted requirements for describing the measures to be taken to comply with the performance standards, as stated by EPI. The requirements of Tennessee regulation 0400–1–4–.02(e), (g), (j) and (l) as well as those of Tennessee regulations 0400–1–4–.03(5)(a), 0400–1–4–.03(6) and 0400–1–4–.03(3) are sufficiently broad to insure this information will be provided.

IV. Permitting

1. Sierra Club commented that the "section concerning permitting" does not provide sufficient information to demonstrate how the Division of Surface Mining (DSM) will coordinate processing of information received from the public to ensure that issues raised by citizens are fully addressed. Also, it does not address exactly how DSM plans to enforce NPDES permits.

It is unclear what section of the permitting regulations the commenter is referring to. Tennessee's submission contains a chapter on "Processing of Permit Applications" (TR 0400–1–3), which provides that the public will have opportunity for comment on permit applications. Any commenter will also be provided a copy of the Division's decision on a permit (TR 0400–1–3–.01(7)(a)(1)).

Tennessee's primacy package also contains a discussion of the "System" to be used for processing permit applications (§ 731.14(g)(1)). This section is intended to focus on the State's internal procedures for processing permits, including the handling of public comments. While the Secretary finds that Tennessee's discussion demonstrates a basic understanding of the permitting process and the related coordination responsibilities, there are some deficiencies as discussed in Finding 12.5. However the State has agreed to provide additional material so that the State program can meet fully the requirements of 30 CFR 731.14(g)(1), as reflected in Condition 9.

Finally, the State has submitted a copy of the Memorandum of Agreement between the Tennessee Department of Conservation and the Tennessee Department of Health. *See* § 731.14(f). It outlines the general responsibilities of each agency regarding NPDES enforcement sufficient to dispel the Sierra Club's concern.

2. Tennessee Valley Authority (TVA) noted that Tennessee regulation 0400–1–2–.09(2)(b)(5), as it relates to total iron, is less stringent than 30 CFR 779.16(b)(2)(v) because the permit applicant is not specifically required to submit information on dissolved iron. TVA, therefore, recommended that the State revise its rule to parallel Federal requirements. At the suggestion of the Office, Tennessee has changed its regulation to require the permit applicant to submit information on dissolved iron.

3. SOCM commented that the State should add the wording "* * * including but not limited to a breakdown of the per acre cost of: (1)

Toxic material handling; (2) Stockpiling; (3) Topsoil salvage; (4) Highwall elimination; (5) Backfilling and grading; (6) Fertilizing and liming; and (7) Seeding, mulching, and planting trees" to Tennessee Section 0400–1–2.16(2)(d). According to the commenter, this breakdown is required by T.C.A. 59–8–310(a)(13).

The Secretary has determined that the suggested addition is not necessary to satisfy the Federal requirement at 30 CFR 780.18(b)(2) regarding the permittee's reclamation plan. The wording of the State's requirement is nearly identical to the Federal counterpart. Furthermore, the Secretary has determined that the State wording "detailed estimate" connotes an item-by-item breakdown.

4. SOCM stated that TCA 59–8–310(12)(C) requires that the permit applicant include in the reclamation plan a description of what measures will be taken to protect the alternative water source which must be of the same or better quality and quantity than the existing source. The commenter asserted that the requirement that the alternative water source be of the same or better quality and quantity should be reflected in Tennessee's regulations by adding to TR 0400–1–2–.23(4) the wording "a plan to provide alternative sources of water with documentation showing those sources are at least equal in water quality and quantity to the present water source."

The Secretary has determined that the suggested revision is not necessary to satisfy the Federal requirement. Tennessee regulation 0400–1–2–.11 already provides for alternative water supply information. The State provision substantially tracks and is, therefore, no less effective than 30 CFR 779.17 in satisfying the requirements of the Act.

5. Tennessee Valley Authority (TVA) stated that regulation 0400–1–2–.23 does not include reference to restoration of approximate recharge capacity. This, according to TVA, is an important technical as well as natural resource issue associated with mine reclamation and should be included as a component of the operator's mine reclamation plan.

The State modified its submission on May 13, 1982, to meet the concern expressed by TVA.

6. SOCM pointed out that Tennessee has omitted the subsection for the "Fish and Wildlife Plan" and suggests that it be included.

On Monday, August 4, 1980, the Office published notice (45 FR 51548–51550) that Federal regulations at 30 CFR 779.20/783.20 and 780.16/784.21, which require the permit application to contain a study of fish and wildlife and a fish and wildlife reclamation plan, were suspended. Rule suspension was the result of the decision in *In re: Permanent Surface Mining Regulation Litigation*, Round 1, supra. In this litigation, the court ruled that Section 507 of SMCRA did not authorize OSM to require such information. Therefore, Tennessee's program need not include requirements comparble to the suspended Federal regulations.

7. SOCM commented that there needs to be an outline of the system that will be used to assess the probable cumulative impacts on the hydrologic balance, as required at 0400–1–3–.04(3).

Federal rules do not specifically require States to submit a narrative describing a "system" for determining probable hydrologic consequence. This task will normally be integrated into the permit review process, which is described at § 731.14(g)(1) of Tennessee's program.

8. SOCM asserted that Section 0400–1–3–.04(6) of Tennessee's program should specify procedures for review by the Division and other agencies with jurisdiction to determine whether or not a proposed mine would adversely affect any public park, etc. SOCM also pointed out that Tennessee's regulation does not include Tennessee Wildlife Resources Agency Management Areas or Tennessee outdoor recreation area systems, as included in TCA 59–8–313(r)(3).

The internal operating procedures suggested by the commenter are not required by Federal regulation. Regarding the commenter's second point, the Secretary recognizes that the wording of Tennessee's regulation does not "track" that of the Tennessee statute. Nevertheless, it does reflect the requirements of Section 522(e)(3) of SMCRA and the State's requirement is, therefore, no less effective than the Federal rule in meeting the requirements of the Act.

9. SOCM commented that in TR 0400–1–3–.04(7) it is not clear whether controlling a mine is the same as ownership, as stated in TCA 59–8–313(k). To clarify the rule, the commenter suggested using the language "does not own or control, or has not owned or controlled mining operations * * *".

Tennessee's proposed rule is no less effective than the Federal provision at 30 CFR 786.19(i) in as much as the term "controlling" is used, but not defined, in the Federal rule. Therefore, the suggested change is not necessary to satisfy the Federal requirements.

10. SOCM commented that TR 0400–1–3–.04(10) should be revised by adding the requirement "The Commissioner must find in writing that the operator has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in this part". The commenter argued that this is a requirement of TCA 59–8–313(1)(1).

The Secretary finds that Tennessee's proposed rule is no less effective than the Federal requirement at 30 CFR 786.19(1) since it refers to the "requirements of surface coal mining and reclamation operations on prime farmlands historically used for cropland", located in TR 0400–1–6–.07, which is no less effective than 30 CFR 785.17. The Secretary points out that the desired requirement is reflected in Tennessee's regulation 0400–1–2–.14 for Prime Farmland Information.

11. SOCM asserted that TR 0400–1–3–.04(15) does not "track" TCA 59–8–313(h). To do so, contended SOCM, it should read " * * * that would prevent the strict control of landslides, deposition of sediment in streambeds, water pollution, or that would not adequately support reclamation vegetation.

The revision suggested by the commenter, would be discretionary with the State, because there is no counterpart in the relevant portion of the Federal regulations to the State's requirement.

12. SOCM stated that TR 0400–1–3–.04 should include a provision which would obligate the Commissioner to deny a permit if operations could not be conducted in compliance with the TCA, regulations, and other standards. According to the commenter, this is a requirement of TCA 59–8–313(n).

The Secretary finds that this requirement is satisfied at TR 0400–1–3–.04 (1) and (2), which obligates the Commissioner to deny a permit if an operation cannot be conducted "without violating any law".

13. SOCM pointed out that TCA 59–8–313(g) provides that no permit shall be granted where the applicant cannot show a legal right or where such rights are under contest. This requirement, it asserted, should be included in Tennessee regulation 0400–1–3–.04.

Tennessee regulation 0400–1–3–.04(5) requires the submission of evidence that the applicant has a legal right to enter on the surface of the land for the purpose of conducting mining operations. This requirement is no less effective than 30 CFR 786.19(f), which it substantially tracks. Therefore, the

suggested revision is not necessary to satisfy the Federal requirement.

14. At TR 0400–1–3–.06 which sets forth the criteria for permit approval or denial in the case of existing violations by the applicant, SOCM recommended adding the wording (line 3) "* * * owned or controlled by the applicant, operator, or subcontractor is currently in violation * * *". This language, asserted SOCM, more closely follows TCA 59–8–307(m) and 313(m). Also, the commenter recommended adding the requirement that "The Division shall make an on-site inspection to determine that violations are corrected".

The language of Tennessee regulation 0400–1–3.06 (line 3) is substantively the same as the Federal requirement at 30 CFR 786.17(c). The suggested change, therefore, may be adopted at the discretion of the State but is not necessary to satisfy the minimum Federal requirement. With regard to the second suggested revision, OSM's rules at 30 CFR 786.17 (c) and (d) do not require the regulatory authority to conduct an inspection of the site of the violation to determine that the permit applicant has corrected it. OSM's rules provide that the permit applicant submit proof which is satisfactory to the regulatory authority that the violation is being corrected, is in the process of being corrected or is being appealed. Therefore, the Secretary cannot require the State to adopt the language suggested by the commenter.

15. SOCM pointed out that TCA 59–8–313(m), as amended in 1981, requires that a cash bond be deposited by the operator to assure compliance, in the case of an existing violation, in order to get another permit. Thereore, stated the commenter, the regulations should describe how this cash bond will be handled, and how much will be required to ensure compliance.

While the provision suggested by SOCM might be a helpful addition to the Tennessee regulations, there is no legal basis for the Secretary to require it of the State.

16. SOCM recommended that 0400–1–3.–07(1)(c)(2) be revised to require that the permit map also show ownership of lands adjacent to the permit boundaries.

As drafted, the State requirement is no less effective than 30 CFR 786.11(a)(2)(ii), which requires only that the permit applicant "clearly show or describe the exact location and boundaries of the proposed permit area". Therefore, the suggested revision is not necessary to satisfy the Federal rule.

17. SOCM stated that newspaper notices concerning applications for mining frequently omit essential information, particularly data needed to pinpoint the location of the mine. SOCM, therefore, requested that a mechanism be included in Tennessee's program to ensure that public notices contain complete information. In a related comment, SOCM stated that the newspaper notice should appear in the most widely circulated paper in the locality of the mine.

The desired mechanism appears to be included. Tennessee regulation 0400–1–3–.07(1) requires the applicant to include in a public notice detailed information concerning the permit application. This includes data necessary to allow local residents to readily identify the proposed permit area. To insure that applicants publish the required notice, the State requires, under TR 0400–1–2–.04, that a copy of the notice must be filed with the permit application. Each notice will be evaluated by the State Regulatory Authority for content requirements.

Tennessee's requirement to publish the notice in a local newspaper of general circulation in the locality of the proposed mining operation is no less effective than Federal rules at 30 CFR 786.11(a) which also require that the applicant for a permit place an advertisement in a local newspaper of "general circulation" in the area of the proposed surface mining operations.

18. At TR 0400–1–3–.09(1), SOCM recommended adding the wording "or 30 days after the completed permit application is filed with the Division, whichever is later".

The Tennessee regulation provides that objections may be filed within 30 days of the last newspaper notice. This is the same as the requirement in the Federal regulation, 30 CFR 786.13(a). The State's rule is, therefore, no less effective than the Federal requirement.

19. SOCM asserted that 0400–1–3–.10(1)(b) should be deleted because TCA 59–8–313(b) requires that the informal conference be held in the locality of the minesite. The Tennessee regulation provides that the person requesting an informal conference state whether he desires the conference to be held in the locality of the proposed mining operations. In a related comment, SOCM suggested revising TR 0400–1–3–.10(2)(a) to state that the conference shall be held in the locality of the proposed minesite.

Tennessee's regulation 0400–1–3–.10(1)(b) and (2)(a) are considered no less effective than 30 CFR 786.14(b) which requires that the informal conference shall be held in the area of the minesite if the requestor of the conference desires it to be held in that location. Further, the Secretary finds that the flexibility provided by the State rules is reasonable and in the interest of the affected party. That is, the conference can be held in a location which serves the best interest of all concerned.

20. At TR 0400–1–3–.4, SOCM suggested adding an item (3), requiring that notices of mine plan applications be sent to interested citizens or organizations who request to be regularly notified.

Such "mailings" are not required by Federal regulations. Therefore, adoption of such procedures by the State, either by regulation or administrative procedure, is discretionary.

21. Tennessee Citizens for Wilderness Planning (TCWP) and Save Our Cumberland Mountains (SOCM) were concerned that permit and other records will not be accessible to the public. SOCM, in particular, suggested that Tennessee's program should outline a method to ensure that permit applications are filed at courthouses. Also, SOCM stated that courthouse personnel need to be trained to be of more assistance to interested citizens.

Both the Tennessee regulation, 0400–1–3–.01(10)(e), and the Federal regulation, 30 CFR 786.11(d), require that permit applications be kept on file at the courthouse of the county where the mining is proposed to occur or at another equivalent public office. The Tennessee regulation is therefore no less effective than the Federal regulation. The proposition that courthouse personnel need special training to assist the public is not self evident. Should problems along this line develop, the Secretary reasonably expects the State to take corrective action, and will monitor this concern with Federal oversight.

22. SOCM and Environmental Policy Institute (EPI) commented that Tennessee regulation 0400–1–3–.17(1) fails to establish the required parameters for determining when a permit change constitutes a significant departure from the original permit. As currently written, the State regulation merely states that determinations on major and significant revisions will be done on a case-by-case basis. The commenters believe that more specific guidelines should be developed.

30 CFR 788.12 provides that each regulatory authority shall provide parameters in the regulatory program to determine what changes shall constitute significant departures and thus require a revision of the permit. Tennessee's regulation provides no parameters, but rather, states that what constitutes a significant departure shall be decided on a case-by-case basis. The case-by-case

approach is not consistent with the guidelines called for in the Federal regulation. Parameters are necessary to guide the public and the operators as well as to aid the regulatory authority in making objective decisions. The Federal regulation reflects a specific requirement of Section 511(a)(2) of SMCRA, and the State regulation fails to meet this requirement. The establishment of guidelines for what constitutes "significant departures" is, therefore, made a condition of approval of the Tennessee program. The Secretary discusses this concern in Finding 14.3 and has required the State to submit such parameters in Condition 7.

23. SOCM commented that TR 0400–1–3–.19(1) should be revised by adding the wording "but no longer than original terms of contracts in original permit". SOCM also stated that a successor in interest to a permit must also submit information required in TCA 59–8–307(b)(1), (b)(4) and (b)(6).

Regarding the commenter's first point, the Secretary does not find the added language is necessary. Tennessee's regulation specifically provides that the successor must continue operations according to the approved mine plan and permit of the original permittee. Further, approved permits have expiration dates which cannot be extended except through the permit renewal procedures at TR 0400–1–3–.20. The commenter's second suggested revision is likewise unnecessary, because the information sought by the commenter is already required at TR 0400–1–3–18(3)(b)3 of Tennessee's program.

24. SOCM recommended that TR 0400–1–4–.01(4) be expanded to indicate that applicants wishing to remove more than 25 tons must justify the necessity of removing this amount for the purposes of analysis and location. The commenter did not provide further rationale for the suggested change.

The Federal regulations at 30 CFR 776 require any person who intends to conduct coal exploration operations in which more than 250 tons of coal are removed to obtain the written approval of the regulatory authority. OSM's rules do not require the operators to justify the necessity for removing the coal. Tennessee's regulation at 0400–1–4–.01 which requires a person to obtain the written approval of the regulatory authority if he wishes to remove more than 25 tons during coal exploration operations is, therefore, no less effective than the Federal standard in meeting the requirements of the Act.

25. According to SOCM, State regulation 0400–1–6–.04(3)(a) needs to be revised to include specific guidelines for determining whether the postmining land use constitutes an equal or better economic or public use. The commenter further suggested adding a new subsection which deals with assurances and how the applicant can demonstrate feasibility.

Tennessee's regulation for mountain top removal is no less effective than the Federal rule at 30 CFR 785.14(c), which does not require the recommended provisions. Inclusion of the suggested changes is, therefore, discretionary with the State.

V. Bonding and Insurance

1. Save Our Cumberland Mountains (SOCM) commented that TCA 59–8–309(b) indicates that "water concerns" should be examined when setting the bond amount. SOCM points out that Tennessee regulation 0400–1–7–.04(1)(j), only mentions the number and size of sedimentation ponds. Bond setting criteria, according to SOCM, should also include consideration of the proximity of the site to natural surface and groundwater sources, and the probability of run-off and contamination of streams.

The Secretary points out the Tennessee regulation TR 0400–1–7–.04(1)(j) is an optional State requirement. Its inclusion is authorized by 30 CFR 805.11(a)(5). Therefore, the suggested change is not necessary for program approval.

2. Environmental Policy Institute (EPI) pointed out that 0400–1–10–.06 allows an accelerated release of the bond after Phase I of reclamation (70% of bond as compared to 60% under 30 CFR 807.12(b)). EPI is concerned that after release of 70% of the bond there may be an insufficient amount remaining to complete reclamation under the standards of SMCRA. Therefore, EPI believes that OSM should require the State to either change its rule to be consistent with Federal requirements or demonstrate that 30% of a bond is adequate to complete reclamation.

Tennessee's requirements for satisfying the Phase I reclamation step go beyond those of similar Federal requirements by requiring the operator to have completed seeding, mulching and fertilizing. These additional requirements are sufficient to justify the additional percentage release and warrant the conclusion that the State's provisions will be no less effective than the Federal regulations.

3. SOCM and Tennessee Citizens for Wilderness Planning (TCWP) suggested adding another item to the bonding provisions at TR 0400–1–7–.04 which would require consideration of an operator's past performance and length of operation in the State. According to the commenter, this is required by TCA 59–8–307(b). Sierra Club stated similar views, adding that past performance is probably the best single criteria for estimating future performance.

The Secretary points out that an operator's past record will be considered by the regulatory authority in its decision to approve or deny a surface mining permit (TR 0400–1–3–.04(17)). In particular, Tennessee law prohibits the issuance of permits in cases where an applicant has previously forfeited a bond or where his permit has been suspended or revoked and the land left unreclaimed.

The Secretary, further, does not find that setting bond amount based on an operator's past performance is mandated by Federal law. Such practice would be inconsistent with established methods for computing bond amounts. The purpose of bonding is to ensure that sufficient funds are available to the regulatory authority to reclaim mined lands. The amount of the bond is to be established by estimating the cost of performing the various reclamation activities which would be needed in the event of bond forfeiture. When correctly estimated, the required bond will be sufficient to cover reclamation costs. Inclusion of an additional bond amount because of operator past performance would, therefore, not be necessary.

To ensure that bond amounts will be set properly, the Secretary intends to implement a comprehensive oversight program through the Office of Surface Mining. Where defects or deficiencies are identified in the State's procedures, the Office will notify the State accordingly and will recommend means for resolving the problem.

4. SOCM commented that TR 0400–1–7–.04 should include provisions to require a narrative justification explaining the factors, used in setting bond amount. This, according to the commenter, would protect the State from charges of arbitrariness, and it would also give the public details on how the bond was set.

The Secretary points out that Federal regulations do not specifically require a narrative justification explaining how the bond amount is set. Therefore, the addition suggested by SOCM is not necessary for Tennessee to receive approval of its program. Nevertheless, the Secretary believes that prudent administrative procedures require documentation of the analytical process used for setting bonds. Such administrative procedures, however, need not be regulatory in nature and

could be handled through internal directives and operating memoranda issued by the TRA.

5. SOCM stated that TR 0400–1–8–.02(3) should include an additional provision to the effect that if for any reason the public liability insurance policy is not renewed or is not in effect, all mining operations must be discontinued. This requirement, asserted the commenter, would ensure public protection at all times.

The Tennessee regulation substantially tracks, in pertinent part, the Federal regulation at 30 CFR 806.16. Both require that the permit applicant have the required insurance coverage and that the policy be maintained during the life of the permit or any renewal thereof. The Tennessee regulation is, therefore, no less effective than the Federal regulation.

6. SOCM recommended that Tennessee revise TR 0400–1–10–.04(3) to limit bond release filings, made after completion of reclamation Phases II and III, to the period between March 1 and December 1. Filings at any other times (i.e. between December 1 and March 1), according to SOCM, should be denied, because it would not be possible to determine revegetation success during dormant periods.

Tennessee's May 13, 1982 program revision meets the concern expressed by this commenter.

7. SOCM contended that Tennessee regulations 0400–1–10–.05(4) and .05(6)(a)(3) need to specify who specifically in the Division will make the evaluation of the reclamation. According to SOCM, technical staff, especially water quality experts, need to be involved in the inspection.

Tennessee's regulation tracks substantially the Federal requirement at 30 CFR 807.11(d), and it is, therefore, no less effective. The additions sought by the commenter would be discretionary with the State.

8. SOCM stated that it was unclear if the percentages given for bond release in TR 0400–1–10–.06(2) are equivalent to 30 CFR 807.12. Also, according to SOCM, there should be a clear mechanism for considering the factors listed in TR 0400–1–10–.06(2)(d) in determining how much bond to release. In the past, asserted SOCM, Tennessee's practice was to release standard percentages for grading, backfilling, and revegetation without consideration of site conditions. Concerning the commenter's first point relative to the equivalency of Tennessee's provisions for the percentages of bond release to 30 CFR 807.12, see the response to comment 2 above. With regard to the commenter's concern that Tennessee's program does not provide for consideration of site conditions when releasing a portion of the bond, the Secretary points out that TCA 59–8–316(c) requires that upon receipt of any request for bond release the commissioner shall within 30 days conduct an inspection and evaluation of the reclamation work involved prior to notifying the permittee of his decision to release all or part of the bond.

9. SOCM commented that TR 0400–1–11–.02(3) should include provisions to the effect that failure to correct violations and achieve compliance within an agreed upon time would result in bond forfeiture and immediate collection proceedings. According to the commenter, this would eliminate drawn-out negotiations, which in the past have slowed the reclamation process, contributed to environmental degradation, and increased reclamation costs.

The Secretary concludes that Tennessee's regulation is no less effective than 30 CFR 808.11(b) which provides for withholding forfeiture in appropriate circumstances. Therefore, the suggested change is not necessary for program approval. Further, the Secretary interprets the State requirement to mean that compliance will be achieved within a reasonable period. If not accomplished by the agreed upon date and there is no compelling reason or unique circumstances to justify an extension, the State would be obligated to exercise the forfeiture provisions and seek appropriate payment.

10. The Obed River Council, SOCM and several other commenters pointed out that bonding procedures have been abused in the past and that Tennessee's primacy program does not resolve the problem of inadequate bonding. One commenter stated that bonding at $1,500 per acre where reclamation costs run $5,000 per acre is inadequate to ensure reclamation success.

As pointed out in the preamble to the permanent regulatory program published in the March 13, 1979, **Federal Register** (44 FR 14961), adequacy of a State program cannot be judged on past performance because past performance may have been determined by factors which may not necessarily relate to the future intentions or capabilities of the State. The Secretary, therefore, has based his decision on the Tennessee program on an evaluation of the consistency of the State program with SMCRA and the federal regulations. Regarding Tennessee's bonding regulations, specifically those concerning bond amount, the Tennessee regulations set the same minimum ($10,000) as the Federal rule at 30 CFR 805.12, and they are, therefore, no less effective in this respect.

VI. Lands Unsuitable

1. SOCM commented that the term "significant", as used in TR 0400–1–9–.04(11), needs to be defined.

Tennessee's use of the word "significant" does not render the definition less effective than the Federal definition at 30 CFR 762.5, as the term "significant" is used in a similar context in the Federal rule and no definition of the word is provided.

2. SOCM asserted that Tennessee's guidelines at TR 0400–1–9–.07(5)(c) for determining if a petition is frivolous or unclear are too vague. The commenter did not offer any specific changes to clarify the guidelines.

The Tennessee rules are guides which the Commissioner may use in making a determination on frivolousness. The Secretary, therefore, has determined that Tennessee's guidelines will serve a useful purpose and their inclusion in the Tennessee program does not render it less effective than the Federal requirements at 30 CFR 764.15 (which do not include a definition of the term "frivolous").

3. SOCM commented that TR 0400–1–9–.10(4) should be revised to require a written waiver from the occupant of a dwelling, if different from the owner.

The Secretary finds that Tennessee's regulation is no less effective than 30 CFR 761.11(e) which requires that a written waiver be obtained only from the owner of the dwelling. Therefore, the suggested addition would be discretionary with the State.

4. According to SOCM, TR 0400–1–9–.11 is very generally worded and does not specifically state what is included in the data base and inventory. SOCM maintained that it needs to be developed further.

Federal regulations at 30 CFR 764.21 do not require a "listing" of what will be included in the data base and inventory system. Rather, Federal regulations merely require development of such materials. Therefore, the Secretary concludes that Tennessee's requirements are no less effective than the Federal rules.

The Secretary also points out that the State must describe, as required under § 731.14(g)(11), a system for designating lands unsuitable. This sytem's description includes a description of the internal mechanism for inventorying, establishing and maintaining a data base. The Secretary finds that Tennessee's system description for the

lands unsuitable function (§ 731.14(g)(11)) is adequate.

5. Environmental Policy Institute (EPI) commented that Tennessee rule 0400–1–9–.10(4) allows for waivers for mining within 300 feet from an occupied dwelling by the owner, or by a previous owner. The corresponding Federal rule at 30 CFR 761.11(e) does not allow waivers by prior owners. While EPI stated that it did not object to the intent of protecting an operator from a change in ownership, EPI believes such protection should be limited. EPI, therefore, asserted that the State requirement should be clarified to limit its scope to waivers from persons who owned the dwelling at the time the permit application is approved.

As noted in the Federal Register of, November 27, 1979 (44 FR 67942), the Secretary has agreed to interpret Section 522(e)(5) of SMCRA as authorizing valid pre-Act waivers and binding subsequent owners to valid waivers of prior owners. The Secretary, therefore, has determined that Tennessee's requirements are no less effective than 30 CFR 761.12(e).

VII. Performance Standards

1. The U.S. Bureau of Mines observed that Tennessee's requirements at TR 0400–1–13–.02 and .03 deleted references to "250 tons of coal", as contained in Federal regulations 30 CFR 815.11 and .13.

The Secretary finds that Tennessee's requirement is no less effective than the Federal rule. The State defines the term "substantially disturb" to include virtually all activities associated with exploration operations. This would include the removal of coal for chemical and physical analysis.

2. At TR 0400–1–14–.08(2), SOCM suggested adding provisions to the effect that use of substitute or supplemental materials shall be decided and approved prior to permit approval. The commenter also indicated that there needs to be a mechanism set up within the regulatory authority to evaluate the technical information required under TR 0400–1–14–.08(5)(a)(1), especially to include independent verification to assure accuracy and absence of fraud.

Additionally, continued the commenter, there should be criteria to use to determine a suitable range of values for allowing soil substitutes and supplements; different measures should be applied to different soil types.

The Secretary has determined that Tennessee's regulations at TR 0400–1–14–.08(2) and .08(5) are worded substantially the same as the Federal regulations at 30 CFR 816.22(e) and are, therefore, no less effective than the Federal regulations. In any event, Tennessee's permitting regulation (TR 0400–1–5–.15(2)) requires the submission of soil substitute technical data for review and approval by the regulatory authority. Mining permits cannot be issued unless the regulatory authority has made a review and approved the plan. Establishing a range of values (criteria) for allowing soil substitutes, is best handled through internal guidelines and procedures issued by the regulatory authority.

3. Tennessee Valley Authority (TVA) commented that TR 0400–1–14–.13(2) and (4) allow exemptions from effluent limitations when a 10-year, 24-hour precipitation event is exceeded. Available research data, stated TVA, suggests that the exemption be extended to situations where a series of precipitation events are equal to or greater than the 10-year, 24-hour storm.

On December 31, 1979, the Secretary published notice in the Federal Register (44 FR 77452) temporarily suspending Federal requirements at 30 CFR 816.42(b) (1) and (2) insofar as they apply to TSS discharges. The State was notified that comparable regulations were not required, unless the State specifically elected to adopt like provisions and such requirements were consistent with State law. The Secretary will publish revised requirements for 30 CFR 816.42(b) (1) and (2) which provide greater flexibility in addressing a variety of environmental conditions. Any changes to the Federal rules will require corresponding revisions to State programs where State regulations would be less effective than the Federal requirements. Meanwhile, the Secretary finds that Tennessee's requirements are no less effective than the remaining Federal rules.

4. SOCM suggested that the last sentence of TR 0400–1–14–.12(4)(a) should be deleted because it implies that stream diversion is preferable, which is contrary to the Tennessee Water Quality Control Act.

The Secretary finds that Tennessee's proposed requirement is no less effective than the Federal regulation at 30 CFR 816.41(d)(1) which specifies that "changes in flow of drainage shall be used in preference to the use of water treatment facilities". Further, the Secretary does not agree that the regulation in question implies that "stream diversion is preferable". In fact, the acceptable practices listed at TR 0400–1–14–.12(4)(b) to control and minimize water pollution do not mention stream diversion. Rather, they focus on methods of stabilizing disturbed areas and regulating run-off.

5. As the U.S. Bureau of Mines pointed out, Tennessee rule TR 0400–1–14–.13(4) adds an exemption for run-off from snow melt. The commenter did not indicate approval or disapproval of the State requirement. 30 CFR 816.42(a)(7) provides that discharges of water from areas disturbed by Surface Mining activities shall be made in compliance with applicable State and Federal laws. In this case EPA's rainfall exemption in 40 CFR 434.22(c), 434.32(b) and 434.42(b) is the applicable Federal requirement. The Secretary has determined, that Tennessee's exemption provision is consistent with this Federal requirement.

6. According to SOCM, TR 0400–1–14–.14(1) needs to be qualified to the extent that any temporary ditches whose function is to carry water to a basin must be designed to carry at least the peak flow from the 10-year, 24-hour precipitation event. This, stated the commenter, would be consistent with like standards for basins and would eliminate possible violation of the water quality standards referred to at TR 0400–1–14–.13. Also, continued the commenter, the 10-year recurrence interval at TR 0400–1–14–.14(2) should be changed to 100-year recurrence interval because this standard is consistent with the construction standards for silt basins.

The Secretary has determined that Tennessee's regulations TR 0400–1–14–.14(1) and (2) are no less effective than Federal rules 30 CFR 816.43(a) and (b) which require that temporary diversions shall be constructed to pass safely the peak run-off from a precipitation event with a 2-year recurrence interval or a larger event as specified by the regulatory authority and permanent diversions be constructed to pass 10 year or larger events. The Secretary suggests that the commenter misinterprets the rules and, therefore, offers the following clarification: The regulations in question address temporary and permanent diversions which will only be constructed in *undisturbed areas*. Therefore, they will not carry water to sediment basins, as would be required for diversions carrying water from disturbed areas. Thus, the 2-year and 10-year precipitation event construction standards are considered adequate for undisturbed areas. Where they are not, Tennessee's regulations provide the regulatory authority with discretionary authority to impose more stringent standards.

7. SOCM contended that Section 0400–1–14–.15 should be deleted because stream diversions are not allowed under

the Tennessee Water Quality Act and TCA 59–8–311(10)(F).

The Secretary has determined that Tennessee's requirements are no less effective than comparable Federal regulations at 30 CFR 816.44, as they track substantially the Federal rule. The Secretary also finds that stream channel diversions designed and constructed under the requirements at TR 0400–1–14–.15 and .28 are consistent with Tennessee law. While the cited provision of TCSML prohibits mining within 100 feet of a stream, it does not prohibit diverting streams. Similar provisions in SMCRA have not been interpreted to prevent such diversions.

8. Tennessee Valley Authority (TVA) commented that they would like to see Tennessee encourage innovation in the design and operation of sediment ponds by allowing variances from design criteria when the operator can demonstrate that the design will permit compliance with the environmental performance standards.

Tennessee's regulations, with minor exceptions, are no less effective than comparable Federal rules at 30 CFR 816.46, which they track in large measure. The Secretary further finds that some regulatory flexibility exists in Tennessee's program to permit operators to propose alternative designs and operations of sediment ponds. See TR 0400–1–14–.17 (2) and (4)(c), for example. The Secretary would also like to point out that OSM is currently reviewing all its regulations in an effort to eliminate provisions which are burdensome, excessive or counter-productive. The Federal rules for the design and construction of sedimentation ponds will be reviewed as part of this regulatory reform effort. Following promulgation of any changes to OSM's rules which would allow greater flexibility in the design and construction of sedimentation ponds Tennessee will have an opportunity to revise its rules to reflect the changes in the Federal requirements.

9. Environmental Policy Institute (EPI) expressed concern that "instructions" given by OSM may have prejudiced the State's decision to not incorporate certain sediment pond design criteria into State rules at TR 0400–1–14–.17 and 15–.17. EPI stated that it was unable to locate the OSM "instructions" in the Tennessee administrative record and, therefore, suggested they be made available for public comment and also placed in the Tennessee administrative record.

On August 22, 1980, the Office sent a telegraphic message to each State agency head notifying them of the effect of the District Court for the District of Columbia's decision of August 15, 1980, concerning Secretarial review and approval/disapproval of State programs. This notification, which may constitute the "instructions" referenced by EPI, indicated that any provisions in a proposed State program enacted pursuant to a State law prior to enactment of SMCRA or which were enacted after the Court's May 16, 1980 opinion, could be approved by the Secretary even if identical to suspended or remanded OSM regulations, if the Secretary found they were no less stringent than the requirements of SMCRA. The notification further specified that such provisions, however, were not required in the State program and could be withdrawn. The OSM message also pointed out that State regulations promulgated to comply with SMCRA and Federal regulations prior to May 16, 1980, and which mirrored suspended or remanded OSM regulations, would be disapproved unless State officials informed OSM in writing that the State wished to retain such rules in the State program. The Secretary does not find that this notification prejudices, in any way, the State's decision to include or exclude suspended or remanded regulations; the decision is entirely discretionary with the State. A copy of OSM's telegraphic message is available in the Tennessee administrative record.

10. U.S. Bureau of Mines and Tennessee Valley Authority pointed out that 30 CFR 816.46(h) requires sediment removal from sedimentation ponds when sediment reaches 60 percent of pond capacity. Tennessee rule 0400–1–14–.17, in contrast, specifies that sediment removal is required at 80 percent of capacity.

By **Federal Register** dated December 31, 1979 (44 FR 77452) the Secretary temporarily suspended that portion of 30 CFR 816.46(h) requiring sediment removal when the sediment reached 60 percent of pond capacity. OSM agreed to suspend this rule in *In re: Permanent Surface Mining Regulation Litigation* (D.D.C., May 16, 1980, (Round 2). Currently, 30 CFR 816.46(h) only requires that sediment be removed from sediment ponds. Tennessee's requirement, therefore, satisfies the existing Federal rule.

11. The Tennessee Valley Authority recommended that Tennessee's regulation 0400–1–14–.17(3) be expanded to include guidance for determining the required theoretical detention time for sediment ponds.

By **Federal Register** notice of December 31, 1979 (44 FR 77452) the Secretary suspended all portions of 30 CFR 816.46(c), except for those portions contained in the Tennessee regulation cited by TVA. Therefore, Tennessee's requirements are currently no less effective than the Federal rules. The Secretary is, however, in the process of revising the Federal requirement concerning sedimentation pond detention time. Following publication of the final rules, the State may be required to revise the State program to be consistent with the modified Federal standards.

12. Environmental Systems Corporation commented that Tennessee's surface area requirements for sediment ponds at TR 0400–1–14–.17(4) are excessive. As pointed out by the commenter, the proposed specific gravity of 1.8 and particle diameter of 10 microns would roughly double the minimum surface area of a required pond. This, stated the commenter, is rather arbitrary and would defeat the intended purpose of increasing solids removal efficiency; although minimum surface area would be nearly doubled, sediment storage volume would be unchanged and more land unnecessarily disturbed in the construction of a larger pond.

The Secretary recognizes that Tennessee's requirements may result in the construction of large sediment ponds in order to meet the required theoretical detention time. Because Tennessee's criteria satisfy Federal requirements, however, the Secretary cannot require the State to revise the standards. Nevertheless, the commenter's concern, along with the Secretary's observations, will be brought to the State's attention.

13. Tennessee Valley Authority recommended rewriting a portion of 0400–1–14–.17(4) to specifically indicate that design criteria are to assure removal of suspended solids. Also, TVA believes that use of the criteria to be considered in determining surface area for sediment ponds should be explained.

The cited portion of the State regulation has no Federal counterpart. The State's requirements go beyond the minimum needed to meet the Secretary's program approval standards. While the Secretary, therefore, does not find that the suggested language changes are necessary to satisfy the Federal standards, he does believe the commenter's points may have merit and will bring them to the attention of the State.

14. Tennessee Valley Authority (TVA) stated, in reference to TR 0400–1–14–.17(5), that studies show that permanent pool-type sediment ponds give better performance. Therefore, according to TVA, dewatering devices should be operator controlled, i.e., dewatering of

the pond is controlled through a mechanism such as a gate valve.

The Tennessee regulation contains the critical requirements of 30 CFR 816.46(d) and it is, therefore, no less effective than the Federal regulation.

The Secretary finds that he does not have the authority to require "gate valve" or other operator-controlled dewatering devices for all permanent pool-type sediment ponds. A requirement of this nature, if proposed by the State, could be considered by OSM. The Secretary, therefore, finds that the system, such as provided by Tennessee's rule at TR 0400–1–14–.17(5) meets the Federal requirements for sediment pond dewatering.

15. Environmental Systems Corporation stated that any statement in the regulations which would "flatly" require a pipe conduit through a dam for a principal spillway should be deleted. The commenter believes that a simple, riprapped emergency spillway of adequate size is far simpler to construct and has fewer attendant problems.

The Secretary is not aware of any requirement in the Tennessee program which would prohibit the use of dewatering systems, other than pipe conduit. For example, Tennessee regulation 0400–1–14–.17(5)(a), like 30 CFR 816.46(d), states that "The water storage * * * shall be removed by a nonclogging dewatering device or a conduit spillway approved by the Division". This rule clearly allows flexibility in selecting the means of dewatering. Similarly, regulation 0400–1–14–.51 provides considerable design flexibility by specifying that "Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion".

In response to the commenter's reference to rocked emergency spillways, the Secretary notes that Tennessee regulation 0400–1–14–.17(8) which is consistent with 30 CFR 816.46(g) precludes the practice of combining emergency and principal spillways by requiring that there shall be no outflow through the emergency spillway during the passage of the run-off resulting from the ten year-24 hour precipitation event or lesser events through the sediment pond.

16. SOCM commented that TR 0400–1–14–.20(1) should specify that someone must assume permanent responsibility for managing a permanent impoundment. According to the commenter, this is probably the most important consideration if permanent impoundments are to be allowed.

The Secretary concludes that Tennessee's requirements at TR 0400–1–14–.20(1) are no less effective than 30 CFR 816.49(a), which it substantially tracks. The commenter should also note that permanent impoundments, regardless of size, are not without continuous monitoring (see TR 0400–1–14–.20(8)).

17. According to SOCM, Section 0400–1–14–.21(1) does not provide adequate protection for groundwater. To do so, stated SOCM, the regulation should specify a procedure for monitoring effects on groundwater, as in Federal regulation 30 CFR 715.17(h)(3) (sic).

Surface and groundwater monitoring is addressed at Tennessee regulation 0400–1–14–.23. These requirements are substantially the same as and no less effective than Federal *permanent* program performance standards at 30 CFR 816.52 (the regulation cited by the commenter is an interim program requirement).

18. SOCM commented that intermittent streams should also be included in TR 0400–1–14–.28(1) because the law does not specify only perennial streams. Also, asserted the commenter, the discretionary authority imparted to the Division by this regulation should be deleted because it conflicts with TCA 59–8–311(10)(F). In a related comment the U.S. Bureau of Mines stated that Tennessee did not include provisions for authorizing surface mining closer than one hundred feet of a stream or through a stream upon a finding that the original stream channel could be restored.

Although worded differently, Tennessee's requirements for "Stream Buffer Zones" are no less effective than 30 CFR 816.57. The intent of these requirements is to afford protection of stream biota. The Secretary interprets the Tennessee wording to include intermittent streams under the phrase "a stream with a biological community". As such, the existence of stream biota would be determined using the criteria at TR 0400–1–14–.28(3). The Bureau of Mines comment is accurate; however, the variation in the Tennessee Program simply renders it more stringent than the Federal requirements.

19. Sierra Club stated that the hydrology section allows for mining closer to streams than permitted by Federal law.

Pursuant to Section 515 of SMCRA, 30 CFR 816.57(a) prohibits mining within 100 feet of a perennial stream or a stream with a biological community unless specifically authorized by the regulatory authority. Tennessee's rule at 0400–1–14–.28(1) is worded differently, but its requirements are no less effective than the Federal requirement.

20. SOCM pointed out that TR 0400–1–14–.30(2) erroneously references TR 0400–1–27 as requiring valid blasting certification. In fact, stated the commenter, Tennessee's regulations do not contain any requirements for blaster certification.

Federal regulations at 30 CFR Part 850 require that the State submit a blaster training and certification program to the Secretary within six months after a complete Part 850 is promulgated. The Office of Surface Mining is still developing certain materials for a complete blaster training and certification program. Therefore, the State will not be required to submit comparable provisions until six months from the date these materials are made available to the State. Regarding the reference error noted by SOCM, the State was notified and requested to make the necessary correction. A revised provision was submitted by the State on May 13, 1982.

21. SOCM suggested adding language at TR 0400–1–14–.31(3)(a) to require the Division to indicate to the person responsible for a structure that they have 20 days from the postmarked date of the survey to comment on the preblast survey.

Tennessee regulation 0400–1–14–.31(3)(b) specifically addresses the commenter's recommendation.

22. At TR 0400–1–14–.33(6), SOCM suggested either deleting the language "except where lesser distances are approved * * * or other appropriate investigation" or clearly spelling out what circumstances would allow a lesser distance.

On August 4, 1980, the Secretary published notice (45 FR 51549) that Federal regulations at 30 CFR 816.65(f) and 817.65(f) were suspended insofar as they restrict blasting at distances greater than 300 feet from a dwelling or other structure, or from flammable facilities and water lines. The Secretary's action is in keeping with Judge Flannery's ruling *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C., May 16, 1980), (Round 2), that the Act did not provide authority for the Secretary to expand the limitations on blasting. Section 522(e)(5) of SMCRA prohibits surface coal mining operations (which includes blasting) within 300 feet from an occupied dwelling, unless waived by the owner thereof, or within 300 feet of any public building, school, church, community, or institutional building, etc. Apart from these provisions in Section 522(e)(5) of SMCRA which prohibit or limit mining (and hence blasting), the Federal law and regulations do not address the circumstances under which, the regulatory authority may authorize blasting at distances less than 300 feet

of an occupied dwelling or other structure. Section 59–8–313(r)(5) of Tennessee's coal surface mining law parallels Section 522(e)(5) of SMCRA and prohibits mining within 300 feet from any occupied dwelling unless approved by the owner or within 300 feet of any public building, school, church, community or institutional building, etc. Tennessee's regulation at 0400–1–14.33(6) which prohibits blasting within 1,000 feet of such structures unless a lesser distance is approved by the Division is more stringent than OSM's counterpart regulations at 30 CFR 816.65(f) and 817.65(f). Therefore, the Secretary has determined, that Tennessee's provision which allows the regulatory authority to approve blasting within distances less than 1,000 feet of a structure is no less effective than the Federal standard.

23. Tennessee Valley Authority (TVA) commented that Tennessee's regulations should allow a multiple-seam operator to push or dump overburden from an upper bench to help reduce the highwall at a lower seam when this practice would be practical and safe. Disposal of excess spoil in this manner, stated TVA, would be a logical extension of OSM's proposed rule published in the July 20, 1981, Federal Register (46 FR 37283–86) which provides an option for disposal of excess spoil on orphan benches.

The Secretary finds that Tennessee's regulations regarding disposal of excess spoil are consistent with the Federal regulations at 30 CFR 816 and 817. OSM's rules do not include provisions to allow the method of disposal of excess spoil recommended by the commenter. The Secretary cannot require the state to include in its program provisions not included in the Act or the Federal permanent program rules.

24. SOCM stated that paragraph 0400–1–14–.56(1)(b)8, concerning the State's discretionary authority to grant additional time to comply with the timing requirements for backfiling and grading, should be deleted because it could be easily abused.

The Secretary has determined that Tennessee's requirements are no less effective than the Federal rule at 30 CFR 816.101(a)(1) which provides that the regulatory authority may grant additional time for backfilling and grading if the permittees can demonstrate additional time is necessary. Further, the Secretary finds that the flexibility provided by TR 0400–1–14–.56(1)(b)8 is reasonable and necessary if the State is to have a program that protects and enhances the environment. Certainly, it would be prudent to postpone certain functions required under TR 0400–1–14–.56(1), if that delay would result in improved environmental conditions e.g. it would be unreasonable and imprudent to require placement and spreading of saturated soils during wet weather periods simply to satisfy a deadline.

25. SOCM and U.S. Bureau of Mines pointed out that Tennessee regulation 0400–1–14–.58(1)(a) does not require burying of toxic and acid-forming materials under at least four feet of soil.

On Tuesday, November 27, 1979, the Secretary published notice that Federal requirements for covering coal and acid- and toxic-forming materials were suspended. Pending the outcome of rulemaking, the Secretary will be guided by sections 515(b)(14) and 516(b)(10) of SMCRA and 30 CFR 816.48 and 817.48 in determining State compliance. Considering this guidance, the Secretary concludes that Tennessee's rules for covering coal and acid- and toxic-forming materials are no less effective than the Federal requirements now in effect.

26. SOCM recommended a word substitution in TR 0400–1–14–.64. Instead of giving the Division discretion in requiring temporary covers, SOCM would mandate such procedure by changing the word "may" to "shall" in the next to last sentence.

The Secretary does not agree with the recommendation because he finds that the flexibility provided by Tennessee's regulation is needed to meet a variety of conditions and circumstances. Temporary covers on flat topography or on erosion-resistant soils during low precipitation periods, for example, would be of little, if any, value. In contrast, this same area may need ground cover protection during an extended period if that period is characterized by intense periods of rainfall. For these reasons, the Secretary has determined that Tennessee's requirements will be no less effective than 30 CFR 816.113.

27. Tennessee Valley Authority (TVA) pointed out that compliance with 0400–1–14–.65(1) of Tennessee's rules may not be possible unless there is an increased production of mycorrhiza inoculated seedlings by the State and/or commercial nurseries. Also, noted TVA, no inoculants exist for some of the recommended plant species. For these reasons, TVA recommended that inoculation only be required when it is practical and on plants which are known to respond favorably to inoculants.

The Secretary finds that the suggested language would clarify Tennessee's requirement for inoculation. It is, however, not essential because reasonable interpretation of the Tennessee provision would indicate the State would recommend only those plants which can be inoculated or which demonstrate response to inoculation.

28. Tennessee regulation 0400–1–14–.65(4) specifies application rates for fertilizer. According to SOCM, the current wording of this requirement is too loose and could be abused. Therefore, the commenter recommended revising this section by adopting very specific instructions, which would require application rates of 60 percent at the initial seeding and 40 percent in the following growing season; all fertilizer would be applied twice annually and would coincide with the growing season.

Federal requirements at 30 CFR 816.25 specify the use of soil tests when determining rates of nutrient and soil amendments but do not specify application rates. Tennessee's requirements state that fertilizer rates will be based on soil tests; hence, the Secretary finds them no less effective than the Federal rules.

29. Tennessee Valley Authority (TVA) observed that for liming to be most effective, it should be used in the upper spoil layers. Therefore, TVA recommended that TR 0400–1–14–.65(5) should specifically state that "Agricultural lime shall be supplied and incorporated into the upper six inches of spoil at a rate determined by spoil tests".

The Federal revegetation requirements at 30 CFR 816 and 817 do not specify methods of application for lime. Therefore, the Secretary cannot require the State to include in its program the provision recommended by the commenter.

30. Section 0400–1–14–.65(6) sets forth mulching rates for different mulches. SOCM commented that the mulch types listed were good, but the requirements should also recognize other anchoring methods such as netting and paper mulch. New technology, pointed out SOCM, may also bring other methods "on-line".

The Secretary has determined that Tennessee's proposed requirements are no less effective than 30 CFR 816.114, which leave the subject of anchoring mulches to the regulatory authority's discretion. Nevertheless, the Secretary believes that SOCM's comment has merit and should be considered by the State for inclusion in its program. Any changes made by the State in response to SOCM's comment, however, would be discretionary, provided they do not conflict with Federal requirements.

31. SOCM indicated that some of the trees listed at TR 0400–1–14–.65(7) and (8)(a) are not native. SOCM also

recommended adding yellow poplar because it is readily available and will grow well on sites with good water and soil. Finally, the commenter suggested using scientific names, in lieu of common names, to avoid confusion.

The Secretary points out that introduced tree species are acceptable, provided they meet the requirements for "Use of introduced species" at 30 CFR 816.112. Also, the Secretary would not object to the addition of "yellow poplar" and the use of scientific names, as suggested by the commenter. Neither change, however, is essential to satisfy the minimum Federal requirements. The Secretary concludes that Tennessee's proposed rule, as written, is no less effective than comparable Federal requirements at 30 CFR 816.111, 816.112, and 816.116.

At TR 0400–1–14–.67, SOCM indicated that the vegetation survival check should not be made until the second growing season following planting. According to the commenter, this would clearly define conditions for the evaluation and would help ensure reclamation success.

The Secretary finds that it is most important to check revegetation success as soon as practical following planting so that remedial measures can be implemented to correct deficiencies in a timely manner. The Secretary would also point out that periodic inspections of revegetated areas be made to ensure that the area meets the standards required for bond release.

33. SOCM commented that TR 0400–1–14–.67(2) should require that productivity for woody plants and perennials shall not be considered equal if it is less than ninety percent of the production of the approved reference area or technical equivalent with ninety percent statistical confidence.

The standard suggested by the commenter are not as valid for woody plants and perennials as for other revegetation. Forested reference areas exhibiting size classes, productivity, and species similar to the reclaimed areas may not be available in the vicinity of the minesite. The Secretary finds that it is appropriate and reasonable to use stocking density when determining revegetation success for woody plants that are used to achieve the post-mining land use. The Secretary has, therefore, determined that Tennessee's requirements for evaluation of vegetation survival are no less effective than those required by 30 CFR 816.116.

34. SOCM commented that TR 0400–1–14–.67 needs to include requirements for (1) fertilizer, (2) liming, and (3) species to meet wildlife requirements. These were included in a previous draft of Tennessee's rules and need to be reinserted here, according to SOCM.

The Secretary points out that the desired provisions are included at TR 0400–1–14–.65 (4), (5), and (9) of Tennessee's program.

35. U.S. Bureau of Mines pointed out that State regulation 0400–1–14–.74(4)(i) allows a safety factor of 1.2. Federal standards at 30 CFR 816.152(d)(9) allow a 1.25 safety factor.

The Secretary published a notice in the August 4, 1980, **Federal Register** (45 FR 51548) suspending pertinent Federal regulations pertaining to roads. This action was taken in response to the decision in *In re: Permanent Surface Mining Regulation Litigation, D.D.C.*, May 16, 1980, Round 2. Until new Federal regulations are published, the Secretary will evaluate the State program based on its adequacy in implementing the provisions of SMCRA. In this regard, the Secretary concludes that Tennessee's rules are no less effective than the Federal law.

36. Environmental Policy Institute (EPI) indicated that TR 0400–1–14–.68 provides for partial bond release after the vegetative cover has been inspected and all requirements of the Act have been met. EPI stated that this rule should specifically reference 0400–1–10–.06 to make it clear that bond release is not authorized beyond that allowed by these rules.

The Secretary agrees that addition of the reference suggested by EPI would clarify Tennessee's bond release provision at TR 0400–1–14–.68. The change, however, is not deemed essential to program approval and is, therefore, discretionary with the State.

37. Tennessee Valley Authority (TVA) commented that sediment storage volume and sediment detention for deep mine sedimentation ponds should be the same as for surface mines. Likewise, pointed out TVA, sediment removal rules for deep mining and surface mining should be the same.

Tennessee's requirements at TR 0400–1–14–.17 and 0400–1–15–.17 have been found to be no less effective than comparable Federal rules. Nevertheless, the Secretary agrees that similar wording would be less confusing and would provide greater regulatory continuity.

38. U.S. Bureau of Mines (BOM) stated that Tennessee's Blasting Standards Act of 1975 allows a greater weight of explosives than Tennessee's surface coal mining regulations at 0400–1–15–.3(12) (a) and (b). Tennessee's blasting regulations herein, as they relate to weight of explosives, are consistent with Federal requirements at 30 CFR 816.65(k) (1) and (2). Surface coal mining operations will be bound by these regulations. The discrepancy between Tennessee's Blasting Standards Act and the State regulations was brought to the attention of the State. As noted in Finding 29.1, the Secretary has concluded that upon full approval of Tennessee's program those provisions of Tennessee's Blasting Standards Act which conflict with the Tennessee Coal Surface Mining Act and implementing regulations shall be superseded to the extent they conflict with the Tennessee surface coal mining law and regulations.

39. SOCM stated that the term "undesirable materials", as used at TR 0400–1–18–.03(2), needs to be defined. The commenter recommended that the terms mean "any natural or man-made material which contains toxic substances such as but not limited to sulfur, lead, magnesium, and iron".

The Secretary has determined that Tennessee's proposed rule is no less effective than Federal requirements at 30 CFR 823.11(b), as the term "undesirable materials" is used in similar content in the Federal rule, without being defined. Therefore, the suggested changes are not essential for the State to satisfy the Federal standards for program approval.

40. SOCM contended that the present wording of TR 0400–1–18–.03(2) would allow mining to continue in the face of some erosion of overburden materials. The commenter suggested adding language which would obligate the regulatory authority to delete any area from a permit where the removal of soil material may result in erosion that may cause air and water pollution.

The Secretary finds that Tennessee's regulation is no less effective than 30 CFR 823.11 which includes the same wording as that to which the commenter objected. Further, the Secretary contends that neither the Federal nor State requirements would permit erosion which may cause air or water pollution. On the contrary, the requirement is designed to eliminate such occurrence by protecting exposed overburden from erosive forces.

41. SOCM asserted that TCA 59–8–307(B) requires immediate protection of stockpiled soil and does not limit protection to physical placement. The commenter believes that seeding and mulching should also be considered. SOCM, therefore, recommended revising 0400–1–18–.05 to reflect expanded means of protecting stockpiled soils.

Tennessee's requirement for prime farmland soil stockpiling is identical to Federal rule 30 CFR 823.13, and is therefore no less effective than the Federal regulation.

42. SOCM commented that the reclamation objectives at TR 0400–1–19–.02(2) should be revised to state "reclaim the land to equal or better economic or public use". According to SOCM, this wording would be more consistent with Section 0400–1–6–.04(3)(a)(1) which concerns requirements for postmining land use.

The Secretary points out that Tennessee's wording is identical to 30 CFR 824.2; it is, therefore, no less effective than the Federal requirement.

43. According to SOCM, the present wording of TR 0400–1–19–.03(1)(i) is vague and could be interpreted that the lowest coal seam ever mined below the permit site, irrespective of what was mined by the involved permit, could be counted as the determining boundary. SOCM, therefore, suggested revising the requirement to foreclose such interpretation.

The Secretary finds that the interpretation suggested by the commenter is unlikely. The regulations are applicable to specific permitted areas. The Secretary, therefore, contends that the most likely interpretation of the regulation in question would be those natural water courses below the lowest seam to be mined in the permit area.

44. Tennessee regulation 0400–1–19–.03(1)(k) concerns placement of spoil from mountain top removal operations. SOCM suggested adding language which would give priority of excess spoil placement to abandoned mine benches within a five mile radius, provided there is connecting access. This practice, stated the commenter, would reduce abandoned mine reclamation costs and would accelerate the reclamation of these areas.

The Secretary has determined that Tennessee's proposed requirements are no less effective than Federal rules at 30 CFR 824.11, which they substantially track. Therefore, changes to TR 0400–1–19–.03(1)(k) suggested by SOCM are not necessary for program approval. Nevertheless, the Secretary finds that the commenter's suggestion has merit and should be considered by the State in implementing a permanent program.

45. SOCM stated that according to Housing and Urban Development (HUD) officials, it is absolutely necessary to determine if soils will provide a stable foundation for buildings and sewer lines. SOCM therefore maintained that Tennessee's regulation 0400–1–19–.03(1)(k) should specifically provide that fills must be sampled and certified by a qualified engineering testing laboratory that the fill is compacted to 95 percent approximate density whenever postmining use will be for commercial, residential or public facility purposes.

The placement of excess spoil in fills is controlled by Tennessee regulations at 0400–1–14–.36 through 0400–1–14–.39. These requirements have been found by the Secretary to be no less effective than comparable Federal rules at 30 CFR 816.71 through 816.74. None of the rules cited require the compaction standards suggested by the commenter nor does the Secretary find that such requirements are necessary in the surface mining regulations. The Secretary agrees that foundation support is an important consideration when constructing buildings or facilities on fills. Foundation support, however, should be considered on a site-by-site basis in the engineering and design of a building or facility.

46. SOCM believes that TR 0400–1–20–.04(3) of Tennessee's program needs to include provisions strictly controlling disturbance of land above a highwall in steep slope mining. SOCM suggested that before disturbing the land above a highwall, a plan must first be certified by a qualified engineer.

The Secretary has determined that Tennessee's requirements are almost identical to the Federal requirements at 30 CFR 826.12(c) and, therefore, are no less effective.

47. According to SOCM, TR 0400–1–20–.04 should include another provision which would require backfilling and grading to be designed by a registered engineer and tested by a qualified laboratory to assure compaction to 95 percent approximate density.

The Secretary finds that Tennessee's requirements are no less effective than the Federal rules at 30 CFR 826.12, which they substantially track. Further, the Secretary contends that the standards recommended by SOCM are unnecessary because the backfilling and grading requirements set forth at TR 0400–1–14–.56 through .60 of Tennessee's program will provide an equivalent degree of environmental protection.

48. Tennessee Valley Authority (TVA) expressed concern that Tennessee's wording of regulations (0400–1–21–.02) for coal tipples and processing plants and support facilities not located at or near the minesite or not within the permit area for a mine could be interpreted to include storage piles located at TVA's coal-fired steam plants. Such an interpretation could result in duplicative requirements, because TVA storage piles are already subject to other environmental regulations. To avoid possible redundant requirements, TVA, therefore, recommended clarifying language at TR 0400–1–21–.02 (and 0400–1–6–.10) to "exempt" TVA storage piles.

The Secretary does not believe that Tennessee intended that storage piles located at TVA steam plants be subject to the referenced rules. Tennessee regulation 0400–1–6–.10(2) supports this view in that permits for coal processing plants, etc. are only needed where they are associated with specific mining operation or operations. This is consistent with the Federal requirements at 30 CFR 827.11.

49. SOCM commented that regulation 0400–1–21–.03(4) should set forth specific criteria as to when sediment control structures should be required; it should not be discretionary with the regulatory authority. Also, SOCM indicated that sediment control should be required in all permits for tipples and processing plants.

The Secretary points out that under the Tennessee regulations any discharges from the tipple or processing plant areas must meet the water quality standards of 0400–1–14–.12 and .13. If this can be achieved without sediment control measures or structures, then none are necessary nor should they be required. Where water quality standards cannot be achieved, however, the regulatory authority will have little recourse but to require sediment control measures or structures, pursuant to TR 0400–1–14–.16 and .17 of Tennessee's program. The above cited Tennessee requirements are no less effective than 30 CFR 827.12, 816.45 and 816.46, 816.41 and 816.42.

50. SOCM asserted that Tennessee regulations at 0400–1–23, concerning the exemption of coal extraction incident to government financed highways, should include provisions for notifying the public of such proposed mining activities. SOCM said that requirements for periodic inspections should also be added to ensure that construction is not extending beyond the right of way, or violating other provisions of this section.

As discussed under Finding 7, during the review of the regulations by the Tennessee Attorney General, Chapter 0400–1–23, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, was deleted as having no basis in Tennessee law. The Secretary has made an initial determination that the absence of this provision is not a problem since SMCRA does not require its inclusion in a State program and further that State programs may be more stringent than SMCRA. As the regulations which were the subject of the commenter's concerns have been deleted from the Tennessee program, the

commenter's concerns have, presumably, been addressed. However, as discussed in Finding 7, notice of these deletions in Tennessee's regulations will be made through the program amendment procedure and the public will be afforded an opportunity to review and comment on the changes.

VIII. Financial Interests

1. SOCM recommended that the definition of the term "Direct Financial Interest" at 0400–1–25–.03 should include royalty and retainer fee interests.

The Secretary points out that Tennessee's definition is identical to that at 30 CFR 705.5. Also, the Secretary finds that the suggested addition is already covered by the definition wording "and other financial relationships".

2. In the definition of "Indirect Financial Interest" at 0400–1–25–.03, SOCM suggested deleting the last sentence, which provides that there is no indirect interest where there is no relationship between the employer's function and duties and the coal mining operation in which the spouse, minor children or other resident relative holds a financial interest. According to SOCM the fact that employees are indirectly benefitting from coal mining operations could affect whatever duties thay perform under the Act.

The Secretary has determined that Tennessee's definition of the term "Indirect Financial Interest" provides that "the employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest."

IX. Hearings/Appeals and Administrative/Judicial Review

1. Save Our Cumberland Mountains (SOCM) suggested that Section 0400–1–26–.04 of Tennessee's program gives the Board of Reclamation Review unlimited authority to decide who can practice before it. This authority may be too broad, stated the commenter. Also, according to SOCM, this section does not adequately address the question of citizen access to temporary relief provisions in cases where permit approval is being challenged, or where the State has failed to enforce any part of the Act.

The Secretary finds the broad discretion granted the board is consistent with the State's apparent policy not to restrict practice to licensed attorneys. TCA 59–8–321(g)(9) guarantees citizen access to temporary relief. This guarantee is reflected in 0400–1–26–.71–.75 of the Tennessee regulations.

2. Environmental Policy Institute (EPI) commented that Tennessee rule 0400–1–27–.01 fails to provide for a hearing within 30 days of the date that a hearing is requested, as required by Section 514(c) of SMCRA. It contended that while this may not constitute a major defect, Tennessee's rationale for failing to incorporate this requirement may suggest a problem with administrative review generally in Tennessee. That is, Tennessee states that permit hearings within 30 days are not possible because of the great backlog of cases before the Board of Reclamation Review. This strongly suggests, continued EPI, that Tennessee lacks sufficient funding to meet the requirements of 30 CFR 732.15(d).

TCA 59–8–321(1) provides that a hearing on appeal from a decision to grant or deny a permit shall be heard within 30 days of its request. The Secretary can perceive no intent in the Tennessee regulations to avoid this requirement.

X. Inspection and Enforcement

1. SOCM recommended that TR 0400–1–30–.02(2)(a) should be revised to require a State inspection within 10 days, or immediately if proof is provided that an imminent danger of significant environmental harm exists. SOCM also suggested that TR 0400–1–30–.02(2)(a) address inspection requirements where it is believed that an imminent danger to the public health and safety or to the environment exists.

The Tennessee regulations at TR 0400–1–30–.02(2)(a) specifically address inspection requirements where it is believed that an imminent danger to the public health and safety or to the environment exists. In such cases the regulation requires that an inspection be conducted "immediately". The Secretary interprets the term "immediately" to mean within a matter of hours or as soon as practical. Violations which do not constitute imminent dangers can be, logically, handled through the normal inspection routine, i.e. one partial inspection per month and one complete inspection per calendar quarter. For these reasons, the Secretary finds that Tennessee's inspection requirements at TR 0400–1–30–.02(2)(a) will provide protection of the public and the environment which is no less effective than that provided by the comparable Federal requirements at 30 CFR 842.11 and 842.12

2. Environmental Policy Institute (EPI) and Tennessee Citizens for Wilderness Planning (TCWP) contended that Tennessee appears to have deleted language from TR 0400–1–30–.02(2)(a)1, which requires an inspection whenever there is reason to believe, based on a citizen's complaint, that there is a violation of the Act or the State program. As written EPI warns, the regulation seemingly only requires inspections where there could be imminent danger to the public or a significant, imminent environmental harm.

The Secretary agrees that Tennessee's rule is somewhat ambiguous when read by itself. The full intent of the State requirements are more clearly revealed, however, when TR 0400–1–30–.02(a)(1) is read together with other program provisions. Section 0400–1–30–.03(2), for example, indicates that the State intends to inspect whenever citizens complain of "possible violations or of imminent danger or harm". The Secretary interprets this wording to mean that the State must investigate and respond to any citizen's complaints. This includes those complaints involving violations which do not pose an imminent danger or threat of environmental harm. Tennessee's narrative at 731.14(g)(4) also clarifies, to some degree, the meaning of Tennessee's rules. Paragraph five on page one of the narrative, for example, indicates that "the Director will insure that any complaints or reports of violations by citizens will be investigated, and the citizen making the complaint will receive a report of the Commissioner's action". The Secretary interprets this to mean that the State will respond to all citizen complaints.

3. SOCM contended that TR 0400–1–30–.02(4)(c) should specify the requirements of an inspection report. These requirements, stated the commenter, to be adequate under Section 517(c)(3) of SMCRA, should include: (1) A narrative report outlining the condition of the mine site in relation to each mining standard applicable and the mine plan; (2) Any discussion with the operator or person in charge; (3) Violations observed and/or cited; (4) Abatement deadline and remedial measures required; (5) Next date for a return inspection; (6) Time it took to perform the inspection; (7) Who performed the inspection; and (8) Who was on-site at the time of inspection.

Section 517(c)(3) of SMCRA requires the "filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act". This language is reflected in the provisions for the State program approval at 30 CFR 840.11(d)(3) and it is substantially tracked in the Tennessee regulation. The wording of this requirement gives the regulatory

authority the needed flexibility in report writing to tailor each report to the needs of the particular situation reported on. In short, the pre-determined format suggested by SOCM is, therefore, not required by law.

4. According to SOCM, regulation 0400–1–30–.03(1) should be revised to indicate that the Commissioner will act within 10 days or immediately in the case of imminent danger. This addition, asserted SOCM, is necessary to clearly set out the time specified for answering a citizen complaint, and it is required by TCA 59–8–315(i).

The Secretary concludes that Tennessee's requirement is no less effective than Federal rules at 30 CFR 842.12(a) and (d). The Secretary would further point out that Tennessee law does not mandate appropriate action within 10 days following receipt of a citizen's complaint, as implied by SOCM. Rather, TCA 59–8–315(i) requires the Commissioner to take action within 10 days of the investigation, not from receipt of the complaint. The Secretary finds this provision of State law is adequately reflected at TR 0400–1–30–.03(4).

5. The Obed River Council, Sierra Club, and Tennessee Citizens for Wilderness Planning (TCWP) were concerned that Tennessee's regulations do not ensure that a citizen get a full report of action taken as a result of his complaint. Sierra Club was particularly concerned that a complainant's identity be kept confidential to avoid retribution by a "wildcatter" or permit violator. Both the Obed River Council and TCWP indicated that the regulations should contain assurances that a respondent to a permit action should be fully informed of the Division's decision on the permit. Finally, TCWP and the Obed River Council suggested a need for citizen training and a staff contact in the regulatory authority to ensure that citizens are well informed on agency matters.

The Secretary points out that Section 0400–1–30–.03(4) of Tennessee's program explicitly requires that DSM make notification concerning the disposition of a citizen complaint. Any person who files a report which leads to a notice of violation or cessation order will also be afforded an opportunity to participate in any public hearings regarding the violation or order and will receive a copy of the Division's decision. *See* TR 0400–1–31–.06(3)(a) and (6)(b). Appeal of the decision is provided for under TR 0400–1–26 of the Tennessee program. The Secretary also finds that the complainant is protected by TR 0400–1–30–.03(2), which provides for complainant confidentiality. The Secretary also points out that Tennessee rule 0400–1–3–.01(7)(a)1 requires the Division to provide each person who filed a written objection or comment on a permit application with a copy of the Division's decision on the permit application. Because Federal law does not require "educating the public and encouraging citizen involvement" or "designating a staff contact", as recommended by the commenters, the Secretary has no authority to require such provisions in the State program.

6. SOCM recommended adding a Section 0400–1–30–.03(4)(d) to provide that any person who is dissatisfied with the action of the Commissioner could appeal to the Board of Reclamation Review.

The Secretary does not find that the suggested revision is necessary. Section 0400–1–30–.06(3) of Tennessee's regulations clearly indicates that formal review of any decision not to inspect or enforce may be appealed to the Board of Reclamation Review.

7. SOCM argued that Tennessee regulation 0400–1–30–.07 should specify that the wording "in the area of mining" should mean "in the county where the mine site is located". According to SOCM, this would assure that files are conveniently available to residents near the mine site, as intended by Section 517(f) of SMCRA.

The Secretary has determined that Tennessee regulation 0400–1–30–.07, which specifies that copies of records shall be made "immediately available to the public in the area of mining so that they are conveniently available to residents of that area", satisfies the requirement of Section 517(f) of SMCRA.

8. SOCM commented that TR 0400–1–30 should be revised to: (1) Specify monitoring responsibilities, including regular monitoring of water drainage and control and blasting to ensure operator compliance; and (2) Specify items to be included in the operator monthly reports to the Commission. These items, stated the commenter, are required by Section 517(b)(1)(B) of SMCRA.

The Secretary points out that the installation, use, and maintenance of any monitoring equipment or methods, along with evaluation of the data and operator reporting, may be imposed at the permit review/approval stage or during inspection activities. See e.g. 30 CFR 816.52(b). Imposition of these requirements, however, is intended to be discretionary with the regulatory authority to assure compliance with the approved State program requirements; where they are not needed to achieve this purpose, they are not required. The Secretary finds that Tennessee's permitting and inspection requirements adequately provide for use of these "tools" as necessary to mitigate the effects of mining operations on the environment.

9. SOCM and Tennessee Citizens for Wilderness Planning (TCWP) pointed out that TCA 59–8–317(a) requires the issuance of a cessation order to any unpermitted mining operation. This provision of State law, stated the commenters, should be included at TR 0400–1–31–.02.

The Secretary does not find that the language revision proposed by SOCM and TCWP is necessary. The Secretary points out that Tennessee regulation 0400–1–31–.02(1)(a) states that "* * * the Commisioner shall * * * order a cessation * * * on the basis of * * * any violation of the Act, this regulation * * *". Because it is a violation of the Act and regulations to operate without a permit, the Commissioner would be obligated to issue a cessation order to any "wildcat" operation.

10. SOCM and TCWP stated that Sections 0400–1–31–.02 (1)(b) and (3) and TR 0400–1–31–.02(5) do not specify a time limit for abatement of violations, as suggested by OSM in the October 10, 1980, **Federal Register** (45 FR 67376 at 2.6). According to SOCM, the absence of an abatement period will leave the inspector open for continued negotiations over abatement deadlines. SOCM and TWCP, therefore, recommend the inclusion of a mandatory abatement period. SOCM suggested 30 days.

The Secretary has determined that Tennessee's requirements are no less effective than the Federal rules at 30 CFR 843.11 and 843.12. Both the State and Federal regulations provide for the issuance of a notice of violation when a prohibited practice does not present an imminent danger or harm, with an abatement period not to exceed 90 days. In all other situations they provide for the issuance of a cessation order as well as where the notice of violation has not been abated after the time allowed for abatement. The Secretary does not find that an arbitrary time period, such as 30 days, should be imposed on the regulatory authority or the violator. Abatement activities, like mining operations, must be planned and executed in a manner consistent with environmental protection. Setting mandatory compliance periods through regulation will not permit the regulatory authority to administer and enforce a program to meet a variety of conditions and circumstances. The Secretary also points out that SOCM's interpretation of the wording at 2.6 of the Friday, October

10, 1980, Federal Register (45 FR 67376) is in error. The Secretary did not imply that the State must include a fixed time period in its regulations. Instead, it is intended that the State address an abatement period marked by a cutoff as determined by the regulatory authority. Tennessee has satisfied this requirement at TR 0400–1–31–.02(3)(d), which provides that the cessation order will remain in effect until the violation has been abated or until vacated, modified, or terminated in writing by an authorized representative of the Commissioner.

11. SOCM and TCWP contended that TR 0400–1–31–.02(2)(a) should be revised to include criteria which are to be used by the Commissioner in overruling a cease order for mining without a permit, as mentioned in TCA 59–8–313(i)(5). According to the commenters, absence of such criteria could permit abuse of the Act.

The cited portion of the Tennessee Act refers to cease orders issued against unpermitted operations, which cease orders have been "administratively or judicially overruled". The Secretary assumes that this phrase refers to cease orders that have not been upheld in a formal administrative review proceeding and that the commenter's concern is unwarranted.

12. Section 0400–1–31–.02 and 0400–1–31–.03(5), stated SOCM, should be amended to require that any person filing a report leading to a cease order or notice of violation to be timely notified of any modification, or termination of the order. This notification, contended SOCM, is necessary if affected parties are to have opportunity for appeal.

The Secretary finds the Tennessee regulation to be no less effective than the minimum requirements for State program approval set forth in 30 CFR Part 840. The Secretary, therefore, has no legal basis for requiring more of the State. Furthermore, the records of the regulatory authority will be open to the public and, thus, available to the concerned citizen.

13. According to SOCM, Tennessee regulation 0400–1–31–.02 does not adequately address action the Division will take if a cease order is not abated in the allowable time. Further, contended the commenter, the regulations do not provide for the Division to inform the operator of the consequences if the cease order is not abated.

The Secretary points out that if a cessation order is not properly abated and the Division has exhausted all reasonable abatement efforts, it may seek suspension or revocation of the operator's permit pursuant to TR 0400–1–31–.04 or injunctive relief pursuant to TR 0400–1–31–.10.

14. SOCM commented that TR 0400–1–31.04(1)(d)(1) of Tennessee's regulations should require that all citations issued by the State and Federal agencies should be considered in determining if a pattern of violations exists. TR 0400–1–31–.04(1)(d)(1) requires that the Director shall consider only violations issued as a result of State inspections. The commenter does not believe that determinations should be limited to State-issued violations. 30 CFR 843.13(a)(4)(i) requires that the Director should consider only violations issued as a result of Federal inspections.

30 CFR 843.13(a)(4)(ii) accords the Director discretion to consider violations resulting from non-Federal inspections as does TR 0400–1–31–.04(1)(d)(2) for non-State inspections. Therefore, the Secretary finds that Tennessee's proposed rule is no less stringent than the comparable requirements at 30 CFR 843.13.

15. SOCM recommended that upon the DSM's issuance of an order to suspend or revoke a permit, a notice of such revocation should also be forwarded to the person who filed a report which led to the DSM's decision. This requirement, stated the commenter, should be added as a new paragraph TR 0400–1–31–.04(3)(d).

No provision of the Federal law or regulations requires imposing this requirement on the State. In any event, notice of disposition of a citizen's request for State inspection is adequately considered in Tennessee regulation 0400–1–30–.03(4). A second notice of permit suspension or revocation is not deemed necessary, because the Secretary believes the complainant must bear some burden for following the complaint to termination. This can be easily achieved by maintaining contact with the regulatory authority and/or by periodically reviewing public notices issued by the Division of Surface Mining.

16. Regulation 0400–1–31–.05, according to SOCM, needs to include provisions for posting a notice of violation or cessation order at the site of an illegal operation. This requirement is necessary in instances where an illegal operation is discovered, but the operator is unknown.

The Secretary has determined that Tennessee's "service of notice" requirements are no less effective than comparable Federal rules at 30 CFR 843.14. Both contain substantially the same provisions. Further, the Secretary does not conclude that mere posting of the notice would be legally acceptable. Notices issued in this manner, for example, would be open to argument that the notice was removed or destroyed by animals, weather, or vandals before the operator had opportunity to see the notice. The Secretary does not believe that issuance of notices should be left to chance.

17. SOCM commented that the meaning of the term "mining" at 0400–1–31–.06(1) is too general. As defined, it would permit the continuance of certain mining related activities, such as drilling, shooting and removal of overburden; only physical removal of the coal would be prohibited. This, stated SOCM, is insufficient to effectively stop operations which could harm the public or the environment.

The State submitted a revision to its program on May 13, 1982, which modified this regulation. It now defines "mining" to mean surface coal mining operations. However, the Secretary points out that this regulation pertains to the operator's right to an informal public hearing when a notice of violation or cessation order requires the cessation of "mining".

18. SOCM recommended revising TR 0400–1–31–.06(5) to indicate that the officer presiding over a public hearing on a notice of violation or cessation order shall be an objective party not directly involved in inspection and enforcement of the case in question. SOCM did not provide supporting justification for the recommended change.

The Secretary finds that Tennessee's requirement is no less effective than 30 CFR 843.15(e), which it substantially tracks. The Secretary also points out that public hearings are not intended as adversary proceedings. That is, cross-examination and interrogation of witnesses should not occur. The principal purpose of the hearing is to permit affected citizens to present testimony which supports a point of view. Questioning by the presiding officer or panel member (if appropriate) may occur. Such questioning is limited, however, to clarifying some portion or portions of a speaker's response to the issue at hand. Further, if a hearing participant is adversely affected as a result of a decision based on hearing proceedings, that person has the right to appeal the decision in accordance with TR 0400–1–26 of Tennessee's program.

19. SOCM suggested that TR 0400–1–31–.02 should also specify that if a cessation order is not abated, the permit shall be revoked or suspended and the bond forfeited as provided by TCA 59–8–317(a). Also, contended SOCM, in cases where mining occurs without a permit, the consequences on non-

abatement should be ineligibility for any future permits in the State.

The Secretary finds that rules for suspension and revocation of mining permits are adequately addressed at TR 0400–1–31–04 of Tennessee's program. Under SMCRA and the Tennessee law, failure to abate a violation does not require permit revocation and bond forfeiture. As for the latter proposed requirement, it would be contrary to TCSML, as amended. The Secretary also points out that operating without a permit is only one requirement of the Act. It is probable that "wildcatting" will result in multiple violations, which if not abated, would demonstrate a pattern of violations. Where such pattern exists the State is prohibited, in appropriate circumstances, from approving a permit under TR 0400–1–3–.04(7).

20. SOCM commented that DSM should establish a toll-free number to handle citizens complaints. Cost of copying records, stated SOCM, are also prohibitive and should be reduced.

As SOCM recognized, the suggested revisions are not required by Federal law or regulation. Therefore, the Secretary has no authority to require the State to revise its program to incorporate the recommended changes.

21. Sierra Club argued that the section on inspection and enforcement lacks sufficient specificity on the extent of wildcatting, plans to eliminate wildcatting, and how citizen's complaints are to be handled. Further, noted the commenter, the requirement that the citizen send a copy of the complaint to the alleged violator places the citizen at a disadvantage in trying to report wildcatters or companies whose place of business if not locally known. Also, the commenter contended that the discussion of cease orders needs specific time limits to hold down endless negotiations for violations and corrections.

The Secretary points out that Federal rules do not specifically require the State to evaluate and discuss the extent of wildcatting nor do they require the State to reveal its plans for minimizing wildcat activities. Further, Tennessee's regulations do not require the complainant to supply the violator with a copy of a complaint. This is the responsibility of the regulatory authority. In fact, the Secretary points out that TR 0400–1–30–.03(2) of Tennessee's rules provides for complainant confidentiality, if so desired.

The Secretary concludes that establishing time limits for compliance with cease orders is not required by Federal rules. Establishing a fixed period would be in some instances contrary to the purpose and intent of the surface mining laws and regulations. For example, forcing an operator to abate a reclamation violation during inclement weather simply to satisfy a fixed date could exacerbate adverse impacts to the environment. In such cases, the Secretary has determined that it would be more prudent to delay reclamation until weather conditions improve. The Secretary would also point out that State inspection and enforcement activities will be monitored as part of OSM's oversight responsibility. Where the Office observes or believes that abuse of the laws and regulations is occurring, it will be obligated to notify the State and pursue resolution accordingly.

XI. Program Revision—Comment Period May 17, 1982–May 27, 1982

Environmental Policy Institute (EPI) submitted further comments during the reopened comment period pursuant to the May 13, 1982, program revision.

1. EPI commented that Tennessee incorporates the previously omitted definition of permit area but fails to require that the permit area include all areas which are or may be adversely affected by surface coal mining and reclamation operations. Accordingly, asserted EPI, the State's definition is less effective than the Federal definition at 30 CFR 701.5.

The State's definition in its regulations tracks the definition in its statute, TCA 59–8–303(21), which in turn tracks the definition in SMCRA, 30 USC 1291(17). The Secretary finds the State's regulation is therefore no less effective than the Federal rule in meeting the requirements of the Act.

2. EPI commented that Tennessee adopted rules to define "surface mining operations" but failed to define "surface *coal* mining operations" as it had apparently agreed to do. Because of the possible ambiguity noted by OSM, this, maintained EPI, must be corrected. EPI also noted that Tennessee still has failed to include within its definition the extraction of coal from coal refuse piles as required by 30 CFR 700.5.

The Secretary has recognized a problem with the definition. Tennessee's failure to include a definition of surface coal mining operations is the subject of Finding 12.3 and Condition 2. Tennessee is not required to include the extraction of coal from coal refuse piles in its definition so long as its total program regulates this extraction consistent with SMCRA and no less effectively than the Federal regulations. The State has the necessary authority under its statute, and there is no apparent intention on the part of Tennessee not to regulate such activities. This aspect of the definition in the Federal regulations was adopted only for clarity, not to create jurisdiction where it did not otherwise exist.

3. EPI commented that OSM indicated that the State agreed to provide a policy statement regarding how the transition from interim to permanent program permits will be handled. EPI stated that it did not find a copy of any such policy statement in the package of revisions. EPI questioned whether a policy statement would be adequate to establish the rights and responsibilities of operators, in any event. In its view, regulations consistent with the requirements of 30 CFR 771.13 are needed.

The question of the transition period is the subject of Finding 12.5 and Condition 9. Regulation changes are appropriate where they are supported by the state law and have not been relied upon where such support is lacking. Under 30 CFR 732.15, the Secretary is to consider "information contained in the program submission" as part of the basis for this decision on state programs; there is no requirement that all aspects of the Federal statute must be covered by direct state statutory authority, as long as they are adequately covered in the program.

Policy statements are also part of the state program and are binding promises as to how the program will be administered. The Secretary's approval of this program is based upon the State's policies as expressed in these statements, and any failure by the State to abide by these promises would be a violation of its program, just as a violation of its statute or regulations would be.

4. EPI commented that the State has failed to require a detailed description with appropriate maps and drawings, pertinent to hydrology plans, as it agreed to do. As such, contended EPI, Tennessee's rules remain less effective than the Federal rules.

The Secretary agrees with the coment and elaborates further in Condition 5. and Finding 14.1.

5. EPI commented that the agreed upon policy statement, pertaining to the coordination of permit review and issuance, was not received with the other materials made available to EPI in the revision package.

The Secretary agrees with the comment. In view of the fact that Tennessee did not provide the policy statement, the question of coordination of permit review and issuance has been made the subject of Condition 9. This

matter is further discussed in Finding 12.5.

6. EPI noted that the State has not yet established parameters for determining "significant departures", as required by 30 CFR 788.12(a)(1).

The Secretary agrees with the comment. The State's failure to establish parameters to determine what changes shall constitute significant departures which necessitate permit revisions is the subject of Condition 7. This matter is further discussed in Finding 14.3.

7. EPI noted that Tennessee's regulation at TR 0400–1–7–.05(2) is inconsistent with 30 CFR 805.13(b) and Section 515(b)(20) of the Act, which provide for extended liability to commence with the first rather than last year of augmented seeding. EPI insisted that Tennessee must amend its rules in order to ensure consistency with the Federal law.

The Secretary agrees, and this program deficiency has been made the subject of Condition 8. See Finding 18 for further discsussion.

8. EPI stated the belief that "OSM may have misconstrued its regulations at 30 CFR 807.13 (sic)" which pertain to incremental bond release. Those rules, stated EPI, allow incremental bond release based on completed phases of mining. The preamble to those rules, however, noted EPI, makes clear that incremental bond release for portions of the permit area is not authorized. EPI maintained that OSM's suggested action, which was followed by the State, appears to allow bond release from portions of the permit area in violation of the Federal rules.

OSM's suggested action was to revise the wording of the State regulation to conform to the wording in the Federal counterpart, 30 CFR 807.11(a). The State effected this change in the May 13, 1982, program revision. Under these circumstances, it would not appear that the Secretary could conclude that the State's regulation is any less effective than the Federal counterpart. The Secretary suggests that EPI's comment does not properly reflect the Tennessee bonding regulations or the Secretary's interpretation of them.

9. EPI commented that the Tennessee blasting regulation fails to require compliance with all applicable State and Federal laws as it had apparently agreed to do. EPI stated that OSM should insist that this be corrected as a condition of approval of the Tennessee program.

The Secretary finds that the May 13, 1982, program revision corrected the situation previously pointed out by EPI.

10. EPI commented that Tennessee has failed to adopt procedures for handling discriminatory discharge proceedings. EPI maintained that OSM should insist that such procedures be establised as a condition on approval of the Tennessee program.

Section 703(a) of SMCRA, 30 USC 1293, creates a Federal cause of action for employees discharged or otherwise discriminated against for filing an action or giving testimony pursuant to the provisions of SMCRA. The States are not required to provide a separate cause of action.

11. EPI comments that Tennessee has failed to establish procedures consistent with those at 30 CFR 787.11(b) (3) and (4) regarding permit review proceedings, and that the establishment of such procedures should be made a condition of the approval of the Tennessee program.

The Secretary finds that Tennessee's May 13, 1982, program revision provides that applications for review of permit decisions shall be conducted according to TCA 59–8–321, which has all the necessary and relevant procedures contained in 30 CFR 787.11(b) (3) and (4).

12. Regarding program or "systems" issues, EPI commented that the State has apparently agreed to submit additional information but has not yet done so. EPI reserved comment on these issues until they are made available.

The systems issue raised by EPI is discussed in Findings 12.5 and 30, and it has been made a condition of State program approval. See Conditions 9 and 10.

Background on Conditional Approval

The Secretary if fully committed to two key aims which underlie SMCRA. SMCRA calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the States in becoming the primary regulators under the Act. To enable the States to achieve that primacy, the Secretary has undertaken many activities, of which several are particularly noteworthy.

The Secretary has worked closely with several State organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with State regulatory authority personnel to discuss informally how SMCRA should be administered, with particular reference to unique circumstances in individual States. Often these meetings have been a way for OSM and the States to test new ideas and for OSM to explain portions of the Federal requirements and how the States might meet them.

The Secretary has dispensed over $8.5 million in program development grants and over $54.8 million in initial program grants to help the States to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to States to assist in the preparation of their permanent program submissions. OSM has also met with individual States to determine how best to meet SMCRA's environmental protection standards.

Equally important, the Secretary structured the State program approval process to assist the States in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each State program to identify needed changes and to allow them to be made without penalty to the State. The Secretary adopted a special policy to ensure that communication between him and the States remained open and uninhibited at all times (44 FR 54444, September 19, 1979). This policy was critical to avoiding a period of enforced silence between OSM and a State after the close of the public comment period on its program and has been a vital part of the program review process.

The Secretary has also developed in his regulations the critical ability to conditionally approve a State program. Under 30 CFR 732.13 of the Secretary's regulations, conditional approval gives full primacy to a State even though there are minor deficiencies in a program. This power is not expressly authorized by SMCRA; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 502(b), and 503(a)(7).

SMCRA expressly gives the Secretary only two options—to approve or disapprove a State program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to conditionally approve a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision. It results in the implementation of the permanent program in a State months earlier than might otherwise be anticipated. It also avoids the costly and cumbersome problem of implementing Federal programs where the State submittal was deficient in only minor respects. While this may not be significant in States that

already have comprehensive surface mining regulatory programs, in many States earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the State's willingness to make good faith efforts to effect the necessary changes. Without the State's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations states, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by SMCRA and these regulations" (44 FR 14961, March 13, 1979). That is, a State must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition, there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be granted.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular State in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete, because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of SMCRA that the deficiency would probably be major.

The granting of conditional approval is not and cannot be a substitute for the adoption of an adequate program. The Federal regulation 30 CFR 732.13(i), gives the Secretary little discretion in terminating programs where the State, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional approval authority is to assist States in achieving compliance with SMCRA, not to excuse them from compliance.

The Secretary's Decision

As indicated above, under "Secretary's Findings", there are minor deficiencies in the Tennessee program which the Secretary requires to be corrected. In all other respects, the Tennessee program meets the criteria for approval. The deficiencies identified in the findings are summarized below and an explanation is given to show why the deficiency is minor, as required by 30 CFR 732.13(i).

1. As discussed in Finding 29, three Tennessee laws (bonding laws, Tennessee Safe Dams Act, Tennessee Uniform Administrative Procedures Act), other than TCSML, either contain provisions which conflict with SMCRA, or were not submitted with the Tennessee program and may contain provisions which conflict with SMCRA. This deficiency is minor since the State has agreed to provide copies of the bonding laws and procedures referred to in Chapter III of the Tennessee program, the Tennessee Safe Dams Act, and an opinion from Tennessee's Attorney General that these laws and the Tennessee Uniform Administrative Procedures Act are superseded by SMCRA to the extent they conflict with SMCRA, pursuant to TCA 59–8–334.

2. As discussed in Finding 12.3, Tennessee's regulations do not contain definitions of "surface mining activities" and "surface coal mining operations" which are consistent with Federal requirements. This deficiency is minor since the State has agreed to amend its regulations to be consistent with Federal requirements, and to make it clear that "surface coal mining operations" has the same meaning as the State's term "surface mining operations", and to use the terms according to the proposed amendment until such amendment is effected.

3. As discussed in Finding 12.4, Tennessee's regulations contain a significant number of typographical and editorial errors. This deficiency is minor since these errors do not affect the substance of the State's program and the State has agreed to amend its regulations to correct the typographical and editorial errors identified in the June 4, 1982 letter to the State (Administrative Record No. TN–526).

4. As discussed in Finding 13, Tennessee's underground mining regulations for evaluating vegetation survival contain an exception to the limitation on bare areas which says "unless such areas are too stony to support vegetation". This deficiency is minor since the State has agreed to amend the regulation by deleting this exception and to operate as though it has been deleted until the amendment is effected.

5. As discussed in Finding 14.1, Tennessee's regulations concerning a water quality protection plan in the permit application fail to require information in the plan to be represented by "a detailed description, with appropriate maps and cross section drawings." Also, the underground regulations contain two sections requiring a water quality protection plan, one of which is incomplete when compared to Federal requirements. These deficiencies are minor since the State has agreed to amend its regulations to include the missing requirements, to include the requirement in permit applications until such amendment is effected, and to either delete the redundant and incomplete TR 0400–1–5–.22 or provide assurance that TR 0400–1–5–.32 is the controlling regulation for the water quality protection plan for underground mining.

6. As discussed in Finding 14.2, Tennessee's regulations for maps and plans in the permit application fail to adequately include provisions for location of natural and manmade features that are no less effective than 30 CFR 779.24(d), (e), (h) and (j), 779.25(j), 783.24(d), (e), (h) and (j), and 783.25(j). These deficiencies are minor since the State has agreed to amend its regulations to include corresponding provisions and to require such information in permit applications until the amendment is effected.

7. As discussed in Finding 14.3, Tennessee's regulations for permit revisions lack parameters for determining significant departures from the approved permit which require a formal revision. This deficiency is minor since the State has agreed to prepare such parameters for inclusion in the State program as soon as possible, and to require formal review of all permit revisions requested before the parameters are included in the State program.

8. As discussed in Finding 18, Tennessee's regulations concerning the five year period of liability under performance bond, provide that such period shall begin "with the first year" rather than "after the last year" of

augmented seeding, fertilizing, irrigation, or other work, as required under Sections 515(b)(20) and Section 509(b) of SMCRA. This deficiency is minor since the State has agreed to amend its regulations to correct the requirement. Also, the requirement is included in TCA 59–8–316(d)(1) in accordance with SMCRA, which allows the State to operate in accordance with SMCRA while the regulation is undergoing amendment.

9. As discussed in Finding 12.5, Chapters VII(1), (4), (5), (6), (7), (8), (9), (15) and (16) of the Tennessee program concerning procedures and forms for permitting, inspection, and enforcement are incomplete and inadequate to describe the State's intended methods of implementing the program. These deficiencies are minor since the State has agreed to provide this information, and can continue to operate using existing forms and procedures until new ones are made a part of the State program.

10. As discussed in Finding 30, Chapters V, VI, X, XI and XII of the Tennessee program concerning staffing and funding include insufficient documentation to show that the State will have qualified personnel and funding adequate to implement certain aspects of the State program. While the proposed staffing and funding for the principal implementing agency, the Division of Surface Mining, is adequate with minor exceptions, the program does not address the functions, staffing, funding and coordination requirements of other agencies which will have roles in implementing the program. These deficiencies are minor since the State has agreed to provide information sufficient to resolve the deficiencies. The State also has agreed to make the necessary changes to correct any deficiencies which may arise.

11. As discussed in Finding No. 7, Tennessee's regulations for administrative hearings and appeals appear to have failed to include provisions that are no less effective than the Federal rules found at 43 CFR 4.1103, 4.1122, 4.1154, 4.1163, 4.1166, 4.1280, and 4.1281. These deficiencies are minor for the reasons specified below and because the State has agreed to either amend its regulations to include corresponding provisions which are no less effective than the Federal rules or to otherwise satisfy the requirements of SMCRA and the Federal regulations by furnishing policy statements, Attorney General's opinions or other sufficient proof that compliance may be achieved without regulatory amendments.

Omission of a specific counterpart to 43 CFR 4.1103 is minor because it concerns a "housekeeping" rule of administrative hearing procedure and is not substantive in effect. State statutes include representation of parties before administrative bodies as the "practice of law" and prohibit the unauthorized practice of law. The temporary lack of this rule will have little impact on the effectiveness of the State program.

Omission of a specific counterpart to 43 CFR 4.1122 is minor because all attorneys, including those sitting as administrative judges, must abide by the Tennessee code of Professional Responsibility. Supervisory control also will serve to keep the actions of the administrative judges within bounds until this condition has been satisfied.

Omission of a specific counterpart to 43 CFR 4.1154 is minor because the underlying decision of whether to grant a civil penalty formula waiver or not is discretionary with the State Regulatory Authority, therefore the inclusion of a section allowing a review of this decision appears to be discretionary.

Omission of a specific counterpart to 43 CFR 4.1163 is minor because ample opportunity for review of the fact of an alleged violation appears to otherwise exist in the State regulations, and the State may be able to limit a review of the fact of an alleged violation to a single rather than dual opportunity.

Omission of a specific counterpart to 43 CFR 4.1166 is minor because the actual contents of the regulatory authority's answer are not jurisdictional and probably should be a matter of discretion within the agency.

Omission of specific counterparts to 43 CFR 4.1280 and 4.1281 are minor because this whole subpart concerns the appeal of decisions of the State Commissioner which are not required by Federal or State law to be formally adjudicated.

Given the nature of the deficieneies set forth in the Secretary's findings and their magnitude in relation to all the other provisions of the Tennessee program, the Secretary of the Interior has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Tennessee program incomplete;

2. All other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII;

3. These deficiencies, which will be promptly corrected, will not directly affect environmental protection at coal mines;

4. Tennessee has initiated and is actively proceeding with steps to correct the deficiencies; and

5. Tennessee has agreed, by letters dated July 1, 1982, and August 2, 1982, to correct the regulation deficiencies by April 30, 1983, and the statutory deficiencies by September 30, 1983. Further, the Tennessee Department of Conservation has agreed to provide narrative descriptions, forms and other material concerning procedures, staffing and funding by October 31, 1982.

Accordingly, the Secretary is conditionally approving the Tennessee program. If regulations correcting the deficiencies are not promulgated by April 30, 1983, if State legislation correcting the statutory deficiencies is not enacted by September 30, 1983, if narrative descriptions, forms and other material concerning procedures, staffing and funding are not submitted by October 31, 1982, the Secretary will take appropriate steps under 30 CFR Part 733 to terminate the State program. This conditional approval is effective on August 1, 1982. Beginning on that date, the Tennessee Department of Conservation shall be deemed the regulatory authority in Tennessee and all Tennessee surface coal mining and reclamation operations on non-federal and non-Indian lands and all coal exploration on non-federal and non-Indian lands in Tennessee shall be subject to the permanent regulatory program.

On non-federal and non-Indian lands in Tennessee, the permanent regulatory program consists of the State program approved by the Secretary. Following this approval, in accordance with Section 523(c) of SMCRA, Tennessee may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State.

The Secretary's approval of the Tennessee program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program.

Other Information

On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining (OSM) an exemption from Sections 3, 4, 6 and 8 of executive Order 12291 for all actions taken to approve or conditionally approve, State regulatory programs, actions, or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this action.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 1982.

James G. Watt,

Secretary of the Interior.

Therefore, 30 CFR Chapter VII is amended by adding a new part 942 as set forth herein.

PART 942—TENNESSEE

Sec.
942.1 Scope.
942.10 State Regulatory Approval.
942.11 Conditions of State Regulatory Approval.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

§ 942.1 Scope.

This Part contains all rules applicable only within Tennessee that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 942.10 State Regulatory Program Approval.

The Tennessee State program, as submitted on February 28, 1980, as amended and clarified on June 11, 1980 and June 19, 1980, as resubmitted on February 3, 1982, and revised in material submitted May 13, 1982, is conditionally approved, effective August 1, 1982. Beginning on that date, the Tennessee Department of Conservation shall be deemed the regulatory authority in Tennessee for all surface coal mining and reclamation operations and all exploration operations on non-federal and non-Indian lands. Only surface coal mining and reclamation operations on non-federal and non-Indian lands shall be subject to the provisions of the Tennessee permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Conservation agreeing to the conditions of 30 CFR 942.11, are available at:

Administrative Record Room, Office of Surface Mining, Room 5315, 1100 L Street, N.W., Washington, D.C.
Administrative Record Room, Office of Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902
Division of Surface Mining, 701 Broadway, Nashville, Tennessee 37203
Division of Surface Mining, Dempster Building, 305 West Springdale Avenue, Knoxville, Tennessee 37919

§ 942.11 Conditions of State Regulatory Program Approval.

The approval of the Tennessee State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, to the regulations, to the program narrative, or by means of a legal opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

(a) Termination of the approval found in § 942.10 will be initiated on September 30, 1983, unless Tennessee submits to the Secretary by that date, copies of the bonding laws and procedures referred to in Chapter III of the Tennessee program, the Tennessee Safe Dams Act, and an opinion from Tennessee's Attorney General that these laws and the Tennessee Uniform Administrative Procedures Act are superseded by SMCRA to the extent they are inconsistent with the provisions of SMCRA. Pending completion of the above, the Secretary expects Tennessee to administer the program in accordance with SCMRA where State program provisions conflict with any other State requirements.

(b) Termination of the approval found in § 942.10 will be initiated on April 30, 1983, unless Tennessee submits to the Secretary by that date, copies of promulgated regulations containing definitions of "surface mining activities" and "surface coal mining operations" which are consistent with Federal requirements, and which make it clear that "surface coal mining operations" has the same meaning as the State's term "surface mining operations". Furthermore, pending completion of the above, the Secretary expects that Tennessee will use the terms according to the proposed amendment.

(c) Termination of the approval found in § 942.10 will be initiated on April 30, 1983, unless Tennessee submits to the Secretary by that date, copies of promulgated regulations which correct the typograpical and editorial errors identified in the June 4, 1982, letter to the State (Administrative Record TN–526).

(d) Termination of the approval found in § 942.10 will be initiated on April 30, 1983, unless Tennessee submits to the Secretary by that date, copies of promulgated regulations which delete the exception to the limitation on bare areas in Tennessee's underground mining regulations for evaluating vegetation survival which says, "unless such areas are too stony to support vegetation". Furthermore, pending completion of the above, the Secretary expects that Tennessee will operate as though the exception has been deleted.

(e) Termination of the approval found in § 942.10 will be initiated on April 30, 1983, unless Tennessee submits to the Secretary by that date, copies of promulgated regulations which include the missing requirements for a water quality protection plan in the permit application to require information in the plan to be represented by "a detailed description, with appropriate maps and cross section drawings," and unless Tennessee submits to the Secretary by that date, either copies of promulgated regulations which delete the redundant and incomplete TR 0400–1–5–.22 or assurance that TR 0400–1–5–.32 is the controlling regulation for the water quality protection plan for underground mining. Furthermore, pending completion of the above, the Secretary expects that Tennessee will include the above provisions as requirements in permit applications.

(f) Termination of the approval found in § 942.10 will be initiated on April 30, 1983, unless Tennessee submits to the Secretary by that date, copies of promulgated regulations which include provisions for location of natural and man-made features that are no less effective than 30 CFR 779.24 (d), (e), (h), and (j), 779.25(j), 783.24 (d), (e), (h), and (j), and 783.25(j). Furthermore, pending completion of the above, the Secretary expects that Tennessee will require such information in permit applications.

(g) Termination of the approval found in § 942.10 will be initiated on April 30, 1983, unless Tennessee submits to the Secretary by that date, copies of promulgated regulations, or otherwise amends its program to include parameters for determining significant departures from the approved permit for purposes of requiring a formal review of a proposed permit revision. Furthermore, pending completion of the above, the Secretary expects that Tennessee will require formal review of all permit revisions requested.

(h) Termination of the approval found in § 942.10 will be initiated on April 30, 1983, unless Tennessee submits to the Secretary by that date, copies of promulgated regulations concerning the five year period of liability under performance bond, which provide that such period shall begin "after the last

year" of augmented seeding, fertilizing, irrigation, or other work, as required by SMCRA. Furthermore, pending completion of the above, the Secretary expects that Tennessee must operate according to the above requirement.

(i) Termination of the approval found in § 942.10 will be initiated on October 31, 1982, unless Tennessee submits to the Secretary by the date, additional documentation for Chapters VII (1), (4), (5), (6), (7), (8), (9), (15), and (16) of the Tennessee program concerning procedures and forms for permitting, inspection, and enforcement, which is complete and adequate to describe the State's intended methods of implementing the program.

(j) Termination of the approval in § 942.10 will be initiated on October 31, 1982, unless Tennessee submits to the Secretary by that date, additional information for Chapters V, VI, X, XI, and XII of the Tennessee program concerning staffing and funding, which includes sufficient documentation to show that the State will have qualified personnel and funding adequate to implement all aspects of the State program.

(k) Termination of the approval found in § 942.10 will be initiated on April 30, 1983, unless Tennessee submits to the Secretary by that date, copies of promulgated regulations, policy statements, Attorney General's opinions or other sufficient proof that the State program is no less effective than 43 CFR 4.1103, 4.1122, 4.1154, 4.1163, 4.1166, 4.1280, and 4.1281.

[FR Doc. 82-21470 Filed 8-9-82; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Part 942

Approval of the State of Tennessee Reclamation Plan for Land and Waters Affected by Past Mining Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: On March 24, 1982, the State of Tennessee submitted to OSM its proposed Reclamation Plan for land and waters affected by past mining under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the State's intent and capability to assume responsibility for administering and conducting the Abandoned Mine Land Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, FR 49932–49952, October 25, 1978). After opportunity for public comment and review of the plan submission, the Assistant Secretary for Energy and Minerals of the Department of the Interior has determined that the Tennessee Reclamation Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Tennessee Plan.

EFFECTIVE DATE: August 10, 1982.

ADDRESSES: Copies of the full text of the Tennessee Plan are available for review during regular business hours at the following locations:

State of Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 305 W. Springdale, Knoxville, Tennessee 37917

Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Don Willen, Chief, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone (202) 343–7951

SUPPLEMENTARY INFORMATION:

General Background of the Abandoned Mine Land Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977 and for which there is no countinuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Department a State reclamation plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Department may approve the plan once the State has an approved Regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, The Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49932, 48847, October 25, 1978). Under those regulations, the Director of the Office of Surface Mining is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the State plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to the Office on an annual basis an application for funds to be expended in that State on specific reclamation projects which are necessary to implement the State reclamation plan as approved. Such annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T consists of Parts 900 through 950.

Provisions relating to Tennessee are found in 30 CFR Part 942.

Background on the Tennessee Reclamation Plan Submission

Public meetings were held on the Tennessee Plan as follows: Sequatchie Valley Electric Cooperative, Dunlap, Tn., October 28, 1980 and Municipal Building, Jacksboro, Tn. on October 30, 1980. On March 8, 1982, the State of Tennessee submitted its proposed Reclamation Plan to OSM. OSM published a notice of proposed rulemaking and requested public comment on April 23, 1982 (47 FR 17576).

On May 18, 1982, representatives of the Tennessee Division of Surface Mining and Reclamation and OSM met to discuss amendments and modifications to the proposed Plan. On May 26, 1982, the Tennessee Division of Surface Mining submitted revised pages to the Tennessee Reclamation Plan. These pages contained several amendments and modifications to the

original Plan. The Department has determined that these additions and revisions were insignificant in nature and, accordingly, required no further public comment.

The necessary changes have been incorporated into the Plan. All of the documents mentioned above are available for public inspection at the offices of OSM and at the Tennessee Division of Surface Mining listed above under "Addresses."

On May 28, 1982, OSM's State Office Director and on June 3, 1982, the Assistant Director for Program Operations and Inspection recommended to the Director that the Assistant Secretary approve the Tennessee Reclamation Plan.

The administrative record on the Tennessee Plan is available for review during regular business hours at the Office of Surface Mining Reclamation and Enforcement, 530 Gay St., Suite 500, Knoxville, Tennessee 37902.

Assistant Secretary's Findings

1. In accordance with Section 405 of SMCRA, the Assistant Secretary finds that Tennessee has submitted a Plan for reclamation of abandoned mine lands and has the ability and necessary State legislation to implement the provisions of Title IV of SMCRA.

2. The Assistant Secretary has determined, pursuant to 30 CFR 884.13, that:

(a) The Tennessee Division of Surface Mining has the legal authority, policies and administrative structure necessary to carry out the Plan;

(b) The Plan meets all the requirements of 30 CFR Chapter VII, Subchapter R;

(c) The State has an approved regulatory program; and

(d) The Plan is in compliance with all applicable State and Federal laws and regulations.

3. The Assistant Secretary has solicited and considered the views of other Federal agencies having an interest in the Plan as required by 30 CFR 884.14(a)(2). These agencies include: the U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (FWS), the U.S. Bureau of Mines (USBOM), the U.S. Geological Survey (USGS), the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (COE), the Soil Conservation Service (SCS), and the Tennessee Valley Authority (TVA).

Disposition of Comments

The following comments received on the Tennessee Abandoned Mine Land Reclamation Plan during the public comment period were considered in the Assistant Secretary's evaluation of the Tennessee Plan as indicated.

1. The SCS asked if Tennessee considered the amount of prime farm land and how it is to be reclaimed. OSM's response is that the Tennessee Plan did not have to address reclamation of prime farm lands because this classification does not apply to lands in drastically disturbed and non-productive conditions such as abandoned mine lands. The prime farm lands designation and regulations governing their reclamation only apply to lands mined under Title V of the Act (Surface Mine Reclamation). Since the Tennessee Plan is an abandoned mine land reclamation plan under Title IV of the Act, the Title V regulations do not apply.

2. The SCS commented that Section 13 (Problems and Techniques) of the Plan does not "qualify nor quantify the erosion problems and recommended alternative systems." OSM's response is that it finds that the Tennessee Plan (Section 13, p. 1), by listing problems in order of frequency of occurrence, has provided adequate qualification of all problems, including erosion, to meet the requirements of 30 CFR 884.13. Quantification of total erosion in terms of sediment yield has been provided to OSM by the State and incorporated into the Plan at Section 3, page 2. This material is available in the administrative record (see "Addresses" section). OSM also finds that the SCS system for "Land Capability Classifications," which is based on soil type topography and climate, is not applicable to abandoned mine lands because of the extent which past mining practices have had on the soil and natural topographic features of abandoned mine lands. Therefore, OSM has concluded that the Tennessee Plan need not be modified to consider the SCS system for "Land Capability Classifications."

3. The SCS commented that Section 13 of the Plan "should show what effects the recommended treatment systems will have on the problems."

OSM's response is that the effects which recommended treatment systems will have on abandoned mine land problems need not be indicated in Section 13 because they are adequately contained in Section 20 (Benefits from Reclamation) of the Plan.

4. TVA commented that it should be included in the list of environmentally concerned agencies contained in Section I.A.2, page 1 (First Phase, Site Identification), I.D., page 3, paragraph 3 (Project Ranking and Selection), and I.E., page 5, paragraph 3 ("A–95" Agency Review and Other Input). OSM's response is that Tennessee agrees and has modified the Plan to include TVA as indicated above.

5. TVA commented that based on definitions of erosion and sedimentation contained in Section 3, page 1 of the Plan, it "appears that erosion techniques 3 (Interception and Diversion) and 4 (Handling and Disposal of Concentrated Flows) are techniques for controlling sedimentation and not erosion." OSM's response is that techniques 3 and 4 are used in the context of diverting surface flows from erosion prone areas or decreasing volume or velocity of flows across such areas thereby preventing or reducing potential for erosion. As such, OSM finds that techniques 3 and 4 are properly listed as erosion control techniques in Section 3 of the Plan and no modification of the Plan is necessary.

6. TVA commented that under Title IV of the Act, reclamation priorities are categorized with priority I, or Class I, being the most severe abandoned mine land problem. However, under Section 15 (pages 6 and 7) of the Tennessee Plan, the "most severe is Class IV." TVA recommended that, in order to be consistent with the Act, the disturbed land classes of Section 15 of the Tennessee Plan be reversed. OSM disagrees because, in Section 15 of the Tennessee Plan, classification of degrees of disturbance is presented only for reclamation cost assessment purposes relative to the difficulty of reclamation. These classifications should not be confused with the reclamation priorities of Section 403 of the Act which are contained in Section 3 of the Tennessee Plan.

7. TVA commented that in Section 17 (Hydrology) "significant ground water sources of community water supplies should be listed since they may be susceptible to pollution from toxic drainage from abandoned mines." OSM's response is that Tennessee has now incorporated existing publications on community water systems into its Plan.

8. TVA commented that the Sequoyah Nuclear Power Plant should be added in Section 17 (Hydrology) to the list of industrial water users in Hamilton County. OSM's response is that the Tennessee Plan now includes the Sequoyah Nuclear Plant in Section 17, page 12 of the Plan.

9. TVA commented that in Section 17 (Hydrology) of the Plan all hydrologic units should include the "Classification for Fish and Aquatic Life." OSM's response is that Tennessee has incorporated into Section 17 of the Plan "Classification for Fish and Aquatic Life" in discussion of all hydrologic

units for which such classifications are available.

10. TVA commented that Section 3 (Goals and Objectives) of the Plan would be better served by focusing directly on the hydrology objectives mentioned on page 10 and outlining a strategy for achieving them. Such a strategy could be "centered on (1) identification and ranking of specific stream segments with impacted-use designations, (2) identification and ranking of abandoned mines contributing to stream-use problems, and (3) prediction of the effectiveness of the proposed reclamation practices." For TVA, the strategy should also "include a plan for filling important data gaps and be developed in coordination with other agencies that have responsibilities closely related to the objectives." OSM's response is that while much of the total problem relating to effects of past mining on hydrologic units might be addressed through this approach, the result would be to ignore the reclamation priorities of Section 403 of the Act. TVA's suggested approach also ignores other objectives of non-aquatic productivity such as land values, land uses, terrestrial wildlife, and air quality. OSM concluded that the Tennessee Plan need not be modified to accommodate TVA's suggestion since the suggested approach is too limited in scope to accomplish the overall objectives of Title IV of the Act.

11. TVA commented that throughout the Plan reference is made to the National Inventory of Abandoned Mine Lands in Tennessee, the completion of which will "serve to modify and extensively revise various portions" of the Plan. Since the completion date for the Inventory of October 31, 1981 was given in Section 15, page 1 of the Plan, TVA requested the status of the Inventory and the extent to which its findings will affect the reclamation plan. OSM's response is that the completion date of October 31, 1981 for the Inventory was given in error. The Inventory will be completed in the near future and at that time will be used to update existing information on abandoned mine lands in Tennessee. Tennessee has corrected the reference to the October 31, 1981 completion date for the inventory and no further modification of the Plan is necessary at this time.

12. FWS commented that a section should be added to the Plan outlining how OSM and the State of Tennessee plan to meet the requirements of Section 7 of the Endangered Species Act of 1973 and the June 10, 1980 Memorandum of Understanding between FWS and OSM for the protection of endangered species. OSM's response is that Tennessee has revised Section 18 (Flora and Fauna) of the Plan by including a statement outlining the procedure to be used to protect endangered and threatened species.

13. FWS recommended that a memorandum of understanding between the Tennessee Wildlife Resources Agency, Department of Conservation, and the FWS be developed to further assure early contacts and resolve any problems regarding endangered and threatened species early in the reclamation process. OSM's response is that Tennessee has accepted this suggestion and is developing a memorandum of understanding. OSM finds that no modification of the Plan is necessary since the memorandum of understanding is intended only to implement the Plan procedure assuring efficient protection of endangered and threatened species.

14. FWS recommended that the "environmental assessment" should be conducted prior to the A–95 review to aid the State, Federal and local agencies in their evaluation of proposed reclamation activities. OSM's response is that the "environmental assessment" should not be accomplished prior to the A–95 review. To do so would require unnecessary expenditure of funds prior to determination of whether or not a project is needed. The A–95 review has no environmental protection purpose but is instead intended only to assure and eliminate duplication in the use of Federal funds. OSM has concluded that no modification of the Plan is necessary.

15. FWS recommended that the list of endangered and threatened species contained in Section 18 (Flora and Fauna) of the Plan should be updated. OSM's response is that Section 18 of the Plan has been updated to include currently listed endangered and threatened species.

Additional Findings

The Office of Surface Mining has examined this rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981), and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have a significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Tennessee Abandoned Mine Land Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to policies, procedures and organization of the State's Abandoned Mine Land Reclamation Program. Therefore, under the Department of Interior Manual (DM) 516.2.2(A)(1), the Assistant Secretary's decision on the Tennessee Plan is categorically excluded from the National Environmental Policy Act requirements. As a result, no environmental assessment or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also, an environmental analysis or an EIS will be prepared for the approval of grants for the abandoned mine land reclamation projects under 30 CFR Part 886.

The good cause for making this rule effective August 10, 1982 is: (1) The Office of Surface Mining wants to minimize the time between the approval of Title V regulatory programs and Title IV State reclamation program plans; and (2) grants are pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act.

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 15, 1982.

J. R. Harris,

Director, Office of Surface Mining.

Dated: June 16, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary for Energy and Minerals.

PART 942—TENNESSEE

Therefore, Part 942 is amended by adding § 942.20 to read as follows:

§ 942.20 Approval of Tennessee reclamation plan for lands and waters affected by past coal mining.

The Tennessee Reclamation Plan, as submitted on March 24, 1982, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902

State of Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 305 W. Springdale, Knoxville, Tennessee 37917

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C. 20240

[FR Doc. 82-21533 Filed 8-9-82; 8:45 am]
BILLING CODE 4310-05-M

federal register

Tuesday
August 10, 1982

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Mining and Reclamation Operations Under a Federal Program for the State of South Dakota

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 941

Surface Mining and Reclamation Operations Under a Federal Program for the State of South Dakota

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior proposes a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in South Dakota. This includes surface effects of underground coal mining. This proposed program is necessary in order to regulate surface coal mining activities in the absence of a State program.

DATES: Written comments must be received not later than 5:00 p.m. on October 12, 1982 at the address below. A public hearing will be held on September 20, 1982 at 1:30 p.m. Requests to testify at the hearing should be received by September 15, 1982. If commenters request a hearing date later than that set, the hearing will be rescheduled and the new date announced by a notice in the **Federal Register.**

ADDRESSES: Written comments must be mailed to: Administrative Record Room R&I–25, Office of Surface Mining, Wyoming Field Office, P.O. Box 1420, Mills, Wyoming 82644, or hand delivered to Office of Surface Mining, Wyoming Field Office, Freden Bldg., 935 Pendell Blvd., Mills, Wyoming 82644.

The public hearing on the proposed program will be held at Joe Foss Bldg., Room 216, Pierre, South Dakota 57201.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–5866.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the proposed program are available for inspection and may be obtained at the OSM office listed above in **"ADDRESSES."**

Public Comment Period

The comment period on the proposed program will extend until [60 days from publication]. All written comments must be received at the location above under **"ADDRESSES"** by close of business on that date.

All written comments received, a transcript of the public hearing, summaries of meetings held at the request of any person or organization to receive advice or recommendations concerning the proposed program with representatives of OSM, and other documents comprising the administrative record on the Federal program for South Dakota will be made available for public review during regular business hours at the location listed above.

OSM appreciates any and all comments on the proposal, but those that would be most useful should be as specific as possible, focus on the issues of this proposed rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this proposal. Nor can OSM ensure consideration of written comments received after the comment period ends or those delivered to an address other than that specified.

Public Hearing

A public hearing on the proposed program will be held at the time and location listed above to hear all those who wish to testify. The hearing may be cancelled if, by September 15, 1982, no person has expressed interest in presenting testimony.

Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked for clarification or to request more specific information from the person testifying. The public hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak heave been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

Background

Under Section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, the Secretary of the Interior (the Secretary) is required to promulgate a Federal program within 34 months after passage of the Act if a State fails to submit a program to assume responsibility for regulating surface mining activities, fails to resubmit a program within 60 days of disapproval, or fails at any time to implement, enforce or maintain an approved State program. The time for submitting State programs was extended by seven months to March 3, 1980 as the result of litigation, *In re: Permanent Surface Mining Regulation Litigation,* 13 ERC 1447 (July 25, 1979). The date for submission of State programs has now passed.

An additional standard for the promulgation of a Federal program is found in 30 CFR Part 736, which requires the implementation of a Federal program for a State where the Director of OSM (the Director) "reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands * * * at any time before June 1985 * * *" 30 CFR 736.11(a)(1).

Once a decision is made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of the Act requires that in implementing a Federal program the Secretary take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also found in the regulations, 30 CFR 736.22(a)(1). The Act (Section 505(b)) and the regulations (Section 736.23(b)) also provide that if a State has more stringent land use and environmental laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. The Secretary believes that the requirements of Section 505(b) can best be met by identifying State laws and regulations which impose equivalent or more stringent environmental controls and incorporating the requirements of those laws in the Federal program. If the State's laws or regulations establish more stringent standards regulating surface mining control and reclamation procedures than those found in the Act or the Secretary's regulations or if the State regulates or protects an aspect of the environment affected by surface mining operations which neither the Act

nor the Secretary's regulations protect, OSM would then specifically preserve those State standards in the Federal program.

Also, in promulgating a program for a State, Section 504(g) specifies that any State statutes or regulations which regulate surface mining and reclamation operations subject to the Act will be superseded and preempted by the Federal program to the extent that they interfere with the achievement of the purposes and requirements of the Act and the Federal program. This provision is reinforced by Section 505(a) of the Act, which states that only those State laws and regulations which are inconsistent with the Act and its implementing regulations shall be superseded by the Federal program. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which interfere with achievement of the purposes of the Act must be identified and preempted by OSM.

Finally, a Federal program, according to Section 504(h) of the Act, must include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. The Federal statutes with which the surface mining permitting process must be coordinated are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the review and issuance procedures required by those statutes.

Federal programs are based on the Secretary's permanent program regulations: 30 CFR Subchapters A, F, G, J, K, L and M. The permanent program regulations establish procedures and performance standards under the Act and form the benchmark for State programs. In order for a State to have a program approved by the Secretary, Section 503(a)(7) requires that the State's rules and regulations be consistent with the Secretary's regulations.

The parts of the permanent program regulations that must be included in a Federal program are listed at 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands unsuitable for surface mining (Parts 760, 761 and 765), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), and inspection and enforcement (Parts 842, 843 and 845). In addition, the provision in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who perform functions or duties under the Act.

The rules for the permanent program are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064). Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15323–15393 (March 13, 1979). Subchapter M was published on December 12, 1980 (45 FR 82098). Corrections were published at 44 FR 15485 (March 14, 1979); 44 FR 53507–53509 (September 14, 1979); 44 FR 66195 (November 19, 1979); 45 FR 26001 (April 16, 1980); 45 FR 37818 (June 5, 1980); and 45 FR 47724 (July 15, 1980). Amendments to the rules have been published at 44 FR 60969 (October 22, 1979) as corrected at 44 FR 75143 (December 19, 1979); at 44 FR 77440–77447 (December 31, 1979); 45 FR 2626–2629 (January 11, 1980); 45 FR 25998–26001 (April 16, 1980); 45 FR 33926–33927 (May 20, 1980); 45 FR 39446–39447 (June 10, 1980); 45 FR 52306–52324 (August 6, 1980); 45 FR 52375 (August 7, 1980); 45 FR 58780–58786 (September 4, 1980); and 45 FR 76932 (November 20, 1980); 46 FR 37232 (July 17, 1981); 46 FR 41702 (August 17, 1981); 46 FR 47720 (September 29, 1981); 46 FR 53376 (October 28, 1981); 46 FR 52287 (December 7, 1981).

Representatives of industry, two States and several environmental groups challenged the permanent regulatory program in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit entitled *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144). In response to the arguments raised in the challenges, the Secretary voluntarily suspended several permanent program regulations. These suspensions were announced in the **Federal Register** on November 27, 1979 (44 FR 67942); December 31, 1979 (44 FR 77447–77454); January 30, 1980 (45 FR 6913); and August 4, 1980 (45 FR 51547–51550). In two opinions the Court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980. Many of the issues decided by the District Court have been appealed to the Court of Appeals for the District of Columbia Circuit. *In re: Permanent Surface Mining Regulation Litigation,* Nos. 80–1810, 80–1811, 80–1812, 80–1813 and 80–1823. The Court is expected to decide the appeal during the fall, 1982 term.

South Dakota Federal Program

As mentioned above, when promulgating a Federal program for a State, the Secretary is required by Section 504(a) of the Act to take into consideration the nature of the terrain, climate, biological, chemical, and other relevant physical conditions of that State. OSM has reviewed South Dakota laws and regulations to determine whether they suggest that special provisions may be necessary or appropriate based on special terrain or other physical conditions in the State. OSM solicits comments on special provisions that should be promulgated and the basis for those provisions.

The State has identifiable coal reserves, but has failed to submit a program to the Secretary to obtain primary regulatory responsibility. Therefore, pursuant to 30 CFR 736.11, the Director must promulgate and implement a Federal program.

Pursuant to Section 504(a), the Secretary becomes the regulatory authority when a Federal program is implemented for a State. OSM's permanent program regulations contain references to "the regulatory authority," which means the Secretary when a Federal program for a State is involved, Section 701(22) of the Act. The Office of Surface Mining is delegated all of the Secretary's authority for implementing, maintaining and enforcing a Federal program. This proposed program for South Dakota would not change these responsibilities.

Explanation of Cross-Referencing

In the general notice of intent to promulgate Federal programs of May 16, 1980 (45 FR 32228), OSM stated that each Federal program would be specific to the particular State and would implement the permanent program procedures and environmental protection provisions of the Act (45 FR at 32229). However, except for changes to incorporate more stringent State environmental protection standards and to list other State laws requiring permits for which coordination is required, OSM believes that few changes are needed in the permanent program regulations for any particular State for which a Federal program must be promulgated.

In January 1981 the Secretary directed that the Department review all existing regulations in order to eliminate those which are burdensome, excessive and unnecessary. Review of the permanent program regulations was initiated and may result in a large scale revision of

them. See semi-annual Calendar of Federal Regulations notice of rule review and revision, 47 FR 1709 (January 13, 1982).

See also, e.g., revisions of OSM's bonding regulations, 30 CFR Subchapter J, 46 FR 45082 (September 9, 1981) and OSM's inspection and enforcement regulations, 30 CFR Parts 842, 843, and 845, 46 FR 58464 (December 1, 1981).

In order to take advantage of the results which revision of the permanent program regulations will achieve, OSM proposes to develop and promulgate this Federal program in the following manner. Rather than repeating the full text of the permanent regulations which are being revised, there would be a cross-reference to the permanent program regulations. For example, criteria for the designation of lands unsuitable for surface coal mining would be provided by the statement that "the Secretary shall designate lands unsuitable . . . pursuant to the criteria in 30 CFR Part 762" (see proposed Section 941.762). One effect of the proposed cross-referencing to the permanent program regulations would be that as the permanent program regulations are revised, this Federal program would be similarly revised. Over time, all of the permanent program regulations will undergo review and many will be revised. No separate rulemaking would be undertaken or necessary for revision of this program if cross-referencing becomes effective, unless OSM determined that special conditions were necessary for a particular State. A statement would appear in permanent program rulemaking notices advising the public that the change in the permanent program rule would also result in a change in this program absent special conditions. The statement for the permanent program rule would invite comment on necessary modifications to accommodate unique or unusual aspects of surface mining in any State and the final rule would be tailored for each State as necessary.

The promulgation of this cross-referencing program would not result in any modification of the substance of OSM's permanent program rules. Where specific provisions are needed for an individual State's Federal program which are different from the permanent program regulations, a separate paragraph is proposed to be added to the appropriate section of that State's Federal program. Cross-referencing to the permanent program rules is also being used in the promulgation of other Federal programs. Public comment on the cross-referencing method as it affects other Federal programs, however, should be directed to each of those rulemaking notices.

Several provisions of the permanent program regulations are already applicable to a particular State's Federal program and need not be cross-referenced here because they were fully promulgated for application to all regulatory programs. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. However, 30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining would be included in a State's Federal program by a cross-reference under § 941.764 to provide a petition process on non-Federal and non-Indian lands in that State.

With regard to the bonding regulations (Subchapter J), only Part 800 is proposed to be cross-referenced because OSM has proposed to revise Subchapter J to include just one part, Part 800. 46 FR 45082 (September 9, 1981).

Content and Organization of the Program

The content and organization of the proposed Federal program for the State of South Dakota woud generally follow the permanent program regulations. But, as discussed above, instead of the full text appearing, each section of this proposed program would only include reference to the pertinent permanent program regulation. Sections 941.700(e) & (f) sets out both inconsistent and more stringent State statutes.

Where specific provisions are needed for the proposed South Dakota Federal program which are different from the permanent program reguations, a separate statement is added in paragraph (b) to the section.

In order to fulfill the Secretary's obligation under Section 504(a) of the Act to take into consideration the nature of the terrain and the climatological, biological, chemical, and other relevant physical conditions, the following South Dakota laws were reviewed.

Historic Preservation. South Dakota Complied Laws Annotated (SDCL) 1–19B.
Archeological Exploration, SDCL 1–20
Administration Procedures, SDCL 1–26
Roads and Highways, SDCL 31–1
Air Pollution Control, SDCL 34A–1
Water Pollution Control, SDCL 34A–2
Solid Waste, SDCL 34A–6
State Environmental Policy Act, SDCL 34A–9
Soil Erosion and Sediment Damage Control, SDCL 38–8A
Agricultural and Vegetable Seed Standards and Labeling, SDCL 38–12
Soil Amendments, SDCL 38–19A
Weed Control, SDCL 38–22
Protection of Birds and Small Game, SDCL 41–11
Protection of Fishing Waters, SDCL 41–13
Rights of Way to Mines, SDCL 45–5
Mining, SDCL 45–6A and 45–6
Water Rights, SDCL 46–5
Energy Conversion and Transmission Facilities, SDCL 49–41B
Insurance and Bonding, SDCL 58–13

Many of these laws did not have provisions which affect surface mining activities. However, some do, and to that extent they are discussed below.

By legislation enacted in February 1982 the State of South Dakota replaced the Mining Land Reclamation Statute, SDCL 45–6A. HB 1001 of the 1982 session revised the regulation of mineral mining and milling. HB 1002 revised the regulation of mineral exploration. This legislation took effect on July 1, 1982. The State statutory scheme applies to all minerals, including coal, HB 1001, Section 3(8), HB 1002, Section 3(7); former SDCL 45–68–2(16) and (17). In most respects, the legislation establishes less stringent standards than those set in the Surface Mining Control and Reclamation Act and the Secretary's permanent program regulations. In some instances however, the State's statutes set more stringent standards. The less stringent provisions of the two statutes are identified in the following discussion and will be pre-empted, as their implementation would interfere with the purposes and requirements of the Act and Federal regulations. The more stringent provisions will also be identified and will not be construed so as to be inconsistent with the Federal program.

The South Dakota statutory scheme for regulating exploration is similar to that established under Section 512 of the Act and 30 CFR Parts 776 and 815. The Federal scheme requires compliance with certain performance standards if the exploration will substantially disturb the natural land surface (30 CFR 815.15 implementing Section 512(a) of the Act). If more than 250 tons of coal will be removed during exploration a written approval is required (30 CFR 776.12 implementing Section 512(d) of the Act). The State regulatory scheme encompasses "exploration operations" but those operations which entail little or no surface disturbance (HR 1002, Section 3(6)). As with the Federal

regulatory regime, the prospector must submit a notice of intent to explore which does not require regulatory authority approval (30 CFR 776.11; HR 1002, Section 6). While both the State and Federal notices of intent serve the same purpose, the State statute requires more detail in the notice. This is not, however, considered to be more stringent.

Nevertheless, there are other provisions in the State exploration statute which are more stringent than the exploration standards in the Federal regulations. Under Section 16 of HB 1002, an operator is required to consult with a surface owner of land before exploration may be conducted. The owner may designate his or her preference for the reclamation of the affected land. The owner also has the right to impose reasonable restrictions on the travel of the prospector over the owner's land. Under Section 19 of HB 1002 the prospector must post a bond at a level to guarantee the cost of plugging ten percent of the proposed test holes and the reclamation of the affected land. Also, under Section 27, a person who explores cannot use explosives within one-half mile of a flowing or domestic water well without the owner's permission. Finally, Section 28 of HB 1002 requires the immediate capping, sealing and plugging of each test hole. However, a prospector may seek a waiver of the requirement for a temporary period. There are no provisions in the Federal Act or regulations setting these requirements. Therefore, they would not be construed to be inconsistent with the Federal program.

The State statutory scheme for the regulation of surface mining is different from that of the Federal permanent program. Under the Federal scheme, an operator may apply for a permit for a period of up to five years, a period which may be extended if necessary to obtain financing for the opening of the mine, and the application is complete for the longer period (Section 506(b) of the Act). The State requires an application for the life of the mine (HB 1001, Section 5). However, each year the operator must submit a map to the State indicating the amount of reclamation completed (HB 1001, Section 36). In all other respects, the procedures established in both the State statute and the performance standards are less stringent than those in the Federal Act. For example, the State statute requires advertisment of the filing of a permit application to be run in a newspaper once a week for two consecutive weeks (HR 1001, Section 16); the Federal requirement is once a week for four consecutive weeks (Act Section 513(a)). Under Section 515(b)(16) of the Act reclamation is to be conducted "as contemporaneously as practicable with the surface mining operations * * *" However, the State statute merely requires that reclamation be carried out with "all reasonable diligence, and * * * be completed within five years * * *" (HB 1001, Section 46). Moreover, while there is an extended period of liability for revegetation success under the Federal scheme (Act Section 515(b)(20))) five years or ten years depending on the amount of annual precipitation, after which the final portion of the bond may be released—under the State scheme the bond may not be held more than twelve months after completion of reclamation (HB 1001, Section 25).

There is one provision in the State statute and one feature of it, however, which set more stringent requirements. The Federal Act exempts operations affecting two acres or less (Act Section 528(2)). On the other hand, the State statute applies to all operations no matter how many acres are affected. However, there is a separate regulatory regime for operations which affect less than ten acres (HB 1001, Section 53), but that regime is less stringent than the Federal one and would be pre-empted on disturbances between two and ten acres, and would supersede requirements of the Act on areas less than two acres. Also, the State provides for a prohibition against mining on lands which are unsuitable (HR 1001, Section 33). While a petitioning process like that established in Section 522(a) of the Act is not provided for, the standards for determining whether lands are unsuitable and for which a permit may not be issued by the State appear to be more stringent, although comparable, to those provided in Section 522(a)(3). Thus, these provisions would not be construed as inconsistent with provisions of the Federal programs.

Comment is invited on whether laws identified in Section 941.700 of the proposed Federal program, which reflect more stringent South Dakota environmental controls adequately take into consideration the nature of the relevant physical conditions. Comments are also invited concerning any other South Dakota laws which establish more stringent land use and environmental controls.

All provisions of South Dakota statutes, HB 1001 and HB 1002 regulating mining, which took effect July 1, 1982, would be pre-empted and superseded insofar as they regulate surface coal mining operations except the following:

Mining, HB 1001:

Section 33 on lands unsuitable for mining.

Exploration, HB 1002:

Section 16 on operator consultation with surface owner;

Section 19 on a bond for reclamation of exploration;

Section 27 on not using explosives within one-half mile of a flowing or domestic water well; and

Section 28 on capping, sealing and plugging each test hole.

The State is in the process of revising its regulations and implementing the statutes enacted in February 1982. When the State formally promulgates regulations, they will be identified as either more or less stringent than Federal standards and accordingly pre-empted or not pre-empted in another rulemaking notice. Other State statutes regulate aspects of activities involved in surface mining operations which set more stringent standards than established in the Act and permanent program regulations. Other State statutes are summarized as follows:

(1) Weed Control, SDCL 38–22. The Weed Control Commission is authorized to determine noxious weeds and the Department of Agriculture is to publish a list. This sets a more stringent standard because the permanent program regulations, §§ 816.112(d) and 817.122(d), only require that introduced species comply with State and Federal seed and introduced species laws and that they not be noxious.

(2) Protection of fishing waters, SDCL 41–13. Section 1 of this chapter of the State statute makes it a misdemeanor to dump any refuse in any waters of the State which contain game fish. There is no provision in the Federal Act or regulations covering disposal in waters containing game fish.

(3) Remedies for protection of the environment, SDCL 34A–10. Under this chapter a cause of action is conferred, *inter alia*, on any person against, *inter alia*, any person or business entity to protect the air, water and other natural resources from pollution impairing or destroying them. Section 520(a) of the Act confers a similar cause of action but only on a person who has "an interest which is or may be adversely affected." The State statute on its face confers broader standing to sue.

(4) Air pollution control, SDCL 34A–1. This chapter authorizes the Board of Environmental Protection to establish ambient air standards, SDCL 34A–1–15, and to require permits for any equipment than can contribute to pollution, SDCL 34A–1–21. This is more stringent than OSM's authority to

regulate air quality because it establishes a more comprehensive scheme than that in 30 CFR 816.95 and 817.95 which, in part, have been suspended.

(5) Water pollution control, SDCL 34A–2. This chapter directs the Board of Environmental Protection to establish minimum effluent standards, 34A–2–13, which must be at least as stringent as the Federal Government's standards. It is a misdemeanor to violate an effluent standard, 34A–2–19. The Board must also establish minimum requirements for treatment of waste, 34A–2–20, the pollution of waters with which is also a misdemeanor, 34A–2–21, or the reduction of water quality from which is a misdemeanor, 34A–2–22. A permit is required from the Board in order to discharge waste into waters, 34A–2–27, the violation of which is a misdemeanor, *id.* The Secretary of Environmental Protection may certify that an applicant for a Federal permit which may result in a discharge into State waters complies with the Federal Water Pollution Control Act, 34A–2–33. This chapter of the State's law forms a pervasive regulatory scheme which is more stringent than the standards set in the Federal Act and regulations.

(6) Solid waste disposal, SDCL 34A–6. The definition of "solid waste" includes refuse resulting from mining operations, 34A–6–2. The Board of Environmental Protection has established a permit system for the disposal of solid waste, 34A–6–8. The rules promulgated by the Board regulate disposal site location, construction, operation, and compliance deadlines, 34A–6–5. Furthermore, dumping of wastes is prohibited at all but authorized disposal sites 34A–6–43. This is also a comprehensive regulatory scheme which is more stringent than the regulation of solid waste as it is involved in surface coal mining operations under the Federal permanent program regulations.

In order to coordinate the Federal Program permitting process with the permitting requirements of South Dakota and those imposed by other Federal statutes, Section 941.770 of the proposed Federal Program tentatively identifies the various permits, statutes and rules which may, expressly or impliedly, impact on surface coal mining and coal exploration and coal reclamation under the proposed Federal Program. The pertinent permits, statutes and rules are:

(1) Air Pollution Control, SDCL 34A–1.

(2) Water Pollution Control, SDCL 34A–2.

(3) Solid Waste Disposal, SDCL 34A–6.

Copies of the South Dakota statutes and other South Dakota statutes referred to herein in the administrative record and are available for review at the place listed above under "Addresses."

OMB Review

The recordkeeping and reporting requirements of the proposed rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507. Although this rule would contain information and recordkeeping requirements, OSM anticipates less than ten respondents. Under the Paperwork Reduction Act, clearance of information collection forms are required only when ten or more respondents are expected. If in the future the number of respondents appear to be increasing, the proper forms, if they differ from those already approved, will be submitted to the Office of Management and Budget, with accompanying notices in the **Federal Register**, in accordance with the requirements of 44 U.S.C. Chapter 35.

Other Information

OSM has examined these proposed rules according to the criteria of Executive Order 12291 (46 FR 13193, February 19, 1981) and determined that they do not constitute a major rule. There would be no major economic impact through adoption of this rule because it would affect only a small number of mining operations.

OSM has examined these proposed rules pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that they will not have significant impact on a substantial number of small entities. Separate determinations of effect will be prepared for all revisions of the permanent program rules and would consider the effects on small entities in the State of South Dakota.

Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no Environmental Assessment is required for this rulemaking.

List of Subjects in 30 CFR Part 941

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting requirements.

Drafting Information

These regulations were drafted by David E. Jones, Office of the Solicitor and James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

William P. Pendley,

Deputy Assistant Secretary, Energy and Minerals.

July 14, 1982.

OSM proposes to amend 30 CFR Chapter VII by adding Part 941 which would provide as follows:

PART 941—SOUTH DAKOTA

Sec.

941.700 General.
941.701 General.
941.707 Exemption for coal extraction incident to government-financed highway or other construction.
941.761 Areas designated unsuitable for surface coal mining by Act of Congress.
941.762 Criteria for designating areas as unsuitable for surface coal mining operations.
941.764 Process for designating areas unsuitable for surface coal mining operations.
941.770 General requirements for permit and exploration procedures.
941.771 General requirements for permits and permit applications.
941.776 General requirements for coal exploration.
941.778 Surface mining permit applications—Minimum requirements for legal, financial, compliance, and related information.
941.779 Surface mining permit applications—Minimum requirements for information on environmental resources.
941.780 Surface mining permit applications—Minimum requirements for reclamation and operations plan.
941.782 Underground mining permit applications—Minimum requirements for legal, financial, compliance, and related information.
941.783 Underground mining permit applications—Minimum requirements for information on environmental resources.
941.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.
941.785 Requirements for permits for special categories of mining.
941.786 Reviews, public participation, and approval or disapproval of permit applications and permit terms and conditions.
941.787 Administrative and judicial review of decisions on permit applications.
941.788 Permit review, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
941.795 Small operator assistance.
941.800 General requirements for bonding of surface coal mining and reclamation operations.
941.815 Performance standards—Coal exploration.
941.816 Performance standards—Surface mining activities.
941.817 Performance standards—Underground mining activities.

Sec.

941.818 Special performance standards—Concurrent surface and underground mining.
941.819 Special performance standards—Auger mining.
941.823 Special performance standards—Operations on prime farmland.
941.824 Special performance standards—Mountaintop removal.
941.826 Special performance standards—Operations on steep slopes.
941.827 Special performance standards—Coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
941.828 Special performance standards—In situ processing.
941.842 Federal inspections.
941.843 Federal enforcement.
941.845 Civil penalties.

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 130 U.S.C. 1201 *et seq.*

§ 941.700 General.

(a) This Part contains all rules that are applicable to surface coal mining operations in South Dakota which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is the permanent program rule cited under the relevant section of the South Dakota Federal program.

(c) The rules in this part apply to all coal exploration and surface coal mining operations in South Dakota conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in South Dakota.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of South Dakota laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) 1982 South Dakota Session Laws HB 1001, Section 33(1)–(5) on lands unsuitable for mining (enacted February 24, 1982; effective July 1, 1982).

(2) 1982 South Dakota Session Laws, HB 1002, Sections 16, 19, 27 and 28 (enacted February 24, 1982; effective July 1, 1982).

(3) Weed Control, South Dakota Compiled Laws (SDCL) 38–22.

(4) Protection of fishing waters, SDCL 41–13.

(5) Remedies for protection of the environment, SDCL 34A–10.

(6) Air pollution control, SDCL 34A–1.

(7) Water pollution control, SDCL 34A–2.

(8) Solid waste disposal, SDCL 34A–6.

(f) The following are South Dakota laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with Section 504(g) of the Act, preempted and superseded:

(1) 1982 South Dakota Session Laws, HB 1001, except with respect to the criteria of designating lands unsuitable for mining, Section 33(1)–(5) (enacted February 24, 1982; effective July 1, 1982).

(2) 1982 South Dakota Session Laws, HB 1002, except with respect to the requirements to consult with the owner of surface lands to be explored and the right of the owner to establish reasonable restrictions on exploration travel, Section 16, the requirement to post an exploration reclamation bond, Section 19, the prohibition of explosives use in exploration within one-half mile of a flowing water well or a domestic water well without the owner's permission, Section 27, and the requirement to cap, plug and seal all exploration test holes, Section 28.

§ 941.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining operations in South Dakota.

§ 941.707 Exemption for coal extraction incident to Government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 941.761 Areas designated unsuitable for surface coal mining by act of Congress

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 941.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, Criteria for designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mine operations.

§ 941.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after the effective date of this program.

§ 941.770 General requirements for Permits and exploration procedures.

(a) Part 770 of this chapter, General Requirements for Permit Systems Under State Programs, shall apply to surface coal mining and exploration operations.

(b) No person shall conduct coal exploration or shall conduct surface coal mining operations without permits, leases and/or certificates required by the State of South Dakota including compliance with: (1) Air pollution control, SDCL 34A–1; (2) water pollution control, SDCL 34A–2; (3) and solid waste disposal, SDCL 34A–6.

§ 941.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mine operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with §736.25 of this chapter.

§ 941.776 General requirements for coal exploration.

(a) Part 776 of this chapter, General Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 941.778 Surface mining permit application—Minimum requirements for legal, financial, compliance and related information.

Part 778 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information,

shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 941.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 941.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) All applicants for a permit shall demonstrate compliance with the South Dakota laws on air pollution, SDCL 34A–1, water pollution control, SDCL 34A–2, and solid waste disposal, SDCL 34A–6.

§ 941.782 Underground mining permit applications—Minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct underground mining operations.

§ 941.783 Underground mining permit applications—Minimum requirements for information on environmental resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who submits an application to conduct underground mining operations.

§ 941.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct underground mining.

§ 941.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to each person who make application for a permit to conduct certain categories of surface coal mining and reclamation operations.

§ 941.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 941.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and Sections 520, 525 and 526 of the Act.

§ 941.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits, shall apply to review, revisions, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 941.795 Small operator assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making application for assistance under the small operator assistance program.

§ 941.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations.

§ 941.815 Performance standards—Coal exploration.

(a) Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person conducting coal exploration operations.

(b) All operators shall comply with the South Dakota statutory requirements adopted in § 941.700(e) of this Part.

§ 941.816 Performance standards—Surface mining activities.

(a) Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) No person shall conduct surface coal mining operations except in compliance with the the South Dakota statutory requirements adopted in § 941.700(e) of this Part.

§ 941.817 Performance standards—Underground mining activities.

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground mining operations.

(b) No person shall conduct underground coal mining operations except in compliance with the South Dakota statutory requirements adopted in § 941.700(e) of this Part.

§ 941.818 Special performance standards—concurrent surface and underground mining.

Part 818 of this chapter, Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining, shall apply to any person who conducts combined surface and underground mining operations.

§ 941.819 Special performance standards—Auger mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 941.822 Special performance standards—Operations in alluvial valley floors.

Part 822 of this chapter, Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 941.823 Special performance standards—Operations on prime farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 941.824 Special performance standards—Mountaintop removal

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts suface coal mining operations constituting mountaintop removal mining.

§ 941.826 Special performance standards—Operations on steep slopes.

Part 826 of this chapter, Special Permanent Program Performance Standards—Operations on Steep Slopes, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 941.827 Special performance standards—Coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants and support facilities not ocated at or near the minesite or not within the permit area for a mine.

§ 941.828 Special performance standards—In situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts in situ processing activities.

§ 941.842 Federal inspections.

(a) Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of inspection report or enforcement action taken to the South Dakota Department of Water and Natural Resources upon request.

§ 941.843 Federal enforcement.

(a) Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action and order to show cause issued pursuant to this subpart to the South Dakota Department of Water and Natural Resources upon request.

§ 941.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

[FR Doc. 82-21638 Filed 8-9-82; 8:45 am]
BILLING CODE 4310-05-M

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

List of Public Laws

Last Listing August 6, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 2706 / Pub. L. 97–230 To amend title 28, United States Code, to modify the bar membership requirements for United States magistrates. (August 6, 1982; 96 Stat. 255) Price: $1.75.