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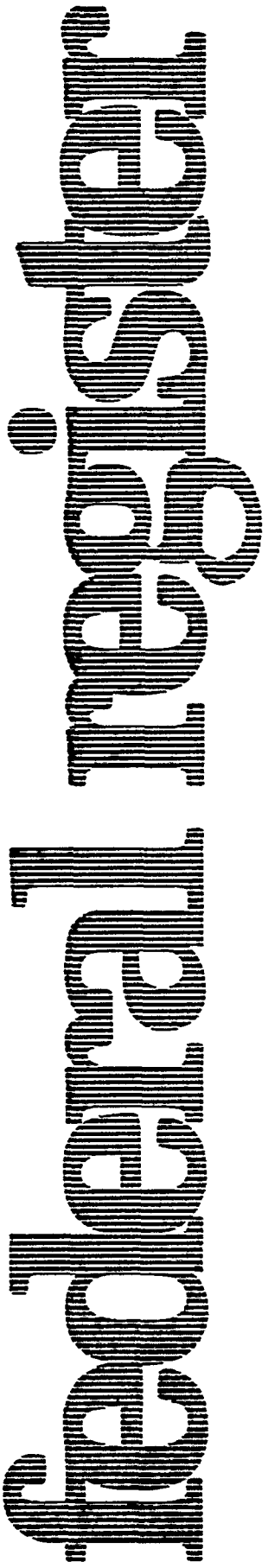

Monday
September 15, 1980

Highlights

60877 **International Maritime Satellite Organizations** Executive order designating public international organization

61031 **Grant Programs—Health** HHS/PHS/HRA announces that applications are now being accepted for grants in residency training in internal medicine or pediatrics; apply by 10–13–80

61250 **Civil Disorders** FEMA gives notice of offer to provide reinsurance against excess aggregate loss resulting from riots or civil disorders; effective 9–15–80 (Part III of this issue)

61262 **Grant Programs—Low and Moderate Income Housing** HUD/FHC solicits applications regarding cooperative conversions of existing multifamily housing projects; apply by 10–15–80 (Part V of this issue)

60902 **Income Taxes** Treasury/IRS provides final regulations relating to time for filing estimated income tax by farmers, fishermen, and certain nonresident aliens

61008 **Grant Programs—Computer Integrated Manufacturing** Commerce announces proposed availability of funds for establishment of Cooperative Generic Technology Centers; apply by 10–10–80

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Highlights

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

61268 **Petroleum** DOE/ERA proposes amendment further modifying treatment of Alaska North Slope upper tier crude oil under entitlements program; comments by 11-12-80; hearing 10-9-80 (Part VI of this issue)

60903 **Government Procurement** HHS adds new clause for use in all consulting service contracts; effective 8-30-80

60954 **Grants—Federally Assisted Education Programs** CSA proposes civil rights requirements for grantees; comments by 11-14-80

60879 **Loan Programs—Agriculture** USDA/CCC provides specifications governing cotton bale packaging materials used for 1980 cotton crops pledged for price support loans; effective 9-15-80

60900 **Natural Gas** DOE/FERC publishes incremental pricing acquisition cost thresholds; effective 9-1-80

61024 **Grant Programs—Environmental Protection** EPA issues a class deviation from certain provisions regarding grants for construction of treatment works and clarifies certain provisions pertaining to Industrial Cost Recovery

60900 **Vessels** Treasury/Customs amends regulations to add Italy to list of nations whose registered vessels are permitted to transport certain articles coastwise; effective 2-26-80

61011 **Grant Programs—Education** ED invites states to submit requests for continuation funding by 10-3-80 under the State Formula Grant Program and State Leadership Program in Basic Skills

61278 **Mines** Interior/SMO clarifies scope of exemption available for anthracite operations in Pennsylvania; effective 10-15-80 (Part IV of this issue)

61120 **Surface Coal Mining and Reclamation** Interior/OSM proposes Federal regulatory program for Georgia; comments by 11-21-80; hearing 11-18-80 (Part II of this issue)

61003 **Privacy Act Documents** Arms Control and Disarmament Agency

61077 **Sunshine Act Meetings**

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Presidential Documents

Title 3—

The President

Executive Order 12238 of September 12, 1980

Public International Organizations Entitled To Enjoy Privileges, Exemptions, and Immunities

By the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288), and having found that the United States participates in the International Maritime Satellite Organization pursuant to Title V of the Communications Satellite Act of 1962, as amended (47 U.S.C. 751 *et seq.*), the International Maritime Satellite Organization is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

THE WHITE HOUSE,
September 12, 1980.

[FR Doc. 80-28608
Filed 9-12-80; 10:53 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 45, No. 180
Monday, September 15, 1980

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

Wrapping of Cotton; Specifications for Bale Packaging Materials

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the specifications governing cotton bale packaging materials used for 1980 and subsequent crops cotton pledged for price support loans. This rule is needed in order that producers and others will know what materials are acceptable to CCC. Bales of cotton will be acceptable for price support loans only if they conform to these specifications.

EFFECTIVE DATE: September 15, 1980.

ADDRESSES: Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3750 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Thomas Fink, Grain, Oilseeds, Rice and Cotton Section, Price Support and Loan Division, ASCS, P.O. Box 2415, Washington, D.C. 20013, 202/447-7923.

The Final Impact Statement containing the consideration in the development of this rule is available upon request from Charles V. Cunningham, Production Adjustment Division, P.O. Box 2415, Washington, D.C. 20013, 202/447-7873.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

In compliance with Secretary's Memorandum No. 1955 and "Improving Government Regulations" (43 FR 50988), it is determined after review for these regulations contained in 7 CFR Part 722 for need, accuracy, clarity, and effectiveness, that no additional changes be made at this time. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the next five years.

The title and number of the federal assistance program that this Final Rule applies to is: Title—Commodity Loans and Purchases; Number—10.051; as found in the catalog of Federal Domestic assistance.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95, was not used to assure that units of local government are informed of this action.

On August 14, 1979, Commodity Credit Corporation (CCC) published in the Federal Register (44 FR 47544) a notice that the Department proposed to make certain determinations concerning the 1980 crops of upland and extra long staple cotton. Such determinations included a determination of the specifications for bale packaging materials applicable to 1980-crop cotton pledged to CCC for price support loans. Interested persons were given until October 15, 1979, to submit recommendations, views and comments.

Four responses were received concerning the specifications. Three recommended adopting the specifications as recommended by the Cotton Industry Bale Packaging Committee and two recommended that all wrapping material contain at least 85 percent cotton.

The Committee recommended that (1) seven pound (jute) T-2 bagging be approved on all bales beginning with the 1980 crop year, (2) width of polypropylene panels for flat and modified flat bales be increased to 49½ inches and length be increased to 114 inches for all patterns, (3) bag fabricator shall be responsible for meeting specifications for seams, cuts and sizes while fabric manufacturers shall be responsible for insuring that fabrics are manufactured, examined and tested in accordance with approved specifications and standards, (4) spiral sewn polypropylene bag seams must be sewn in accordance with type SSN-1, SSA-1 and LSA-1 seam and type 401 stitch, and (5) all color marking yarns be discontinued on polypropylene bagging.

After consideration of all responses and recommendations, it has been determined that the specifications will be revised in accordance with the Committee's recommendations. These revised specifications are designed to improve the quality and protection of the cotton bale.

Final Rule

Accordingly, the Specifications for Bale Packaging Materials Used in Wrapping Cotton published in 44 FR 32637 on June 7, 1979, as amended, are revised to read as set forth below, effective with the 1980 crop of cotton. The material previously appearing in these regulations remains in full force and effect as to the crop to which it was applicable.

Subpart—Specifications for Bale Packaging Materials

Sec.

1427.1901 Purpose.
1427.1902 Specifications for bale ties and buckles.
1427.1903 Specifications for bagging.
1427.1904 Official tare weights.
1427.1905 Test methods.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 (b) and (c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421)).

Subpart—Specifications for Bale Packaging Materials

§ 1427.1901 Purpose.

This subpart is for the purpose of announcing the specifications applicable to bale packaging materials for packaging the 1980 and subsequent crops of cotton tendered to CCC for loans, unless otherwise approved by the Executive Vice President, CCC, or his designee: *Provided, however,* That all bales of cotton packaged and identified with the testing programs of the Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America will be exempt from the provisions of this subpart, bale packaging materials contracted prior to issuance of 1980 specifications based on 1979 specifications, and bale packaging materials carried over from 1979 which were eligible for packaging 1979 crop loan cotton also may be used to package 1980 crop cotton pledged for loans.

§ 1427.1902 Specifications for bale ties and buckles.

Any fixed length bale ties used on flat bales shall not exceed 10 feet, 3 inches in length, excluding overlap. All ties and buckles or fasteners must be coated or furnished with a rust inhibitor. All ties which are underneath the wrapping material shall be wire or cold rolled high tensile steel strapping.

(a) General requirements—(1) Number of ties required.

(i) Flat bales (bales having densities of less than 20 pounds per cubic foot) must have not less than 6 ties.

(ii) Standard density bales (bales having densities of at least 20 pounds but less than 28 pounds per cubic foot) must have not less than 8 ties.

(iii) Universal density bales (bales having densities of 28 pounds or more per cubic foot) must have not less than 8 ties.

(2) Flat bales packaged with nonreusable ties. Except for bales stored only in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if the ties on a bale are not suitable for reuse when the bale is compressed, the ties will not be deemed to meet these specifications unless the producer has prepaid any warehouse charge for furnishing new bale ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouses are normally compressed in transit, the warehouse receipt must show that the bale ties are not suitable for reuse when the bale is compressed and the charge assessed by the nearest compress in line of transit for furnishing new bale ties will be deducted from the loan proceeds.

(b) *Conventional hot rolled steel ties and buckles.* The total weight of bale ties and buckles to tie each bale of cotton shall not be less than 8½ pounds. Such ties may be used only on flat, modified flat and bales compressed at a warehouse.

(c) *Cold rolled high tensile steel strapping.* The supplier's name or trademark must be printed or embossed on every 36 inches of strapping.

(1) *For use on flat bales and standard density and universal density and universal density bales compressed at a warehouse.* The strapping shall have a minimum width of three-fourths of an inch and minimum thickness of 0.025 inch with zero tolerance, minimum weight of 1 pound per 15.7 linear feet of strapping or 4 pounds per bale of cotton, minimum breaking strength of 2,400 pounds with a joint strength of not less than 2,040 pounds.

(2) *For use on gin standard density and gin universal density bales.* The strapping shall have a minimum width of three-fourths of an inch and minimum thickness of 0.031 inch with zero tolerance, minimum weight of 1 pound per 12.7 linear feet of strapping or 5 pounds per bale of cotton and minimum breaking strength of 3,200 pounds with a joint strength of not less than 2,720 pounds for gin standard density bales or 4,000 pounds with a joint strength of not less than 3,400 pounds for gin universal density bales.

(3) *Keylock type fixed length tie for use on flat bales and universal density bales compressed at a warehouse.* The bale tie must have a minimum width of 0.74 inches and a minimum thickness of 0.025 inches, minimum weight of 4 pounds per bale of cotton, minimum breaking strength of 3,200 pounds with a joint strength of not less than 2,700 pounds. The tie shall be constructed so as not to disengage at the joint while tucking or while being handled with clamp trucks.

(d) *Wire ties.* Ties must be manufactured from wire which conform to ASTM–A–510 issued by the American Society for Testing Materials (ASTM). Each bundle of wire shall bear a certification that the wire ties have been manufactured according to the specifications for Bale Packaging Materials as published in Part 1427, Chapter XIV, Title 7 of the Code of Federal Regulations. The certification shall also show the name and address of the wire tie manufacturer and contain a quality control code which will permit the ties to be identified to the 2,000 pound lot and/or wire carrier.

Wire tie manufacturers shall follow a regular procedure of testing and inspection which involves a minimum of one break test on a sample from each 2,000 pound lot and/or wire carrier. Wire ties shall be fabricated within the United States.

(1) *For use on flat bales and bales compressed to standard density and universal density at a warehouse.* (i) *Square knot type wire.* The ties shall not be smaller than 10-gauge with a minimum joint strength of 1,850 pounds including the connection. Joints may be on side of bales.

(ii) *Crosshead type wire.* The ties shall not be smaller than 10-gauge with a minimum joint strength of 1,650 pounds including the connection. The minimum elongation of the wire shall be one inch per 10 inches. Joints may be on side of bales.

(2) *For use on gin standard density and gin universal density bales.* The ties shall be not smaller than 9-gauge. The breaking strength of the wire must not be less than 3,400 pounds with a joint strength of not less than 2,100 pounds with the joints placed on the tops of the bales. If the joints are placed on the sides of the bales, the breaking strength of the wire must not be less than 3,200 pounds with a joint strength of not less than 3,040 pounds.

§ 1427.1903 Specifications for bagging.

Except in cases where shrink-pack polyethylene bags, cotton bags, polypropylene half-bag panel combinations, or spiral sewn bags of burlap and/or polypropylene are used, each bale must be wrapped with a pattern of bagging consisting of two pieces (panels) of bagging material. All bagging material must be clean, in sound condition, and of sufficient strength to adequately protect the cotton. The material must not have salt or other corrosive material added and must not contain sisal or other hard fiber or any other material which will contaminate or adversely affect cotton as determined by the President or Executive Vice President, Commodity Credit Corporation.

(a) *New jute bagging used to wrap gin standard density and gin universal density bales.* Each one-half pattern (panel) of new jute bagging used for wrapping must not be less than 96 inches or more than 100 inches in length for gin universal density bales and not less than 100 inches or more than 102 inches in length for gin standard density bales and must not be less than 40 or more than 48 inches in width. The bagging must contain not less than 150 warp yarns per 40 inches of bagging of a size equal to or larger than the weft (filling) yarns, must contain not less than 25 weft (filling) yarns per 12 inches of bagging and must weigh not less than 7½ and not more than 8½ pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain). A marker warp yarn of the same size as the remaining warp yarns, made of jute or plied cotton, dyed dark green with a colorfast, nonbleeding dye of a type which will not be subject to permanent staining of cotton fiber under normal weathering conditions must be placed in the center of each panel to designate the 8-pound tare weight of the bagging.

(b) *Compact center type new jute bagging*—(1) *Used to wrap flat bales (24 ounces per linear yard).* Each one-half pattern (panel) of compact center type new jute bagging used to wrap flat bales must not be less than 108 inches or more than 115 inches in length and must not be less than 46 inches in width. The bagging must contain a center panel not less than 32 inches wide and contain not less than 110 warp yarns and an outer edge not less than 7 inches wide containing not less than 13 warp yarns including selvage. The outer edge may

contain more than 13 warp yarns and the center panel may exceed 32 inches provided the bagging contains not less than 41 warp yarns per 12 inches and still meet these specifications provided all other requirements contained herein are met. The warp yarn must be a size equal to or larger than the weft (filling) yarns. The bagging must contain not less than 25 weft (filling) yarns per 12 inches of bagging with a minimum weft yarn weight of 40 pounds per spindle (14,400 yards). The bagging must weigh not less than 8½ and not more than 9½ pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain). A marker warp yarn of the same size as the other warp yarns, made of jute or a plied cotton yarn, dyed dark blue with a colorfast, nonbleeding dye of a type which will not be subject to permanent staining of cotton fiber under normal weathering conditions must be placed in the center of each panel to designate the 9-pound tare weight.

(2) *Used to wrap gin standard and universal density bale.* Compact center type new jute bagging (24 ounces per linear yard) meeting the same width and fabric construction requirements for compact center type new jute bagging as used on flat bales cut to a length of not less than 98 inches or more than 101 inches in length, weighing not less than 7½ and not more than 8½ pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain) and containing a dark green center market yarn may be used to wrap gin standard and gin universal density bales.

(c) *Salvage jute (burlap) bagging)*—(1) *General requirements.* Salvage jute (burlap) bagging must be processed specifically for cotton bale coverings from once-used good quality closely woven heavy jute bags previously used for sugar, coffee, cocoa, or other products approved by the President or Executive Vice President, CCC. Each one-half pattern (panel) must be composed of not more than three pieces of used bag cloth of the same construction and weight. There must not be more than two crosswise sewn seams and not more than one lengthwise sewn seam when measured across any single width of the panel in any one-half pattern (seams, hems, and necessary patches in the original bags from which the bagging is made will not be considered sewn seams). Overlap at seams and patches must not be greater than 3½ inches. Overlaps, patches, and hems sewn into bagging to increase the weight of lightweight material will not be permitted. Sewn seams must be such that the edges of the joined pieces coincide to make a symmetrical one-half pattern without appreciable displacement of the edge of one piece of bagging relative to the edge of the adjoining piece in the seam. Sewing must be with strong thread with not larger than ⅜ inch stitching.

(2) *To wrap flat bales.* Each one-half pattern (panel) used to wrap flat bales must not be less than 106 inches or more than 112 inches in length and must be not less than 48 inches or more than 52 inches in width. The bagging must weigh not less than 8½ and not more than 10 pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain).

(3) *To wrap modified flat bales.* Each one half pattern used to wrap modified flat bales must not be less than 106 inches or more than 112 inches in length and must not be less than 46 inches or more than 52 inches in width. The bagging must weigh not less than 8½ or more than 10 pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain).

(4) *To wrap gin standard density and gin universal density bales.* Each one-half pattern (panel) used to wrap gin standard and gin universal density must not be less than 40 inches or more than 48 inches in width and must be not less than 96 inches or more than 102 inches in length. The bagging must weigh not less than 7½ and not more than 10 pounds per pattern (two panels) at 13.75 moisture content (not moisture regain).

(d) *T2 type new jute bagging*—(1) *General requirements.* Each panel of bagging shall have the total bale tare weight preprinted by the bagging manufacturer. Printing shall read, "TOTAL BALE TARE WEIGHT TEN POUNDS." Printing shall be in the center of each pattern and run lengthwise. Individual letter size shall be no less than 1½ inches and no more than 4 inches high. Use of T2 bagging shall be used only on bales strapped with wire or high tensile steel strapping.

(2) *Used to wrap flat and modified flat bales.* Each one-half pattern of T2 type new jute bagging used to wrap flat and modified flat bales must be not less than 108 inches in length and must not be less than 46 inches in width. The bagging must contain not less than 108 two-ply warp yarns per 12 inches of bagging and not less than 48 weft (filling) yarns per 12 inches of bagging with a minimum weft yarn weight of 14 pounds per spindle (14,400 yards). The bagging must weigh not less than 6.65 and not more than 7.75 pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain). The average tensile breaking strength shall not be less than 295 kilograms (650 pounds) in the warp way with a tolerance of minus 45 kilograms (100 pounds) and 60 kilograms (132 pounds) in the weft way with a tolerance of minus 10 kilograms (22 pounds) (10 centimeters by 20 centimeters) ravel strip method.

(3) *Used to wrap gin standard and universal density bales.* T2 type new jute bagging meeting the same fabric construction requirements for T2 type new jute bagging as used on flat and modified flat bales cut to a length of not less than 98 inches or more than 101 inches and not less than 40 inches in width, weighing not less than 5.5 pounds and not more than 6.5 pounds per pattern (two panels) at 13.25 percent moisture content (not moisture regain) may be used to wrap gin standard and gin universal density bales.

(e) *Spiral sewn burlap bags used to wrap gin standard and gin universal density bales and bales compressed to standard density and universal density at a warehouse.*—(1) *Material.* Spiral sewn burlap bags used to wrap gin standard and gin universal density bales and bales compressed to standard density and universal density at a warehouse must be spiral sewn from new burlap which is not less than 68 inches wide before sewing and weighs not less than 13.25 ounces per linear yard (this corresponds to burlap weighing 8.9 ounces per 40-inch width). The material must have a true selvage on each side. Spiral sewn bags made from split burlap with raw edges will not be acceptable.

(2) *Bag size.* The bag size must be tailored to individual bale size at each location. Bags shall fit bales tightly, but must be large enough to minimize bursting and long enough to completely cover and secure heads of bales.

(3) *Seams.* Seams must be sewn with a type 401 stitch, minimum four stitches per inch, and $\frac{1}{12}$ or $\frac{5}{12}$ cotton thread, or 1,000 denier polypropylene thread meeting ultraviolet inhibitor concentration requirements of paragraph (g)(2)(iii) of this section, with breaking strength of 5 grams per denier.

(f) *Cotton bagging.*—(1) *General requirements.* Bagging made from 100 percent cotton must weigh not less than 7.7 ounces per square yard with a minimum weight of 4 pounds per pattern for flat and modified bales, 3.1 pounds for gin standard density bales, 3 pounds for gin universal density bales, and bales compressed at a warehouse at 8.5 percent moisture content (not moisture regain).

(i) *Panel requirements.* Bales wrapped with cotton bagging must be tied with wire or high tensile steel strapping. Each panel of bagging must not be less than

48 inches in width, and 112 inches in length for flat or modified flat bales, 100 inches in length and 42 inches in width for gin standard density bales and 96 inches in length and 42 inches in width for gin universal density bales and compressed at a warehouse. Each panel must be constructed with true selvages on each side.

(II) *Bag requirements.* Sewn cotton bags may be used to wrap gin standard, gin universal density and bales compressed at a warehouse.

(A) *Material.* The bagging must be constructed of warp knitted cotton fabric as specified in subparagraph (c)(3). Bags may be constructed with two panels sewn on each side to form a bag or form a single folded pattern.

(B) *Bag size.* The bag size must be tailored to individual bale sizes at each location. Bags shall fit bales tightly but must be large enough to minimize bursting and long enough to completely cover and secure heads.

(C) *Seams.* Seams must be sewn with a type SSA–1 or LSA–1 seam, type 401 stitch, minimum 6 stitches per inch with 4/12 or 5/12 cotton thread.

(2) *Woven.* The bagging must contain not less than 120 warp yarns (plied or single) per 12 inches of bagging of a size equal to or larger than the weft (filling) yarns and must contain not less than 78 weft (filling) yarns (plied or single) per 12 inches of bagging.

(3) *Warp knitted.* The bagging must be constructed with not less than two guide bars. The bagging must contain not less than five wales per inch and not less than six courses per inch. All yarns (plied or single) must be form connected with each other. The bagging must have stabilized construction with elongation or stretch not less than 15 percent or more than 30 percent. Variation in tensile strength in wale and course direction must not exceed 20 percent. The bagging must have a minimum bursting strength of 75 pounds.

(g) *Polyethylene shrink-pack bags used to wrap gin standard density and gin universl density bales.* Polyethylene shrink-pack bags used to wrap gin standard and gin universal density bales must meet the following requirements:

(1) *Density.* The bag must be low density virgin polyethylene.

(2) *Color.* The bag must be clear.

(3) *Gauge.* The gauge shall be not less than 8 mil.

(4) *Gauge tolerance.* The average of any 20 evenly spaced points around the length and width of a bag must be within plus or minus 10 percent of 8 mil. Yield on any order of 2,000 pounds or more shall not vary more than plus or minus 3 percent from the nominal yield.

(5) *Tensile strength.* For machine (length) and transverse (cross) direction the tensile strength must be not less than 2,500 pounds per square inch, and for transverse (cross) direction, not less than 2,000 pounds per square inch.

(6) *Elongation.* For both machine (length) and transverse (cross) direction the elongation must be not less than 400 percent.

(7) *Impact resistance.* The impact resistance must be not less than 450 grams.

(8) *Slip characteristics.* Bags must be low slip (coefficient of friction not less than 0.50) with no antiblock or slip additive included.

(9) *Tagging.* A piece of woven yarn scrim not less than 5 inches by 7 inches and laminated on each side with polyethylene must be placed inside the bag on the head of bale and heat welded to the cover, or some other suitable reinforcing material must be bonded to the bag.

(10) *Tare weight.* Tare weight shall be not less than 2 pounds per shrink-pack bag.

(11) *Sealing head of bales.* Extra precaution must be taken in sealing heads of bales to provide maximum coverage and protection.

(12) *Shrink ratio.* The ratio of machine (length) direction shrink to the transverse (cross) direction shrink must not exceed 1.5:1.

(13) *Total tare weight.* The total tare weight (i.e. bag and ties shall be printed on the bag. Printing shall read "total tare=——lbs." and the bale tare weight shall be included in the appropriate space.

(14) *Bag size.* Each bag shall be not less than 87 inches in length when used on 54 inch by 20 inch presses and not less than 83 inches in length when used on 50 inch by 20 inch presses.

(h) *Polypropylene material—(1) General.* Polypropylene material used to wrap bales shall be new polypropylene fabric manufactured in the United States from yarn and resins produced in the United States and woven specifically for use on cotton bales. The bale covers shall be uniform in size and color, clean, unstained, and free of any extraneous material.

(2) *Yarns.* No scrap, reground, or reworked polymer shall be used, except that unoriented edge trim may be reground and directly recycled during operation of extruder.

(i) *Type.* The yarn shall be crystalline or isotatic polypropylene tape yarn.

(ii) *Dimension.* Yarn dimensions shall be 2.1 mils thick, plus or minus 0,2 mil and 95 mils wide, plus or minus 2 mils.

(iii) *Inhibitor concentration.* The yarn shall be stabilized by a system containing organo-nickel complex ultraviolet light inhibitor. The yarn shall contain organo-nickel complex at a concentration of not less than 0.1 percent nickel as metal from the inhibitor. The cotton Industry Bale Packaging Committee will have samples checked periodically by a private laboratory at manufacturers' expense.

(3) *Fabric woven from stabilized yarns—(i) Minimum weight.* The fabric must weigh an average of not less than 3 ounces per square yard and no test sample shall weigh less than 2.8 ounces per square yard.

(ii) *Yarn count.* There must be 12 warp yarns, plus or minus 1, per inch; and 12 weft yarns, plus or minus 1, per inch.

(iii) *Color.* The color of the fabric shall be translucent light gold, unless otherwise approved by the Cotton Industry Bale Packaging Committee. The center of each panel must be marked in the weft direction with a clearly visible line printed with white ink running across the entire width of the panel or with a series of three lines having a minimum of 12 inches on each edge and a minimum of 6 inches in the center. The lines must be within one inch of the true center of the length of the panel.

(iv) *Tensile strength.* Minimum tensile strength shall be 125 pounds per inch average in the warp direction and 100 pounds per inch average in the weft direction. Ten samples shall be tested in each direction for this determination and no single test shall be more than 10 pounds per inch below the specified average.

(v) *Elongation.* Fabric shall have an elongation to break of not less than 15 percent average in both warp and weft directions. Ten samples shall be tested in each direction for this determination and no single test value shall be below 12 percent.

(vi) *Selvage.* Each outer edge of the fabric shall be a tucked selvage or natural selvage containing not less than the number of warp ends prevalent in the body of the fabric. A heat cut selvage will not be acceptable. Ends of cut sheets and spiral sewn bags must be finished by heat cutting to give a pin test value of at least 40 pounds per inch.

(vii) *Air permeability.* The fabric in an unstressed state must permit not less than 5 cubic feet per minute per square foot, nor more than 50 cubic feet per minute per square foot of air flow.

(viii) *Weathering resistance.* The fabric shall retain not less than 70 percent of its original tensile breaking strength after 1,200 hours exposure to accelerated weathering.

(4) *Coatings.* Any coating added to the fabric to reduce gloss, fibrillation, slippage, or for other technical reasons,

shall be as stable as the fabric to which it has been applied when exposed to accelerated weathering. Such coating must not adversely affect cotton which it is to contact.

(5) *Minimum panel size.* (i) Each panel of bagging must be not less than 52 inches in width and 114 inches in length for use on nonmodified flat presses (28 inch width bales).

(ii) Each panel of bagging must be not less than 49½ inches in width and 114 inches in length for use on modified flat presses (25 inch width bales).

(iii) Each panel of bagging must be not less than 44 inches in width and 100 inches in length for use on gin standard density bales.

(iv) Each panel of bagging must be not less than 44 inches in width and 96 inches in length for use on gin universal density bales.

(6) *Additional specifications for spiral sewn bags.* Spiral sewn polypropylene bags must meet the following requirements:

(i) Fabric shall conform to the specifications for woven polypropylene fabric specifications.

(ii) The fabric from which each bag is sewn shall be a minimum of 60 inches in width.

(iii) The bag size must be tailored to individual bale size at each location. Bags shall fit bales tightly, but must be large enough to minimize bursting and long enough to completely cover and secure heads of bales.

(iv) Seams must be sewn in accordance with the following: Type SSN–1, SSA–1, and LSA–1, Seam, type 401 stitch, minimum four stitches per inch, and 4/12 or 5/12 cotton thread, or 1,000 denier polypropylene thread meeting ultraviolet inhibitor concentration requirements of paragraph (h)(2)(iii) of this section, with breaking strength of 5 grams per denier. Sewn seams at bottom of bags must be a minimum of ¾ inch from heat cut edges and be of type SSA–1.

Color of polypropylene sewing thread shall be white or natural color inherent in meeting ultraviolet inhibitor specs.

(7) *Additional requirements for half-bag panel combinations.* Half-bag panel combinations must meet the following requirements:

(i) Fabric shall conform to specifications for woven polypropylene fabric specifications.

(ii) The half-bag size must be tailored to individual bale size at each gin location.

(A) *Flat presses.* For flat presses each half-bag shall be not less than 36 inches in depth and each panel shall be not less than 48 inches in width and 112 inches in length.

(B) *Gin universal presses.* For 54 inch by 20 inch gin universal presses, each half-bag shall be not less than 32 inches in depth and each panel shall be not less than 40 inches in width and 98 inches in length. For 50 inch by 20 inch presses, each half-bag shall be not less than 34 inches in depth and each panel shall be not less than 40 inches in width and 96 inches in length.

(C) *Gin standard presses.* For gin standard presses, each half bag shall not be less than 40 inches in width and 100 inches in length.

(iii) Seams must be sewn in accordance with the following: Type SSN–1 seam, type 401 stitch, minimum four stitches per inch, and 4/12 or 5/12 cotton thread or 1,000 denier polypropylene thread meeting ultraviolet inhibitor concentration requirements of paragraph (h)(2)(iii) of this section, with breaking strength of 5 grams per denier. All cuts shall be heat cut or shall be rolled to prevent raveling.

(8) *Identification markings.* Each panel and/or spiral sewn bag must have the name or trademark of the fabric manufacturer (this is, the company weaving the material) suitably printed no more than 36 inches apart in the center of each panel. Each identification mark shall be at least three-fourths inch in height but not more than one inch in height. The identification markings shall be placed on record with the Cotton Industry Bale Packaging Committee and CCC.

White ink shall be used for printing logos and centering marks.

(9) *Inspection and certification requirements—(i) Responsibility for inspection.* The fabric manufacturer and the supplier are both responsible for performance of all inspection requirements as specified herein. They may use their own or any other facilities suitable for the performance of such inspection requirements, unless such facilties are disapproved by the Cotton Industry Bale Packaging Committee or CCC.

(ii) *Right to perform inspection or testing.* Reasonable inspection or tests deemed necessary may be performed by the Cotton Industry Bale Packaging Committee and/or CCC to assure that materials conform to prescribed specifications.

(iii) *Inspection or testing expense.* Expense for such inspection or testing shall be borne by the fabric manufacturer or supplier.

(iv) *Certification required by the Cotton Industry Bale Packaging Committee—(A) Submission of samples.* All manufacturers of polypropylene must submit samples to a private testing laboratory selected by the Cotton Industry Bale Packaging Committee or CCC for certification that materials meet all prescribed specifications.

(B) *Approved list.* Upon receipt of testing results, the Cotton Industry Bale Packaging Committee will publicize throughout the cotton industry a list of approved manufacturers and their trademarks.

(C) *Responsibility for components and materials.* The fabric manufacturer shall be responsible for insuring that fabrics are manufactured, examined and tested in accordance with approved specifications and standards. The bag fabricators shall be responsible for insuring that specifications for seams, cutting and sizes are met. Where spiral bags are fabricated by manufacturers other than the supplier of basic fabric, the fabricator's name or trademark shall appear on each pattern in addition to the fabric manufacturer's name or trademark. The bag fabricator, when other than the fabric manufacturer, shall register the name or trademark with the National Cotton Council's Bale Packaging Committee and such list shall be furnished to ASCS/CCC office.

(D) *Certification of fabric furnished.* Fabric manufacturers shall certify to customers that the fabric furnished has been manufactured in the United States from yarn and resins produced in the United States for use as cotton bale covers, and which meet the material specifications herein, and that the manufacturer is on the Cotton Industry Bale Packaging Committee's approved list.

§ 1427.1904 Official tare weights.

The following table shows official CCC tare weights for various combinations of approved wrapping material. CCC will not accept any bales for loans which carry a tare weight different than the one shown below:

Tares for 1980 and Subsequent Crops

Wrapping material	Bale ties	
	Wire or high tensile steel strapping [3]	Hot rolled steel ties with buckles [4]
Woven polypropylene [1]	5	11
Polyethelene bags,[2] burlap spiral bags, cotton	7	
Compact and salvage jute bagging [3]	12	18
T-2 jute bagging [4]	10	

[1] Woven polypropylene can be identified by its pale yellow color. This category includes all patterns of polypropylene including two sheets, half bag/sheet combinations and spiral sewn bags. Such material must meet all other requirements in § 1427.1903(g).

[2] Polyethelene bags can be identified by the clear color. The total tare weight is printed on the bag. Burlap spiral bags can be identified by the lightweight burlap fabric sewn to form a bag which completely encloses a bale. Cotton bagging is any packaging material made from all cotton fiber. Bagging must meet all other requirements for that type of bagging set forth in § 1427.1903 (d), (e), and (f).

[3] Compact jute can be identified by the dark blue or green center marking yarns on each panel of bagging. Salvage jute

is commonly referred to as sugar bagging and can be identified by seams and markings indicating that the material was previously used for other commodities. Such bagging must meet all other requirements as set forth in § 1427.1903 (b), and (c).

[4] T-2 jute bagging can be identified by the statement on each panel "total bale tare weight ten pounds."

[5] Wire or strapping includes all wire or high tensile steel strapping other than conventional hot rolled steel ties with buckles and must meet all applicable requirements in § 1427.1902 (c) and (d).

[6] Bands with buckles consist of conventional hot rolled steel ties with buckles which meet requirements set forth in § 1427.1902(b).

§ 1427.1905 Test methods.

The following testing methods will be used by CCC in determining whether bagging and bale ties and buckles or fasteners used to package cotton tendered for CCC loans beginning with the 1980 crop of cotton meet the above specifications. Except for polyethylene shrink-pack bags, spiral sewn burlap bags, cotton bags, and bagging manufactured from polypropylene material, each sample of bagging selected for testing will consist of one-half pattern. (Each sample of polyethylene shrink-pack bag and spiral sewn burlap bag and cotton bag will consist of one bag polypropylene material selected for testing and will consist of a minimum of ten randomly selected panels or spiral sewn bags or an equivalent amount of flat goods in cases where the material is tested before it is in panel or spiral sewn bag form.)

(a) *Weight and strength of bale ties and buckles.* The bale ties and buckles will be weighed on suitable accurate scales and the weight determined to the nearest one-half pound. A bundle or package of ties and buckles may be weighed and averaged to determine the weight of ties and buckles necessary to package a bale of cotton. For high tensile steel strapping, a given number of feet of strapping will be weighed to determine the number of feet of strapping per pound. Breaking strength and joint strength tests will be made only when determined to be necessary.

(b) *Length.* The length of the sample will be measured directly using a measuring stick, steel tape, or other suitably graduated device. The sample will be laid out flat on a smooth horizontal surface and the length measured. Both selvages for jute and cotton panels will be measured and the length of each side of polyethylene shrink pack bags will be measured. The length of the sample will be the average of the two measurements rounded to the nearest inch. Jute and cotton measurements will be made on the sample in equilibrium with standard atmospheric conditions as specified in ASTM-D-1776-62-T.

(c) *Width.* The width of the sample will be measured directly using a measuring stick, steel tape, or other suitably graduated device and will include the selvages. The sample will be laid out flat on a smooth horizontal surface and the measurements made perpendicular to the lengths (selvages in the case of jute and cotton). Three width measurements will be taken on each sample. One measurement will be made at the center of the sample and two other measurements will be made approximately 12 inches in from each end of the sample. The average of the three measurements, rounded to the nearest inch, will be the width. For compact center type new jute, the compact center shall be measured between the outer edges of the outermost yarns in the more compact area. The loosely woven edges shall be measured from the outer edge of the outermost warp yarn of the compact area to the outside edge including selvage. Three width measurements will be taken at locations described above for other width measurements and averaged. Jute and cotton measurements will be made on the sample in equilibrium with standard atmospheric conditions as specified in ASTM-D-1776-62-T.

(d) *Warp yarn count.* For new jute (except for the compact center type new jute), T-2 jute and woven cotton bagging, the number of warp ends in the width of the sample including the selvages will be counted at each end of the sample. The average of the two counts will be divided by the width, as determined above. This figure will be multiplied by 12 to determine warp yarns per 12 inches of bagging or by 40 to determine warp yarns per 40 inches of bagging. For compact center type new jute bagging, the number of warp ends in the denser center area will be counted at each end of the sample and averaged. The average of the two counts will be the warp yarn count for the compact center section. The number of warp ends in the outer edges will be counted at each end and at each edge including selvages and averaged. The average of the two counts will be the warp yarn count for the outer edges. For polypropylene bagging, the number of warp ends in a 12 inch width of the sample will be counted. This figure will be divided by 12 to determine the warp yarns per inch of bagging.

(e) *Weft yarn count.* The number of weft (filling) yarns over a measured length of 36 inches on each sample of new jute, and woven cotton bagging will be counted. The number counted divided by 3 will be the weft yarn count per 12 inches. For polypropylene bagging, the number of weft ends in a 12 inch length of the sample will be counted. This figure will be divided by 12 to determine the weft yarns per inch of bagging.

(f) *Weight of bagging.* The weight of bagging, except for polypropylene material, will be determined by weighing on suitable accurate scales, and the weight per pattern will be determined to the nearest one-tenth pound. Several patterns (or bales of bagging patterns) may be weighed simultaneously and the weight averaged. The weight for jute bagging will be calculated on the basis of 13.75 percent moisture content (not moisture regain) and for cotton bagging on the basis of 8.5 percent moisture content (not moisture regain). (Polypropylene fabric weight will be determined as prescribed in subparagraph (k)(3) of this section.)

(g) *Wale count of warp knitted cotton bagging.* The number of wales or ribs running lengthwise of the sample from warp knitted cotton bagging will be counted over a measured width (relaxed state) of 12 inches on each sample. The number counted divided by 12 will be the wale count per inch.

(h) *Course count of warp knitted cotton bagging.* The number of courses or loops which form a line horizontal to the wales or ribs will be counted over a measured length (relaxed state) of 12 inches on each sample of warp knitted cotton bagging. The number counted divided by 12 will be the course count per inch.

(i) *Additional tests on warp knitted cotton bagging.* Elongation or stretch properties of warp knitted cotton bagging will be tested at one pound per inch static load using methods as specified in ASTM-D-2594. Bursting strength will be tested on an approved type of constant rate of traverse machine equipped with a bursting attachment (ball burst) as specified in ASTM-D-231.

(j) *Additional tests for polyethylene material.* The gauge and gauge tolerance of polyethylene material shall be tested in accordance with ASTM-D-374. The tensile strength and elongation shall be tested in accordance with ASTM-D-882-67. Impact resistance should be tested in accordance with ASTM Method B 1709-67 slip characteristics in accordance with ASTM-D-1894. The ratio of machine direction shrink to transverse direction shrink will be calculated in accordance with ASTM-D-2732.

(k) *Additional test procedures for polypropylene material—(1) Yarn dimensions.* Polypropylene material shall also be tested as follows: Yarn dimensions will be tested as specified in ASTM-D-3218-73T.

(2) *Inhibitor concentration.* Yarn shall be removed from the warp direction of each test sample and analyzed for ultraviolet inhibitor concentration by following applicable analytical test procedure as specified in method Military—B 52472B (ME) paragraph 4.4.2.7.2.2. atomic absorption method. Specimen yarns shall likewise be removed from the weft or fill direction and tested for inhibitor concentration. Values obtained less than 0.1 percent nickel as metal for the inhibitor in either warp or weft direction of the fabric shall be deemed nonconformance and constitute failure of this test.

(3) *Fabric weight.* The fabric weight per square yard shall be determined as specified in Federal Test Method Standard No. 191, method 5041.

(4) *Tensile strength and elongation.* A minimum of ten randomly selected samples will be tested for tensile strength and elongation to break at standard conditions and in accordance with Federal Test Method Standard No. 191.

(5) *Accelerated weathering—(i) Preparation of specimens.* The sample unit will be one finished panel or spiral sewn bag or an equivalent amount of flat goods. Three swatches 4 inches by 12 inches shall be cut from each principal direction (warp and weft) of the fabric. Each swatch shall be cut into two 4 inch by 6 inch test specimens: One specimen to be used for initial break strength and the other specimen to be used for break strength after accelerated weathering. The specimens shall be marked to indicate which are cut with the long dimension in the warp direction and which have the long dimension in the weft direction.

(ii) *Initial tensile breaking strength.* The marked control specimens shall be conditioned for 24 hours at the standard condition specified in Federal Test Method Standard No. 191 and shall be tested for breaking strength in accordance with Federal Test Method Standard No. 191, method 5100.1. The result shall be averaged for specimens in warp direction and averaged for specimens in weft direction and the averages shall be recorded as the initial breaking strength in warp and weft directions. An average in warp of less than 125 pounds or less than 100 pounds in the weft direction shall constitute failure of this test.

(iii) *Breaking tensile strength after accelerated weathering.* The balance of the specimens shall be tested in accordance with Federal Test Method Standard No. 191, method 5804 for not less than 1,200 hours, except that the black panel temperature shall be maintained at 155 F, plus or minus 3 F. The black panel temperature shall be read during the final 10 minutes of a cycle just before the water spray period starts. At the completion of 1,200 hours exposure to accelerate weathering, the specimens shall again be conditioned for 24 hours at the standard conditions specified in Federal Test Method Standard No. 191. After conditioning, the exposed specimens shall be tested for breaking strength in accordance with Federal Test Method Standard No. 191, method 5100.1. An average breaking strength of less than 70 percent of the initial average breaking strength recorded for its respective warp or fill yarn direction shall constitute failure of this test.

(6) Ends of heat cut sheets and/or spiral sewn bags. Heat cut ends of cotton bale cover sheets and spiral tubing shall be evaluated for heat cut strength as specified in ASTM method D 751. Pin test values of less than 40 pounds, as per this method, shall constitute failure of this test.

(7) *Air permeability.* The fabric shall be tested for air permeability as specified in ASTM D 737–46. Air permeability values of less than 5 or more than 50 cubic feet per minute per square foot will constitute failure of this test.

(8) Additional test procedures for T2 type new jute bagging. Tensile strength, breaking load shall be determined for T2 type new jute bagging by a ravel strip method. Strip tests shall be performed on a pendulum type strength tester (or equivalent) having a constant rate of traverse operated at 46 cm (18 inches) per minute, with test specimen dimensions between the grips of the tester being 20 cm by 10 cm.

Signed at Washington, D.C. on September 8, 1980.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-28399 Filed 9-12-80; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

Securities of Insured State Nonmember Banks

ACTION: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The new rule amends the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under the Securities Exchange Act of 1934 ("Act") in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC"). Section 12(i) of the Act requires that the FDIC issue substantially similar regulations to those of the SEC or publish its reasons for not doing so. Also, this proposal is an attempt to simplify the regulation and make it more understandable by bringing Part 335 into conformity with changes in Reports of Condition and Reports of Income prescribed for insured banks. The changes were developed jointly by the staffs of the FDIC, Comptroller of the Currency, and the Board of Governors of the Federal Reserve System. Similar amendments will be adopted by all three agencies.

EFFECTIVE DATE: The amendments apply with respect to financial statements for periods ending on or after November 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mulford H. Smith, Financial Analyst, or Patrick J. Moses, Chief, Registration and Disclosure Section, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429. (202) 389–4651.

SUPPLEMENTARY INFORMATION: On December 28, 1979, there was published in the Federal Register (44 FR 76800) a notice of proposed rulemaking which would amend the FDIC's securities disclosure regulations in order to make them more similar to SEC regulations and for other purposes. Interested persons were given the opportunity to submit, not later than February 26, 1980, data, views or arguments regarding the proposed amendments. The comments were given due consideration and are discussed below in the section entitled "Certain Findings."

The amendments cover the following subjects:

1. Recent amendments to Article 9 of the SEC's Regulation S–X which governs the form and content of financial statements of bank holding companies and banks;

2. Incorporation by reference of the Instructions for the Preparation of Reports of Condition and Reports of Income;

3. Modification of certain financial statement schedules;

4. Falsification of accounting records;

5. Bank's representations in connection with the preparation of required reports and documents;

6. Restructuring of accounting and financial statement regulations;

7. Designation of sample financial statements as "Formats" rather than "Forms."

Part 335 is changed in the following manner:

A. *Amendments to Conform with Regulation S–X.* On September 7, 1978 the SEC amended Article 9 of Regulation S–X. The following changes conform Part 335 to certain of the SEC changes:

1. *Cash and due from depository institutions.* Format F–9A is changed to add a requirement that interest bearing and noninterest bearing deposit balances be stated separately.

2. *Significant investments.* Format F–9A is changed to add a requirement that bank investments in the securities of an issuer other than U.S. Treasury and Agency securities for which the aggregate book value exceeds 10 percent of the equity capital accounts of the bank must be separately disclosed in a note to the balance sheet. The format also states that consideration shall be given to disclosure of risk characteristics of the securities of an issuer and of differences in risk characteristics, of different issues of securities of an issuer, where appropriate.

3. *Loans.* Format F–9A is changed to add a note requirement for disclosure of the aggregate amount of loans outstanding to officers, directors, principal shareholders and associates if these total balances exceed 5 percent of equity capital.

4. *Deposits.* Format F–9A is changed to include a note requirement for disclosure of the aggregate time certificates of deposit and other time deposits in domestic offices which are $100,000 or more.

5. *Indebtedness of bank.* (a) Financial statement note requirements related to federal funds purchased, securities sold under agreements to repurchase, and other liabilities for borrowed money are expanded by amending Format F–9A. Disclosures include the weighted-average interest rate at the balance sheet date(s), the maximum month-end borrowing during each accounting period reported, average borrowings during the period, and the weighted-average interest rate for such average borrowings.

(b) For mortgage, capitalized lease, and subordinated note indebtedness expanded Format F–9A caption instructions require a table showing on a yearly basis for the next five years after the balance sheet date the combined aggregate amounts of maturities and sinking fund requirements.

6. *Income Statement Format.* As a result of recent amendments to Article 9, Regulation S–X now sets forth an income statement format different from the banking agency format for the reports of income (6040/02, 01A and 02A) of insured banks. The basic difference is that the SEC now requires a net interest margin format for reports of income filed with them. The FDIC did not adopt this requirement because of the substantial difference from the report of income required of insured banks generally and its view that the SEC required format would be unfamiliar to most banks and perhaps their investors. However, the general instructions to Format F–9 is amended to state that the formats for financial statements are to serve as guides and are recommended presentations. Furthermore, the instructions state that financial statements could be filed in such form and order as would, in the bank's opinion, best indicate their significance and character. Thus, a bank might at its option provide net interest margin income statements such as would conform with requirements of Regulation S–X if all material information required by Format F–9B is presented.

7. *Foreign Activities.* Section 335.7 (e)(9) is added to require disclosure of foreign activities of an insured nonmember bank where assets, operating income, income (loss) before taxes and securities gain (losses), or net income (loss) associated with foreign activities, comprise over 10 percent of the corresponding amount in the related financial statement. Loan categories, cash and due from balances in banks in foreign countries, deposit liabilities, other borrowings, an income and expense summary, and an allowance for possible loan losses must be separately stated. In addition, activities for each significant geographic area (defined to include an area in which assets, operating income, or net income exceed ten percent of the comparable amount in a related financial statement), must be separately given for that area. Other foreign activities may be aggregated and reported as a separate total with respect to the total assets, total operating income, income before taxes and securities gains and net income if those other areas are not significant geographic areas. Also, Format F–9A is changed to provide for the separate disclosure of deposits in foreign offices.

8. *Preferred Stock.* The SEC issued Accounting Series Release No. 268 "Redeemable Preferred Stock" on July 27, 1979. This release deals with the financial statement classification of and note disclosure requirements for preferred stock subject to mandatory redemption requirements or whose redemption is outside the control of the issuer. Various portions of Article 9 were amended by this release. The FDIC is not adopting these amendments because banks subject to its regulation generally don't issue this type of security and there are restrictions imposed and prior approvals required by the FDIC for retirement of bank capital.

B. *Simplification of the financial statement regulations.* The FDIC is eliminating the instructions to its financial statement formats contained in § 335.71 because they are substantially similar to those now contained in the instructions to the Report of Condition and Report of Income. The instructions in the Report of Condition and Report of Income are incorporated in Part 335 by reference. Additional requirements are added to Part 335 to supplement the call report instructions for disclosure purposes. Thus, a bank may use its call report work papers to produce the Part 335 financial reports. This should ease the burden of Part 335 compliance since there will be no need to begin anew when preparing the Part 335 filing.

Existing Schedule II—Other Securities is eliminated and added to the requirements of existing Schedule I. Also, the par value column of Schedule I is to be omitted. Schedule VI—Other Liabilities for Borrowed Money and Schedule IX—Supplementary Income Statement Information is deleted.

Existing Schedule VIII—Amounts Receivable From Directors, Officers, Employees, And Principal Holders (Other Than Affiliates) of Equity Securities of The Bank And Its Affiliates would be redesignated as Schedule II—Loans to Officers, Directors, Principal Security Holders, and Any Associates Of the Foregoing Persons. There are some minor column caption word changes also. The SEC has recently proposed amendments to its Schedule I of Rule 9–05, the counterpart to FDIC's Schedule VIII, to reduce the reporting detail of this schedule. Loans to individuals for household, family and personal expenditures are excluded if these loans were made in the ordinary course of business. Ordinary course of business loans to directors (and any of their associates) who are not officers of the bank nor principal security holders may be stated in aggregate. The FDIC proposes to adopt these changes.

C. *Falsification of Accounting Records and Issuer's Representations.* Section 13(b)(2) of the Act requires issuers who are registered under the Act to (1) make and keep books, records and accounts, in reasonable detail, which accurately and fairly reflect transactions and dispositions of the assets of the Bank and (2) devise and maintain a system of internal accounting controls

sufficient to meet certain standards. The SEC has adopted rules 13(b)2–1, and 13(b)2–2 in order to implement this authority. 44 FR 10970 (February 23, 1979). The FDIC adopts the SEC amendments by amending § 335.7(c) & (d) to add these new provisions.

D. *Deletions, Revisions, and Relocations for Simplification Purposes.*

1. *Deletions.* The following sections in existing Part 335 are deleted:

(a) Section 335.7(d)(3)(iii) Examination of financial statements of persons other than the bank.

(b) Section 335.7(e)(5) Omission of substantially identical notes.

(c) Section 335.7(e)(6) Omission of names of certain subsidiaries.

(d) Section 335.7(e)(15)(ii) Bases of revenue recognition.

(e) Section 335.7(e)(15)(vi)(4) Lease Assets and Lease Commitments.

(f) Sections 335.7(f)(4), (5), (6), (11), (12) Consolidated Financial Statements.

2. *Revisions.* Section 335.7(a) Application is revised for simplification purposes.

3. *Relocations.* The following sections are relocated for simplification purposes:

(a) Section 335.7(b) "Financial statements" is moved to § 335.71 General Instruction No. 1.

(b) Section 335.7(c) "Principles of financial reporting" is moved to § 335.7(a).

(c) Section 335.7(d)(3)(ii)(A) "Technical requirements" is moved to § 335.7(b)(1)(i) "Verification-General".

(d) Section 335.7(e)(2) "Negative amounts" is moved to § 335.71 General Instruction No. 3.

(e) Section 335.7(e)(14)(iii) "Preferred shares" is moved to § 335.71(A), Item 26.

(f) Section 335.7(e)(14)(x) "Bonus, profit sharing, and other similar plans" is moved to § 335.7(e)(13)(iii).

(g) Section 335.7(e)(15)(v) "Warrants or rights outstanding" is moved to § 335.7(e)(12)(x).

(h) Section 335.7(e)(15)(vi) "Leased assets and lease commitments" is moved to § 335.7(e)(11).

4. The section numbering and lettering sequences throughout Part 335 are adjusted to reflect the above changes.

E. *Technical Corrections.* A few technical errors have come to our attention throughout Part 335. These are corrected in the attached amendment.

F. *Certain Findings.* In publishing the proposal, the FDIC specifically invited comments with respect to:

(1) Whether the cost of the proposal to a bank would outweigh benefits to its shareholders and the public.

(2) The impact of the proposal on competition.

The FDIC receives six comment letters in response to the proposal. Three banks commented that the benefits to its shareholders and the public outweigh the costs to derive the information. A contrary position was not taken. Thus, the comment letters did not provide any significant basis for concluding that the benefits to the banks' shareholders and the public from the implementation of the FDIC's statutory mandate in the manner proposed would be outweighed by such possible additional costs. The FDIC finds that the costs imposed on the 407 banks subject to Part 335 are not unreasonable and are outweighed by the benefits to be derived by the investing public. In fact, the FDIC finds that the overall simplification of the regulations may ease the burden of conforming to these regulations.

In view of these factors, no detailed cost/benefit analysis was prepared.

None of the changes contains a flexible regulatory approach that establishes requirements on the basis of the size of a bank because FDIC believes that the shareholders and investors of all banks have a need for the same quality information. The Office of Small Business Policy at the Securities and Exchange Commission is studying the feasibility of reducing reporting requirements for small issuers. FDIC has asked to participate in such developments.

The new requirements impose minor technical changes in the record keeping and reporting requirements. The FDIC solicited comments on any additional record keeping burden in its proposal. One bank commented that one of the new requirements relating to a footnote disclosure concerning interest costs would increase their costs of obtaining the information because of their manual system. The FDIC believes that the changes will not impose any significant new recordkeeping or reporting burden on the banks.

As required by Section 23(a)(2) of the Securities Exchange Act, the FDIC has specifically considered the impact which the amendments will have on competition. The FDIC finds that compliance by banks with these actions will not have any significant adverse effect on competition.

FDIC has found no basis for not imposing the changes indicated above in order to conform its securities disclosure regulations to those of the SEC. Thus, as required under Section 12(i) of the Securities Exchange Act, FDIC amends Part 335 of its regulations as stated below.

By Order of the Board of Directors, September 8, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

12 CFR Part 335 is amended as follows:

1. Section 335.5(c)(1) (note 1) (c), (d), (e), and § 335.5(c) (note 5) the term "Form" is deleted and the term "Format" is substituted in its place.

2. Section 335.7 is revised as follows:

§ 335.7 Form and content of financial statements.

(a) *Principles of financial reporting.* Financial statements filed with the Corporation under this part shall be prepared in accordance with generally accepted accounting principles and practices applicable to banks. The Corporation may from time to time issue releases on accounting principles and practices to be used with respect to specific areas.

(b) *Verification.*—(1) *General.*

(i) Every verification with respect to financial statements filed under this part shall be dated, shall be signed manually, shall indicate the city and State where issued, and shall identify without detailed enumeration the financial statements covered by the verification.

(ii) If the person or persons making a verification considers that he/she must take exceptions or express qualifications with respect to the verification, each exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate the effect of the matter on the financial statements to which it relates.

(2) *Opinions to be expressed by principal accounting officer and internal auditor.* Every verification by a bank's principal accounting officer and internal auditor shall state:

(i) The opinions the persons with respect to the financial statements covered by the verification and the accounting principles and practices reflected therein; and

(ii) The opinions of the persons as to any material changes in accounting principles or practices or in the method of applying the accounting principles or practices, or adjustments of the accounts, required to be set forth by paragraph (e)(5) of this section.

(3) *Examination by independent public accountants.*

(i) *Qualifications of independent public accountants.*

(A) The Corporation will not recognize any person as an independent public accountant who is not registered or licensed to practice as a public accountant by a regulatory authority of

a State and in good standing with such authority as such an accountant.

(B) The Corporation will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates *(1)* in which, during the period of his/her professional engagement to examine the financial statements being reported on or at the date of his report, the firm or a member of the firm had, or was committed to acquire, a direct financial interest or any material indirect financial interest, or *(2)* with which, during the period of his/her professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the firm or a member of the firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee. A firm will be deemed independent in regard to a particular person if a former officer or employee of the person is employed by the firm and the individual has been completely disassociated from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his/her employment by the person. For the purposes of this section the term "member" means all partners in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit.

(C) In determining whether a public accountant is, in fact, independent with respect to a particular person, the Corporation will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Corporation.

(ii) *Representations as to the audit.* The independent public accountant's report—

(A) shall state whether the audit was made in accordance with generally accepted auditing standards; and

(B) shall designate any auditing procedures generally recognized as normal (or deemed necessary by the accountant under the circumstances of the particular case) that have been omitted, and the reasons for their omission. Nothing in this provision shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(3)(iii) of this section.

(iii) *Opinions to be expressed.* The independent public accountant's report shall state clearly:

(A) The opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein; and

(B) The opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in the principles which have a material effect on the financial statements required to be set forth by paragraph (e)(5) of this section.

(iv) *Exceptions.* If the accountant making the report considers that he/she must take exceptions or express qualifications with respect thereto, each exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate the effect of the matter on the financial statements to which it relates.

(v) *Association with unaudited note covering interim financial data.* If the financial statements covered by the accountant's report designate as "unaudited" the note required by paragraph (e)(13)(vii) of this section, it shall be presumed that appropriate professional standards and procedures with respect to the data in the note have been followed by the independent accountant who is associated with the unaudited footnote by virtue of reporting on the financial statements in which the note is included.

(vi) *Examination of financial statements by more than one independent public accountant.* If, with respect to the examination of the financial statements of any bank, the principal independent public accountant relies on an audit made by another independent public accountant of certain of the accounts of the bank or its subsidiaries, the report of the other accountant shall be filed (and the provisions of this subparagraph shall be applicable thereto); however, the report of such other accountant need not be filed (A) if no reference is made directly or indirectly to the other accountant's audit in the principal accountant's report, or (B) if, having referred to the other accountant's audit the principal accountant's report indicates an assumption of responsibility for the other accountant's audit.

(c) *Falsification of accounting records.* No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act.

(d) *Bank's representations in connection with the preparation of required reports and documents.* No director or officer of a bank shall directly or indirectly make or cause to be made a materially false or misleading statement, or omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with (1) any audit or examination of the financial statements of the bank required to be made under this part or (2) the preparation or filing of any document or report required to be filed with the Corporation under this part or otherwise.

(e) *Provisions of general application.* (1) *Requirements as to form.* Financial statements shall be prepared in accordance with the applicable requirements of Formats 9A, B, C, D, and E. All money amounts required to be shown in financial statements may be expressed in even dollars or thousands of dollars. If shown in even thousands, and indication to that effect shall be inserted immediately beneath the caption of the statement or schedule, or at the top of each money column. The individual amounts shown need not be adjusted to the nearest dollar or thousand if the failure of the items to add to the totals shown is stated in a note as due to the dropping of amounts of less than $1.00 or $1,000, as appropriate.

(2) *Items not material.* If the amount that would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth.

(3) *Inapplicable captions and omission of unrequired or inapplicable financial statements.* No caption need be shown in any financial statement required by the forms set forth in this part as to which the items and conditions are not present. Financial statements not required or inapplicable because the required matter is not present need not be filed, but the statements omitted and the reasons for their omission shall be indicated in the list of financial statements required by the applicable form.

(4) *Additional information.* In addition to the information required with respect to any financial statement, further information shall be furnished as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(5) *Changes in accounting principles and practices and retroactive adjustments of accounts.* Any change in accounting principle or practice, or in the method of applying any accounting principle or practice, made during any period for which financial statements are filed that affects comparability of the financial statements with those of prior or future periods and the effect thereof upon the net income for each period for which financial statements are filed, shall be disclosed in a note to the appropriate financial statement. Any material retroactive adjustment made during any period for which financial statements are filed, and the effect thereof upon net income of prior periods, shall be disclosed in a note to the appropriate financial statement.

(6) *Summary of accounting principles and practices.* Information required in notes as to accounting principles and practices reflected in the financial statements may be presented in the form of a single statement. In such a case specific references shall be made in the appropriate financial statements to the applicable portion of the single statement.

(7) *Reacquired evidences of indebtedness.* Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption.

(8) *Reacquired shares.* When authorized by statute, reacquired shares not retired shall be shown separately as a deduction from capital shares, or from the total of capital shares and other stockholders' equity, at either par of stated value, or cost, as circumstances require.

(9) *Foreign activities.* If assets, or operating income, or income (loss) before taxes and securities gains (losses), or net income (loss) associated with foreign activities, exceeded 10 percent of the corresponding amount in the related financial statements, the following disclosures concerning foreign activities shall be furnished in a note to the financial statements.

(i) *Loans.* State separately loan categories as prescribed by Schedule A, Column C of Consolidated Report of Condition, FDIC 8040/13, as applicable. Categories of less than 10 percent of total loans related to foreign activities may be grouped with all other loans.

(ii) *Balances with banks in foreign countries.* State separately balances with foreign branches of other U.S. banks and with other banks in foreign countries. (See line 5 (a) and (b) of Schedule C, Column C of Consolidated Report of Condition, FDIC 8040/13.) Also furnish the amount of interest-bearing balances included above.

(iii) *Deposit liabilities.* Furnish deposit information as prescribed in Schedule F/F of Consolidated Report of Condition, FDIC 8040/13. State also amount of interest-bearing deposits in denominations of $100,000 or more.

(iv) *Other borrowings.* State separately short-term borrowings, other liabilities for borrowed money, and other indebtedness related to foreign activities corresponding to the amounts reported on the Balance Sheet (Format F-9A) Items 18, 20, 21 and 25.

(v) *Income and expense summary.* For each period for which an income statement is filed, furnish information as prescribed in Part 1, Column B and Part 2 of the Statement of Income FDIC 8040/03. State in a note the basis of pricing money transfers and the policy governing allocation of income and expenses to foreign activities.

(vi) *Allowance for possible loan losses.* For each period for which a statement of income is filed, furnish in a note a reconciliation of changes in the allowance of possible loan losses applicable to loans related to foreign activities.

(vii) If disclosure above is required, state separately in a note for each significant geographic area, and in the aggregate for all other geographic areas not deemed significant, the following:

(A) total assets (net of valuation allowances)

(B) total operating income

(C) income (loss) before taxes and securities gains (losses)

(D) net income (loss)

Note.—A "significant geographic area" is one whose assets, operating income, or net income exceed 10 per cent of the comparable amount as reported in the related financial statements.

(10) *Foreign currencies.* The basis of conversion of all items in foreign currencies shall be stated, and the amount and disposition of the resulting unrealized profit or loss shown. Disclosure should be made as to the effect, insofar as this can be reasonably determined, of foreign exchange restrictions upon the consolidated financial position and operating results of the bank and its subsidiaries.

(11) *Commitments.* If material in amount, the pertinent facts relative to from commitments for the acquisition, directly or indirectly, of fixed assets and for the purchase, repurchase, construction, or rental of assets under long-term leases shall be stated briefly in the balance sheet or in footnotes referred to therein. Where the rentals or obligations under long-term leases are material the following shall be set forth in a note to the appropriate financial statement:

(i) Total rental expense (reduced by rentals from subleases, with disclosure of such amounts) entering into the determination of results of operations for each period for which an income statement is presented shall be disclosed. Rental payments under short-term leases for a month or less which are not expected to be renewed need not be included. Contingent rentals, such as those based upon usage or sales, shall be reported separately from the basic or minimum rentals.

(ii) The minimum rental commitments under all noncancelable leases shall be disclosed, as of the date of the latest balance sheet required, in the aggregate for (A) each of the five succeeding fiscal years and (B) the remainder as a single amount. The amounts so determined should be reduced by rentals to be received from existing noncancelable subleases (with disclosure of the amounts of such rentals). For purposes of this rule, a noncancelable lease is defined as one that has an initial or remaining term of more than one year and is noncancelable, or is cancelable only upon the occurrence of some remote contingency or upon the payment of a substantial penalty.

(iii) Additional disclosures shall be made to report in general terms; (A) the basis for calculating rental payments if dependent upon factors other than the lapse of time; (B) existence and terms of renewal or purchase options, escalation clauses, etc.; (C) the nature and amount of related guarantees made or obligations asssumed; (D) restrictions on paying dividends, incurring additional debt, further leasing, etc.; and (E) any other information necessary to assess the effect of lease commitments upon the financial position, results of operations, and changes in financial position of the lessee.

(12) *General notes to balance sheets.* If present with respect to the bank for which the statement is filed, the following shall be set forth in the balance sheet or in referenced notes. Information required by paragraphs (e)(12), (i), (v), (vi), (vii), (viii), (ix) and (x) of this section shall be provided with the most recent fiscal year balance sheet and any interim date balance sheet being filed.

(i) *Assets subject to lien.* The amounts of assets mortgaged, pledged, or otherwise subject to a lien or security interest shall be designated and the obligation secured thereby, if any, shall be identified briefly.

(ii) *Intercompany profits and losses.* The effect upon any balance sheet item of profits or losses, resulting from

transactions with affiliated companies and not eliminated shall be stated. If impracticable of accurate determination without unreasonable effort or expense, an estimate or explanation shall be given.

(iii) *Pension and retirement plans.* (A) A brief description of the essential provisions of any employee pension or retirement plan and of the accounting and funding policies relating thereto shall be given; (B) The estimated annual cost of the plan shall be stated; (C) If a plan has not been funded or otherwise provided for, the estimated amount that would be necessary to fund or otherwise provide for the past-service cost of the land shall be disclosed; (D) The excess, if any, of the actuarially computed value of vested benefits over the total of the pension fund and any balance sheet accruals, less any pension prepayments or deferred charges, shall be stated as of the most recent practicable date; (E) A statement shall be given of the nature and effect of significant matters affecting comparability of pension costs for which income statements are presented.

(iv) *Capital stock optioned to officers and employees.* (A) A brief description of the terms of each option arrangement shall be given, including the title and amount of securities subject to the option, the year or years during which the options were granted, and the year or years during which the optionees became, or will become, entitled to exercise the options; (B) There shall be stated the number of shares under option at the balance sheet date, and the option price and the fair value thereof (per share and in total) at the dates the options were granted; the number of shares with respect to which options became exercisable during the period, and the option price and the fair value thereof (per share and in total) at the dates the options became exercisable; the number of shares with repsect to which options were exercised during the period, and the option price and the fair value thereof (per share and in total) at the dates the options were exercised; and the number of unoptioned shares available at the beginning and at the close of the the latest period presented, for the granting of options under an option plan. A brief description of the terms of each other arrangement covering shares sold or offered for sale to only directors, officers, and key employees shall be given, including the number of shares, and the offered price and the fair value thereof (per share and in total) at the dates of sale or offer to sell, as appropriate. The required information may be summarized as appropriate with respect to each of the categories referred to in this subclause (B); (C) The basis of accounting for the option arrangements and the amount of charges, if any, reflected in income with respect thereto shall be stated.

(v) *Restrictions that limit the availability of surplus and/or undivided profits for dividend purposes.* Describe the most restrictive of any such restriction, other than as reported pursuant to Item 26(b) of Format F-9A, indicating briefly its source, its pertinent provisions, and where appropriate and determinable, the amount of the surplus and/or undivided profits (A) so restricted or (B) free of such restrictions.

(vi) *Contingent liabilities.* A brief statement as to contingent liabilities not reflected in the balance sheet shall be made.

(vii) *Standby letters of credit.* State the amount of outstanding "standby letters of credit." For the purpose of this paragraph, "standby letters of credit" include every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuing bank (A) to repay money borrowed by or advanced to or for the account of the account party or (B) to make payment on account of any evidence of indebtedness undertaken by the account party, or (C) to make payment on account of any default by the account party in the performance of an obligation,[1] except that, if prior to or at the time of issuance of a stanby letter of credit, the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit, or has set aside sufficient funds in a segregated, clearly earmarked deposit account to cover the bank's maximum liability under the standby letter of credit, then the amount of that standby letter of credit need not be stated.

(viii) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured, shall be stated. Notation of such default or breach of covenant shall be made in the financial statements. If a default or breach exists, but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(ix) *Significant changes in bonds, mortgages, and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages, and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

(x) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows: (A) Title of issue of securities called for by warrants or rights outstanding; (B) aggregate amount of securities called for by warrants or rights outstanding; (C) date from which warrants or rights are exercisable and expiration date; (D) price at which warrant or right is exercisable.

(13) *General notes to statement of income.* If present with respect to the bank for which the statement is filed, the following shall be set forth in the statement of income or in referenced notes thereto:

(i) *Intercompany profits and losses.* The amount of any profits or losses resulting from transactions between unconsolidated affiliated companies shall be stated. If impracticable of determination without unreasonable effort and expense, an estimate or explanation shall be given.

(ii) *Depreciation and amortization.* For the period for which statements of income are filed, there shall be stated the policy followed with respect to: (A) The provision for depreciation of physical properties or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts; (B) The provision for depreciation and amortization of intangible, or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts; (C) The accounting treatment for maintenance, repairs, renewals, and improvements; and (D) The adjustment of the accumulated valuation allowances for depreciation and amortization at the time the properties were retired or otherwise disposed of, including the disposition made of any profit or loss on sale of the properties.

(iii) *Bonus, profit sharing, and other similar plans.* Describe the essential provisions of any plans in which only

[1] As defined, "standby letter of credit" would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not "guaranty" payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation M of the Board of Governors of the Federal Reserve System.

directors, officers or key employees may participate, and state, for each of the fiscal periods for which income statements are required to be filed, the aggregate amount provided for all plans by charges to expense.

(iv) *Income tax expense.* (A) Disclosure shall be made, in the income statement or a note thereto, of the components of income tax expense, including: (*1*) Taxes currently payable; (*2*) the net tax effects, as applicable, of (*i*) timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences where the amount of each such tax effects exceeds 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rates; other differences may be combined) and (*ii*) operating losses; and (*3*) the net deferred investment tax credits. Amounts applicable to United States Federal income taxes, to foreign income taxes and to other income taxes shall be stated separately for each major component, unless the amounts applicable to foreign and other income taxes do not exceed 5 percent of the total for the component. (B) If it is expected that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year, that fact should be disclosed together with the approximate amount of the excess the year (or years) of occurrence and the reasons therefor. (C) Provide a reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes for the difference. If no individual reconciling item amounts to more than 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than 5 percent of the computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than 5 percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts.

(v) *Interest capitalized.* The amount of interest cost capitalized in each period for which an income statement is presented shall be shown within the income statement. Banks which follow a policy of capitalizing interest cost shall make the following additional disclosures: (A) The reason for the policy of interest capitalization and the way in which the amount to be capitalized is determined. (B) The effect on net income for each period for which an income statement is presented of following a policy of capitalizing interest as compared to a policy of charging interest to expense as incurred.

(vi) *Disagreements on accounting and financial disclosure matters.* If, (A) within the twenty-four months prior to the date of the most recent financial statements, a Form F–3 has been filed reporting a change of accountants, (B) included in the Form F–3 there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (C) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (D) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountant apparently concluded was required. The effects on the financial statements need not be disclosed if the method asserted by the former accountant ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

(vii) *Disclosure of selected quarterly financial data in notes to financial statements.*

(A) *Exemption.* This rule shall not apply unless the bank meets the following conditions:

(*1*) The bank's securities registered under Section 12(g) of the Securities Exchange Act of 1934 are quoted on the National Association of Securities Dealers Automated Quotation System and (*i*) meet the requirements for continued inclusion on the list of OTC margin stocks set forth in section 220.8(i) of Regulation T of the Board of Governors of the Federal Reserve System or (*ii*) the bank has securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; and

(*2*) The bank and its consolidated subsidiaries (*i*) have had a net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of at least $250,000 for each of the last three fiscal years; or (*ii*) had total assets of at least $200,000,000 as of the end of the last fiscal year.

(B) *Disclosure requirement.*

(1) Disclosure shall be made in a note to financial statements of total operating income, income before securities gains (losses), income before extraordinary items and cumulative effect of a change in accounting, net income, and per share data based upon such income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

(2) When the data required by the preceding paragraph above vary from the amounts previously reported on the Form F–4 filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported describing the reason for the difference.

(3) Describe the effect of any unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments that are material to the results of that quarter.

(4) Where this note is part of audited financial statements, it may be designated "unaudited."

(f) *Consolidated financial statements.* (1) Consolidated statements generally present more meaningful information to the investor than unconsolidated statements. Except where good reason exists, consolidated statements of the bank and its majority-owned significant subsidiaries should be filed.

(2) Every majority-owned bank-premises subsidiary and every majority-owned subsidiary operating under the provisions of section 25 or section 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations") shall be consolidated with that of the reporting bank irrespective of whether such subsidiary is a significant subsidiary.

(3) If the financial statements of a subsidiary are as of a date or for periods different from those of the bank, such statements may be used as the basis for consolidation of the subsidiary only if the date of such statements is not more than 93 days from the date of the close of the bank's fiscal year; the closing date of the subsidiary is specified; the necessity for the use of different closing dates is explained briefly; and any changes in the respective fiscal periods of the bank and the subsidiary made during the period of report are indicated clearly.

(4) There shall be set forth in a note to each consolidated balance sheet filed a statement of any difference between the investment in subsidiaries consolidated, as shown by the bank's books, and the bank's equity in the net assets of such subsidiaries as shown by the subsidiaries' books. If any such difference exists, there shall be set forth the amount of the difference and the disposition made thereof in preparing the consolidated statements, naming the balance sheet captions; and stating the amount included in each.

(5) There may be filed financial statements in which majority-owned subsidiaries not consolidated with the parent are consolidated or combined in one or more groups, and 50 per cent or less owned persons, the investments in which are accounted for by the equity method are consolidated or combined in one or more groups, pursuant to principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the group or groups.

(6) A brief description of the principles followed in consolidating or combining the separate financial statements; including the principles followed in determining the inclusion or exclusion of (i) subsidiaries and (ii) companies in consolidated or combined financial statements, shall be stated in the notes to the respective financial statements.

(7) As to each consolidated financial statement and as to each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the Board which has a material effect on the financial statements, the persons included and the persons excluded shall be disclosed. If there have been any changes in the respective fiscal periods of the persons included made during the periods of the report which have a material effect on the financial statements, indicate clearly such changes and the manner of treatment.

(8) A statement shall be made in a note to the latest balance sheet of the amount and the accounting treatment of any difference between the investment of a bank and its consolidated subsidiaries, as shown in the consolidated balance sheet, in the unconsolidated subsidiaries and 50 per cent or less owned persons accounted for by the equity method, and their equity in the net assets of such unconsolidated subsidiaries and 50 per cent or less owned persons.

(g) *Statement of changes in equity capital.* A statement of changes in equity capital shall be filed with each statement of income filed pursuant to this part.

(h) *Statement of changes in financial position.* A statement of changes in financial position shall be filed with each statement of income filed pursuant to this part.

(i) *Schedules to be filed.* (1) The following schedules shall be filed with each balance sheet filed pursuant to this part: Schedule I—U. S. Treasury Securities, Obligations of other U. S. Government Agencies and Corporations, Obligations of States and Political Subdivisions, and Other Bonds, Notes and Debentures; Schedule III—Loans; and Schedule IV—Bank Premises and Equipment.

(2) The following schedule shall be filed with each statement of income filed pursuant to this Part: Schedule II—Loans to Officers, Directors, Principal Security Holders, and any Associates of the Foregoing Persons; Schedule V—Investments in, Income from Dividends, and Equity in Earnings or losses of Subsidiaries and Associated Companies; and Schedule VI—Allowance for Possible Loan Losses.

(3) Reference to the schedules referred to in paragraphs (i)(1) and (2) of this section shall be made against the appropriate captions of the balance sheet or statement of income.

(4) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

§ 335.41 [Amended]

3. Section 335.41, item 2(e) shall omit the phrase "or disclosed pursuant to Schedule IX, § 335.71E."

§ 335.51 [Amended]

4. Section 335.51, item 15(a) and (b) shall delete "VII" and substitute "VI" in its place.

5. Section 335.71, including the section heading is revised as follows:

§ 335.71 Format F-9 financial statements.

A. Balance Sheet (Format F-9A)
B. Statement of Income (Format F-9B)
C. Statement of Changes in Equity Capital (Format F-9C)
D. Statement of Changes in Financial Position (Format F-9D)
E. Schedules (Format F-9E)

General Instructions

1. *Preparation of Financial Statements.*—The formats are intended to serve as guides for preparation of financial statements required to be filed pursuant to this Part. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Requirements for inclusion of financial statements in certain other guideline forms required by Part 335 are found in the instructions to such forms.

Requirements set forth in Section 335.7 of this Part shall be applicable to financial statements filed pursuant to Part 335. The term, "financial statements," as used in this instruction, includes all required notes to financial statements and all required schedules.

2. *Accrual accounting.*—Financial statements shall generally be prepared on the basis of accrual accounting whereby all revenues and all expenses shall be recognized during the period earned or incurred regardless of the time received or paid, with certain exceptions: (a) where the results would be only insignificantly different on a cash basis, or (b) where accrual is not feasible. Statements with respect to the first fiscal year that a bank reports on the accrual basis shall indicate clearly, by footnote or otherwise, the beginning-of-year adjustments that were necessary and their effect on prior financial statements filed under this Part.

3. *Negative Amounts.*—Negative amounts shall be shown in brackets or parentheses and so described in the related caption, columnar heading or a note to the statement or schedule, as appropriate.

4. *Items not Material.*—If the amount that would otherwise be required to be shown with respect to any items is not material, it need not be separately set forth.

5. *Inapplicable Captions and Omission of Unrequired or Inapplicable Financial Statements and Schedules.*—No caption need be shown in any financial statement or schedule if the items and conditions are not present. Financial statements and schedules not required or inapplicable because the required matter is not present need not be filed, but the statements and schedules omitted and the reasons for their omission shall be indicated in the list of financial statements and schedules required by the applicable form.

A. Balance Sheet

The Balance Sheet shall be prepared in accordance with the *Instructions* for the Preparation of the Consolidated Report of Condition (FDIC 8040/11, 12 or 13, as applicable) except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note: Banks subject to this Part are required to report on the accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Balance Sheet required under this Part:

Assets

1. *Cash and due from depository institutions.*—(a) State separately (1) interest bearing deposits in other banks and (2) noninterest bearing deposits and cash. (See Schedule C of FDIC 8040/12 or 13.)

2. *U.S. Treasury Securities.*

3. *Obligations of other U.S. Government agencies and corporations.*

4. *Obligations of States and political subdivisions in the United States.*

5. *Other bonds, notes and debentures.*

6. *Federal Reserve stock and corporate stock.*—(a) With respect to Items 2, 3, 4, 5 and 6, state parenthetically on the balance sheet or in a note for each category the aggregate amount on the basis of market quotations or fair value of securities at the balance sheet date.

(b) With respect to Items 2, 3, 4, 5 and 6, state in a note the basis by which book value is determined. Bond premium shall be amortized and discount shall be accreted.

(c) With respect to Items 4, 5 and 6, as applicable, state in a note the name of issuer, aggregate book value and aggregate amount on the basis of market quotations or fair value of the securities of any issuer for which the aggregate book value exceeds 10 per cent of the equity capital accounts of the bank. Debt securities issued by a State of the United States and its political subdivisions and agencies which are payable from and secured by the same source of revenue or taxing authority shall be considered to be securities of a single issuer. Consideration shall be given to disclosure of risk characteristics of the securities of an issuer and of differences in risk characteristics of different issues of securities of an issuer as may be appropriate.

7. *Trading account securities.*—(a) State in a note whether securities in the trading account are valued at lower of cost or market. If market basis is not used, in valuing the trading account securities inventory, furnish the aggregate fair market value at each balance sheet date.

8. *Federal funds sold and securities purchased under agreements to resell.*

9. *Loans (net of unearned income).*

Less: Allowance for possible loan losses.

Loans, net.

(a) If the amount exceeds 5 per cent of equity capital, state in a note the aggregate amount of loans outstanding to officers, directors and principal security holders and associates. Amounts to be reported shall include loans from the bank or any subsidiary. It shall not be necessary to disclose amounts related to individuals for household, family and other personal expenditures made in the ordinary course of business that (i) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other persons, and (ii) did not involve more than normal risk of collectibility or present other unfavorable features.

10. *Lease financing receivables.*

11. *Bank Premises, furniture and fixtures and other assets representing bank premises.*

12. *Real estate owned other than bank premises.*—(a) State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) a reconciliation of any valuation allowance account.

13. *Investments in unconsolidated subsidiaries and associated companies.*

14. *Customers' liability to this bank on acceptances outstanding.*

15. *Other assets.*

16. *Total assets.*

Liabilities

17. *Deposits.*—(a) State separately.

(1) Demand deposits in domestic bank offices.

(2) Savings deposits in domestic bank offices.

(3) Time deposits in domestic bank offices.

(4) Deposits in foreign offices.

(See Schedule F and FF of FDIC 8040/12 or FDIC 8040/13, as applicable.)

(b) State in a note the aggregate amount of (1) time certificates of deposit and (2) other time deposits in denominations of $100,000 or more in domestic offices. (See Memoranda Items 1 (b) and (c) of FDIC 8040/12 or 13, as applicable.)

18. *Federal funds purchased and securities sold under agreements to repurchase.*—(a) If the approximate average balance outstanding during the period for any category was more than 30 per cent of equity capital accounts, state in a note with respect to each activity category the following:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end-of-period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowings outstanding during the period.

19. *Interest-bearing demand notes (note balance) issued to the U.S. Treasury.*

20. *Other liabilities for borrowed money.*—See supplemental instruction to Item 18.

12. *Mortgage indebtedness and liability for capitalized leases.*—(a) State in a note material terms and conditions of each obligation including (but not limited to) (1) the general character of the debt, (2) the rate of interest, (3) the date of maturity, or if maturing serially, a brief indication of the serial maturities, (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency, (5) a brief indication of priority and (6) the amount outstanding at the balance sheet date.

(b) Furnish in tabular form the combined aggregate amount of maturities and sinking fund requirements for all obligations, each year for the five years following the date of the balance sheet.

(c) If there are any liens on bank premises or other real estate owned by the bank or its consolidated subsidiaries which have not been assumed by the bank or its consolidated subsidiaries, state in a note the amount thereof together with an appropriate explanation.

22. *Bank's liability on acceptances executed and outstanding.*

23. *Other liabilities.*

24. *Total Liabilities* (excluding subordinated notes and debentures).

25. *Subordinated notes and debentures.*—(a) State in a note material terms and conditions of each obligation including (but not limited to) (1) the general character of the debt, (2) the rate of interest, (3) the date of maturity, or if maturing serially, an indication of serial maturities, (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency, (5) a brief indication of priority and (6) the amount outstanding at the balance sheet date.

(b) Furnish in tabular form the combined aggregate amount of maturities and sinking fund requirements for all obligations, each year for the five years following the date of the balance sheet.

Equity Capital

26. *Preferred stock.*—(a) State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par or stated value per share and the capital share liability thereof, and if convertible, the basis of conversion. Show also the dollar amount, if any, of shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom.

(b) State in a note (1) If callable, the date or dates and the amount per share at which such shares are callable, (2) if convertible, the terms of the conversion, (3) any arrears in cumulative dividends per share and in total for each class of shares, and (4) the preferences on involuntary liquidation, if other than the par or stated value. When the excess involved is material, there shall be shown the difference between the aggregate preference on involuntary liquidation and the aggregate par or stated value, a statement that this difference (plus any arrears in dividends) exceeds the sum of the par or stated value of the junior capital shares, surplus, and undivided profits including reserve for contingencies and other capital reserves if such is the case, and a statement as to the existence (or absence) of any restrictions upon surplus and/or undivided profits growing out of the fact that upon involuntary liquidation the preference of the preferred stock exceeds its par or stated value.

27. *Common stock.*—(a) State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par or stated value per share and the capital share liability thereof. Show also the dollar amount, if any, of shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom.

28. *Surplus.*

29. *Undivided profits.*

30. *Reserve for contingencies and other capital reserves.*

31. *Total Equity Capital.*

32. *Total Liabilities and Equity Capital.*

General Notes to the Balance Sheets

If present with respect to the bank for which the statement is filed, the following topical information shall be furnished in notes to the balance sheets:

1. *Assets subject to Lien.*

2. *Intercompany profits and losses.*

3. *Pension and Retirement Plans.*

4. *Capital Stock Optioned to Officers and Employees.*

5. *Restrictions that limit the availability of surplus and/or undivided profits for dividend purposes.*

6. *Contingent liabilities.*

7. *Standby letters of credit.*

8. *Defaults.*

9. *Significant Changes in Bonds, Mortgages, and Similar Debt.*

10. *Warrants or rights outstanding.*

For detailed instructions as to required content of above general notes to the balance sheet, refer to Section 335.7(e)(12) of Part 335.

B. Statement of Income

The Statement of Income shall conform generally to the Consolidated Report of Income (FDIC 8040/01A, 02, or 02A, as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities and Exchange Act of 1934, as amended.

Note.—Banks subject to this Part are required to report on an accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Statement of Income required under this Part:

1. *Operating Income:* (a) *Interest and fees on loans.*

(b) *Interest on balances with depository institutions.*

(c) *Income on Federal funds sold and securities purchased under agreements to resell in domestic offices of the bank and of its Edge and Agreement subsidiaries.*

(d) *Interest on U.S. Treasury securities.*

(e) *Interest on obligations of other U.S. Government agencies and corporations.*

(f) *Interest on obligations of States and other political subdivisions in the U.S.*

(g) *Interest on other bonds, notes and debentures.*

(h) *Dividends on stock.*

(i) *Income from lease financing.*

(j) *Income from fiduciary activities.*

(k) *Service charges on deposit accounts in domestic offices.*

(l) *Other service charges, commissions and fees.*

(m) *Other operating income.*

(n) *Total Operating Income.*

2. *Operating Expenses:* (a) *Salaries and employee benefits.*

(b) *Interest on time certificate of deposits of $100,000 or more issued by domestic offices.*

(c) *Interest on deposits in foreign offices.*

(d) *Interest on other deposits.*

(e) *Expense of Federal funds purchased and securities sold under repurchase agreements in domestic offices of the bank and of its Edge and Agreement subsidiaries.*

(f)(1) *Interest on demand notes (note balances) issued to the U.S. Treasury.*

(2) *Interest on other borrowed money.*

(g) *Interest on subordinated notes and debentures.*

(h)(1) *Occupancy expense of bank premises, Gross.*

(2) *Less—Rental income.*

(3) *Occupancy expense of bank premises, Net.*

(i) *Furniture and equipment expense.*

(j) *Provision for possible loan losses.*

(k) *Other operating expenses.*

(l) *Total Operating Expenses.*

3. *Income (Loss) Before Taxes And Securities Gains (Losses).*

4. *Applicable Income Taxes.*

5. *Income (Loss) Before Securities Gains (Losses).*

6. (a) *Securities Gains (Losses), Gross.*

(b) *Applicable Income Taxes.*

(c) *Security Gains (Losses), Net.*

7. *Income (Loss) Before Extraordinary Items And Cumulative Effects of Changes In Accounting Principles.*

8. *Extraordinary Items, Less Applicable Income Tax.*

9. *Cumulative Effects Of Changes In Accounting Principles.*

10. *Net Income (Loss).*

11. *Earnings (Loss) Per Common Share.*[1] (a) *Income (Loss) Before Securities Gains (Losses).*

(b) *Net Income.*

Earnings per common share. State the per share amounts applicable to common stock (including common stock equivalents) and per share amounts on a fully diluted basis, if applicable. The basis of computation, including the number of shares used, shall be furnished in a note to the financial statements.

General Notes to the Statement of Income

If present with respect to the bank for which the statement is filed, the following topical information shall be furnished in notes to the Statement of Income.

1. *Intercompany profits and losses.*

2. *Depreciation and amortization.*

3. *Bonus, profit sharing, and other similar plans.*

4. *Income tax expense.*

5. *Interest capitalized.*

6. *Disagreements on accounting and financial disclosure matters.*

7. *Disclosure of selected quarterly financial data in notes to financial statements.*

For detailed instructions as to required content of above general notes to the statement of income, refer to Section 335.7(e)(13) of Part 335.

C. Statement of Changes in Equity Capital

The format and content of the Statement of Changes in Equity Capital shall conform generally to Section B of the Consolidated Report of Income (FDIC 8040/02) and related instructions thereto except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

The following supplemental instructions shall be observed in the preparation of the Statement of Changes in Equity Capital required under this Part.

Reconcile the various equity capital accounts individually as follows:

1. *Balance end of previous year.*

2. *Prior Period Adjustment.*[2]

(a) Cumulative effect type changes in accounting principles shall be reported under Item 9 of the Statement of Income.

3. *Adjusted balance end of previous year.*

4. *Net income (loss).*

5. *Sale, conversion, acquisition, or retirement of capital net:* (a) *Transactions with own holding company or affiliates.* (b) *Other.*

6. *Changes incident to mergers and absorptions, net*

7. *Less: Cash dividends declared on common stock*

8. *Less: Cash dividends declared on preferred stock*

9. *Stock dividend issued*

10. *Other increases (decreases)*[2]

11. *Balance end of period*

D. Statement of Changes in Financial Position

Sources of Funds.—Operations:

Net Income.

Charges (Credits) to Income not affecting Funds: Total Funds provided by Operations.

Equity Funds—Proceeds.

Subordinated Notes and Debentures—Sale Proceeds

Increase (Decrease) in Liabilities:

Total.

Applications of Funds.

Payment of Dividends.

Purchase of Property and Equipment.

Increase (Decrease) in Assets:[3]

E. Schedules

Schedule I.—*U.S. Treasury Securities, Obligations of Other U.S. Government Agencies and Corporations, Obligations of States and Political Subdivisions, and Other Bonds, Notes and Debentures*

Type and maturity grouping	Book value [1]	Market value [2]
U.S. Treasury securities:		
Within 1 year		
After 1 but within 5 years		
After 5 but within 10 years		
After 10 years		
Total U.S. Treasury securities		
Obligations of other U.S. Government agencies and corporations:		
Within 1 year		
After 1 but within 5 years		
After 5 but within 10 years		
After 10 years		
Total securities of other U.S. Government agencies and corporations		
Obligations of States and political subdivisions: [3]		
Within 1 year		
After 1 but within 5 years		
After 5 but within 10 years		
After 10 years		
Total obligations of States and political subdivisions		
Other bonds, notes and debentures [4]		

[1] State briefly in a footnote the basis for determining the amounts in this column.

[2] If market value is determined on any basis other than market quotations at balance sheet date, explain.

[3] Include obligations of the States of the United States and their political subdivisions, agencies, and instrumentalities; also obligations of territorial and insular possessions of the United States. Do not include obligations of foreign states.

[4] State in a footnote the aggregate (a) book value and (b) market value of securities that are less than "investment grade".

Note: See Schedule B of FDIC 8040/11, 12, or 13, as applicable.

[1] If amounts are entered for Item 8 and/or 9, per share amounts shall be stated separately for Items 5, 8 and/or 9, and 10.

[2] State separately any material amounts, indicating clearly the nature of the transaction out of which the item arose.

[3] Sources and applications of funds items shall be shown separately by amounts when they exceed 5 per cent of the average of total funds provided during the respective reported periods.

Schedule II—*Loans to Officers, Directors, Principal Security Holders, and any Associates of the Foregoing Persons* [1]

Col. A	Col. B	Col. C	Col. D		Col. E
			Deductions		
Name of borrower [2]	Balance at beginning of period	Additions	(1) Amounts collected [3]	(2) Amounts charged off	Balance at end of period

[1] Provide information if at any time during the period for which related income statements are required to be filed, loans to a specified person and associates exceeded 2½% of equity capital of the bank or $500,000, whichever is less.

It shall not be necessary to include amount of loans related to individuals for household, family and other personal expenditures made in the ordinary course of business as defined in Item 9(a) of Format F-9A, Balance Sheet.

Loans to directors (and any associates) who are neither officers nor principal security holders may be stated in the aggregate. The number of directors for whom loans are stated in the aggregate shall be indicated in Column A.

[2] State in a note hereto pertinent information such as the maturity date, interest rate, terms of repayment and collateral, if any, of loans made to the specified persons named in Column A as of the date of the most recent balance sheet being filed.

[3] If collection was other than cash, explain.

Schedule III—Loans

Type	Book value
Loans in domestic offices	
Real estate loans:	
Insured or guaranteed by the U.S. Government or its agencies	
Other	
Loans to financial institutions	
Loans for purchasing or carrying securities (secured or unsecured)	
Loans to finance agricultural production and other loans to farmers	
Commercial and industrial loans	
Loans to individuals for household, family and other personal expenditures	
All other loans (including overdrafts)	
Loans in foreign offices	
Total loans, gross	
Less: Unearned income on loans	
Total loans (excluding unearned income)	

Note: See Schedule A of FDIC 8040/11, 12, or 13, as applicable.

Schedule IV—Bank Premises and Equipment

Classification	Column A	Column B	Column C
	Gross book value [1]	Accumulated depreciation and amortization [2]	Amount at which carried on balance sheet
Bank premises (including land $. . .)			
Equipment			
Leasehold improvements			
Totals			

[1] State the basis of determining the amounts in column A.

[2] The nature and amount of significant additions (other than provisions for depreciation and amortization) and deductions from depreciation accounts shall be stated in an explanatory footnote.

Schedule V—*Investments in, Income From Dividends, and Equity in Earnings or Losses of Subsidiaries and Associated Companies*

Col. A	Col. B	Col. C	Col. D	Col. E
Name of issuer [1]	Percent of voting stock owned	Total investment	Equity in underlying net assets at balance sheet date [2]	Amount of dividends [3]	Bank's proportionate part of earnings or loss for the period
Totals					

[1] Group separately securities of (a) subsidiaries consolidated, (b) subsidiaries not consolidated, and (c) associated companies. Show shares, bonds, notes and advances separately in each case.

[2] Equity shall include advances and other obligations reported in column B to the extent recoverable.

[3] State as to any dividends other than cash the basis on which they have been reported as income. If any such dividend received has been credited to income in an amount differing from that charged to surplus and/or undivided profits by the disbursing subsidiary, state the amount of such difference and explain.

Schedule VI—*Allowance for Possible Loan Losses*

	Amount
Balance end of previous period	
Recoveries credited to allowance	
Changes incident to mergers and absorptions [1]	
Provision for possible loan losses	
Less: Losses charged to allowance	
Foreign currency translation adjustment	
Balance end of period [2]	

[1] Describe briefly in a footnote any such addition.

[2] State in a footnote (1) the amount deducted for Federal income tax purposes, (2) the maximum amount that could have been deducted for Federal income tax purposes, and (3) the balance of the allowance at the end of the period as reported for Federal income tax purposes.

Note: See Schedule C of FDIC 8040/02.

[FR Doc. 80-28441 Filed 9-12-80; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2, Amdt. 14]

Delegations of Authority To Conduct Program Activities in the Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA is delegating administrative authority to certain positions in Regional Offices. It is expected that this action will ensure the most effective, prompt delivery of administrative services.

EFFECTIVE DATE: September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Ronnie Allen, Paperwork Management Branch, Small Business Administration, 1441 "L" Street, NW., Washington, D.C, 20416, (202) 653-6703.

SUPPLEMENTARY INFORMATION: Because Part 101 consists of rules relating to the Agency's organization and procedures, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 is not required and this amendment to Part 101 is adopted without resort to those procedures. Accordingly, pursuant to authority contained in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, Chapter I, Title 13 of the Code of Federal Regulations is amended as follows:

§ 101.3-2 [Amended]

Section 101.3-2 is amended to add the following as set forth below:

1. In Part II—Disaster Program, Section B, paragraphs 1, 2a and 2b are amended to renumber subparagraphs (8) through (11) as (12) through (15) and new subparagraphs (8) through (11) are added as follows:

(8) Office Services Manager, Regions V, VIII, IX and X only
(9) Office Services Supervisor, Region IV only
(10) Chief, Administration, Region II only
(11) Administrative Officer, Region VI and VII only

2. In Part X—Administrative, Section A, paragraphs 1 through 3 and paragraph 5 are amended by relettering subparagraphs h and i as l and m and adding new subparagraphs h through k as follows:

h. Office Services Manager, Regions V, VIII, IX and X only
i. Office Services Supervisor, Region IV only
j. Chief, Administration, Region II only
k. Administrative Officer, Region VI and VII only

3. Paragraph 6 in Part X—Administrative, Section A, is amended by adding the following:

h. Office Services Manager, Regions V, VIII, IX and X only
i. Office Services Supervisor, Region IV only
j. Chief, Administration, Region II only
k. Administrative Officer, Region VI and VII only

Dated: August 29, 1980.

William H. Mauk, Jr.

Acting Administrator.

[FR Doc. 80-28439 Filed 9-12-80; 8:45 am]

BILLING CODE 6025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 78-CE-22-AD; Amdt. 39-3914]

Beech Models E50, F50, G50, H50, J50, 65, A65, A65-8200, 65-80, 65-A80-8800, 65-B80, 65-88, 70, C50, D50, D50A, D50B, D50C, and D50E Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) AD 79-01-02, Amendment 39-3385, as amended by Amendment 39-3491, applicable to the above Beech Model airplanes, by revising the applicability statement to except those airplanes modified in accordance with STC SA587SW. These airplanes are excepted because the powerplant changes incorporated by this STC make the inspections prescribed by this AD unnecessary and inappropriate.

EFFECTIVE DATE: September 22, 1980.

FOR FURTHER INFORMATION CONTACT: R. A. Brenk, Aerospace Engineer, Aircraft Certification Program, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-7927..

SUPPLEMENTARY INFORMATION: Amendment 39-3385, AD 79-01-02 required various modifications and repetitive inspection of the powerplant installation and nacelles on certain Beech Model airplanes. Amendment 39-3491 excepted those airplanes modified in accordance with STC SA444SW. Subsequent to this action, the FAA has determined that the modifications incorporated by STC SA587SW are also so extensive as to make the inspections prescribed by the AD unnecessary and inappropriate. Therefore, the agency is revising Amendment 39-3385, as amended by Amendment 39-3491, by further amending the AD applicability statement to except those airplanes modified in accordance with STC SA587SW.

Since this amendment is relieving in nature and imposes no additional burden on any person, notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days after the date of publication in the Federal Register.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Amendment 39-3385 (44 FR 1079, 1080), AD 79-01-02, of § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as amended by Amendment 39-3491 (44 FR 34911), is further amended as follows:

(1) Delete the existing applicability statement and in its place add the following new applicability statement:

Beech: Applies to:
(1) Models E50, F50, G50, H50, J50, 65, A65, A65-8200, 65-80, 65-A80, 65-A80-8800, 65-B80, 65-88, and 70 airplanes except those airplanes modified in accordance with STC SA444SW or STC SA587SW, and
(2) Those Models C50, D50, D50A, D50B, D50C and D50E airplanes modified per STC SA76SW.

This amendment becomes effective on September 22, 1980.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 5, 1980.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 80-28367 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ANE-29]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V-300, in part, by revoking the current airway floor between Millinocket, Maine, and Sherbrooke, Quebec, Canada. The Greenville, Maine, nondirectional beacon (NDB) has been decommissioned and requires conversion of the segment of V-300 to a 1,200 foot floor.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On August 4, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to alter the description of V-300 between Millinocket, Maine, and Sherbrooke, Quebec, Canada (45 FR 51589). New approach procedures being developed due to the planned relocation of the Greenville, Maine, nondirectional beacon (NDB) require the conversion of that segment of V-300 be changed to a 1,200 foot floor. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. No comments objecting to the proposal were received. Subpart C of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters the description of V-300 by revoking the current airway floor between Millinocket, Maine, and

Sherbrooke, Quebec, Canada. This amendment lowers the floor of the segment of V-300 to 1,200 feet. This action supports new approach procedures being developed for the airport at Greenville, Maine.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, October 30, 1980, as follows:

Under V-300

"From Sherbrooke, Quebec, Canada, 86 miles 52 MSL, Millinocket, Maine;" is deleted and "From Sherbrooke, Quebec, Canada; Millinocket, Maine;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on September 9, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-28365 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AWA-9]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of V-133 Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to V-133 airway extends the route from Thunder Bay VOR to International Falls VOR. The Canadian Government has advised the FAA that they are extending their portion of V-133. This action maintains the airway designation and continuity for the small airway segment within the United States.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT:

L. Jack Overman, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On July 28, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend VOR Federal Airway V-133 from Thunder Bay, Ontario to International Falls, Minn. (45 FR 49950). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objection. This is the same as that proposed in the notice. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 307).

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) extends V-133. This airway is designated to be direct between Thunder Bay VORTAC and International Falls VORTAC to coincide with the airspace established by the Canadian Government.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, October 30, 1980, by amending V-133 by deleting the words "Ontario, Canada. The airspace within Canada is excluded." and substitute for them "Ontario, Canada; International Falls, Minn. The airspace within Canada is excluded."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on September 5, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-28119 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-GL-16]

Designation of Federal Airways Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate controlled airspace near Madison, Minnesota, in order to accommodate a new instrument approach into Dawson-Madison Airport, Madison, Minnesota, which was established on the basis of a request from the local Airport officials to provide that facility with instrument approach capability.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT:

Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions and other aircraft operating under visual weather conditions. The floor of the controlled airspace will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures requires that FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for these procedures may be established below the floor of the 700 foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Discussion of Comments

On page 31131 of the Federal Register dated May 12, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the

Federal Aviation Regulations so as to designate a transition area at Madison, Minnesota. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

No objections were received as a result of the Notice of Proposed Rule Making.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective October 30, 1980, as follows:

In § 71.181 (45 FR 445) the following transition area is added:

Madison, Minn.

That airspace extending upward from 700 feet above the surface within a 8.5 SM radius of the Dawson-Madison Airport (latitude 44°59'25"N., longitude 96°10'50"W.) and that airspace extending upward from 1200 feet above the surface 5 SM either side of the 072° bearing from the Watertown, South Dakota, VORTAC to the Dawson-Madison NDB (latitude 44°59'03"N, longitude 96°10'44"W).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61))

The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 80-GL-16, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on September 3, 1980.

Kenneth C. Patterson,

Director, Great Lakes Region.

[FR Doc. 80-28117 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 80-ANW-12]

Establishment of Jet Routes and Area High Routes; Establishment of Jet Route No. 153

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment establishes Jet Route No. 153 between Rome, Oreg., and Spokane, Wash., via Baker, Oreg. The action not only reduces controller workload and frequency congestion, but also provides more efficient air traffic service by reducing the need for radar vectoring.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: L. Jack Overman, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On July 28, 1980, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish a jet route between Rome, Oreg., and Spokane, Wash. (45 FR 49952). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objection. This is the same as that proposed in the notice. Section 75.100 of Part 75 was republished in the Federal Register on January 2, 1980 (45 FR 732).

The Rule

This amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) designates Jet Route No. 153. This Jet Route No. 153 would be from Rome, Oreg., direct to Baker, Oreg., direct to Spokane, Wash. Designation of this added route segment as a jet route provides charted course radials and minimum altitudes where they may be required. Flight planning and communication time is reduced by the use of a number jet route rather than radar vectoring that is presently required.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) is amended, effective 0901 GMT, October 30, 1980, by establishing Jet Route No. 153 as follows:

Jet Route No. 153 From Rome, Oreg., via Baker, Oreg., to Spokane, Wash.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on September 5, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-28119 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 260

[Docket No. RM80-59—Order No. 101]

Order Revising Annual Reports for Public Utilities and Licensees, and for Natural Gas Companies (Class C and Class D)

Issued: September 5, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) hereby revises Form No. 1-F, "Annual Report for Public Utilities and Licensees (Class C and Class D)" (18 CFR 141.2), and Form No. 2-A, "Annual Report for Natural Gas Companies (Class C and Class D)" (18 CFR 260.2). The revisions should reduce the reporting burdens imposed by these two forms (by approximately 63% in the case of Form No. 1-F, and 30% in the case of Form No. 2-A) by eliminating certain data requirements which the Commission no longer needs to carry out its regulatory functions. The changes are a product of the Commission's ongoing effort to eliminate unnecessary reporting burdens.

EFFECTIVE DATE: October 6, 1980.

FOR FURTHER INFORMATION CONTACT:

James Kitchen, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 3408N, Washington, D.C. 20426. (202) 357-9212.

Elaine Dawson, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 3405N,

Washington, D.C. 20426. (202) 357–9190.

I. Background

On May 23, 1980, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (45 FR 36428, May 30, 1980). This Notice proposed to revise Form No. 1–F, "Annual Report for Public Utilities and Licensees (Class C and Class D)," and Form No. 2–A, "Annual Report for Natural Gas Companies (Class C and Class D)," [1] to reflect the results of the Commission's ongoing validation program, the purpose of which is to reduce the reporting burden on the industries regulated by the Commission.*

Form No. 1–F annually collects from privately owned electric utilities information concerning the Balance Sheet Statement, Statement of Income and related items.

Form No. 2–A is annually filed by natural gas companies and collects data concerning natural gas operating revenues, expenses and sales.

The proposed deletions will cause an estimated 63 percent reduction in the reporting burden for Form No. 1–F and an estimated 30 percent reduction for Form No. 2–A.

II. Revisions to Forms

A. Form No. 1–F [2]

By this rulemaking, the Commission eliminates 510 of the 811 data items now prescribed on Form No. 1–F. Of the 510 items, 448 are deleted by elimination of reporting requirements for the following schedules:

Schedule	Page
Security Holders and Voting Powers	3
Officers and Directors	3
Accumulated Provisions for Depreciation and Amortization of Utility Plant	6
Capital Stock	6
Long-Term Debt	6
Electric Sales Data for the Year	7
Sales of Electricity for Resale	7
Electric Operation and Maintenance Expenses	7
Purchased Power	11
Utility Plant	11
Generating Station Statistics	12
Transmission Line Statistics	12
Transmission Lines Added During Year	12
Investment Tax Credits Generated and Utilized	13
Accumulated Deferred Investment Tax Credits (Account 255)	14
Expenditures of Certain Civic, Political, and Related Activities	15

[1] A Class C electric utility or natural gas company is one having annual electric or gas operating revenues of $150,000 or more but less than $1,000,000. A Class D electric utility or natural gas company is one having annual electric or gas operating revenues of $25,000 or more but less than $150,000.

* FERC Form No. 1–F (Attachment A) and Form No. 2–A (Attachment B) are not being printed by the Federal Register. Copies are available in the Office of Public Information.

[2] Attachment A.

The remaining 62 data items are eliminated by deleting the "Increase or (Decrease)" data requirements of the Comparative Balance Sheet (columns (d) and (h) of schedule pages 4 and 5, respectively). In addition, the Commission has decided to eliminate Instruction 7 of the Statement of Income for the Year (schedule page 9).[3]

B. Form No. 2–A [4]

Form 2–A is changed by deleting 277 of the 907 currently prescribed data items. The reductions are accomplished by:

(1) Deletion of the Principal Business and Address column of the "Officers and Directors Schedule" (column c, schedule page 3);

(2) Elimination of the "Increase or (Decrease)" data requirement from the Balance Sheet (columns (d) and (h), schedule pages 4 and 5 respectively);

(3) Deletion of Instruction 7 of the Statement of Income for the Year (schedule page 9);[5]

(4) Elimination of columns b through g from Gas Purchases (schedule page 12); [6] and

(5) Deletion of the following schedules:

Schedule	Page
Investment Tax Credits Generated and Utilized	15
Accumulated Deferred Investment Tax Credits (Account 255)	16
Expenditures for Certain Civic, Political and Related Activities	17
Service Interruptions Occurring on the Pipeline System	18

III. Summary of Comments

In response to the proposed rulemaking, the Commission received comments from only one respondent, the International Brotherhood of Electrical Workers (IBEW).[7] The IBEW argued that "it was logical and in the continued public interest" for the Commission to act as "the statutory and primary collector" of the information required on Form Nos. 1–F and 2–A.

However, while the public may have some interest in this information, the Commission cannot thereby justify the continued collection of this data. The Commission, as part of its data validation program, has determined that the information to be deleted from the forms is no longer necessary to the performance of the Commission's regulatory functions. Because of this determination the Commission is relieving the affected respondents from unnecessary reporting burdens.

[3] A similar instruction has been proposed for deletion from Form No. 1 (Docket No. RM80–55, NOPR issued July 10, 1980, 45 FR 47705, July 16, 1980) because it is no longer necessary for the Commission's regulatory purposes. Instruction 7 is eliminated for the purpose of consistency.

[4] Attachment B.

[5] A similar instruction has been proposed for deletion from Form No. 2 (Docket No. RM80–56, NOPR issued July 1, 1980, 45 FR 48075, July 9, 1980) because it is no longer necessary for Commission regulatory purposes. Instruction 7 is eliminated for the purpose of consistency.

[6] Similar reporting requirements in Form No. 2 were proposed for deletion as unnecessary, and the changes to Gas Purchases are made herein for the purpose of consistency.

[7] The IBEW is a labor union, the members of which are employed in the electrical construction, manufacturing and utility industries.

IV. Public Procedures and Effective Date

The Commission has complied with 5 U.S.C. 553 by providing public notice and an opportunity to participate in this rulemaking. The changes in this Order will be effective 30 days from the date of its issuance for reports to be filed on or before March 31, 1981.

(Natural Gas Act, as amended, 15 U.S.C. 717–717w; Natural Gas Policy Act of 1978, 14 U.S.C. 3301–3432; Federal Power Act, as amended, 16 U.S.C. 792–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR Part 142 (1978)).

For the foregoing reasons, FPC Form No. 1–F, "Annual Report for Public Utilities and Licensees (Class C and Class D)", prescribed by § 141.2, Chapter I, Title 18 of the Code of Federal Regulations, and FPC Form No. 2–A, "Annual Report for Natural Gas Companies (Class C and Class D)", prescribed by § 260.2, Chapter I are revised by the Commission as set forth in Attachments A and B.

In addition to the foregoing, Parts 141 and 260 of Chapter I, Title 18 of the Code of Federal Regulations are amended by the Commission as set forth below, effective 30 days from the date of issuance.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. Part 141—Statements and Reports (Schedules) is amended by revising § 141.2 to read as follows:

§ 141.2 FERC form No. 1–F, annual report for public utilities and licensees (class C and class D).

(a) *Prescription.* The form of Annual Report for Public Utilities and Licensees (Class C and Class D), designated herein as FERC Form No. 1–F, is prescribed for the year 1980 and each year thereafter.

(b) *Filing Requirements.*—(1) *Who must file.* (i) *Generally.* Each public utility and licensee, as defined by the Federal Power Act, which is included in Class C or Class D as defined in Part 104 of this chapter,[1] shall prepare and file with the Commission an original and conformed copies of FERC Form No. 1–F pursuant to the General Instructions set out in that form.

(ii) *Exceptions.* FERC Form No. 1–F is not prescribed for any municipality as defined in Section 3 of the Federal Power Act, i.e., a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power.

(2) *When to file.* Such report shall be filed on or before March 31 of each year for the previous calendar year, beginning with a filing by March 31, 1981 for the 1980 calendar year.

(c) This annual report contains the following schedules:

General Information.
General Instructions.
Identification.
Attestation.
Comparative Balance Sheet.
Statement of Income for the Year.
Statement of Retained Earnings.
Footnote Data.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

2. Part 260—Statements and Reports (Schedules) is amended by revising § 260.2 to read as follows:

§ 260.2 FERC form No. 2–A, annual report for natural gas companies (class C and class D).

(a) *Prescription.* The form of Annual Report for Natural Gas Companies (Class C and Class D), designated herein as FERC Form No. 2–A, is prescribed for the year 1980 and each year thereafter.

(b) *Filing Requirements.* (1) *Who must file.* Each natural gas company, as defined by the Natural Gas Act, which is included in Class C or Class D as defined in Part 204 of this Chapter,[2] shall prepare and file with the Commission an original and conformed copies of FERC Form No. 2–A pursuant to the General Instructions set out in that form.

(2) *When to file.* Such report be filed on or before March 31 of each year for the previous calendar year, beginning with a filing by March 31, 1981 for the 1980 calendar year.

(c) This annual report contains the following schedules:

General Information.
General Instructions.
Identification.
Attestation.
Comparative Balance Sheet.
Statement of Income for the Year.
Statement of Retained Earnings.
Security Holders and Voting Powers.
Officers and Directors.
Accumulated Provisions for Depreciation, Depletion and Amortization of Utility Plant.
Capital Stock.
Long-Term Debt.
Gas Sales Data for the Year.
Gas Operation and Maintenance Expenses.
Sales for Resale—Natural Gas.
Gas Purchases.
Utility Plant Natural Gas Companies.
Gas Account—Natural Gas.
General Information Concerning Plant and Operations.
Footnote Data.

[FR Doc. 80-27980 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-65-M

[1] *See* 18 CFR Part 104, revised as of April 1, 1979.

[2] *See* 18 CFR Part 204, revised as of April 1, 1979.

18 CFR Part 282

[Docket No. RM 79-14]

Incremental Pricing Regulations; Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: September 1, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426 (202) 357–8500.

Table I.—*Incremental Pricing Acquisition Cost Threshold Prices*

	January	February	March	April	May	June	July	August	September
Incremental pricing threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834
NGPA section 102 threshold	2.358	2.381	2.404	2.428	2.453	2.478	2.504	2.532	2.560
NGPA section 109 threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.867	1.883	1.899
130 pct of No. 2 fuel oil in New York City threshold	7.170	7.260	7.410	7.110	7.360	8.040	7.840	7.360	7.400

Order of the Director, OPPR

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acqusition cost threshold prices for the month of September 1980, is issued by the publication of a price table for the applicable month.

Issued September 3, 1980.

Kenneth A. Williams,
Director, Office of Pipeline and Producer Regulation.

[FR Doc. 80-28087 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 80-229]

Italy; Coastwise Transportation; Vessels in Foreign and Domestic Trades

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add Italy to the list of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports. Satisfactory evidence has been obtained by the Department of State that Italy places no restriction on the transportation of the specified articles by vessels of the United States between ports in Italy. This amendment provides reciprocal privileges for vessels of Italian registry.

EFFECTIVE DATE: February 26, 1980.

FOR FURTHER INFORMATION CONTACT: Charles W. Hart, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the Act, as amended by Pub. L. 90-474 (82 Stat. 700; T.D. 68-227), provides that if the Secretary of State advises the Secretary of the Treasury that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with such barges; certain empty instruments of international traffic; and certain stevedoring equipment and material are listed in § 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)).

Italy is included in the list in § 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), of those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks.

On February 26, 1980, the Department of State advised the Secretary of the Treasury that Italy now places no restriction on the transportation of the other articles listed in the Act by vessels of the United States between ports in Italy. Therefore, reciprocal privileges are accorded to vessels of Italian registry as of that date.

Finding

On the basis of the information received from the Secretary of State, as described above, I find that the Government of Italy places no restriction on the transportation of the other articles specified in section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the United States between points in Italy. Therefore, reciprocal privileges are accorded to vessels of Italian registry as of February 26, 1980.

Amendment to the Regulations

To reflect the reciprocal privileges granted to Italy, § 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), is amended by inserting "Italy" between "Israel" and "Liberia" in the list of nations under this section.

(Sec. 27, 41 Stat. 999, as amended, sec. 14, 67 Stat. 516, Pub. L. 90-474, 82 Stat. 700 (5 U.S.C. 301, 19 U.S.C. 1322(a), 46 U.S.C. 883))

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this is a minor amendment in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because this amendment grants an exemption.

Regulations Determined to be Nonsignificant

In a directive published in the Federal Register on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations," the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the Federal Register and codified in the Code of Federal Regulations to be significant. However, regulations which are nonsubstantive, are essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, with Secretarial approval may be determined not to be significant. Accordingly, it has been determined that this document does not meet the Treasury Department criteria in the directive for "significant" regulations.

Drafting Information

The principal author of this document was Betty A. Stemley, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Departments of State and the Treasury participated in its development.

Dated: August 29, 1980.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 80-28418 Filed 9-12-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 891

Neighborhood Strategy Area (NSA) Funding; CFR Correction

In the April 1, 1980 revision of Title 24 (Parts 500 to 1699) of the Code of Federal Regulations, § 891.404(c)(1) was incorrectly published. An amendment to § 891.404(c)(1) appearing at 44 FR 60085, Oct. 18, 1979, was inadvertently omitted. Paragraph (c)(1) of § 891.404 should read as set forth below.

* * * * *

(c)(1) When the amount of contract authority for each allocation area has been established, the field office shall develop a matrix indicating a distribution of units by housing type (except in the case of contract authority for NSAs described in the last two sentences of paragraph (a)(2)) and household type within tenure type. This allocation plan shall be prepared for each allocation area using housing assistance plans, approved areawide housing opportunity plans, and data developed in the field for units of general local government not having a housing opportunity plan. For those central cities and other entitlement recipients which are established as separate allocation areas under paragraph (a)(4) of this section, the field office shall consult with the chief executive officer or his representative in the preparation of the allocation plan.

To the maximum extent practicable, the number of units in the allocation plan shall be proportionate by housing type (except in the case of contract authority for NSAs described in the last two sentences of paragraph (a)(2)) and household type to the approved Annual Housing Action Programs (which reflect the locality increments to achieve three-year HAP goals), housing needs for non-HAP localities, and goals in AHOPs approved pursuant to Subpart E. For those allocation areas with an approved AHOP under the provisions of subpart E, the approved AHOP shall serve, to the extent practicable, as the basis for allocation of contract authority by housing type and household type.

* * * * *

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7719]

Time for Filing Declarations of Estimated Income Tax by Farmers, Fishermen, and Certain Nonresident Aliens

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the time for filing estimated income tax by farmers, fishermen, and certain nonresident aliens. Changes to the applicable tax law were made by the Tax Reform Act of 1976 and the Act of November 10, 1978. These amendments to the regulations specify the dates for filing declarations of tax in a timely manner and thereby provide the public with needed guidance to comply with the Acts.

DATES: The amendment relating to the time for farmers and fishermen to file declarations of estimated tax (§§ 1.6073-1(b), 1.6073-2(b), and 1.6073-3(b)) is effective for taxable years beginning after November 10, 1978. The amendment relating to the time for nonresident aliens to file declarations of estimated tax (§§ 1.6073-1(c), 1.6073-2(c), and 1.6073-3(c)) is effective for taxable years beginning after December 31, 1976.

FOR FURTHER INFORMATION CONTACT: Claudine Ausness of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3459).

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1980, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6073 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 1012(c) of the Tax Reform Act of 1976 (90 Stat. 1614) and section 7 of the Act of November 10, 1978 (Pub. L. 95-628, 92 Stat. 3630). The one written comment received raised an issue unrelated to the proposed regulation changes and no public hearing was requested or held. The proposed amendment is adopted by this Treasury decision without change.

Explanation of Provisions

The amendment made by the Tax Reform Act provides that, in the case of nonresident aliens who are not subject to wage withholding, the due date for filing a declaration of estimated tax for the current taxable year is not earlier than the due date for filing an income tax return for the preceding taxable year. The amendment made by the Act of November 10, 1978, provides an additional exception for farmers and fishermen to the quarterly requirements relating to declarations of estimated tax. The regulations adopted by this Treasury decision reflect these statutory changes.

The regulations adopted by this Treasury decision impose no new reporting burdens or recordkeeping requirements. Evaluation of the effectiveness of these regulations will be based upon comments received from members of Congress, offices within Treasury and the Internal Revenue Service, other governmental services, and the public.

Drafting Information

The principal author of this regulation is Claudine Ausness of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the amendments to 26 CFR Part 1, published as a notice of proposed rulemaking in the Federal Register for May 21, 1980 (45 FR 34016), are hereby adopted as proposed.

This Treasury decision is issued under the authority contained in section 6073(d) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 750, 917; 26 U.S.C. 6073(d) and 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: August 27, 1980.

Emil M. Sunley,
Acting Assistant Secretary of the Treasury.

Paragraph 1. Section 1.6073-1 is amended by revising subparagraph (1) of paragraph (b), by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding a new paragraph (c). These revised and added provisions read as follows:

§ 1.6073-1 Time and place for filing declarations of estimated tax by individuals.

* * * * *

(b) *Farmers or fishermen*—(1) *In general.* In the case of an individual on a calendar year basis—

(i) If at least two-thirds of the individual's total estimated gross income from all sources for the calendar year is from farming or fishing (including oyster farming), or

(ii) If at least two-thirds of the individual's total gross income from all sources shown on the return for the preceding taxable year was from farming or fishing (including oyster farming) (with respect to declarations of estimated tax for taxable years beginning after November 10, 1978),

he may file a declaration of estimated tax on or before the 15th day of January of the succeeeding calendar year in lieu of the time prescribed in paragraph (a) of this section. For the filing of a return in lieu of a declaration, see paragraph (a) of § 1.6015-1.

* * * * *

(c) *Nonresident aliens.* Notwithstanding the provisions of paragraph (a) of this section, for taxable years beginning after December 31, 1976, in the case of a nonresident alien described in section 6072(c) (relating to returns of nonresident aliens whose wages are not subject to withholding) whose estimated gross income for the calendar year meets the requirements of section 6015(a), a declaration of estimated tax for the calendar year need not be made before June 15th of such calendar year.

* * * * *

Par. 2. Section 1.6073-2 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.6073-2 Fiscal years.

* * * * *

(b) *Farmers or fishermen.* In the case of an individual on a fiscal year basis—

(1) If at least two-thirds of the individual's total estimated gross income from all sources for the fiscal year is from farming or fishing (including oyster farming), or

(2) If at least two-thirds of the individual's total gross income from all sources shown on the return for the preceding taxable year was from farming or fishing (including oyster farming) (with respect to declarations of estimated tax for taxable years beginning after November 10, 1978),

he may file a declaration on or before the 15th day of the month immediately following the close of his taxable year, in lieu of the time prescribed in paragraph (a) of this section.

(c) *Nonresident aliens.* Notwithstanding the provisions of paragraph (a) of this section, in the case of a nonresident alien described in section 6072(c) (relating to returns of nonresident aliens whose wages are not subject to withholding) whose anticipated income for the fiscal year meets the requirements of section 6015(a), § 1.6015(a)–1, and § 1.6015(i)–1, the declaration of estimated tax for the fiscal year need not be filed before the 15th day of the 6th month of such fiscal year.

Par. 3. Section 1.6073–3 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.6073–3 Short taxable years.

* * * * *

(b) *Farmers or fishermen.* In the case of an individual—

(1) Whose current taxable year is a short taxable year and whose estimated gross income from farming or fishing (including oyster farming) is at least two-thirds of his total estimated gross income from all sources for such current taxable year, or

(2) Whose taxable year preceding the current taxable year was a short taxable year and whose gross income from farming or fishing (including oyster farming) was at least two-thirds of the total gross income from all sources shown on the return for such preceding short taxable year (with respect to declarations of estimated tax for taxable years beginning after November 10, 1978),

he may file a declaration of estimated tax on or before the 15th day of the month immediately following the close of the current taxable year, in lieu of the time prescribed in paragraph (a) of this section.

(c) *Nonresident aliens.* Notwithstanding the provisions of paragraph (a) of this section, in the case of a short taxable year, a nonresident alien described in section 6072(c) (relating to returns of nonresident aliens whose wages are not subject to withholding) whose anticipated income for the short taxable year meets the requirements of section 6015(a), § 1.6015(a)–1, § 1.6015(g)–1, and § 1.6015(i)–1 on or before the 1st day of the 6th month following the beginning of such year need not file a declaration of estimated tax before the 15th day of the 6th month following the beginning of such year.

[FR Doc. 80-28362, Filed 9-12-80; 8:45 am]
BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL 1606-6]

Hazardous Waste Guidelines and Regulations: Extension of Comment Period on Interim Final Listing

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Extension of comment period on interim final listing.

SUMMARY: This notice extends for thirty (30) days, the deadline for commenting on EPA's July 16, 1980, interim final listing of three wastes generated by the ferroalloys industry, two wastes generated from industrial painting in the mechanical and electrical products industry and four wastes generated from paint manufacturing as hazardous wastes under Section 3001 of the Resource Conservation and Recovery Act of 1976 [RCRA], as amended.

DATE: Comments limited to the validity of EPA's decision to list these nine wastes as hazardous are now due no later than October 15, 1980.

ADDRESSES: Comments should be sent to Docket Clerk [Docket No. 3001], U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public docket: The public docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION: On July 16, 1980, as part of its interim final Phase IB regulations implementing Section 3001 of RCRA, EPA published an additional list of hazardous wastes (Subpart D of this Part, 45 FR 47833–47834). The original deadline for commenting on this list was September 15, 1980.

Both the Ferroalloys Association and the National Paint and Coatings Association have requested an extension of time to comment on the validity of EPA's decision to include on the list three wastes generated by the ferroalloys industry [EPA Hazardous Waste Numbers K090 to K092], two wastes generated by industrial painting in the mechanical and electrical products industry (EPA Hazardous Waste Numbers F017 and F018) and four wastes generated by paint manufacturing (EPA Hazardous Waste Numbers K078 and K079 and K081 and K082). Both the Ferroalloys Association and the National Paint and Coatings Association indicate that they are presently collecting additional data, including sample analyses of wastes, and need additional time in order to properly prepare their comments. EPA believes that submission of this data is important in order to adequately consider the listing of these wastes. In addition, some of the members of the National Paint and Coatings Association did not receive certain of the referenced materials cited in the applicable background documents until recently (i.e., results of the verification sampling performed by EPA's Effluent Guidelines Division). Although all of this material is now available, EPA believes that the public should be allowed additional time to comment on them. EPA accordingly is extending the comment period on these nine wastes [40 CFR § 261.32, EPA Hazardous Waste Numbers F017 and F018, K078 and K079, K081 and K082 and K090 to K092] for thirty (30) days from September 15, 1980.

Dated: September 11, 1980.

Eckardt C. Beck,

Assistant Administrator.

[FR Doc. 80-28495 Filed 9-12-80; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

41 CFR Part 3-7

Contract Clauses

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health and Human Services is amending its procurement regulations to add a clause for use in all consulting services contracts.

The clause to be added, "Consulting Services Reporting," replaces the clause "Statement of Cost and Personnel Responsible for Report" located at section 3-7.5024.

EFFECTIVE DATE: August 30, 1980.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Office of Procurement Policy, OGP-OASMB-OS, Department of Health and Human Services, Room 538H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201 (202-245-0481).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget, in a memorandum dated July 2, 1980, directed Federal agencies to take specific actions in regard to consulting services contracting procedures. One of the required actions was to develop a clause, for inclusion in all consulting services contracts, requiring the contractor to provide certain data on the cover of reports submitted under the contract. The following clause has been developed for that purpose.

It is the policy of the Department to allow time for interested parties to participate in the rulemaking process. However, since the requirement has been mandated by the Office of Management and Budget, the public rulemaking process was deemed unnecessary in this instance. The provision of this amendment is issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

Therefore, 41 CFR Chapter 3 is amended as set forth below.

Dated: August 27, 1980.

Murray N. Weinstein,

Acting Deputy Assistant Secretary for Grants and Procurement.

Under Part 3-7, Contract Clauses, Subpart 3-7.50, Special Contract Clauses, is amended by deleting section 3-7.5024, Statement of cost and personnel responsible for report, and substituting the following. In addition, the table of contents of Part 3-7 is amended to reflect the new section title.

Subpart 3-7.50—Special Contract Clauses

Sec.

* * * * *

3-7.5024 Consulting services reporting.

* * * * *

§ 3-7.5024 Consulting services reporting.

The contracting officer shall include the following clause in every contract for consulting services as defined in Chapter 8-15 of the General Administration Manual:

Consulting Services Reporting

The Contractor shall set forth on the cover of every report submitted pursuant to this contract the following information: (a) Name and business address of the Contractor; (b) Contract number; (c) Contract dollar amount; (d) Whether the contract was competitively or noncompetitively awarded; (e) Name of the Department's project officer and complete office identification and address; and (f) Names of the managerial and professional personnel responsible for the content and preparation of the report.

[FR Doc. 80-28066 Filed 9-12-80; 8:45 am]

BILLING CODE 4110-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-5897]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables propery owners to purchase flood insurance at rates made listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Illinois	Henry	Cleveland, village of	1707488	Apr. 8, 1977, emergency, Aug. 1, 1980, regular, Aug. 1, 1980, suspended, Aug. 21, 1980 reinstated.	May 13, 1977.
Oklahoma	Seminole	Wewoka, city of	4001938	Mar. 6, 1975, emergency, July 16, 1980, regular, July 16, 1980, suspended, Aug. 21, 1980, reinstated.	June 14, 1974 and May 14, 1976.
Ohio	Greene	Beavercreek, city of	390676	Aug. 27, 1980, emergency	
Missouri	Holt	Corning, town of	290159	Aug. 28, 1980, emergency	Feb. 6, 1976.
Illinois	Lake	Lincolnshire, village of	1703788	Jan. 26, 1973, emergency, July 16, 1980, regular, July 16, 1980, suspended, Aug. 29, 1980, reinstated.	Nov. 9, 1973 and Nov. 19, 1976.
Ohio	Guernsey	Quaker City, village of	390653A	Aug. 28, 1980 emergency	Sept. 29, 1978.
Texas	Cameron	Santa Rosa, city of	480114A	Aug. 29, 1980, emergency	May 17, 1974 and Apr. 2, 1976.

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

Issued: September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-28357 Filed 9-12-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 5896]

List of Communities with Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or October 15, 1980, whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell National Flood Insurance Program (202) 426–1460 or Toll Free Line 800–424–8872 Room 5150 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 days period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as many have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin 30 days after the date of publication in the Federal Register (October 15, 1980) or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the Federal Register (October 15, 1980) on the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 or Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001–4128).

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 65.3 List of communities with special hazard areas (FHBMs in effect).

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

Issued: September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

BILLING CODE 6718-03-M

EFFECTIVE DATE September 2, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
MT	300144	Blaine County (Unincorporated Area)	0006C	I	FL	B	1	3	1	2-7-78 2-6-79	N/A	9 16	N/A	N/A	The Honorable Merle Thorstad Chairman, Blaine County Commissioners P.O. Box 278 Chinook, MT 59523 (406) 357-3250
ND	380033	Grand Forks County (Unincorporated Area)	0001A 0002A 0003A 0004A 0005A 0006A 0007A 0008A 0009A 0010A 0011A 0012A 0013A 0014A 0015A 0016A 0017A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. A. B. Dickie Planning and Zoning Commission P.O. Box 726 Grand Forks, ND 58201 (701) 775-2571
TX	481562	City of Santa Fe (Galveston County)	0001A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	The Honorable Jim Wood Mayor, City of Santa Fe P.O. Box 946 Alta Loma, TX 77510 (713) 925-6412

EFFECTIVE DATE September 5, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
MN	270131	City of Rushford Vil. (Fillmore Co.)	Index 0001B 0002B	I	FL	B	4	2	1	N/A	N/A	20	N/A	N/A	Kermit Holder, Mayor Rushford, MN 55971 Phone: (507) 864-2446
PA	423636	Twp. of North Shenango (Crawford Co.)	Index 0001A 0002A 0003A	I	FL	B	1	2	1	N/A	N/A	6	N/A	N/A	James Ellis, Chairman Twp. Board of Supervisors R.D. 1 Espyville Station, PA 16414 Phone: (412)-927-2467
PA	421798	Twp. of Pulaski (Lawrence Co.)	Index 0001A 0002A	I	FL	B	1	3	1	1/24/75	N/A	9 10 16	N/A	N/A	Michael Beck, Chairman Twp. Board of Supervisors P.O. Box 235 New Bedford, PA 16140 Phone: (412) 964-8057
PA	421676	Twp. of Richhill (Greene Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	1/17/75	N/A	9 10 16	N/A	N/A	Harold Fernigan, Chairman Twp. Board of Supervisors Municipal Building Box 86 Wind Ridge, PA 15380 Phone: (412) 428-4294 home (412) 428-4465 Twp. Bldg.

EFFECTIVE DATE September 5, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FIRM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	422449	Twp. of Union (Jefferson Co.)	Index 0001A	I	FL	B	1	3	/	12/27/74	N/A	9 10 16	N/A	N/A	John Monks, Chairman Twp. Board of Supervisors R.D. 1 Corsica, PA 15829 Phone: (814) 379-3521
PA	422451	Twp. of Washington (Jefferson Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	/	2/7/75	N/A	9 10 16	N/A	N/A	William Crawford, Chairman Twp. Board of Supervisors R.D. 1 Falls Creek, PA 15840 Phone: (814) 371-6749
MS	280095 B	Town of Marion (Lauderdale Co.)	01	I	FL	B	1	3	1	1/4/74 1/16/76	N/A	8 9 10	N/A	N/A	Mr. John Crocker, Mayor Town of Marion P. O. Box 35 Marion, MS 39342 (601) 483-9573
MS	280175	Town of Tylertown (Walthall Co.)	0005B	I	FL	B	1	3	1	6/28/74 11/19/76	N/A	8 10	N/A	N/A	Lon Roberson, Mayor Town of Tylertown P. O. Box 191 Tylertown, MS 39667 (601) 876-4011
IN	470137	T. Clarksville (Montgomery Co.)	0005 0010 0015 0020	I	FL	B	1	3	1	9/6/74 8/6/76	N/A	8 9 10	N/A	N/A	Ted Crozier, Mayor City of Clarksville Clarksville, TN 37040 (615) 647-5378

EFFECTIVE DATE September 9, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
AR	050452	Mississippi County (Unincorporated Area)	0003C 0004C	I	FL	B	1	3	/	10-18-77 5-29-79	N/A	9 16	N/A	N/A	The Honorable A. A. "Shug" Banks County Judge Mississippi County Courthouse Blytheville, AR 72315 (501) 763-3212
CA	060337	Santa Clara County (Unincorporated Area)	0001C	I	FL	B	1	3	/	6-20-78 10-30-79	N/A	10 20	N/A	N/A	Mr. Raffi Sarkisian Land Development Coordinator County Government Center, East Wing 70 West Hedding Street San Jose, CA 95110 (408) 299-2454

EFFECTIVE DATE September 12, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
IL	170261	Village of Gardner (Grundy Co.)	0001A	I	FL	B	3	2	1	N/A	N/A	6	N/A	N/A	Raymond Serena, Mayor P.O. Box 545 Gardner, IL 60424 Phone: (815) 237-2592
IL	170195	City of Tuscola (Douglas Co.)	0001B	I	FL	B	1	3	1	11/30/73 7/ 9/76	N/A	9 10 16	N/A	N/A	Chris Hill, Mayor 600 East South Line Road Tuscola, IL 61953 Phone: (217) 253-4150
PA	421332	Twp. of Bloomfield (Bedford Co.)	Index 0002A	I	FL	B	4	3	1	1/31/75	N/A	9 10 16	N/A	N/A	Robert Hoover, Chairman Twp. Board of Supervisors R.D. Roaring Springs, PA 16673 Phone: (814) 224-4404
PA	421334	Twp. of Colerain (Bedford Co.)	Index 0001A 0002A 0003A	I	FL	B	4	3	1	1/ 3/75	N/A	9 10 16	N/A	N/A	A. James Diehl, Chairman Twp. Board of Supervisors R.D. 4 Bedford, PA 15522 Phone: (814) 847-2243

EFFECTIVE DATE September 12, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	421339	Twp. of Hopewell (Bedford Co.)	Index 0001A 0002A 0003A	I	FL	B	1	3	1	1/ 3/75	N/A	9 10 16	N/A	N/A	Dennis Browell, Chairman Twp. Board of Supervisors R.D. 1 Hopewell, PA 16650 Phone: (814) 928-4501
PA	422044	Borough of Meyersdale (Somerset Co.)	0001A	I	FL	B	1	3	1	11/15/74	N/A	9 10 16	N/A	N/A	Harry Finigan, Mayor 611 2nd Street Meyersdale, PA 15552 Phone: (814) 634-5222
PA	422393	Twp. of Randolph (Crawford Co.)	Index 0001A 0003A 0004A	I	FL	B	1	3	1	1/10/75	N/A	9 10 16	N/A	N/A	Francis Merle Burchard Chairman, Twp. Board of Supervisors R.D. 2 Guys Mills, PA 16327 Phone: (814) 789-4436

EFFECTIVE DATE September 16, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
CA	060700	City of Atascadero (San Luis Obispo County)	0001A 0002A	I	FL	B	4	2	I	N/A	N/A	N/A	N/A	N/A	The Honorable Robert J. Wilkins, Jr. Mayor, City of Atascadero Administration Building 6501 Lewis Avenue P.O. Box 747 Atascadero, CA 93422 (805) 466-8000
MT	300059	Powell County (Unincorporated Area)	0001A thru 0005A; 0007A thru 0012A; 0014A; 0015A; 0017A thru 0023A; 0025A thru 0027A; 0029A; 0030A	I	FL	B	4	2	I	N/A	N/A	N/A	N/A	N/A	Mr. Thomas A. Beck County Commissioner Powell County Commissioners Office P.O. Box 271 Deer Lodge, MT 59722 (406) 846-2772

EFFECTIVE DATE September 19, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
OH	390292	City of Jackson (Jackson Co.)	0001C	I	FL	B	1	3	I	5/17/74 5/21/76 12/24/76	N/A	9 10 16	N/A	N/A	Burleigh Oiler, Mayor Memorial Building P.O. Box 664 Jackson, OH 45640 Phone: (614) 286-3224
PA	421512	Twp. of Beccaria (Clearfield Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	I	3/28/75	N/A	9 10 16	N/A	N/A	Marlin Shope, Chairman Twp. Board of Supervisors R.D Coalport, PA 16627 Phone: (814) 672-8716
PA	422510	Twp. of Black (Somerset Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	I	1/24/75	N/A	9 10 16	N/A	N/A	Barry Dunmyer, Chairman Twp. Board of Supervisors R.D. 1 Rockwood, PA 15557 Phone: (814) 926-3329
PA	422220	Twp. of Franklin. (York Co.)	Index 0001C 0002C 0003C	I	FL	B	1	3	I	11/ 8/74 5/14/76 12/10/76	N/A	9 10 16	N/A	N/A	Lorin Stough, Chairman Twp. Board of Supervisors R.D. 1 Dillsburg, PA 17019 Phone: (717) 432-5695

EFFECTIVE DATE September 19, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	421609	Twp. of Highland (Elk Co.)	Index 0001A 0003A 0004A 0006A	I	FL	B	1	3	1	1/10/75	N/A	9 10 16	N/A	N/A	Patricia Bouch, Chairman Twp. Board of Supervisors James City, PA 16734 Phone: (814) 837-6377
PA	421612	Twp. of Jones (Elk Co.)	Index 0002A 0003A 0004A 0005A 0006A 0007A 0008A	I	FL	B	1	3	1	2/21/75	N/A	9 10 16	N/A	N/A	Adam Szymanski, Chairman Twp. Board of Supervisors R.D. 1 Wilcox, PA 15870 Phone: N/A

EFFECTIVE DATE 9-19-80

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
AL	010094	Hale County	0025 0050 0075 0100 0125 0150 0175 0200 0225 0250	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Hale County County Office Building 1001 Main Street Greensboro, AL 36744
TN	470113	C. of Jackson (Madison Co.)	0005 0010 0015 0020	I	FL	B	1	3	1	11/1/74 9/2/77	N/A	8 9 10	N/A	N/A	Robert Conger, Mayor City of Jackson 105 N. Church Street Jackson, TN 38301 (901) 423-4550

EFFECTIVE DATE September 23, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FIRM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FIRM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
AK	020024	North Slope Borough (Unincorporated Area)	0001A 0002A 0003A 0004A	I&C	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	The Honorable Eben Hopson Mayor, North Slope Borough P.O. Box 69 Barrow, AK 99723 (907) 852-2611

EFFECTIVE DATE September 26, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FIRM	9 Status of FIRM	10 Previous Map Dates FIRM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	422388	Township of Gussewago (Crawford Co.)	Index 0001A 0003A	I	FL	B	1	3	1	1/10/75	N/A	9 10 16	N/A	N/A	Arthur Mook, Chairman Twp. Board of Supervisors RD 3 Saegertown, PA 16433 Phone: (814) 763-4541
PA	422055	Township of Somerset (Somerset Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	1/24/75	N/A	9 10 16	N/A	N/A	Elwood Shaulis, Chairman Twp. Board of Supervisors Municipal Building Somerset, PA 15501 Phone: (814) 445-4675

EFFECTIVE DATE September 30, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 603 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
ND	380639	City of Argusville (Cass County)	0001A	I	FL	B	1	2	/	N/A	N/A	N/A	N/A	N/A	The Honorable Jerome J. Posch Mayor, City of Argusville City Hall Argusville, ND 58005 (701) 484-5534

[FR Doc. 80-28358 Filed 9-12-80; 8:45 am]

BILLING CODE 6718-03-C

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 148

[CGD 77-225]

Low Specific Activity Radioactive Material

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends certain regulations pertaining to the transportation of low specific activity radioactive materials on board vessels. The specific change is to require a measure of containment to prevent dispersal of the material under transport.

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Lieutenant Kenneth M. Norris, USCG, Office of Merchant Marine Safety (G-MHM-2), 2100 Second Street, SW., Washington, D.C. 20593. (202) 426-1577.

SUPPLEMENTARY INFORMATION: On 30 March 1978, the Coast Guard published a notice of proposed rulemaking (Docket 77-225; 43 FR 13402) that addressed the comparative lack of cargo containment required by Title 46 of the Code of Federal Regulations. The Materials Transportation Bureau (MTB), another agency of the Department of Transportation, issued a massive revision of 49 CFR regulations detailing radioactive material transportation. Publication of the final Coast Guard rule was suspended until comments on the MTB rule were examined.

Low specific activity radioactive materials are authorized for bulk transport by vessel. Most often, shipments are in the form of raw uranium or thorium ore enroute to milling processes or of tailings from the milling processes consigned to storage facilities. Airborne contamination of radioactive particles presents a health hazard to organisms that can ingest or inhale such particulate matter. For unpackaged shipments in transport vehicles or freight containers 49 CFR 173.392(d) recommends closed transport vehicles to control contamination. It was the intent of the regulations to control contaminations issuing from any form of transportation. This problem was not addressed, however, in 46 CFR Part 148, Solids in Bulk. At present, bulk shipments of low specific activity radioactive materials may be carried in open barges.

No comments were received on this proposal. Accordingly, the proposed amendment in hereby adopted without changes, as set forth below.

Dated: September 4, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

1. By adding a new paragraph (c) to § 148.04-1 to read as follows:

§ 148.04-1 Radioactive material, low specific activity (LSA).

* * * * *

(c) Each hold or barge used for transportation of any of these materials must be effectively closed or covered to prevent dispersal of the material during transportation.

(46 U.S.C. 170(7), 49 CFR 1.46(t))

[FR Doc. 80-28074 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

Fishermen's Protective Act; Correction

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

ACTION: Correction to section numbers for Subpart C.

SUMMARY: On October 25, 1979, Final Rules for Section 10 of the Fishermen's Protective Act (22 U.S.C. 1980) were published in the Federal Register (44 FR 61546). The Section numbers in that publication were incorrect. This notice rectifies that error.

EFFECTIVE DATE: September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Michael L. Grable or Ms. Kathryn E. Hensley, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, Telephone (202) 634-4688.

SUPPLEMENTARY INFORMATION: On October 25, 1979, Final Rules for Section 10 of the Fishermen's Protective Act (22 U.S.C. 1980) were published in the Federal Register (44 FR 61546). The numerical section references in that publication were designated §§ 258.20 through 258.30 inclusively. These numerical references were incorrect and should have been designated §§ 258.30 through 258.40 inclusively. This Federal Register notice rectifies the previously made error by correctly renumbering the Section numbers.

Signed at Washington, D.C., on the 9th day of September 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

50 CFR Part 258 is amended by inserting the following numerical section references wherever they appear throughout the text of Subpart C:

Subpart C—Compensation for Fishing Vessel or Fishing Gear Damage in a U.S. Fishery Attributable to Other Vessels or Acts of God.

Sec.

258.30 Purpose and scope.
258.31 Definitions.
258.32 Eligibility.
258.33 Applications.
258.34 Burden of proof and presumptions.
258.35 Amount of compensation.
258.36 Initial determination.
258.37 Final determination.
258.38 Subrogation.
258.39 Payment.
258.40 Penalties.

Authority: Pub. L. 95-376, 92 Stat. 715 (22 U.S.C. 1980). Subpart C—Compensation for Fishing Vessel or Fishing Gear Damage in a U.S. Fishery Attributable to Other Vessels or Acts of God.

[FR Doc. 80-28440 Filed 9-12-80; 8:45 am]

BILLING CODE 3510-06-M

Proposed Rules

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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

Commodity Credit Corporation

7 CFR Part 1421

1980 Crop Sunflower Seed Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this notice is to advise that the Commodity Credit Corporation (CCC) is considering supporting prices to domestic producers of 1980-crop sunflower seed either through a loan and purchase agreement program or through a purchase agreement program only. The levels of support being considered are: $6.00, $7.00 and $8.00 per hundredweight (cwt.).

The notice also sets forth the proposed general provisions under which producers may obtain price support on their 1980-crop of sunflower seeds.

The proposed price support program would be implemented pursuant to authority granted by Section 301 of the Agricultural Act of 1949, as amended.

This notice invites written comments on the type of program to be offered, the level of support and the general operating provisions.

DATE: Comments must be received on or before October 15, 1980.

EFFECTIVE DATE: Mail comments to Mr. Jeffress A. Wells, Director, Production Adjustment Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Harry A. Sullivan, Agricultural Program Specialist, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013, 202/447-7951.

The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044, and has been classified "significant".

The title and number of the federal assistance programs that this notice applies to are: Title: Commodity Loans and Purchases; Number 10.051 as found in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

A notice asking for comments relative to the implementation of a price support program for sunflower seed was published in the May 2, 1980, issue of the Federal Register (45 FR 29302). Interested persons were given 30 days in which to comment. A total of 70 responses were received with 53 favoring a program and 17 opposed. Of producers responding, 86 percent (38) favored a price support program and 14 percent (6) opposed a program. Two members of the Farm bureau, three members of the Farmers Union, five employees of credit agencies, a grain merchandiser, the North Dakota Chamber of Commerce and one member of WIFE (Women Involved in Farm Economics) supported a program. Two grain merchandisers, a brewery, one member of WIFE, two consumers and five in an unknown category expressed opposition to a program.

Support prices recommended ranged between 6 cents to 10 cents per pound. Three producers suggested 7 to 8 cents while seven recommended 10 cents. The Farm Bureau members felt that 6 to 7 cents would be sufficient while the Farmers Union members recommended 8 to 9 cents.

The members of the Farm Bureau and the Farmers Union, along with the North Dakota Chamber of Commerce, indicated that a recourse loan program would be preferable to a nonrecourse loan program.

Since prior notice has been given allowing 30 days for comment on the need for and provisions of a price support program and in order to promulgate a program for the 1980 crop in time for producers to make the most effective use of the progam, I have determined that it is impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Accordingly, the public comment period for this notice is being limited to 30 days.

Section 301 of the Agricultural Act of 1949, as amended (7 U.S.C. 1477), authorizes the Secretary to make price support available to producers of sunflower seed through loans, purchases or other operations at a level not in excess of 90 percent of the parity price. It has been determined that the parity price for sunflower seed for August 1980 is $19.70 per hundredweight (cwt.). Therefore, the maximum evel of support at this parity price is $17.73 per cwt.

Section 401 (b) of the Agricultural Act of 1949, as amended (7 USC 1421 (b)), requires that in determining whether price support shall be made available and in determining the level of support, consideration be given to the following eight factors:

1. *Supply of the commodity in relation to the demand therefor:* Sunflower seed production in 1979 totaled about 77.2 million cwt., 90 percent above 1978. Including beginning stocks of 2.9 million cwt., the total supply for the 1979-80 marketing year is 80.0 million cwt., an increase of 89 percent over 1978-79.

Utilization is also increasing. Crushings during the 1979-80 marketing year are projected at 12.1 million cwt., an increase of about 88 percent over the previous year. Exports are projected at 39.7 million cwt., up about 32 percent from 1978-79. If these projections are realized, total use will be 41 percent above that of the preceding year. Even so, carryover at the end of the season is expected to increase to 24.3 million cwt., 21.4 million cwt. above the 1978-79 level.

In respose to the lower prices for sunflower seed in 1979, planted acreage in 1980 declined to 4.2 million acres, about 30 percent below 1978. This, coupled with the severe drought in the sunflower producing areas, is expected to result in production of 48.5 million cwt., 17 percent below 1978.

Domestic crushing capacity is expected to increase this year. U.S. crush is projected to be 16.0 million cwt., up 32 percent from 1979. Export of sunflower seed is projected at 44.1 million cwt., 11 percent above 1979. Ending stocks from the 1980 crop are

estimated at 9.3 million cwt., down 62 percent from the projected 1979 level.

2. *Price support levels at which other commodities are being supported.* Price support levels for some other 1980 crops of agricultural commodities are: dairy, $11.49 per cwt.; upland cotton, 48 cents per pound; wool, $1.23 per pound; mohair, $2.90 per pound; wheat, $3.00 per bushel; corn, $2.25 per bushel; sorghum, $2.14 per bushel; oats, $1.16 per bushel; rye, $1.91 per bushel; soybeans, $5.02 per bushel; rice, $7.12 per hundredweight; peanuts, $455 per short ton; honey, 50.3 cents per pound, and flaxseed, $4.50 per bushel. These price support levels range between 37 percent to 75 percent of parity. Price support for sunflower seed at the levels being considered ($6, $7 and $8 per hundredweight) would be 31, 36 and 41 percent of parity, respectively.

3. *The availability of funds.* Commodity Credit Corporation funds are estimated to be available to carry out a program if one is implemented.

4. *The perishability of the commodity.* The industry has no experience with storage of sunflower seed over extended periods. Reports from North Dakota State University indicate no significant difference in storage problems with sunflower seed compared to other oilseed crops. However, because of its high oil content, if CCC acquired any stocks after maturity of loans of average life duration, refrigerated storage or crushing might be deemed preferable to conventional storage.

5. *The importance of the commodity to agriculture and the national economy.* Sunflower harvested acreage in 1979, an estimated 5.63 million acres (oilseed varieties only), exceeded that of durum wheat (3.93 million acres), rice (2.98 million acres), sugarbeets and sugarcane (1.12 million and 0.73 million acres, respectively), peanuts (1.53 million acres), all potatoes (1.28 million acres), rye (0.95 million acres), and tobacco (0.83 million acres)—which, with the exception of potatoes, are all price-supported commodities.

Sunflower seed exports make a positive contribution to the U.S. balance of payments. Export value in 1978–79 and 1979–80 was $330 million and $342 million, respectively. The farm value of production, an important factor in local farming economies within the main production areas, was $450 million in 1978–79 and $665 million in 1979–80.

Sunflower is an important rotation crop in areas where wheat production has historically been confined to a two-year rotation of wheat-fallow due to low moisture conditions. The addition of sunflower can lengthen rotation patterns by an additional year due to its general ability to withstand stress because of a very deep taproot system which permits it to make more efficient use of scarce groundwater.

6. *Ability to dispose of stocks acquired under the program.* Market prices for sunflower seed are projected to be above proposed support rates. Consequently, no acquisitions of stocks would be anticipated if a support program is implemented for the 1980 crop. Should stock takeover occur, CCC would need to seriously consider crushing prior to further storage. In addition to the obvious costs associated with processing and storage of both oil and meal, CCC would incur the costs of marketing these products. Precedent for toll crushing of a similar commodity has been set with flaxseed. Under prior programs, processors have agreed to process flaxseed in return for the protein meal.

7. *Need for offsetting temporary loss of export markets.* Exports for the 1979 and 1980 crops are estimated to continue rising at an impressive rate. It appears that loss of export markets is not a consideration relevant to the establishment of a price support program for the 1980 crop of sunflower within the range of support levels examined.

8. *Ability and willingness of producers to keep supplies in line with demand.* Producers of oilseed type sunflower indicated their intention as of January 1, 1980, to plant 5.3 million acres in 1980, a reduction of 10 percent from the 1979 level. Farm prices at the time the planting intentions survey was conducted are estimated to have been below $9.00 per cwt. Farm prices had not improved by planting time and producers' actual planted acreage dropped 30 percent from 1979, to 4.2 million acres. The reduction in plantings can be construed as indicating producer's recognition of the current over-supply situation and a willingness to adjust acreage accordingly.

Consideration is being given by CCC to supporting prices of 1980-crop sunflower seeds either through a loan and purchase agreement program or through a purchase agreement program only. The levels of support being considered are $6.00, $7.00 and $8.00 per cwt.

In the interest of obtaining information which will assist in establishing the provisions of a price support program for the 1980 crop of sunflower seed, it is requested that respondents to this invitation for comments give careful consideration to all of the matters discussed above and to the general provisions of the proposed rules following below. Subparts providing the provisions for the two different types of programs proposed are listed as proposed rules. Sections 1421.750 through 1421.758 provide regulations governing a proposed loan and purchase program for sunflower seed. Sections 1421.775 through 1421.783 provide regulations governing a proposed purchase program only.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 1421 be amended by adding a new "Subpart—1980 and Subsequent Crops Sunflower Seed Loan and Purchase Program Regulations" or a new "Subpart—1980 and Subsequent Crops Sunflower Seed Purchase Program Regulations" to read as follows:

Subpart—1980 and Subsequent Crops Sunflower Seed Loan and Purchase Program Regulations

Sec.

1421.750 Purpose.
1421.751 Eligible sunflower seed.
1421.752 Determination of quality.
1421.753 Determination of quantity.
1421.754 Warehouse receipts.
1421.755 Fees and charges.
1421.756 Warehouse charges.
1421.757 Maturity of loans.
1421.758 Support rates.

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); Sec. 5, 62 Stat. 1072, as amended (15 U.S.C. 714c); and Secs. 301, 401, 63 Stat. 1051, as amended (7 U.S.C. 1447, 1421).

Subpart—1980 and Subsequent Crops Sunflower Seed Loan and Purchase Program Regulations

§ 1421.750 Purpose.

This supplement contains program provisions which, together with the General Regulations Governing Price Support for the 1978 and Subsequent Crops and any amendments thereto or revisions thereof (such regulations are referred to in this subpart as "General Regulations") and the annual crop year supplement issued with respect to the crop of sunflower seed for which price support is being requested, set forth the requirements with respect to price support for the 1980 and subsequent crops of sunflower seed.

§ 1421.751 Eligible sunflower seed.

(a) *General.* (1) To be eligible for a loan or purchase, the sunflower seed must be merchantable for food or feed or for other uses, as determined by CCC, and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to man or animals. (2) The sunflower seed must have also been produced by a producer who has complied with the set-aside and normal crop acreage requirements, if any, as prescribed in parts 718, 722,

728, 730, 775 and 791 of this title and any amendments thereto.

(b) *Warehouse-stored loan and purchase requirements.* To be eligible for loan or purchase sunflower seed must meet the following requirements:

(1) The sunflower seed shall not contain over 12 percent moisture unless the warehouse receipt representing the sunflower seed is accompanied by a supplemental certificate which provides that the warehouse operator shall deliver sunflower seed which does not contain moisture in excess of 12 percent, and is otherwise of eligible quality.

(2) The sunflower seed shall not have more than 10 percent total damage, including 1.0 percent heat damage and 5.0 percent dehulled seed.

(3) The sunflower seed shall not grade sour, musty, heated or have any commercially objectionable foreign odor.

§ 1421.752 Determination of quality.

The grade, grading factors, and all other quality factors shall be based on standards determined by CCC for sunflower seed whether or not determinations are made on the basis of an official inspection.

§ 1421.753 Determination of quantity.

When the quantity is determined by weight, a hundredweight shall be 100 pounds of sunflower seed free of dockage.

(a) *In warehouse.* The quantity of sunflower seed on which a warehouse storage loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net weight specified on the warehouse receipt or on the supplemental certificate, if applicable. If the sunflower seed has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate, if applicable, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight of 1.2 times the percentage difference between the moisture content of the sunflower seed when received, and 12 percent.

(b) *On farm.* The quantity of sunflower eligible to be placed under a farm storage loan shall be determined in accordance with § 1421.17. The quantity acquired by CCC from farm storage under a loan or purchase shall be determined by weight.

§ 1421.754 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a loan or purchase must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade of sunflower seed.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt, must show: (1) Gross weight and net weight, (2) grade, (3) test weight, (4) moisture, (5) dockage, (6) damaged seed, (7) any other grading factor(s), (8) whether the sunflower seed arrived by rail, truck or barge, (9) the date the sunflower seed was received or deposited in the warehouse, and (10) the storage start date.

(c) *Where warehouse receipt shows excess moisture.* If a warehouse receipt tendered as security for a loan or purchase indicates that the sunflower seed contains over 12 percent moisture, the warehouse receipt must be accompanied by a supplemental certificate as provided in § 1421.751 (b) (1) in order for the sunflower seed to be eligible for price support. When the warehouse receipt shows a moisture content of over 12 percent and the sunflower seed has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the sunflower seed to a moisture content of not over 12 percent which shall reflect a drying or blending shrink as specified in § 1421.753 (a). The supplemental certificate must state that no lien for processing will be claimed by the warehouseman from Commodity Credit Corporation or any subsequent holder of the warehouse receipt. In the case of conditions specified in this paragraph, the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipt.

(d) *Liens.* Warehouse receipts and the sunflower seed represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.756. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the sunflower seed when CCC is holder of the warehouse receipt.

§ 1421.755 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.756 Warehouse charges.

The Kansas City Commodity Office (KCCO) approved list of handling and storage rates will provide the rates to be deducted from the amount of the loan or purchase price in the case of sunflower seed stored in an approved warehouse operated under the UGSA. Such deduction shall be based on entries shown on the warehouse receipts. If written evidence is submitted with the warehouse receipts that storage charges through the loan maturity date have been prepaid or that the producer has arranged with the warehouse operator for the payment of storage charges through loan maturity and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt: "Warehouse storage charges through the applicable maturity date accrued or to accrue prior to the acquisition of the sunflower seed by CCC on sunflower seed represented by this warehouse receipt have been paid or otherwise provided for and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt," no storage deductions shall be made. The beginning date to be used for computing the storage deduction on sunflower seed stored in warehouses operating under the UGSA shall be the latest of the following: (a) The date the sunflower seed was received or deposited in the warehouse, (b) the date storage charges start, or (c) the day following the date through which storage charges have been paid.

§ 1421.757 Maturity of loans.

Loans mature on demand but no later than the date specified in the annual crop year supplement to the regulations in this subpart.

§ 1421.758 Support rates.

Basic county support rates for sunflower seed and the schedule of premiums and discounts will be set forth in the annual crop year supplement to the regulations contained in this subpart. (The basic county support rate for 1980 crop sunflower seed will be determined using a national average price support rate of $6.00, $7.00 or $8.00 per hundredweight. The final national average price support rate will be determined after comments have been reviewed.) Farm-stored sunflower seed loans will be made at the applicable basic county support rate adjusted, where applicable, for the Weed Control discount. The support rate for warehouse-storage loans and for sunflower seed acquired under a loan or by purchase shall be the applicable basic support rate adjusted in accordance with the provisions of this section, and the premiums and discounts in the annual crop year supplement on the basis of quality factors on

warehouse receipts or supplemental certificates in the case of sunflower seed stored in or delivered to an approved warehouse or on such other form as CCC may prescribe in the case of sunflower seed delivered to other than an approved warehouse. Settlement of loans and purchases shall be made in accordance with the provisions of § 1421.22. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(a) *Basic support rates for farm-stored sunflower seed.* The applicable basic support rate for farm-stored loans shall be the basic county support rate established for the county in which the sunflower seed is stored.

(b) *Basic support rates for warehouse-stored sunflower seed received by rail or utilizing combination barge-rail rates.*—(1) *When shipped by rail.* The applicable basic support rate for warehouse-stored loans on sunflower seed which was received by rail and stored in an approved warehouse which is in line of normal commercial channels of trade shall be determined by adding to the basic support rate established for the county from which the sunflower seed was shipped, the amount of freight charges per bushel actually paid in and an amount equal to the truck receiving and rail loading-out charges in effect for the shipping warehouse. The freight rate paid into the storage point shall not exceed the lowest rate which will permit the storage intransit privilege and protect the lowest single rate applying from origin through point of storage to a normal trade channel market that would be used in commercial channels of trade. If the sunflower seed is stored in an approved warehouse at a transit point which takes a penalty by reason of backhaul or out-of-line movement when destined to a normal trade channel market that would be used in commercial channels of trade, such penalty or cost by reason of such movement shall be deducted from the support rates as determined in this paragraph.

(2) *When shipped utilizing combination barge-rail rates.* The applicable basic support rate for warehouse storage loans on sunflower seed which was shipped utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission and stored in an approved warehouse shall be determined by adding to the basic support rate established for the county from which the sunflower seed was shipped, the amount of freight charges per bushel actually paid in and an amount equal to the truck receiving and rail loading-out charges computed in accordance with the applicable rates of the UGSA in effect at the time the loan is made. The freight rate paid into the storage point shall be a rate which will permit the storage intransit privilege and protect the lowest single car or barge freight rate applying from origin through point of storage to a normal trade channel that would be used in commercial channels of trade. If the sunflower seed is stored in an approved warehouse at a transit point which takes a penalty by reason of backhaul or out-of-line movement when destined to a normal trade channel that would be used in commercial channels of trade, such penalty of cost by reasons of such movement shall be deducted from the support rates as determined in this paragraph.

(c) *Basic support rates for warehouse-stored sunflower seed received by truck or nontariff barge.* (1) The basic support rate for sunflower seed delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the sunflower seed is stored. (2) The basic support rate for sunflower seed delivered by truck by the producer to an in-line warehouse beyond normal delivery point shall be the support rate for the county from which shipped plus the smaller of the actual freight charge or the following truck freight rate from the farm to the storing warehouse minus the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0-19	
20-50	$0.10 per cwt.
51-100 add	.0017 per cwt per mile.
101 and over add	.0007 per cwt per mile.

(3) The basic support rate for sunflower seed delivered to a warehouse and shipped by truck to an in-line warehouse shall be the support rate for the county in which the shipping warehouse is located plus truck freight from the schedule shown in subparagraph (c)(2) plus truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic support rate for sunflower seed shipped by barge or truck-barge to an in-line warehouse at negotiated rate shall be the support rate for the county from where shipped plus truck freight from the schedule shown in paragraph (c)(2) of this section plus origin truck receiving and load-out charge.

(d) *Storing responsibilities.* The storing warehouseman in the case of sunflower seed received by rail or utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission shall be responsible for determining the normal trade channel routes via the storing warehouse that will protect the lowest freight rate to the designated normal trade channel market that would be used in commercial channels of trade, and for protecting such routes. The storing warehouseman shall also execute supplemental certificates showing (1) the rate of freight paid into the storage point, (2) the amount of penalty if any, for backhaul or out-of-line movement, (3) the applicable normal trade channel market that would be used in commercial channels of trade, and (4) any other information which may be prescribed by CCC. The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for their failure to comply with the provisions of this paragraph (d) will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

Subpart—1980 and Subsequent Crops Sunflower Seed Purchase Program Regulations

Sec.

1421.775 Purpose.
1421.776 Availability, eligible quantity and delivery.
1421.777 Eligible sunflower seed.
1421.778 Determination of quality.
1421.779 Determination of quantity.
1421.780 Warehouse receipts.
1421.781 Delivery charges.
1421.782 Warehouse charges.
1421.783 Support rates.

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714 b); Sec. 5, 62 Stat. 1072, as amended (15 U.S.C. 714 c); and Secs. 301, 401, 63 Stat. 1051, as amended (7 U.S.C. 1447, 1421).

Subpart—1980 and Subsequent Crops Sunflower Seed Purchase Program Regulations

§ 1421.775 Purpose.

This supplement contains program provisions which, together with the General Regulations Governing Price Support for the 1978 and Subsequent Crops and any amendments thereto or

revisions thereof (such regulations are referred to in this subpart as "General Regulations") and the annual crop year supplement issued with respect to the crop of sunflower seed for which price support is being requested, apply to price support purchases for the 1980 and subsequent crops of sunflower seed.

§ 1421.776 Availability, eligible quantity and delivery.

(a) *Where to request price support.* A producer shall request price support at the local county ASCS office of the county in which the sunflower seed is stored or, if in an approved warehouse, at the county in which the producer resides.

(b) *Availability date.* The final availability date applicable to purchases will be specified in the annual crop year supplement to the regulations in this subpart, except that whenever the final date of availability falls on a nonworkday for county ASCS offices, the applicable final date shall be extended to include the next work day.

(c) *Quantity eligible for purchase.* An eligible producer may sell to CCC any or all of the eligible sunflower seed: *Provided,* That the producer executes and delivers to the county office, prior to the final availability date, a Purchase Agreement (Form CCC-614) indicating the maximum quantity of sunflower seed that will be sold to CCC. Delivery points for purchases shall be limited to those approved by the Kansas City Commodity Office.

(d) *Delivery period.* In the case the sunflower seed is not in an approved warehouse, the producer must make delivery of the sunflower seed to CCC within the period of time after the final availability for purchase date shown in the applicable crop supplement in accordance with delivery instructions issued by the county office. Delivery shall be made to the location specified in such instructions.

§ 1421.777 Eligible sunflower seed.

To be eligible for purchase, the sunflower seed (a) must be merchantable for crushing into oil and feed as determined by CCC, (b) must not contain mercurial compounds, toxin-producing molds, or other substances poisonous to humans or animals, and (c) must have been produced by an eligible producer on a farm who has complied with the set aside and normal crop acreage requirements as prescribed in Parts 718, 722, 728, 775 and 791 of this title and any amendments thereto.

§ 1421.778 Determination of quality.

The grade, grading factors and all other quality factors shall be based on standards determined by CCC for sunflower seed whether or not determinations are made on the basis of an official inspection.

§ 1421.779 Determination of quantity.

When the quantity is determined by weight, a hundredweight shall be 100 pounds of sunflower seed free of dockage. The quantity of sunflower seed delivered to or acquired by CCC in an approved warehouse shall be the net weight specified on the warehouse receipt, or on the supplemental certificate if applicable.

§ 1421.780 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with purchases must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade of sunflower seed.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt, must show: (1) Gross weight and net weight, (2) grade, (3) test weight, (4) moisture, (5) dockage, (6) damaged seed, (7) any other grading factor(s), (8) whether the sunflower seed arrived by rail, truck or barge, (9) the date the sunflower seed was received or deposited in the warehouse, and (10) the storage start date.

(c) *Liens.* Warehouse receipts and the sunflower seed represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.782. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the sunflower seed when CCC is holder of the warehouse receipt.

(d) *Freight certificate requirements.* Warehouse receipts representing sunflower seed which has been shipped by rail or by barge utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission, from a county shipping point to a designated point or to a storage point and stored intransit to a normal market location, must be accompanied by supplemental certificates. These certificates must be representative as to origin and date of movement of the sunflower seed and must reflect the rate of freight paid into the storage point and the amount of penalty, if any, for out-of-line haul. The form of the certificates will be prescribed by the commodity office and shall be signed by the warehouse operator.

§ 1421.781 Delivery charges.

A delivery charge of 1.0 cent per hundredweight shall be paid by producers on the quantity of sunflower seed delivered to CCC.

§ 1421.782 Warehouse charges.

(a) *Handling and storage liens.* Warehouse receipts and the sunflower seed represented thereby stored in approved warehouses operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse storage and handling from the date the sunflower seed is deposited in the warehouse for storage.

(b) *Responsibility for storage charges.* If the sunflower seed is in store at an approved warehouse, the producer shall be responsible for storage charges through the date the sunflower seed is acquired by CCC. If such charges have not been paid or provided for by the producer, a deduction shall be made from the settlement to cover such charges. The deduction shall be at the rate approved by CCC for the warehouse.

§ 1421.783 Support rates.

Basic county support rates for sunflower seed and the schedule of premiums and discounts will be set forth in the annual sunflower seed crop supplement to the regulations contained in this subpart. (The basic county support rate for 1980-crop sunflower seed will be determined using a national average purchase rate of $6.00, $7.00 or $8.00 per hundredweight. The final national average purchase rate will be determined after comments have been reviewed.) The support rate for sunflower seed acquired by CCC shall be the applicable basic suport rate adjusted in accordance with the provisions of this section and by the premiums and discounts in the annual sunflower seed crop supplement on the basis of quality factors on warehouse receipts or supplemental certificates in the case of sunflower seed stored in or delivered to an approved warehouse, or on such other form as CCC may prescribe in the case of sunflower seed delivered to other than an approved warehouse. Settlement shall be made in accordance with the provisions of § 1421.22 of the General Regulations.

(a) *Basic support rates for farm-stored sunflower seed.* The applicable basic support rate for farm-stored sunflower seed shall be the basic county support rate established for the county in which the sunflower seed is stored.

(b) *Basic support rates for sunflower seed stored at approved warehouses.* The applicable basic price support rate

for sunflower seed purchased in approved warehouse storage shall be the support rate established for the county in which the warehouse is located. If two or more approved warehouses are located in the same or adjoining towns, villages or cities which have the same freight rate, such towns, villages or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(1) *Support rate for sunflower seed delivered by truck by producer to an in-line warehouse beyond normal delivery point.* The applicable support rate shall be the support rate for the county from which shipped plus the following truck freight allowance from the farm to the storing warehouse minus the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0–19	
20–50	$0.10 per cwt.
51–100	.0017 per cwt per mile.
101 and over	.0007 per cwt per mile.

(2) *Support rate for sunflower seed delivered to a warehouse and shipped by truck to in-line warehouse.* The applicable support rate shall be the support rate for the county in which the shipping warehouse is located plus truck freight from schedule shown in paragraph (b) of this section plus truck receiving and truck load out charges for the shipping warehouse.

(3) *Support rate for sunflower seed shipped by rail or utilizing combination barge-rail rates on file with ICC to in-line warehouse.* The applicable support rate shall be the support rate for the county from which shipped plus freight (from supplemental certificate) plus origin truck receiving and rail load out reduced by any penalty for out-of-line shipment or backhaul.

(4) *Support rate for sunflower seed shipped by truck or barge to in-line warehouse at negotiated rate.* The applicable support rate shall be the support rate for the county from where shipped plus truck freight from the schedule shown in paragraph (b)(1) of this section plus origin truck receiving and load out charge.

Before making final determinations, consideration will be given to any relevant data, views, recommendations, or alternative proposals which are submitted in writing to the Director of the Production Adjustment Division, ASCS–USDA.

All written submissions made pursuant to this notice will be made available for inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3730-South Building.

Signed at Washington, D.C., on September 10, 1980.

Bill Cherry,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-28367 Filed 9-12-80; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Nos. 80–CE–21–AD, 80–CE–22–AD and 80–CE–23–AD]

Gates Learjet Models 24D, 24E, 24F, 25B, 25C, 25D, 25F, 28, 29, 35, 35A, 36 and 36A Airplanes; Cessna Models 340, 340A, 414, 414A, 421B, 421C, 441, 500, 501, 550 and 551 Airplanes; Beech Models 58P, B60, 65–90, C90, 65–A90, B90, E90, F90, H90 (Military Model T–44A), A100, B100, 200, 200C, 200T, A100–1 (Military Model RU–21J), A200 (Military Model C–12A and C–12C), and A200C (Military Model UC–12B) Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the period for the submission of public comments relating to Docket No. 80–CE–21–AD (Gates Learjet Models set forth above), Docket No. 80–CE–22–AD (Cessna Models set forth above) and Docket No. 80–CE–23–AD (Beech Models set forth above) all of which were to close on September 4, 1980. These three Notice of Proposed Rule Making Dockets solicited comments from interested persons on the necessity for the issuance of Airworthiness Directives (ADs) that would require initial and repetitive inspection of the cabin pressurization outflow and safety valves installed on these airplanes, and the replacement of those valves found defective. These ADs would further require that these valves be inspected/replaced before another pressurized flight, following any in-flight instance in which abnormal operation of the pressurization system is noted. A system functional check and report to the FAA are also required following reinstallation of these valves. These extensions are in response to requests from the valve manufacturer and one of the airplane manufacturers that may be affected by the proposed rule making who need additional time in which to prepare and submit their comments.

DATES: Comments must be received on or before October 18, 1980.

ADDRESSES: Send comments on the proposal to: FAA, Central Region, Office of the Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Dockets, No. 80–CE–21–AD; 80–CE–22–AD and 80–CE–23–AD, as appropriate, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Ed Mosman, ACE–213, Aircraft Certification Program, FAA, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942–4281.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the applicable AD Docket Number and be submitted in duplicate to the address specified above. All comments received on or before the extended closing date for comments will be considered by the Administrator before action is taken on the proposed rules. The proposals contained in the three Notices may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the appropriate Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed ADs, will be filed in the applicable Rules Docket.

Three Notices of Proposed Rule Making applicable to the Gates Learjet, Cessna, and Beech Models airplanes listed in the heading of this document were published in the Federal Register on Thursday, July 31, 1980. These Notices were issued because there have been reports in which the outflow and safety valves failed on certain makes of aircraft. In one instance the right windshield was blown out of the airplane. In another occurrence where the right windshield was lost, debris entered the cockpit, and the sun visor reportedly dislodged and damaged the propeller.

Investigation of the failed outflow and safety valves showed that the outflow valve balance diaphragm retention ring had cracked and broken away from the diaphragm assembly. When this

occurred, the valve closed and did not perform its normal pressure relief and depressurization function.

In the event of failure of both the outflow and safety valves, the resulting increase in cabin pressure would not be called to the crew's attention by a warning device, but could be detected by observing the cabin pressure indicator. Should the crew fail to note this rise in cabin pressure, a resulting overpressure condition can occur. This condition may result in structural damage to the cabin, explosive decompression or limit the ability to depressurize the airplane. Since the condition described herein is likely to exist on other airplanes of the same type or similar type design, ADs were proposed, applicable to certain serial numbers of the Gates Learjet, Cessna and Beech Models Airplanes listed in the heading herein. The ADs would require initial and repetitive visual inspections for a broken diaphragm retention ring found in the outflow and safety valves utilized in the cabin pressurization system, and the replacement of those valves found defective. A further visual inspection of the outflow and safety valve diaphragm retention rings would be required prior to the next pressurized flight, in the event an abnormal in-flight operation of the cabin pressurization was noted, where an overpressure condition or the cabin pressure could not be regulated within plus or minus one-half pound per square inch differential (±½ psid). A system functional check in accordance with the manufacturer's applicable maintenance manual would also be required following reinstallation of these valves.

Subsequent to the issuance of these Notices, the FAA has received requests from the manufacturer of the valves and one of the airplane manufacturers who would be affected by the Rule Making, if adopted, stating that more time was needed to effectively study and evaluate the failure data to obtain the information necessary to develop their comments.

The FAA has reviewed these requests and has determined that extending the comment period would afford the requestors as well as other interested persons additional time to furnish comments that should be considered in determining whether final rule making is appropriate and, if so, the opportunity to participate in the development of these final rules. This action is consistent with Executive Order 12044, Improving Government Regulations, and the FAA's desire to assure full public participation in its regulatory actions. The FAA concludes that the public interest would be served by granting additional time for submission of written comments.

Accordingly, the comment period for Docket Nos. 80-CE-21-AD (Gates Learjet Models set forth above), 80-CE-22-AD (Cessna Models set forth above) and 80-CE-23-AD (Beech Models set forth above) is reopened to close on October 18, 1980.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.85 of the Federal Aviation Regulations (14 CFR Sec. 11.85))

Issued in Kansas City, Missouri, on September 3, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-28115 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-NW-15]

Establishment of Control Zone, Oak Harbor, Wash.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a control zone at Oak Harbor, Washington, to provide controlled airspace to protect aircraft executing the airport surveillance radar approach to Runway 25 being developed for Oak Harbor Airpark Airport.

DATES: Comments must be received on or before October 15, 1980.

ADDRESS: Submit comments to Robert L. Brown, Airspace Specialist, (ANW-534), Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, telephone (206) 767-2610.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire.

Communications should identify the airspace docket number and be submitted to the Chief, Operations, Procedures and Airspace Branch, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108. All communications received on or before October 15, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available, before and after the closing dates for comments, in the official docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rule Making by submitting a request to the Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, ANW-530, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108 or by calling (206) 767-2610. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The Federal Aviation Administration (FAA) is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), that would establish a part-time control zone at Oak Harbor, Washington. This airspace is to protect aircraft executing an airport surveillance radar approach which will be provided by Navy Whidbey Approach Control to the Oak Harbor Airport. The proposed action would designate an area within a 5-mile radius of the Oak Harbor Air Park Airport (latitude 48°15'06" N, longitude 122°40'40" W). The effective time would be established in advance by Notice to Airmen and thereafter continuously published in the Airport/Facility Directory. Section 71.171 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 356).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 356) by adding a control zone at Oak Harbor, Washington, to read as follows:

Oak Harbor, Wash.

Within a 5-mile radius of the Oak Harbor Air Park Airport (latitude 48°15'06" N, longitude 122°40'49" W), excluding the portion within the Whidbey Island, Washington, Control Zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will

thereafter be continuously published in the Airport/Facility Directory.

(Secs. 307(a), and 1110, Federal Aviation Act of 1958, (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Seattle, Washington, on September 4, 1980.

Jonathan Howe,

Acting Director, Northwest Region.

[FR Doc. 80-28116 Filed 9-14-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 80-ASW-40]

Extension of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Jet Route J-177 between Humble, Tex., and Tampico, Mexico, via Hobby, Tex., and Palacios, Tex. This alteration will improve traffic flow in the Houston and Hobby terminal areas by conforming to the Standard Terminal Arrival Routes (STARs).

DATES: Comments must be received on or before October 15, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 80-ASW-40, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before October 15, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C., 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart B of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) that would realign Jet Route J-177 from Humble, Tex., via Hobby, Tex., to Palacias, Tex., to Tampico, Mexico. This alteration will enhance traffic flow in the Houston and Hobby terminal areas by coinciding with the Standard Terminal Arrival Routes (STARs). Also, the realignment would avoid a military training area and provide more efficient use of Warning Area W-228. Section 75.100 of Part 75 was republished in the Federal Register on January 2, 1980 (45 FR 732).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) as follows:

Under Jet Route No 177 "From Humble, Tex., via Hobby, Tex., to Tampico, Mexico," is deleted and "From Humble, Tex., via Hobby, Tex.; Palacios, Tex.; to Tampico, Mexico," is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticpated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on September 8, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-28366 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[521743]

Extension of Time for Comments in Response To Proposed Change of Practice Concerning Garments With Traditional, but Primarily Decorative Features, and Garments With Simulated Features

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed change of practice; notice of extension of time for comments.

SUMMARY: This document extends the period of time permitted for the submission of comments in response to a notice published in the Federal Register on August 14, 1980 (45 FR 54085), inviting the public to comment as to whether a decision of the United States Customs Court, *The Ferriswheel v. United States,* C.D. 4844 (February 21, 1980), requires the Customs Service to change its current uniform and established practice of classifying garments with traditional, but primarily decorative features, as well as garments with simulated features, as nonornamented wearing apparel. Comments were to have been received on or before September 15, 1980.

However, Customs has received several requests to extend the period of time to allow for the preparation and submission of more detailed comments by interested members fo the public.

DATES: Comments must be received on or before October 15, 1980.

ADDRESS: Written comments, preferably in triplicate, should be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harold Loring, Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8238).

Dated: September 9, 1980.

Salvatore E. Caramagno,

Acting Director, Office of Regulations and Rulings.

[FR Doc. 80-28443 Filed 9-12-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Proposal To Develop Regulations

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposal to develop regulations.

SUMMARY: The Social Security Administration is planning to publish regulations to implement the provisions of section 101 of the Social Security Disability Amendments of 1980 (Pub. L. 96–265). These amendments introduce a new method of computing the maximum total benefits payable to the family of a worker who is first entitled to disability insurance benefits after June 1980 and was first eligible for these benefits after 1978. The total benefits are the lesser of 85 percent of the average indexed monthly earnings (but not less than the primary insurance amount) or 150 percent of the primary insurance amount. The new method reduces the maximum total benefits that would otherwise be payable under section 203(a) of the Social Security Act as amended by the Social Security Amendments of 1977.

This provision will amend Subpart E of 20 CFR Part 404.

The Department of Health and Human Services has classified the proposed regulations as policy significant.

FOR FURTHER INFORMATION CONTACT: George T. Barry, Jr., Room 1121, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone: 301–594–2650.

William J. Driver,

Commissioner of Social Security.

[FR Doc. 80-28340 Filed 9-12-80; 8:45 am]

BILLING CODE 4110-07-M

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Proposal To Develop Regulations

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposal to develop regulations.

SUMMARY: The Social Security Administration is planning to publish regulations to implement the provisions of section 102 of the Social Security Disability Amendments of 1980 (Pub. L. 96–265). Generally, these amendments require a change in the methods of computing benefits for individuals who first become entitled to disability insurance benefits after June 1980. Instead of subtracting 5 from the number of elapsed years to derive the number of computation years, the number of elapsed years is divided by 5 and the quotient (disregarding any fraction) is subtracted from the number of elapsed years to derive the number of the computation years. The quotient used in the computation may not exceed 5. The remainder (the number of computation years) may not be less than 2. The change in computation methods reduces the primary insurance amounts that would be otherwise payable to affected individuals. For the most part, these are persons who are under age 47 when the disability began.

This provision will amend Subpart C of 20 CFR Part 404.

An additional provision of section 102 permits up to 3 years to be subtracted from the elapsed years if the disabled individual had a child under age 3 living with him or her substantially throughout 1 or more years. However, total dropout years—regular and childcare—cannot exceed 3. We will publish regulations later on this provision which is not effective until July 1981.

The Department of Health and Human Services has classified the proposed regulations as policy significant.

FOR FURTHER INFORMATION CONTACT: George T. Barry, Jr., Room 1121, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone: 301–594–2650.

Dated: August 22, 1980.

William J. Driver,

Commissioner of Social Security.

[FR Doc. 80-28341 Filed 9-12-80; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625, 646, and 655

[FHWA Docket No. 80–11, Notice 2]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Railroad-Highway Projects; Extension of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period

SUMMARY: This document extends the period for comments on the advance notice of proposed rulemaking published on June 12, 1980 (45 FR 40062), requesting comments by September 10, 1980, on two items relative to railroad-highway crossings. The comment period is being extended until February 15, 1981, in order to provide interested parties additional time to respond to the advance notice.

DATE: Comments will be received until February 15, 1981.

ADDRESS: FHWA Docket No. 80–11, Federal Highway Administration, HCC–10, Room 4205, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Justin True, Office of Traffic Operations, (202) 426–0411, or Ms. Virginia Cherwek, Office of the Chief Counsel, (202) 426–0766, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

(23 U.S.C. 109 (b) and (d), 315, and 402(a); 49 CFR 1.48(b))

Issued on: September 9, 1980.
John S. Hassell, Jr.,
Federal Highway Administrator.
[FR Doc. 80-28201 Filed 9-12-80; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 281

Heritage Preservation

June 24, 1980.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Rule.

SUMMARY: The Bureau of Indian Affairs is publishing proposed regulations for the identification, protection, preservation, and management of archeological, architectural, historic, scientific, and cultural properties. These regulations fulfill requirements set forth in the National Historic Preservation Act, Executive Order 11593, the regulations of the Advisory Council on Historic Preservation, and other applicable historic preservation laws. The intended effect of these regulations is to provide appropriate opportunities for involvement by Indian tribes in the implementation of these requirements on Indian lands.

DATES: Comments must be received on or before November 14, 1980.

ADDRESS: Comments should be submitted to the Director, Office of Trust Responsibilities, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: William C. Allan, BIA Field Administrative Offices, Environmental Quality Services, 500 Gold Avenue, SW., Albuquerque, New Mexico 87103, 505-776-3374, FTS 474-3374, or Al Clark, Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, D.C. 20005, 202-254-3886, FTS 254-3886.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8.

In July of 1978, the President issued the Memorandum on Environmental Quality and Water Resources Management which directed the Chairman of the Advisory Council on Historic Preservation (the Advisory Council) to promulgate regulations implementing Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470f) by March 1, 1979. Accordingly, the existing regulations (36 CFR Part 800) were amended to reflect changes in statutory authority, experience gained in implementing the procedures since 1974, and to meet the requirements of the President's Memorandum. The Advisory Council published final amendments to its regulations in the Federal Register on January 30, 1979 (44 FR 6067).

The purpose of Section 106 of the Act is to protect properties included in or eligible for inclusion in the National Register of Historic Places through review and comment by the Advisory Council regarding Federal undertakings that affect such properties. Properties are listed on the National Register or declared eligible for listing by the Secretary of the Interior. As implemented through the Advisory Council's regulations, consultation under Section 106 is a public interest process in which the Federal agency proposing an undertaking, the State Historic Preservation Officer, the Advisory Council, and interested organizations and individuals participate. The process is designed to assure that alternatives which avoid or mitigate an adverse effect on a National Register or eligible property are adequate considered in the planning processes. The regulations are binding on all Federal agencies and specify the manner in which the Advisory Council will render its comments to Federal agencies when their undertakings affect properties included in or eligible for inclusion in the National Register of Historic Places. To facilitate processing of the large volume of cases submitted for Advisory Council comment each year, the regulations provide for agency consultation with the Advisory Council's staff and State Historic Preservation Officers to reduce the number of undertakings that require consideration by the full Advisory Council.

Agencies were required to publish rules for implementing the Advisory Council's regulations no later than three months after the effective date of their regulations, and/or may choose to adopt counterpart regulations specifically tailored to their particular program needs as provided in Section 800.11 of the Advisory Council's regulations (36 CFR Part 800).

The Department of the Interior has published proposed rules for implementing these regulations (44 FR 45417, August 2, 1979) which are to be codified at 36 CFR Part 1213. The proposed rules require that each Bureau of the Department develop specific implementing procedures or counterpart regulations for its own programs.

The Department of the Interior has determined that the protection and enhancement of historic and cultural properties on Indian lands will be better served by the issuance of counterpart regulations which provide opportunities for tribes to participate in the consultation process regarding undertakings of the Bureau of Indian Affairs. These counterpart regulations recognize that the historic and cultural properties on Indian lands are of great importance to Indian people and that the protection and enhancement of these properties is a function of government which is within the retained sovereign authority of the Indian tribes. The basic difference between the process established by these counterpart regulations and the process established by 36 CFR Part 800 is that, pursuant to these counterpart regulations, the Bureau will provide any designated tribal official (See § 281.4) the same opportunities to be involved in the consultation process as the Bureau provides to the State Historic Preservation Officer.

The proposed regulations contain several references to a Bureau of Indian Affairs Manual Supplement designated 30 BIAM Supp. 2. This Supplement, which is currently in preparation, will provide supplemental guidance to Bureau personnel regarding the application of these regulations. This supplement will be available to the public at all Bureau of Indian Affairs offices.

In the development of the proposed regulations, special attention was given to the mandate of the American Indian Religious Freedom Act (92 Stat. 469). The Bureau believes that the proposed regulations will contribute to the freedom of American Indians to practice traditional religions, since sites which are important for religious reasons may also be eligible for the National Register and thus may be protected from inadvertent destruction. In addition, the proposed regulations provide some protection for religious sites which may not be eligible for listing on the National Register. (See § 281.7(c), 281.8(d).) The Bureau invites comments on this subject.

In addition to the National Historic Preservation Act, there are other Federal statutes which concern cultural resources. One such statute is the Antiquities Act of 1906 (16 U.S.C. 432-433), which makes it unlawful for any person to remove or damage any object of antiquity located on Federal or Indian land unless a permit has been granted by the Secretary of the agency having jurisdiction over the land involved.

Bureau procedures for the preservation of antiquities pursuant to the Antiquities Act are codified at 25 CFR Part 132. The bureau had intended to redesignate these procedures as Subpart B, 25 CFR 281.20 *et seq.* However, during the preparation of the proposed Subpart A rules, the Archaeological Resources Protection Act of 1979 was enacted (Pub. L. 96-95; 93 Stat. 725), which, when implemented, will supersede the Antiquities Act. Section 10(a) of the Act directs the Secretaries of Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, and representatives of concerned State agencies, and after public notice and hearing, to promulgate uniform rules and regulations to carry out the purposes of the Act. Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations, as may be appropriate for carrying out his functions and authorities under the Act. When Bureau regulations are developed, they will be codified in Subpart B, beginning at § 281.20, and will replace the regulations presently codified at 25 CFR Part 132. The public will be afforded an opportunity to comment when the new Subpart B is published as proposed rules.

Public Hearing

A public hearing on these proposed regulations will be held in Albuquerque, New Mexico, at 9:30 a.m. on October 8, 1980, at Southwestern Indian Polytechnical Institute, 9169 Coors Road, NW., Albuquerque, New Mexico. Additional hearings may be scheduled if there is substantial demand.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. The purpose of these regulations is to simplify existing requirements and to clarify responsibilities in conformance with the requirements of Executive Order 12044.

These proposed regulations were prepared by the Bureau of Indian Affairs Cultural Resources Task Force, in consultation with the staff of the Advisory Council on Historic Preservation. The Chairman of the Task Force is William C. Allan, Archeologist, Bureau of Indian Affairs, Albuquerque Area Office, telephone number 505-776-3374, FTS-474-3374.

The Bureau of Indian Affairs proposes to establish a new Subchapter Z—Protection and Enhancement of Environmental Quality in Title 25 of the Code of Federal Regulations. It is proposed to amend 25 CFR Chapter I by adding a new Part 281, reading as follows:

SUBCHAPTER Z—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

PART 281—HERITAGE PRESERVATION

Subpart A—Identification and Protection of Archeological, Architectural, Historic, and Cultural Properties

Sec.

281.1 Purpose and authorities.
281.2 Compliance responsibility.
281.3 Definitions.
281.4 Tribal participation.
281.5 Consultation policy.
281.6 Identification of Historic and Cultural Properties.
281.7 Determination of eligibility.
281.8 Determination of effect.
281.9 Study of alternatives.
281.10 Mitigation.
281.11 Participation by interested parties.
281.12 Procedures for discovery situations.

Subpart B—Permits for the Excavation of Archeological Resources [Reserved]

Authority: National Historic Preservation Act, 16 U.S.C. 470f; Executive Order 11593; 36 CFR Part 800; 36 CFR Part 1213; American Indian Religious Freedom Act, 42 U.S.C. 1996; Archeological Resources Protection Act, 16 U.S.C. 470aa *et seq.*

Subpart A—Identification and Protection of Archeological, Architectural, Historic, and Cultural Properties

§ 281.1 Purpose and authorities.

(a) The purpose of this subpart is to fulfill the Bureau's responsibilities pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), Executive Order 11593, the regulations issued by the Advisory Council on Historic Preservation (36 CFR Part 800), and the implementing regulations issued by the Department of the Interior (36 CFR Part 1213). This Subpart applies to all Bureau undertakings as defined in § 281.3(j). The Bureau is reponsible for the identification and protection of historical, archeological, architectural, scientific, and paleontological resources, hereinafter referred to as historic and cultural properties, affected by its undertakings and on the lands it administers. It is the responsibility of the Bureau to identify, evaluate, and protect all districts, sites, structures, buildings, and objects significant in American history, architecture, archeology, and culture which may be eligible under the National Register Criteria (36 CFR 60.6) on all areas affected by a Bureau undertaking and on all Bureau-administered, withdrawn, or acquired lands or land in which the Bureau acquires or retains an interest. These responsibilities shall be fully considered in planning, construction, operation, and maintenance activities carried out directly or permitted by the Bureau. To the fullest extent possible, it is the Bureau's policy to preserve historic and cultural properties *in situ* and total avoidance of adverse effects will always be attempted. However, when all factors related to the undertaking are evaluated, it is possible that some historic and cultural properties may be adversely affected. Whenever an undertaking would adversely affect a historic and cultural property, the Bureau will attempt to minimize all adverse effects.

(b) The regulations in this Subpart are counterpart regulations issued pursuant to 36 CFR 800.11 and 1213.2. These counterpart regulations substitute for 36 CFR 800.4 which would otherwise apply to Bureau undertakings. One purpose for issuing these counterpart regulations is to ensure that the Bureau's responsibilities pursuant to the National Historic Preservation Act and Executive Order 11593 are carried out in a manner which is consistent with the right of Indians to exercise self-government. The protection of Indian cultural resources and the resolution of conflicts arising from proposed uses of resources are governmental functions which are within the retained sovereign authority of the Indian tribes. It is the policy of the Bureau to support tribes in exercising authority in such matters and to assist tribes in developing their governmental capacities.

(c) This rule is not intended to relieve any other Federal agency of its responsibilties to comply with applicable laws and regulations related to the identification and protection of historic and cultural properties.

§ 281.2 Compliance responsibility.

(a) The Bureau is responsible for compliance with the requirements of historic and cultural preservation laws and Executive orders. Historic and cultural preservation review requirements, including compliance with Section 106 of the National Historic Preservation Act of 1966 and these implementing regulations, shall be integrated with other environmental considerations under the National Environmental Policy Act of 1969 (NEPA) and 40 CFR 1502.25(a) of the Council on Environmental Quality's regulations implementing the NEPA. Except as provided in Section 281.2(b) of this Subpart, Section 106 compliance will be completed on all undertakings

affecting National Register or National Register eligible properties even if an Environmental Impact Statement (EIS) is not required to comply with the NEPA. When a proposed undertaking has the potential to adversely affect historic and cultural properties, the Bureau shall take no action which could foreclose the consideration of alternatives to the undertaking until the consultation process is concluded pursuant to this subpart. The Bureau will provide adequate professional capabilities to develop and direct its program to protect and enhance historic and cultural properties. Historic and cultural surveys and management reports shall identify and describe the techniques and methods used in their development and shall make explicit references to scientific and other sources relied upon for conclusions in the document. These surveys and reports shall, at a minimum, meet the requirements set forth in 36 CFR 800.13.

(b) The issuance of a permit pursuant to Subpart B of this Part does not require compliance with Subpart A of this regulation. The authority for this exclusion is Section 4(i) of the Archaeological Resources Protection Act (16 U.S.C. 470cc).

§ 281.3 Definitions.

(a) "Advisory Council" means the Advisory Council on Historic Preservation, an independent Federal agency which was created by the National Historic Preservation Act of 1966. Under the provisions of Section 106 of the National Historic Preservation Act and Executive Order 11593, the Advisory Council must be afforded an opportunity for comment on Federal, federally-assisted or federally-licensed undertakings that may affect properties listed in or eligible for listing in the National Register of Historic Places. The procedures for consultation with the Advisory Council are contained in 36 CFR Part 800. The Advisory Council retains staff for review and compliance in Denver, Colorado, and Washington, D.C., to carry out its consultative role.

(b) "Consultation" means the act of directly contacting and formally seeking advice of the appropriate State Historic Preservation Officer, the Advisory Council on Historic Preservation, and any designated tribal official.

(c) "Designated tribal official" means an individual who has been designated by the tribal governing body, pursuant to § 281.4, to serve as the focal point for consultation with the tribes in cultural resources matters.

(d) "Effect" is the extent and nature of an undertaking's impact on a historic and cultural property as determined according to the Advisory Council's "Criteria of Effect" (36 CFR 800.3). Section 800.3(a) establishes the criteria for determining if the property will be affected by an undertaking, while § 800.4(b) establishes the criteria to determine if the effect on the property may be adverse. In addition to the criteria contained in § 800.3(b), "adverse effects" may include the impairment of any significant Native American religious site for ceremonial or religious purposes.

(e) "Historic and cultural properties" includes any building, site, district, structure, or object significant in history, architecture, archeology, or culture.

(f) "Indian tribe" means any Indian tribe, band, nation, rancheria, pueblo, or other organized community, including any Alaska Native village or regional or village corporation as defined in or estabished pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(g) "National Register" means the National Register of Historic Places maintained by the Department of the Interior. It is the official list of landmarks, districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture, maintained by the Secretary of the Interior under the authority of Section 2 of the National Historical Preservation Act. Addenda to the National Register are published in the Federal Register on the first Tuesday in each month.

(h) "Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical, cultural, or archeological value. Examples are battlefields, historic campgrounds, ancient trails or gathering places, deposits of cultural debris, and historic farms.

(i) "State Historic Preservation Officer" (SHPO) means the official, designated pursuant to 36 CFR Part 60, responsible for liaison with Federal agencies for implementation of the National Historical Preservation Act of 1966 and Executive Order 11593, and for the coordination of the statewide survey of historic and cultural properties and the development of a comprehensive State historic preservation plan.

(j) "Undertaking" means all Bureau-assisted, Bureau-licensed, and direct Bureau actions, activities and programs. Actions, activities, or programs, in which the Bureau has no discretion regarding the protection, preservation, and management of historic and cultural properties, are not, however, considered to be undertakings for the purposes of this subpart. See 36 CFR 800.2 and 30 BIAM Supplement 2 for further clarification of the scope of "undertaking."

(k) "Undertaking's area of potential impact" means that geographical area within which direct and indirect effects could be expected to occur and thus potentially change the historical, architectural, archeological, or cultural qualities possessed by a historic and cultural property.

§ 281.4 Tribal participation.

The Bureau encourages the tribal governing bodies to designate a tribal official to be the focal point for consultation with each tribe. The tribal governing body should notify the Area Director whenever a tribal official is designated, replaced, or removed. The individual designated by the tribal governing body will be responsible for providing comments concerning cultural resources directly to the Bureau. The tribal official will assist the Bureau in identifying historic and cultural properties; assist in determining the significance of historic and cultural properties identified; assist in determining the effect of Bureau undertakings on significant historic and cultural properties; and assist the Bureau in developing alternatives or measures to avoid or mitigate potential adverse effects to historic and cultural properties. The tribal official may provide comments directly to the Advisory Council and the Keeper of the National Register, where appropriate. The tribal official may recommend historic and cultural properties to the Bureau for nomination to the National Register. The individual designated as tribal official should be knowledgeable of the religious and cultural rites and practices of the tribe(s) and of its cultural resources. The tribal official should be able to represent the views of or provide liaison with the tribe's traditional religious leaders in order to assist the Bureau in meeting its responsibilities under the American Indian Religious Freedom Act (92 Stat. 469).

§ 281.5 Consultation policy.

(a) The Bureau will initiate consultation with the appropriate SHPO, tribal official (if designated), and, where required, the Advisory Council, at the earliest appropriate stage in planning, before the occurrence of actions which may limit the formulation and

consideration of alternatives or upon receipt of a request for a license. The Area Director (or appropriate Bureau official) shall initiate consultation by directly contacting the appropriate SHPO and tribal official (if designated) and informing them of the nature and scope of the proposed undertaking. If no tribal official is designated, the Area Director shall notify the affected Indian tribe and inform it of the nature and scope of the proposed undertaking. However, formal consultation as described in this Section is not required with an Indian tribe unless and until a tribal official is designated pursuant to Section 281.4. If an environmental impact statement (EIS) will be prepared on the proposed undertaking, the Area Director shall invite the SHPO and any designated tribal official to participate in the scoping process. (See 40 CFR 1501.7.)

(b) Whenever a Bureau undertaking will affect a National Register or eligible property (see § 281.8), the Bureau shall initiate consultation with the Advisory Council in either of the following two ways:

(1) *Environmental Impact Statement Required.* Whenever a Bureau undertaking requires the preparation of an EIS, the Advisory Council should be notified through the draft EIS (see 36 CFR 800.9). The draft EIS should discuss, to the extent possible at the time of its issuance, the results of historic and cultural surveys and management reports concerning the undertaking's area of potential impact, the effect of the undertaking's area of potential impact, the effect of the undertaking on all identified historic and cultural properties, and the appropriate documentation necessary to fulfill the requirements set forth in 36 CFR 800.13. When it is intended that the draft EIS constitute notification to the Advisory Council, the transmittal letter must clearly state that the draft EIS is being submitted to request the comments of the Council pursuant to 36 CFR 800.6.

(2) *Environmental Impact Statement Not Required.* Whenever a Bureau undertaking does not require the preparation of an EIS, but the undertaking could affect one or more National Register eligible or listed properties, notification shall be accomplished by providing the Advisory Council with documentation, in accordance with the procedures and instructions contained in 36 CFR 800.6 and 30 BIAM Supplement 2.

(c) When a proposed undertaking has the potential to adversely affect historic and cultural properties, the Bureau shall take no action which could foreclose the consideration of alternatives to the undertaking until the consultation process is concluded pursuant to this Subpart. The execution of a Memorandum of Agreement among the Advisory Council, the SHPO, the designated tribal official, and the Bureau normally concludes the consultation process. (See 36 CFR 800.6.)

(d) In the case of adverse effect determinations (See § 281.8) the Bureau will coordinate contacts with the Advisory Council through the Deputy Assistant Secretary for Fish, Wildlife, and Parks, who is the designated representative of the Secretary to that Council. The Bureau has appointed the Environmental Services Officer, Office of Trust Responsibilities, to coordinate these activities.

§ 281.6 Identification of historic and cultural properties.

The Bureau will identify all National Register properties and properties appearing to meet the National Register Criteria (36 CFR 60.6) that are within areas under the Bureau's jurisdiction. Areas that may be affected by the policies, plans, programs, or other undertakings of the Bureau will be examined for historic and cultural properties prior to implementation of such policies, plans, programs, or other undertakings. Historic and cultural surveys and inventory reports shall be completed for all lands under the Bureau's administration and for those areas which may be affected by a Bureau undertaking. The Bureau conducts three levels of surveys. Consultation with the SHPO and tribal official, if designated, is necessary at appropriate points during and after such studies.

(a) *Class I Survey.* A Class I survey is primarily a literature search. A Class I survey is conducted to determine what information already exists on the area under consideration. It consists of consulting the National Register of Historic Places and supplemental National Register listings to determine whether any properties listed in or previously determined eligible for listing in the National Register exist in the undertaking's area of potential impact or on lands under the Bureau's administration. It also includes contacting officials such as the SHPO, designated tribal official, native traditional religious leaders, State Archeologist, State Historian, State Historical Society, and other appropriate individuals, agencies, or institutions to determine what information these parties may have concerning the presence of historic and cultural properties within the area. Regional records shall also be examined for potentially eligible properties on lands under the Bureau's administration. The Class I survey will provide the basis for making a determination of what additional information is necessary for an adequate inventory of historic and cultural properties in the area under consideration. A Class I survey, at the present time, will seldom provide sufficient information to adequately identify historic and cultural properties on lands administered by the Bureau. As historic and cultural inventories are completed for Bureau administered lands, the Bureau expects that Class I surveys will provide sufficient information in a number of cases to adequately identify historic and cultural properties within an undertaking's area of potential impact.

(b) *Class II Survey.* A Class II survey is a field examination of the undertaking's area of potential impact or of lands under the Bureau's administration in an attempt to determine or accurately predict the presence or absence of historic and cultural properties. This type of survey is generally conducted whenever insufficient information exists to document the presence or absence of potentially eligible properties and where there is a potential for previously unidentified historic and cultural properties in the area. Class II surveys may consist of a complete on-the-ground examination and/or an evaluation covering an adequate sample of the total study area. Class II surveys are generally required to inventory historic and cultural properties on Bureau-administered lands and may include remote sensing techniques and/or subsurface sampling. Class II surveys shall be designed to document, or reliably predict, the presence or absence of historic and cultural properties, aid in determining the necessity for conducting Class III surveys, and provide a basis for planning Class III surveys, where required. Class II surveys may be combined with Class I surveys (e.g., general inventories of Bureau-administered lands) or bypassed in favor of a Class III survey (e.g., identification of historic and cultural properties within an undertaking's area of potential impact).

(c) *Class III Survey.* A Class III survey is normally required to obtain sufficient documentation to apply the National Register Criteria (36 CFR 60.6) to previously unidentified historic and cultural properties. A Class III survey consists of an intensive on-the-ground examination along with appropriate background research, testing, and analysis of the area under consideration.

It shall be designed to provide sufficient information to make a professional evaluation of all historic and cultural properties within the area under consideration. While such surveys are usually required to obtain sufficient information to nominate properties meeting the 36 CFR 60.6 Criteria for inclusion in the National Register, as a practical matter, most Class III surveys will be conducted on an undertaking-by-undertaking basis. As funds become available, Class III surveys will be conducted where required on Bureau-administered lands inventoried with Cass I and/or Class II surveys.

§ 281.7 Determination of eligibility.

(a) All historic and cultural properties inventoried during a Class I, II, or III survey, except those previously determined eligible or listed in the National Register, shall be evaluated for their potential significance. The Bureau, the SHPO, and the designated tribal official shall conduct the evaluation based on National Register Criteria (36 CFR 60.6) and tribal or State interest in the historic or cultural property. Other qualified professionals, such as the State Historian or State Archeologist, may assist the Bureau in this assessment of the significance of the cultural resources discovered as a result of the surveys conducted.

(b) If in the opinion of the Bureau, the SHPO, or the designated tribal official, the property appears to meet the criteria of eligibility for inclusion in the National Register, the Area Director (or appropriate Bureau official) will request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR Part 63.

(c) All properties which do not meet the National Register Criteria shall be evaluated for significance based on tribal or state interest. Properties shall be evaluated for significance relative to Native American religious and cultural rites and practices pursuant to the American Indian Religious Freedom Act (92 Stat. 469). The evaluation shall be conducted in consultation with the tribal official (if designated). Information submitted to the Bureau by other parties expressing interest in a property shall also be considered.

(d) All properties determined eligible for inclusion in the National Register by the Keeper should be considered for nomination to the National Register. The Bureau will not normally nominate and eligible property for listing in the National Register unless the governing body of the tribe having jurisdiction concurs in the nomination. The Area Director (or appropriate Bureau official) shall prepare nomination forms and provide them to the Environmental Services Officer, or his or her designee. The Enviornmental Services Officer shall examine the nomination forms for completeness and forward the materials to the Keeper of the National Register.

§ 281.8 Determination of effect.

For all significant historic and cultural properties, including those properties listed in or determined eligible for listing in the National Register of Historic Places, within an undertaking's area of potential impact, the Bureau will determine the effect on those properties in accordance with 36 CFR 800.3(a). Effect determinations must be made in consultation with the State Historic Preservation Officer and with any tribal official designated for the lands included within the undertaking's area of potential impact. Supplemental guidance for making determinations of effect is provided for Bureau personnel in 30 BIAM Supplement 2.

(a) *Determination of No Effect.* Upon determining that the undertaking will not affect any National Register or eligible properties within the undertaking's area of potential impact, documentation to support the finding will be provided to the SHPO and the tribal official (if designated). If the SHPO and designated tribal official concur with or fail to comment within 30 calendar days from receipt of the documentation, the Bureau may proceed with the project. If the SHPO or designated tribal official disagree with a no effect determination, the Advisory Council will be asked to decide if there will be an effect.

(b) *Determination of No Adverse Effect.* If if is determined that there will be an effect on a National Register or eligible property, the Bureau, the SHPO, and the designated tribal official will apply the criteria set forth in 36 CFR 800.3(b) and 281.3(e) to determine whether or not the effect will be potentially adverse. If it is determined that the effect will not be adverse, documentation to support this will be sent to the SHPO and tribal official (if designated). If the SHPO and tribal official agree, or if either or both disagree with the no adverse effect determination but the Bureau still believes the effect to be no adverse, documentation to support the determination of no adverse effect (see 36 CFR 800.13) along with the SHPO's and the tribal official's comments will be submitted to the Advisory Council. Unless the Advisory Council responds pursuant to 36 CFR 800.6(a), the Bureau may proceed with the undertaking without further consultation.

(c) *Determination of Adverse Effect.* If it is determined that an undertaking has the potential to adversely affect National Register and eligible properties or if the Advisory Council objects to a finding of "no adverse effect," the Bureau shall submit documentation to the Advisory Council in the form of a Preliminary Case Report (see 36 CFR 800.13). The Area Director (or appropriate Bureau official) shall be responsible for preparing the Preliminary Case Report and notifying the Environmental Services Office of the adverse effect determination. The Bureau will coordinate all contacts with the Advisory Council pursuant to 36 CFR 800.6(b), (c), and (d) concerning adverse effect determinations through the Deputy Assistant Secretary for Fish, Wildlife, and Parks.

(d) *Properties not eligible for inclusion in the National Register of Historic Places.* If a historic and/or cultural property not eligible for listing in the National Register may be affected by the undertaking, there may be State, tribal, local, or private interest in its conservation. The Bureau shall consider information submitted by interested parties concering the effect of a proposed undertaking on such a property. The Bureau shall evaluate the effect of the undertaking on any property significant because of Native American religious and cultural rites and practices in consultation with the tribal official (if designated) in accordance with the American Indian Religious Freedom Act (92 Stat. 469).

§ 281.9 Study of alternatives.

Whenever it is determined that an undertaking may have a potentially adverse effect on a National Register or eligible property the Bureau will, in consultation with the Advisory Council, the SHPO, and the tribal official (if designated) conduct a study of alternatives pursuant to 36 CFR 800.6(b) to avoid the potentially adverse effect. The Bureau will also confer with the interested parties to consider alternatives to avoid adversely affecting properties determined to have other significance. Where the property has significance based on Native American religious and cultural rites and practices, the Bureau shall confer with the tribal official (if designated) to determine appropriate measures to protect and preserve Native American religious cultural rites and practices. Alternatives that shall be considered are:

(a) Carrying out the proposed undertaking at a location that will eliminate or substantially reduce the potential to adversely affect historic and cultural properties (alternative sites);

(b) Conducting other undertakings, actions, activities, or programs with similar objectives which could avoid or substantially reduce the potential to adversely affect historic and cultural properties (alternative undertakings);

(c) Implementing other plans, designs, schemes, or concepts with similar objectives which avoid or substantially reduce the potential to adversely affect historic and cultural properties (alternative designs); and,

(d) Taking no action (no action alternative).

§ 281.10 Mitigation.

Where alternatives to avoid adversely affecting historic and cultural properties are determined by the consulting parties not to be prudent and feasible, the Bureau shall develop measures to minimize the potentially adverse effect. Measures to mitigate adverse effects to National Register or eligible properties shall be developed in consultation with the Advisory Council, the SHPO, and the tribal official (if designated). Similarly, the Bureau will consider information submitted by interested parties regarding measures to minimize adverse effects on properties determined to have other significance. Where a property has significance based on Native American religious and cultural rites and practices, the Bureau shall confer with the tribal official (if designated) to determine appropriate measures to protect and preserve Native American religious and cultural rites and practices. Such measures shall be funded at least concurrently and proportionately with other features of the undertakings and may include:

(a) Limiting the magnitude or extent of the proposed undertaking or identified alternatives;

(b) Modifying the proposed undertaking through redesign, reorientiation to the project site, and other similar changes;

(c) Rectifying the potentially adverse effects by rehabilitating, repairing, or restoring the affected resources;

(d) Compensating for the potentially adverse effects; for example, through the recovery and preservation of scientific, prehistoric, and archeological data; and,

(e) Minimizing the potentially adverse effects over time through preservation and maintenance activities throughout the life of the undertaking.

Mitigation measures should be appropriate to the nature and importance of the historic properties in question. For example, mitigation for a property possessing architectural merit will necessarily differ from that for a property important only for the information it may contain. In all cases, there will be preservation of such physical features as may be prudent and feasible. The measures should include provisions for the protection and preservation of Native American religious and cultural rites and practices. Provisions, where appropriate, for analysis and publication of information collected and deposition of recovered artifacts and materials where they may be of cultural benefit, may be suitable mitigation measures. Recording of National Register and eligible properties to be destroyed or altered by an undertaking is required by Section 2(c) of Executive Order 11593. Section 2(f) of Executive Order 11593 contains certain provisions which apply in the event of the transfer or sale of National Register and eligible properties to other agencies or owners. If any National Register or eligible property is to be removed from the Bureau's jurisdiction or control, except where such a transfer is not an undertaking (§ 281.3(j)), provisions for the protection of the property shall be integrated into the transfer in conformance with the requirements of Section 2(f) of Executive Order 11593. Such provisions would include mitigation of any adverse effects on National Register and eligible properties that might occur as an indirect result of the transfer. Any final EIS prepared pursuant to Section 102(2)(C) of NEPA, in addition to identifying the adverse effects, will describe the mitigation plans developed in consultation with the SHPO, tribal offical (if designated), and the Advisory Council, even though a Memorandum of Agreement may not have been formally executed.

§ 281.11 Participation by interested parties.

The Bureau encourages interested parties to participate in the processes established by this Subpart. The Bureau has three basic objectives in soliciting the participation of parties interested in proposed undertakings and possible effects on historic and cultural properties. The first goal is to obtain any information that individuals, organizations, universities, agencies, tribal governing bodies, etc., may have available to assist the Bureau, the SHPO, designated tribal official, and the Advisory Council in carrying out their responsibilities under historic and cultural preservation laws and regulations. The second objective is to make documents, materials, and other data available, to the extent possible, concerning the undertaking and the nature of its effect on historic and cultural properties. The information made available to interested parties, however, need not include the specific location of certain properties if, by revealing the location, such properties could be subject to damage or degradation. The third goal is to increase the involvement of interested parties in the review processes established in this Subpart. The Bureau will invite the participation of interested parties pursuant to 40 CFR 1506.6 and 516 DM 1.6 and 301 DM 2.

§ 281.12 Procedures for discovery situations.

Should historic and cultural properties be discovered after compliance with this Subpart and 36 CFR 800.6 is complete and during the implementation of an undertaking, the Secretary of the Interior will investigate the discovery through the Heritage Conservation and Recreation Service (HCRS), in order to determine the appropriate action. The investigation will be initiated within 48 hours of notification by the Bureau in accordance with Section 4(a) of the Archeological and Historic Preservation Act (16 U.S.C. 469(a)), as indicated in the Statement of Program Approach (44 FR 18117–19) and the proposed implementing regulations (36 CFR Part 66) published January 28, 1977. Telephone notification followed by telegraphic abstract and request to the appropriate Field Office of HCRS by the Area Director (or appropriate Bureau official) will constitute notification. The SHPO and the designated tribal official (or if none has been designated, the tribal governing body) will be notified by the Area Director concurrently with HCRS. If the Secretary or the Bureau determines that the significance of the property, the effect, or any proposed mitigation measures warrant consideration by the Advisory Council, the Environmental Services Officer, or his or her designee, shall request the comments of the Advisory Council pursuant to 36 CFR 800.7(b).

Subpart B—Permits for the Excavation of Archeological Resources [Reserved]

Sidney L. Mills,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 80-28395 Filed 9-12-80; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 09-80-01]

Special Anchorage Area, Lake Winnebago, Oshkosh, Wis.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard at the request of the City of Oshkosh, Wisconsin, is proposing to amend the Anchorage Regulations by establishing a Special Anchorage Area at Millers Bay in Lake Winnebago, Oshkosh, Wisconsin. The proposed area will be for the use of the general public. It is needed because of the large increase of pleasure craft utilizing this area.

Establishment of the Special Anchorage Area will eliminate the necessity for displaying anchor lights on vessels of less than 65 feet in length while anchored within the area.

DATES: Comments must be received on or before October 15, 1980.

ADDRESSES: Comments should be submitted to and will be available for examination at the Office of the Commander, Ninth Coast Guard District (mps), Room 2019, 1240 East 9th Street, Cleveland, OH 44199.

Copies of all written comments will also be available for examination at the Coast Guard Marine Safety Office, Milwaukee, Wisconsin.

FOR FURTHER INFORMATION CONTACT: LTJG Joseph L. Robison, Ninth Coast Guard District (mps), 1240 East 9th Street, Cleveland, OH 44199, Phone: (216) 522-3918, (FTS) 293-7064.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include their name and address, identify this notice (CGD 09-80-01) and the specific section of the proposal to which their comment applies, and give reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a self-addressed postcard or envelope. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are LTJG Joseph L. Robison, Port Safety Branch, and Lieutenant James M. Collin, Project Attorney, Ninth District Legal.

Discussion of Proposed Regulation

The city of Oshkosh, Wisconsin has requested that an existing area in which sailboats are mooring be designated a Special Anchorage Area. Oshkosh is sole owner of all property surrounding Millers Bay and is interested in seeing the area officially recognized and charted. The mooring area will be open to the general public and will be operated on a seasonal navigational basis, approximately from March 15 to November 30 of each year.

The Coast Guard has determined that in accordance with Department of Transportation "Regulatory Policies and Procedures", (44 FR 11034) this amendment is not significant. The economic impact of this amendment will be minimal and, accordingly, it does not warrent a full evaluation. The amendment imposes no economic burdens and benefits all small vessel owners, since they will not have to carry or display anchor lights, while anchored in the special anchorage.

In consideration of the foregoing, it is proposed that Part 110 of Title 33 of the Code of Federal Regulations be amended by adding § 110.79b to read as follows:

§ 110.79b Millers Bay, Lake Winnebago, Oshkosh, Wis.

The area adjacent to Menominee Park in Miller Bay within the following boundaries beginning at Latitude 44° 01' 47" N., longitude 88° 31' 05" W., thence to latitude 44° 01' 46" N., lontitude 88° 31' 00" W., thence to latitude 44° 01' 34" N., longitude 88° 31' 04"., thence to latitude 44° 01' 36"., longitude 88° 31' 08.

Note.—Control over the launching, mooring and anchoring of vessels in the area is exercised by the City of Oshkosh, Department of Parks pursuant to section 19-7 of the Oshkosh Municipal Code.

(Sec. 1, 28 Stat. 647, as amended (33 U.S. Code 258); Sec 6(g)(1)(c) 80 Stat. 937, (49 U.S. Code 1655(g)(1)(c)): 49 CFR 1.46(c)(3))

Note.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: September 3, 1980.

A. F. Fugaro,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 80-28073 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 4

[FRL 1600-7]

Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA is beginning the process of revising its regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. We intend to provide increased assistance to regulation users by replacing unclear language with plain English, by eliminating unnecessarily burdensom requirements, as stipulated in Executive Order 12044, and by improving those portions of the regulations which lack completeness. Therefore, we request public comment and suggestions concerning the current regulations and ways to improve them.

DATE: To have your comments considered in the development of the proposed rules, you should submit them by November 30, 1980.

ADDRESS: You should submit comments to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. G-80-2, 401 M Street, SW, Washington, D.C. 20460. Docket No. G-80-2, containing material relevant to this rulemaking, is located in the U.S. Environmental Protection Agency, Central Docket Section, Gallery 1 (West Tower), 401 M Street, SW, Washington, D.C. 20460. You may inspect the docket between 8 a.m. and 4 p.m. on weekdays; we may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Belle N. Davis, Chief, Grants Policy and Procedures Branch, Grants Administration Division (PM-216), 401 M Street, SW., Washington, D.C. 20460, Telephone: 202-755-0860.

regulation development procedures: Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or

whether it may follow other specialized development procedures. EPA labels these other regulatons "specialized". I have reviewed this regulation and have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: September 9, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-28316 Filed 9-12-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1605-2]

Submittal To Satisfy Condition on Approval of the New York State Implementation Plan; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On February 5, 1980 (45 FR 7803), the Environmental Protection Agency (EPA) promulgated conditional approval of the New York State Implementation Plan (SIP) for the Capital District, Rochester and Syracuse metropolitan areas with regard to the plan's ability to meet the requirements of Part D of the Clean Air Act. Today's notice discusses one of the conditions of EPA's approval and announces EPA's intent to find the provisions of the condition met. This condition, which also appears in EPA's proposal for the Niagara Frontier metropolitan area (45 FR 28371, April 29, 1980), required the State to submit to EPA on or before July 1, 1980 criteria and procedures for making assessments of the consistency and conformity of the outputs of the transportation planning process with the SIP. The State made its submission in response to this requirement on July 2, 1980.

DATE: Comments must be received by November 14, 1980.

ADDRESSES: Written comments should be submitted to: Charles S. Warren, Regional Administrator, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the submittal are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Air Programs Branch, Room 908, Region II Office, 26 Federal Plaza, New York, New York 10278;

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

New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 5, 1980 (45 FR 7803) the Environmental Protection Agency (EPA) promulgated conditional approval of parts of the New York State Implementation Plan (SIP) for the Capital District, Rochester and Syracuse metropolitan areas with regard to their ability to meet requirements of Part D of the Clean Air Act. The contents of these parts of the SIP and the history of their development are summarized in an EPA notice of proposed rulemaking, which was published in the Federal Register on July 30, 1979 (44 FR 44556). A similar notice of proposed rulemaking for the Niagara Frontier metropolitan area was published in the Federal Register on April 29, 1980 (45 FR 28371). Included in these parts of the SIP are regulations and other control measures aimed at attainment of the ozone and carbon monoxide ambient air quality standards.

Ozone and carbon monoxide air pollution problems are related to a large extent to motor vehicle emissions in an area. As such, the control strategy included in a SIP to attain national ambient air quality standards for these pollutants must rely in part on improvements and modifications to the area's transportation system. These improvements and modifications must, in turn, be designed and implemented through the area's existing transportation planning process.

In its review of the New York State SIP for the Capital District, Rochester, Syracuse and Niagara Frontier metropolitan areas, EPA found that the necessary commitments, criteria and procedures to assess the outputs of the transportation planning process for their "consistency" and "conformity" with the SIP were not included. As noted in the July 30, 1979 and April 29, 1980 Federal Register proposals on the SIP for these areas, assessments are essential to ensure that the transportation planning process gives priority to air quality concerns and that these concerns are fully integrated into the process.

As a result of this shrotcoming, on February 5, 1980 EPA promulgated and on April 29, 1980 EPA proposed the following condition at 40 CFR 52.1674(b)(1): *On or before July 1, 1980 the State must submit criteria and procedures for making assessments of the consistency and conformity of the outputs of the transportation planning process with the SIP.*

On July 2, 1980, the Commissioner of the New York State Department of Environmental Conservation submitted to EPA information which responded to this condition. Today's notice describes this State submittal as it relates to this condition and EPA's proposed findings as to its adequacy.

II. State Submittal

A. Content

The State's July 2, 1980 submittal provided the required criteria and procedures for making assessments of the consistency and conformity of the outputs of the transportation planning process with the SIP. The submittal consists of two parts, a transmittal letter from the Commissioner of the New York State Department of Environmental Conservation and a document entitled "Criteria and Procedures for Evaluating the Consistency/Conformity of Transportation Plans, Programs and Projects with the State Implementation Plan for Upstate Planning Areas."

The introduction to the document states the purpose of the criteria and procedures. This purpose is to define in simple and practical terms the elements and approach to making and annual evaluation of the consistency and conformity of the transportation plans, programs and projects in each Metropolitan Planning Organization planning area in upstate New York with the approved SIP. The document consists primarily of three parts which can be summarized as follows:

1. Elements Requiring Consistency/Conformity Evaluation

—A determination of the consistency/conformity of the United Planning Work Program (UPWP) with the SIP.

—A determination that there is an intergrated transportation-air quality planning process.

—An analysis of the impacts of the transportation plans on air quality and a determination of the consistency/conformity of the transportation plans with the SIP.

—An analysis of the impacts of the Transportation Improvement Program (TIP) on air quality and a determination of the consistency/conformity of the TIP with the SIP.

—An analysis of the impacts of the individual projects, or groups of projects

in the TIP on air quality and a determination of the consistency/conformity of the project(s) with the SIP.

2. Evaluation Procedures

a. UPWP. The UPWP will be considered consistent with the SIP if all transportation related studies or follow-up activities committed to in the SIP are included in the UPWP.

b. Transportation—Air Quality Planning Process. This element of the consistency/conformity evaluation will document the interrelationship of air quality and the transportation planning process. Included will be documentation that the long-range and short-range transportation plans and the TIP were developed through an integrated transportation—air quality planning process which gave priority to air quality concerns. The documentation should also include material demonstrating that the integrated process provides for adequate public participation.

c. Transportation Plan and the TIP. The evaluation of the transportation plans and the TIP with the SIP will be based on total pollutant emissions. This approach involves estimating the transportation generated carbon monoxide, hydrocarbons, nitrogen oxides and particulate emissions on an areawide or subarea basis (as appropriate for non-attainment and/or attainment areas) for each analysis year and transportation alternative, and comparing the results with the appropriate SIP emissions data to determine consistency/conformity.

d. Individual Transportation Improvement Program Projects. Individual highway projects in the TIP will be evaluated to determine their consistency with the SIP. To simplify this process projects will be divided into three generic categories:

—Projects with potentially significant air quality impact (Category I).

—Projects which do not have significant air quality impacts, but have more than minimal air quality impacts (Category II).

—Projects with only minimal air quality impacts (Category III).

This definition of projects is based on the project categorization in the New York State Environmental Action Plan.

3. Reporting Mechanisms and Responsibilities

The consistency/conformity evaluation of the transportation plans, programs and projects with the SIP will be performed on an annual basis. There will be joint responsibility for performing this evaluation between the New York State Department of Transportation and the Metropolitan Planning Organization for each planning area. Assistance and concurrence will be provided by the New York State Department of Environmental Conservation. The annual consistency/conformity evaluation should commence with the 1981–1982 program year.

III. EPA Proposed Action

EPA proposes to find that the State's July 2, 1980 submission adequately meets the condition for approval of the New York SIP promulgated (or, in the case of the Niagara Frontier metropolitan area, proposed) at 40 CFR 52.1674(b)(1). The objective of requiring the submittal was to provide criteria and procedures for making assessments of the consistency and conformity of the outputs of the transportation planning process with the SIP. It is EPA's preliminary finding that the State's submission meets this objective.

On June 12, 1980, EPA and the U.S. Department of Transportation (DOT) completed a document entitled, "Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans." EPA reviewed the State submission and found that it is generally consistent with these DOT-EPA Procedures. However, the State and the Metropolitan Planning Organizations for the Capital District, Rochester, Syracuse and Niagara Frontier metropolitan areas should examine these Procedures to determine if any future changes to the State submission are desirable. The State and the Metropolitan Planning Organizations should also consider revisions to the criteria should any major changes occur in the nature of the air pollution control program in the metropolitan areas. Changes to the State submission will represent proposed SIP revisions.

IV. Public Comment

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted as to whether the submittal with regard to the New York State Implementation Plan for the Capital District, Rochester, Syracuse and Niagara Frontier areas should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed plan revision will be based on whether it meets the requirements of Sections 110 and 172 of the Clean Air Act and applicable EPA requirements in 40 CFR Part 51.

EPA particularly invites comments from the Upstate Metropolitan Planning Organizations and any other agencies or organizations which have SIP-related responsibilities. Section 174(b) of the Clean Air Act requires that SIP revisions be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under Section 134 of Title 23 of the United States Code.

Comments received by November 14, 1980 will be considered in EPA's final decision. All comments received will be available for inspection at the Region II Office of EPA at 26 Federal Plaza, Room 908, New York, New York 10278.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this package and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601))

Dated: August 19, 1980.

Charles S. Warren,

Regional Administrator,

Environmental Protection Agency.

[FR Doc. 80-28642 Filed 9-12-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1605-1]

Approval and Promulgation of Implementation Plans; San Joaquin Valley Air Basin Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Revisions to the California State Implementation Plan (SIP) were submitted to the Environmental Protection Agency (EPA) by the Governor's designee. These revisions consist of a Control Strategy and regulations for the San Joaquin Valley Air Basin (SJVAB) and constitute the Nonattainment Area Plan (NAP) for carbon monoxide, ozone, sulfur dioxide and total suspended particulates (TSP). This Air Basin includes the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare. The intended effect of the revisions is to meet the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas" for this air basin.

This notice addresses only that portion of the SIP revision concerning the SJVAB nonattainment area for TSP

and the Kern County nonattainment area for ozone, carbon monoxide and sulfur dioxide. A separate Federal Register notice will address the remaining portion of the SJVAB NAP; which concerns the Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare County nonattainment areas for ozone and carbon monoxide.

The EPA invites public comments on these revisions, the identified deficiencies, the suggested corrections and associated proposed deadlines, and whether these revisions should be approved, conditionally approved, or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

DATES: Comments may be submitted up to October 15, 1980.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions and EPA's associated Evaluation Report are contained in document file NAP-CA-07 and are available for public inspection during normal business hours at the EPA Region IX Office at the above address and at the following locations:

California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Public Information Reference Unit, Room 2404 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460

In addition copies of the applicable Nonattainment Area Plans are available at the following locations:

Fresno County Air Pollution Control Board, 1246 "L" Street, Fresno, CA 93721

Kern County Air Pollution Control Board, 1601 "H" Street, Suite 250, Bakersfield, CA 93301

Kings County Air Pollution Control Board, 1221 West Lacey Boulevard, Hanford, CA 93230

Madera County Air Pollution control Board, 135 W. Yosemite Avenue, Madera, CA 93637

Merced County Board of Supervisors, 210 E. 15th Street, Merced, CA 95340

San Joaquin County Board of Supervisors, 1801 E. Hazelton Avenue, Stockton, CA 95202

Stanislaus Area Association of Governments (SAAG), 814 14th Street, Modesto, CA 95354

Tulare County Association of Governments, County Civic Center, Visalia, CA 93277

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air & Hazardous Materials Division, Environmental Protection Agency, Region IX (415) 556-2938.

SUPPLEMENTARY INFORMATION:

Proposed Actions

The SJVAB NAP has been evaluated for conformance with Part D of the Clean Air Act. This notice provides a description of the NAP, summarizes the applicable Clean Air Act requirements, compares the NAP to those requirements and proposes approval, conditional approval, or disapproval for the portions of the NAP concerning the SJVAB nonattainment area for TSP and the Kern County nonattainment area for ozone, carbon monoxide (CO) and sulfur dioxide (SO_2).

The following portions of the NAP for CO, ozone and SO_2 in Kern County have been determined to be consistent with Part D and are proposed to be approved and incorporated into the SIP: emission inventory (except for ozone), modeling (except for ozone and SO_2), reasonable further progress (except for ozone and SO_2), legally adopted measures (except for CO and ozone), emissions growth (except for SO_2), annual reporting, resources (except for CO and ozone), public and government involvement and public hearing requirements.

The following portions of the NAP for CO, ozone and SO_2 contain minor deficiencies with respect to Part D and are proposed to be approved and incorporated into the SIP with the condition that each deficiency be corrected by a specified deadline: emission inventory (except for CO and SO_2), modeling (except for CO), emission reduction estimates, attainment provision reasonable further progress (except for CO), legally adopted measures, emissions growth (except for CO and ozone), resources (except for SO_2), and permit program.

The following portions of the NAP for TSP have been determined to be consistent with Part D and are proposed to be approved and incorporated into the SIP: emission reduction estimates, emissions growth, public and local government involvement, and public hearing.

The following portions of the NAP for TSP contain minor deficiencies with respect to Part D and are proposed to be approved and incorporated into the SIP, with the condition that each deficiency be corrected by a specified deadline: emission inventory, modeling, attainment provision, reasonable further progress, legally adopted measures, annual reporting, permit program and resources.

EPA is proposing in this notice to conditionally approve the TSP portions of the SJVAB NAP and to conditionally approve the CO, ozone and SO_2 portions of the NAP for Kern County. Upon final rulemaking action, conditional approval would be sufficient to lift the construction prohibition in these counties for the indicated pollutants.

Background

New provisions of the Clean Air Act, amended in August 1977, Public Law No. 95-95, require states to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the attainment status for all areas within the state. The Administrator promulgated these lists with certain modifications, on March 3, 1978 (43 FR 8962), and November 16, 1979 (44 FR 65986). State and local governments were required to develop, adopt and submit to EPA revisions to their SIP, for nonattainment areas, by January 1, 1979 which meet the requirements of Part D of the Clean Air Act and which provide for attainment of the NAAQS as expeditiously as practicable.

On April 4, 1979 (44 FR 20372), EPA published a General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. In addition, EPA published Supplements to the General Preamble on July 2, August 28, September 17 and November 23, 1979 (44 FR 38538, 50371, 53761, and 67182). The General Preamble supplements this notice by identifying the major considerations that will guide EPA's evaluation of the plan submittal.

EPA's evaluation of the transportation portion of the plan is also guided by the EPA/Department of Transportation (DOT) Transportation-Air Quality Planning Guidelines and EPA's Office of Transportation and Land Use Policy SIP-Transportation Checklist. EPA-DOT Guidelines describe the acceptable elements that satisfy the Clean Air Act requirements for the transportation portion of an approvable SIP.

The entire San Joaquin Valley Air Basin has been designated as nonattainment for ozone and total suspended particulates (TSP). The following counties of the San Joaquin Valley Air Basin are also identified as nonattainment areas for carbon monoxide and sulfur dioxide:

Carbon Monoxide:
- San Joaquin County
- Stanislaus County
- Fresno County
- Kern County

Sulfur Dioxide:
- Kern County

In addition, EPA received from the California Air Resources Board (ARB) on September 24, 1979 a request for redesignation of the boundaries for the Kern County Sulfur Dioxide Nonattainment Area and the Fresno County Carbon Monoxide Nonattainment Area. This request will be addressed in a separate Federal Register notice.

Description of Proposed SIP Revisions

On October 12, 1979 the Executive Officer of the California Air Resources Board (ARB), the Governor's official designee, submitted the "San Joaquin Valley Air Basin Control Strategy" (consisting of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare Counties) to EPA. Preparation of the proposed SIP revision was coordinated by the lead planning agencies as designated by the ARB.

The San Joaquin Valley Air Basin NAP submitted as a SIP revision includes the "San Joaquin Valley Air Basin Control Strategy" (Chapter 16) and those portions of the locally adopted plans, the ARB's TSP Plan, and the ARB Staff Reports and Resolutions concerning these plans which are listed in Tables 16-1a, 16-1b and 16-1c of Chapter 16. Nonreferenced portions of these documents have not been submitted by the State for incorporation into the SIP, but for informational purposes only. This notice addresses only that portion of the SJVAB NAP concerning TSP in the Basin and the Kern County Nonattainment Area for ozone, CO and SO_2.

A separate Federal Register notice will address the parts of the October 12, 1979 submittal.

Chapter 16 provides an overview of the pollutant control strategies for the San Joaquin Valley Air Basin and identifies and discusses which portions of the NAP meet Clean Air Act requirements.

The locally adopted Plans, including the Kern County plan, and the ARB TSP plan are attached as appendices to Chapter 16 and include the following information:

—A basic description of the nonattainment area including topography, air quality standards and the local air quality history;
—An examination of air quality trends through the use of growth projections and emission inventories;
—A discussion of alternative air quality control measures that examines feasibility, costs, technical effectiveness, and enforcement aspects;
—An examination of the impact that new, modified, or relocated sources will have on air quality;
—A discussion of the specific strategy for photochemical oxidants (ozone) that describes the implementation mechanisms, schedules for reasonable further progress, and continuing planning requirements, as well as the environmental, social and economic impacts for the strategies;
—A discussion of the planning process including: how the plan was prepared, the agencies involved in the process, public participation and intergovernmental consultation;
—A summary of the costs of implementing and enforcing the plan.

The ARB Staff Reports and Resolutions provide the following information:

—The Attainment/Nonattainment designation for each area and pollutant;
—A summary of the locally adopted Plans which includes a discussion of the control strategies and requirements for an adequate nonattainment area plan, and a summary of findings and recommended Air Resources Board action;
—In addition, staff findings and proposed ARB amendments are included which discuss ozone, carbon monoxide and TSP control strategies, new source review programs, air quality analyses and transportation control measures.

Chapter 16 indicates that ozone is one of the more serious problems in the basin. Attainment of the ozone standard in Kern County is projected by the Kern County Air Pollution Control District to occur by December 31, 1982. The main components of the strategy to reach and maintain the ozone standard are:

—California's motor vehicle standards on new vehicles;
—Increased control of industrial sources, including oil production;
—An inspection program to reduce pollution from in-use vehicles;
—A program to ensure that new industrial sources do not make the problem worse;
—Transportation measures to reduce the use of automobiles in urban areas.

Kern County is also nonattainment for carbon monoxide. Since the carbon monoxide problem is caused by motor vehicles, the controls listed above for motor vehicles are also projected to attain the carbon monoxide standard by December 31, 1982.

Attainment and maintenance of the sulfur dioxide standards in Kern County is expected primarily as the result of control of sulfur emissions from oil field operations.

National ambient air quality standards for TSP are exceeded throughout the SJVAB. Studies indicate that most of the TSP problem in the SJVAB is attributable to windblown dust and secondary aerosols. (Secondary aerosols are formed in the atmosphere from the chemical conversion of certain gaseous pollutants such as sulfur dioxide.) Because so much of the TSP is from these sources, the plan indicates that attainment of the TSP standards cannot be achieved by December 31, 1982 without control of these nontraditional sources.

In addition to those portions of the October 12, 1979 submittal, this notice considers amendments to the Kern County Air Pollution Control District rules and regulations submitted to EPA by the Governor's designee on January 2, May 23, and October 15, 1979, and January 8 and April 15, 1980 as SIP revisions. In order to expedite EPA's review of the Kern County Plan this notice addresses only those District regulations which appear to relate to applicable Part D requirements, and thus support the NAP.

The rules being considered in this notice are listed below.

Kern County—May 23, 1979 (Unless Otherwise Indicated)

Rule 412 Transfer of Gasoline into Stationary Storage Containers—January 2, 1979
Rule 410.1 Architectural Coatings
Rule 412.1 Transfer of Gasoline into Vehicle Fuel Tanks
Rule 424 Sulfur Compounds from Oilfield Steam Generators
Rule 410.4 Surface Coatings of Manufactured Metal Parts and Products—October 15, 1979
Rule 414.2 Refinery Process Vacuum Producing Devices or Systems—October 15, 1979
Rule 410.5 Cutback Asphalt—October 15, 1979

January 8, 1980 (Unless Otherwise Indicated)

Rule 210.1 Standard for Authority to Construct—April 15, 1980
Rule 210.2 Standards for Permit to Operate
Rule 410.3 Volatile Organic Compound Emission from Degreasing Operations Which Use Organic Solvents Exempted from Rule 410
Rule 411 Storage of Petroleum Distillates or Light Crude Oil
Rule 414 Wastewater Separators
Rule 414.1 Valves and Flanges at Petroleum Refineries and Chemical Plants

Rule 414.3 Refinery Process Unit Turnaround

Criteria for Approval

The following list summarizes the requirements for nonattainment area plans. The citations which follow referring to portions of the Clean Air Act, provide the bases for those requirements.

1. An accurate inventory of existing emissions (172(b)(4)).
2. A modeling analysis indicating the level of control needed to attain by 1982 (172(a)).
3. Emission reduction estimates for each adopted control measure (172(a)).
4. A provision for expeditious attainment of the standards (172(a)).
5. Provisions for reasonable further progress as defined in section 171 of the Act (172(b)(3)).
6. Adoption in legally enforceable form of all measures necessary to provide for attainment or, in certain circumstances where adoption by 1979 is not possible, a schedule for development, adoption, submittal, and implementation of these measures (172(b)(2), (8) and (10)).
7. An identification of an emissions growth increment (172(b)(5)).
8. Provisions for annual reporting with respect to items (5) and (6) above (172(b)(3) and (4)).
9. A permit program for major new or modified sources (172(b)(6) and 173).
10. An identification of and commitment to the resources necessary to carry out the plan (172(b)(7)).
11. Evidence of public, local government, and state involvement and consultation (172(b)(9)).
12. Evidence that the proposed SIP revisions were adopted by the State after reasonable notice and public hearing (172(b)(1)).
13. For carbon monoxide and ozone SIP revisions that provide for attainment of the primary standard later than 1982:

a. A permit program for major new or modified sources requiring an evaluation of alternative sites and consideration of environmental and social costs (172(b)(11)(A)).

b. A provision for implementation of all reasonably available control measures for mobile and transportation sources (172(a)(2)).

c. A commitment to establish, expand, or improve public transportation to meet basic transportation needs (110(a)(3)(D) and 110(c)(5)B)).

d. In addition to the above, for major urbanized areas, a specific schedule and legal authority for implementation of a vehicle emission control inspection and maintenance program (172(b)(11)(B)).

14. For ozone nonattainment areas requiring an extension beyond 1982, the revision must also provide for adoption of legally enforceable regulations to reflect the application of reasonably available control technology (RACT) to those volatile organic compound (VOC) stationary sources for which EPA has published a Control Techniques Guideline by January 1978, and a commitment to adopt RACT regulations for additional sources to be covered by future guidelines (172(a)(2)). For rural areas and urban areas that demonstrate attainment by 1982, only large sources (more than 100 tons/year emissions) must be so regulated.

Discussion

The paragraph numbers below correspond to the Part D nonattainment area plan requirements discussed in the preceding section, Criteria for approval. EPA policy for approval of ozone (O_3) nonattainment area plans differentiates between rural and urban O_3 nonattainment areas. EPA's policy including the definition of rural areas is discussed in the General Preamble. Although the 1970 Census would qualify Kern County as a rural area, the plan shows that population growth by 1980 has changed the demographic character to "urbanized." In addition, by correspondence dated June 3, 1980 from the State Air Resources Board (ARB), the State asserted that (a) Kern County was treated as an urban county in the 1979 nonattainment area planning process, (b) Bakersfield, Kern County, has exceeded 200,000 population, and (c) the plan documents that Kern County creates the major portion of the O_3 standard violations monitored in Kern County. Based upon the population cut-off contained in the General Preamble, and in consideration of the ARB corresponsence, Kern County is considered to be an urban area.

As noted in the SUMMARY section, EPA reviewed the plan for conformance with the pertinent requirements and, in this section, identifies the portions of the plan that (1) are approvable, or (2) are conditionally approvable. As a result of this analysis EPA proposes to conditionally approve the Kern County plan and the TSP plan for the San Joaquin Valley Air Basin.

A. Kern County—Ozone/Carbon Monoxide

1. Emission Inventory

The plan includes a current emission inventory for hydrocarbons (HC) and carbon monoxide (CO) identifying emission source categories, their estimated emissions for the base year, 1975, and projected inventories for 1982 and 1987. However, the HC inventory was found to need refinement in that adequate documentation of base year and projected emissions from tertiary oil production operations, which account for 80% of the HC emission inventory (227 tons/day), was not provided. On the basis of the ARB staff report, submitted as part of the SIP revision, and EPA's review, it appears that this source category might account for a substantially smaller portion of the emission inventory than that indicated in the plan. This portion of the O_3 plan is proposed to be approved with the condition that the State submit by October 1, 1980 documentation for this source category.

2. Modeling

Ozone. A city-specific EKMA analysis was used to determine the emission reductions needed to attain the NAAQS for O_3. The EKMA analysis used a design value of 0.17 ppm rather than 0.20 ppm. The 0.20 ppm value is contained in the plan and was determined upon analysis by EPA to be the more appropriate design value. The use of 0.20 ppm as the design value would require emission reductions of 70.3% of the base year emissions to meet the NAAQS for O_3, compared to 60.7% emission reductions derived by the use of the 0.17 ppm design value. EPA proposes to approve this portion of the O_3 plan with the condition that the State submit by January 1, 1981 either (1) a revised analysis using the 0.20 ppm design value or (2) an adequate justification of the 0.17 ppm design value.

Carbon Monoxide. The plan uses a linear rollback model to determine the emission reductions needed to attain the NAAQS for CO and concludes that the required emissions reduction is 49%. Linear rollback is an acceptable method for the 1979 SIP revision to estimate required reductions in emissions. Therefore, EPA proposes to approve this portion of the CO plan.

3. Emission Reduction Estimates.

Ozone. Annual emission reductions are contained in the plan for each control measure for HC reductions up to 1982 and for 1987. The emission reduction estimates appear reasonable. However, uncertainties exist with respect to control tactic SS1, "Steam Drive Controls." Emission reduction estimates for this control tactic account 227 T/D reactive organic gases (ROG) of the total 288 T/D ROG emission reductions required to meet the projected attainment date of 1982. Due to the uncertainty of the emission inventory for this source category (see

Criterion #1), EPA proposes to approve this portion of the O_3 plan with the condition that the State submit by January 1, 1981 a new estimate of emission reductions attributed to control tactic SS1, derived from a reanalysis based on the emission inventory to be documented per the conditional approval in Criterion #1.

Carbon Monoxide. Emission reduction estimates for a motor vehicle inspection and maintenance (I/M) program and stationary source control measures appear to be reasonable. However, petroleum refinery emission reduction estimates of 88.3 T/D are not fully documented in the plan. This portion of the CO plan is proposed to be approved with the condition that the State submit by October 1, 1980 further documentation of these emission reduction estimates.

4. Attainment Provision

Ozone and Carbon Monoxide. The locally adopted plan claims attainment for O_3 and CO by December 31, 1982, implementing certain reasonably available control measures. However, as previously discussed in Criteria #1, 2, and 3, the emission inventory and modeling portions of the O_3 plan and the emission reduction estimates portion of the CO plan contain minor deficiencies. Further, as described below in Criterion #6, additional control measures are necessary to substitute for the plan's I/M program since the State Legislature has failed to provide the legal authority required to implement the program. This portion of the O_3 and CO plans is proposed to be approved with the condition that the State submit by January 1, 1981 a revised demonstration of attainment which corrects the deficiencies stated in Criteria #1, 2, 3 and 6.

Although this notice proposes to conditionally approve the O_3 and CO plans without an I/M program, it should be noted that substitute control measures must be added to replace the I/M program currently described in the Kern County Plan. Further, if the revised demonstration does not show attainment by 1982 with the substitute control measures and thus requires an extension of the 1982 attainment date, an I/M program would then become a mandatory requirement for an approvable O_3 or CO plan in Kern County.

Carbon Monoxide. The plan demonstrates attainment of the CO NAAQS by December 31, 1982, and EPA proposes to approve this protion of the CO plan.

5. Reasonable Further Progress (RFP)

Ozone. The plan contains an RFP analysis which projects attainment by 1982, but as previously noted, analysis indicates that the allowable emission level will differ from that stated in the plan. Therefore, this portion of the O_3 plan is proposed to be approved with the condition that the State submit by January 1, 1981 a revised RFP analysis consistent with the revised demonstration of attainment referenced in Criterion #4. The RFP schedules must be supported by the implementation of a process for monitoring and verifying transportation related emission reductions.

Carbon Monoxide. The plan contains an acceptable RFP analysis which demonstrates attainment of the NAAQS for CO by December 31, 1982. Therefore, EPA proposes to approve this portion of the CO plan.

6. Legally Adopted Measures/Schedules

The plan does not indicate that all necessary control measures have been adopted in a legally enforceable form as discussed below.

Inspection and Maintenance. The demonstration of attainment in the O_3 and CO plans for Kern County relies upon an I/M program in part. The State Legislature has failed to provide the necessary legal authority to implement and enforce the I/M program and EPA cannot approve this measure without such legal authority. However, because the Clean Air Act requires an I/M program only in urban areas that request an extension beyond the 1982 attainment date, the O_3 and CO plans for Kern County are not required to include an I/M program. Therefore, EPA is deferring action on this control measure until such time as legal authority is adopted.

In this notice EPA proposes to approve the legally adopted measures portion of the O_3 and CO plans for Kern County with the condition that the State provide by January 1, 1981 the necessary substitute control measures for the I/M program.
a revised demonstration of attainment which includes substitute control measures for the I/M program and a revised demonstration of attainment for the O_3 and CO standards and of necessary substitute control measures for the I/M program.

VOC RACT. The Clean Air Act requires that minimum levels of control technology be provided for in the nonattainment area plan. The plan must include adopted, legally enforceable regulations which reflect the application of reasonably available control technology (RACT) for those stationary source categories for which EPA has published a Control Technique Guideline (CTG) document by January 1978 (i.e., Group I CTGs). In addition the plan must contain a commitment to adopt RACT regulations for sources in categories to be addressed by future CTG documents.

The CTGs provide information on available air pollution control techniques, and contain certain recommendations of what EPA calls the "presumptive norm" for RACT, based on EPA's current evaluation of the capabilities and problems general to an industry. The State may develop case-by-case requirements, independent of EPA's recommendation, for any source or group of sources. Therefore, the basis for an EPA decision to approve a regulation as satisfying the requirements of the Act for RACT consists of the applicable CTG document, any material submitted by the State justifying that the regulation satisfies the requirements of the Act for RACT (based on the economic and technical circumstances of the particular sources being regulated), and public comment on the submitted regulation and supporting material.

The plan indicates that of the 15 source categories (addressed by 11 CTG documents) for which adopted regulations are required, only 9 exist in the nonattainment area. There are no surface coating operations for cans, coils, paper, fabric, automobile, or magnet wire. The source categories that do exist in the nonattainment area include service stations, bulk plants, bulk terminals, refinery processes, fixed-roof tanks, degreasing operations, surface coating of large appliances, surface coating of metal furniture, and cutback asphalt. Regulations have been submitted for all of these required categories.

The following regulation is currently part of the approved State Implementation Plan (SIP) for this District, and has also been evaluated, since it contains control requirements for one of the above-noted source categories:

Rule 413, "Organic Liquid Loading," submitted on July 19, 1974.

EPA has reviewed the submitted regulations and the previously-approved regulation listed above in relation to the respective CTG for each of the categories. Based on the information in the CTGs EPA believes that the regulations are adequate to fulfill the requirement for RACT, except as noted below:

(1) Rule 414, "Effluent Oil-Water Separators," exempts sources which

recover less than 200 gallons/day and units which handle products with a Reid Vapor Pressure of less than 0.5 psi. These exemptions are not supported by information in the CTG. This portion of the O_3 plan is proposed to be approved with the condition that the State submit one of the following by January 1, 1981: an adequate demonstration that the rule represents RACT; an amended rule to be consistent with the CTG; or a demonstration that the rule will result in VOC emission reductions which are insignificantly different (within 5% of controlled emissions) from the reductions which would be achieved through implementation of the CTG recommendations.

(2) Rule 410.5, "Cutback Asphalt Paving Materials," does not place a limit on the VOC content of emulsified asphalts prior to January 1, 1985. (After that date the rule limits the VOC content to 3% by volume.) It is believed that appropriate limits must be required prior to January 1, 1985. This portion of the O_3 plan is proposed to be approved with the condition that the State submit one of the following by January 1, 1981: justification for not regulating VOC content earlier; or an amended rule to conform with the CTG and subsequent guidance memoranda.

(3) Rule 411, "Storage of Petroleum Distillates and Light Crude Oil," may not apply to all the sources addressed by the CTG for fixed-roof tanks. The rule does not apply to crude oils with true vapor pressures of 1.5 psi or greater if they are in storage containers which have an average daily throughput of less than 6300 gallons. Further, crude oils are only controlled if their true vapor pressure can be determined using the ASTM D 323-72 test method and the nomogram for crude oils in API Bulletin 2517. The ASTM method and the crude oil nomogram are of questionable applicability to most of the crude oils found in the District. The CTG would apply to *all* petroleum liquids with a true vapor pressure greater than 1.5 psi. Rule 411 also exempts tanks designated for "emergency standby." These exemptions are not supported by information in the CTG. This portion of the O_3 plan is proposed to be approved with the condition that the State submit one of the following by January 1, 1981: an adequate demonstration that the rule represents RACT; an amended rule to be consistent with the CTG; or a demonstration that the rule will result in VOC emission reductions which are insignificantly different (within 5% of controlled emissions) from the reductions which wuld be achieved through implementation of the CTG recommendations.

(4) Rule 410.3, "Volatile Organic Compound Emissions from Degreasing Operations Which Use Organic Solvents Exempted from Rule 410," contains control requirements believed to be equvalent to those recommended in the CTG for degreasing, but those controls would only apply to degreasers using saturated halogenated hydrocarbons and perchloroethylene. The majority of degreasing operations would be subject to Rule 410 which requires that either a 40 lb/day or 3000 lb/day emission limit be met, depending on the reactivity of the solvent used. This level of control is not considered adequate since many degreasing operations could meet the daily emission limits specified in Rule 410 with no controls. This portion of the O_3 plan is proposed to be approved with the condition that the State submit one of the following by January 1, 1981: an adequate demonstration that Rule 410 represents RACT; an amended Rule 410.3 extending the control requirements to all degreasers; or a demonstration that Rule 410.3 will result in VOC emission reductions which are insignificantly different (within 5% of controlled emissions) from the reductions which would be achieved through implementation of the CTG recommendations.

The submitted regulation for service stations and bulk gasoline plants applies to sources also regulated by the Federal Regulation 40 CFR 52.255, "Gasoline Transfer Vapor Control." Since the submitted regulations adequately control those sources covered by the Federal Regulation, and since the District regulation is presently in effect, the Federal Regulation is proposed to be rescinded applicable to these sources. Similarly, the submitted regulation for the surface coating of miscellaneous metal parts and products applies to sources which are regulated by Federal Regulations 40 CFR 52.253, "Metal Surface Coating Thinner and Reducer," and 40 CFR 52.254, "Organic Solvent Usage." Since the District's regulation is future effective, the Federal Regulations are proposed to be retained applicable to the sources covered by the District regulations until such sources achieve full compliance with the respective District regulation.

As stated above, the plan must contain a commitment to adopt RACT regulations for source categories to be covered by future CTG documents. The plan contains a resolution committing to implement all other reasonably available control measures needed to attain the standard as expeditiously as practicable. It is concluded that this commitment is adequate provided that the State submit adopted regulations for the following applicable source categories: refinery fugitive leaks, gasoline tank trucks, perchlorethylene manufacture, graphic arts, pneumatic rubber tire manufacture, and surface coating of flat wood paneling.

The District's Rule 410.4, "Surface Coating of Manufactured Metal Parts and Products," contains control requirements sufficient to fulfill the requirement for RACT for Miscellaneous Metal Parts (a Group II CTG category). Therefore, no additional regulations are needed for this source category at this time. However, Rule 410.4 is not legally enforceable since a compliance schedule is not specified. Therefore, EPA proposes to approve this portion of the O_3 plan with the condition that the State submit by January 1, 1981 a revised rule providing for a compliance schedule.

The District's Rule 411, "Storage of Petroleum Distillates and Light Crude Oil," contains control requirements for Floating Roof-Tanks (another Group II CTG category). This rule contains controls which are adequate to fulfill the requirements for RACT, except for the problems noted previously for this regulation as it pertains to fixed-roof tanks. Appropriate revisions need to be made to the regulation by January 1, 1981.

The plan contains in Table 16-3 stationary source control measures for several source categories which are not addressed by the CTG documents published by EPA as of January 1978. The State has found that these measures are required for attainment of the O_3 standard. Therefore, EPA proposes to approve and incorporate into the SIP these commitments.

The plan contains 3 transportation control measures that are presently found to be reasonable for Kern County. However, there is no evidence in the plan that any of the 3 transportation control measures are committed for implementation in legally enforceable form. The requirements of Section 172(b)(10) are not met since the plan does not include written evidence that the agencies identified as responsible for transportation related measures have formally committed, and where appropriate, have adopted statutes, regulations, ordinances or other legally enforceable documents, to implement and (where appropriate) enforce the necessary transportation control measures, nor have they adequately identified the specific measures to be implemented and established implementation schedules with milestone dates for planning,

programming, implementing, operating, enforcing, and monitoring each transportation control measure. EPA proposes to approve the portion of the NAP with the condition that the State submit these commitments and schedules from the implementing agencies by October 1, 1980.

To assure that the requirements of Sections 176(c) and 176(d) are met, EPA policy requires that the plan contain procedures for the determination of conformity with the SIP of any project, program, or plan over which the metropolitan planning organization has approval authority, and that the plan contain procedures to ensure that priority is given to the implementation those portions of any plan or program with air quality related transportation consequences that contribute to the attainment and maintenance of the primary NAAQS. Specifically, these procedures should address the granting of priority to projects in the Transportation Improvement Program which contribute to the attainment and maintenance of the NAAQS. EPA policy requires that these procedures be submitted by July 1, 1981 in the annual report.

Supporting Regulations

The State has also submitted Rule 410.1, "Architectural Coatings," Rule 412.1, "Transfer of Gasoline into Vehicle Fuel Tanks," and Rule 414.1, "Valves and Flanges in Petroleum Refineries and Chemical Plants." These regulations are proposed to be approved for inclusion in the SIP, since they will strengthen the SIP. Federal Regulation 40 CFR 52.265, "Control of Evaporative Losses from the Filling of Vehicular Tanks," is proposed to be rescinded since Rule 412.1 controls sources in an equivalent manner to the Federal rule.

Rule 414.1 contains control requirements for fugitive refinery leaks (a Group II CTG category). Rule 414.1 does not however satisfy all the requirements for RACT for this source category. Appropriate revisions need to be made to the regulation by January 1, 1981. Specific comments are included in the evaluation report notes.

40 CFR Part 52

In addition to the proposed rulemaking actions discussed in this section, this notice proposes to remove certain Federally promulgated regulations from the Code of Federal Regulations, 40 CFR Part 52, which concern (in part) the Kern County nonattainment area. The following Federally promulgated regulations or specified portions are proposed to be rescinded or amended because they have been replaced by the revised set of control measures/regulations contained in this plan and/or they have been invalidated by previous legal action:

A. § 52.233 *Review of new sources and modifications:* Subparagraphs (c)(3), and (d)(10)(ix) should be rescinded when the State adopts and officially submits approvable new source review regulations; also, subparagraph (f)(i)(c), should be rescinded since it has been invalidated by the Clean Air Act Amendments of 1977.

B. § 52.238 *Attainment dates for national standards:* The attainment dates in this section are proposed to be changed in accordance with the submitted plan.

C. The sections below should be rescinded in their entirety since they have been invalidated by the court action of *Brown vs. EPA.* 521 F2d 827 (1975):

§ 52.242 *Inspection and maintenance program;*
§ 52.243 *Motorcycle limitation;*
§ 52.244 *Oxidizing catalyst retrofit;*
§ 52.245 *Control of Oxides of Nitrogen, Hydrocarbon, and CO emission from inuse vehicles;*
§ 52.247 *Definitions for parking management regulations;*
§ 52.251 *Management of parking supply;*
§ 52.257 *Computer carpool matching;*
§ 52.265 *Mass transit and Transit Priority Planning;*
§ 52.266 *Monitoring transportation mode trends.*

D. The sections below should be rescinded as they are replaced by revised control strategies for the pollutants:

§ 52.269(a) Control strategy Regulations: Photochemical Oxidants (HCs and CO);
§ 52.226(a) Control Strategy and Regulations: Particulate Matter, San Joaquin Valley Intrastate Region;
§ 52.231(a) Regulations: Sulfur Oxides, San Joaquin Valley Intrastate Region.

7. Emissions Growth

The O_3 plan identifies 1.6 T/D of reactive organic gases as the emission growth increment. This approach is acceptable for O_3, and EPA proposes to approve this portion of the O_3 plan.

For CO the plan must include either (1) identification and quantification of an emission growth increment for the construction and operation of major new or modified stationary sources, or (2) provisions to offset the emissions from such sources in a New Source Review rule. Offsets for new or modified stationary sources are provided by the adopted New Source Review rule (See Criterion #9), and therefore EPA proposes to approve this portion of the CO plan.

8. Annual Reporting

The plan provides for an annual report of reasonable further progress, including an updated emission inventory. Therefore, EPA proposes to approve this portion of the O_3 and CO plans.

9. Permit Program

The Kern County NAP contains a New Source Review Rule that was adopted by the Air Resources Board for the entire Kern County nonattainment area. EPA's criteria for approval of a new source permitting program are contained in Section 173, which also references essential portions of Sections 171 and 172. EPA has established further guidance based on Section 173: EPA's Emission Offset Interpretative Ruling in the January 16, 1979 Federal Register (44 FR 3274), and EPA's proposed amendments to regulations for New Source Review and to the Emission Offset Ruling in the September 5, 1979 Federal Register (44 FR 51924). The permitting program must be consistent with Section 173 and one or the other notice.

EPA's review indicates that the NSR regulation is not fully consistent with, and is less stringent than, the above criteria. Definitions of source and other terms are less restrictive, certain emissions are not counted, and many broad exemptions are included in the regulation. These deficiencies would allow many sources to avoid LAER and offset requirements contrary to EPA criteria. In addition, the provisions for determining the amount and locations of emission offsets, when they are required, are weaker than EPA criteria. These and other deficiencies are described in the evaluation report.

EPA has determined that the deficiencies in the NSR regulation are minor deficiencies, with respect to Section 173. Therefore, EPA proposes to approve and incorporate into the SIP the NSR regulation with the following condition. The regulations must be revised and submitted as an SIP revision by March 1, 1981 and must satisfy Section 173 and must be consistent as a whole with either the January 16, 1979 Interpretative Ruling, or the September 5, 1979 proposal. An additional option, if EPA's final rulemaking on the September 5, 1979 proposal has been promulgated, would be for the revised regulations to be consistent with that rulemaking. However, it should be noted that when EPA does take final action on

its September 5, 1979 proposal, the State will be under a statutory obligation to revise its NSR regulation within nine months to be consistent with that final action.

10. Resources

The plan commits to general funding and implementation. However, the plan does not specifically identify the financial and personnel resources necessary for plan implementation, nor does it provide commitments to these resources on the part of all implementing agencies. Submittal of such identifications and commitments would satisfy Sections 110(a)(2)(F) and 172(b)(7) of the Act. This portion of the O_3 and CO plans is proposed to be approved with the condition that the State submit by January 1, 1981 such identifications and commitments.

11. Public and Government Involvement

The plan provides evidence of public, local government, and State involvement and consultation in the planning process, and documents the process used in designating responsible entities for preparing and implementing the plan. The plan identifies air quality, health, welfare, economic, energy, and social effects of the plan provisions. In addition, the plan contains a summary of public comments.

Therefore, the requirements of Section 172(b)(9) have been satisfied, the EPA proposes to approve this portion of the O_3 and CO plans.

12. Public Hearing

The plan meets the requirements of Section 172(b)(1) and 40 CFR 51.4 since it includes evidence that the plan was adopted by the State after reasonable notice and public hearing. Therefore, EPA proposes to approve this portion of the O_3 and CO plan submittals.

13. Extension Requirements for O_3 and CO

14. Extension Requirements for VOC/ RACT

The plan projects attainment of the O_3 and CO standards by 1982. Therefore, the extension requirements with respect to O_3 and CO do not apply.

B. Kern County—Sulfur Dioxide

1. Emission Inventory

The plan includes a reasonably comprehensive and accurate emissions inventory for sulfur dioxide (SO_2) identifying emission source categories and their estimated emissions for 1977, 1982, 1987. Therefore, EPA proposes to approve this portion of the SO_2 plan.

2. Modeling

The locally adopted plan utilized the Climatological Dispersion Model (CDM) to estimate the expected SO_2 levels for 1982 for the Kern River Oil Field. The results of this analysis indicated that the annual standard would be exceeded at the center of the oil field. The plan also indicated that a CDM analysis prepared by Science Applications Incorporated, predicted that planned projects in the Midway/Sunset Oil Field were likely to cause violations of the annual standard.

Based upon a recent analysis by EPA, it appears that CDM may not have been used appropriately for air quality analyses in Kern County. CDM was developed by EPA for use in estimating long-term concentrations of inert pollutants in urban areas. As a result, the model has several limiting assumptions. These assumptions are: (1) the model simulates the urban heat island effect of a city by changing stable meteorological conditions to neutral meteorological conditions, (2) the model gives the plume an enhanced initial disperson of 30 meters for stacks less than 20 meters high, and (3) the model does not take into account the effect of elevated terrain. As a result, if CDM is used in Kern County without changing these assumptions, the model can under-predict ambient concentrations. Also, a report by SRI International, "Modeling of Stationary Air Pollution Sources In The Central and Western Kern County Oil Fields," January 1979, showed that there is a substantial difference between CDM which takes into account the above assumptions and CD which does not.

In view of the foregoing discussion, EPA proposes to approve this portion of the SO_2 plan with the condition that the State submit by October 1, 1980 a revised modeling analysis which takes into account the above noted issues if a modified version of CDM is used in the reanalysis.

On March 5, 1980 the State provided a document entitled "Evaluation Supporting the Kern County Non-Attainment Plan for SO_2," dated February 29, 1980. This document is not a part of the SIP submittal, but has been included in the docket to this rulemaking for informational purposes. Material included in the document would satisfy this criterion if the State were to adopt and submit the document as an SIP revision after reasonable notice and public hearing.

3. Emission Reduction Estimates

The plan does not directly provide for any emission reduction estimates which would result in a decrease of SO_2 emissions. Rather the plan indicates that New Source Review (NSR) requirements, Prevention of Significant Deterioration (PSD) requirements, and the shutdown of 62 steam generators in the Kern River Oil Field due to monitored violations of the standard and an EPA permit condition, will prevent future violations of the standard. Also, according to the State, Rule 424, "Control of Sulfur Compounds From Oil Field Steam Generators," which was submitted to EPA on January 8, 1980 as part of the particulate matter plan, will reduce SO_2 emissions by approximately 58 percent from steam generators permitted prior to February 21, 1979. This emission reduction, however, may not be fully achieved because the rule allows an exemption for cogeneration if a source converts at least 20 percent of its heat input to electrical energy. Therefore, EPA proposes to approve this portion of the SO_2 plan with the condition that the State submit by October 1, 1980 emission reduction estimates for Rule 424 which takes into account the cogeneration exemption. Material included in the State's February 29, 1980 document, cited above, would satisfy this criterion if the document were to explicitly account for the cogeneration exemption, and if the State were to adopt and submit the document as an SIP revision after reasonable notice and public hearing.

4. Attainment Provision

Section 172(a) of the Act requires that the plan shall provide for attainment of the primary SO_2 standard as expeditiously as practicable, but not later than December 31, 1982. The plan, however, does not demonstrate attainment of the standard by December 31, 1982 because modeled violations of the standard were not considered.

The plan indicates that the annual standard will be exceeded at the end of 1982 in the Kern River Oil Field. As discussed in Criterion #2, CDM can under-predict ambient SO_2 concentrations in Kern County because it may not have been appropriately used. In addition, the two following reports show current modeled violations of the annual standard in the Kern River Oil Field and the Sunset/Midway Oil Field: (1) "Statement Prepared For The State of California Air Resources Board Public Hearing for Consideration of A Proposed Rule for Control of Sulfur Compounds From Steam Generators and Boilers Used In Oil Field Operations," (Science Applications Incorporated, March 23, 1978); and (2) Air Quality Impact of Proposed Oil Field Equipment in the Western County Oil Fields As of

July 1978, Volumes I and II," (Science Applications Incorporated, November 15, 1978).

Further, the attainment demonstration did not account for possible future increased SO_2 emissions growth due to (1) decontrol of heavy crude oil pricing, (2) minor point sources not subject to NSR or PSD requirements, (3) area and mobile sources, and (4) increases from existing sources.

As a result of these issues and those discussed above in Criteria #2 and #3, a revised air quality analysis and emission reduction control strategy will be required to justify an attainment demonstration. Therefore, EPA proposes to approve this portion of the SO_2 plan with the condition that the State submit by October 1, 1980 a revised control strategy demonstrating attainment of the SO_2 standard throughout the nonattainment area. Material included in the State's February 29, 1980 document, cited above, would satisfy this criterion if the document were to explicitly account for the cogeneration exemption, and if the State were to adopt and submit the document as an SIP revision after reasonable notice and public hearing.

5. Reasonable Further Progress (RFP)

As indicated in Criteria #2, #3, and #4, further modeling efforts and a revised demonstration of attainment are required. As a result, a revised demonstration of reasonable further progress will be required. Therefore, EPA proposes to approve this portion of the SO_2 plan with the condition that the State submit by October 1, 1980 a revised demonstration of reasonable further progress. Material included in the State's February 29, 1980 document, cited above, would satisfy this criterion if the document were to explicitly account for the cogeneration exemption, and if the State were to adopt and submit the document as an SIP revision after reasonable notice and public hearing.

6. Legally Adopted Measures

The plan indicates that all control measures contained in the plan have been adopted in legally enforceable form. Therefore, EPA proposes to approve this portion of the plan.

7. Emissions Growth

The plan must include either 1) an express identification and quantification of an emission growth increment for the construction and operation of major new or modified stationary sources, or 2) provisions to offset the emissions from such sources in a New Source Review rule. The plan identifies an emission growth increment of 7100 tons per year. However, as noted above, additional revised modeling and demonstrations of attainment and reasonable further progress are required. Therefore, EPA proposes to approve this portion of the the SO_2 plan with the condition that the State submit by October 1, 1980 evidence that the emission growth increment is consistent with such revised modeling and demonstration.

8. *Annual Reporting*

The SO_2 plan does not specifically contain provisions for annual reports of reasonable further progress including an updated emissions inventory. However, the O_3 and CO plans for Kern County do provide such a commitment, and it is expected that the annual report will include material for all three pollutants. Therefore, EPA proposes to approve this portion of the SO_2 plan.

9. *Permit Program*

A New Source Review Rule for the Kern County APCD has been submitted by the State in order to meet the requirements of Sections 172(b)(6) and 173 of the Clean Air Act. The submittal is discussed in depth in the Permit Program section of the above O_3/CO discussion. EPA proposes to approve the permit portion of the SO_2 plan with the same conditions as the O_3/CO plans.

10. *Resources*

The plan gives evidence of financial and personnel resources obligated to implement certain measures. Therefore, EPA proposes to approve this portion of the SO_2 plan.

11. *Public and Government Involvement*

The plan gives evidence of public, local government, and State involvement and consultation in the planning process, and documents the process used in designating responsible entities for preparing and implementing the plan.

The plan identifies air quality, health, welfare, economic, energy, and social effects of the plan provisions.

Additionally, the plan contains a summary of public comments and the tapes of the ARB hearing on the plan. Therefore, the plan satisfies the requirements of Section 172(b)(9), and EPA proposes to approve this portion of the SO_2 plan.

12. *Public Hearing*

The plan meets the requirements of Section 172(b)(10) and 40 CFR 51.4 since it includes evidence that the plan was adopted by the State after reasonable notice and public hearing. Therefore, EPA proposes to approve this portion of the SO_2 plan submittal.

C. San Joaquin Valley Air Basin (Fresno, Kern, San Joaquin, Stanislaus, Kings, Madera, Merced, and Tulare Counties) Plan for the Primary and Secondary Standards for Total Suspended Particulates

1. *Emission Inventory*

The plan includes a Total Suspended Particulate (TSP) emission inventory, of which 94 percent of the emissions are attributed to nontraditional sources.

In order to effectively define TSP control strategies, the inventory for the nontraditional source category must be refined to identify and quantify subcategories, such as secondary aerosols and windblown dust. This deficiency is considered minor, and EPA proposes to approve the emission inventory portion of the San Joaquin Valley TSP plan, with the condition that the State submit an emission inventory that contains the information noted above, by October 1, 1980.

2. *Modeling*

The plan does not contain a modeling analysis which would determine the emission reduction estimates needed to attain the NAAQS. A design value must be selected and documented, and a modeling analysis submitted. Justification for using either the 24 hour standard or the annual geometric mean standard must also be submitted.

EPA proposes to approve the modeling portion of the San Joaquin Valley TSP plan with the condition that the State submit a modeling analysis for TSP by October 1, 1980.

3. Emission Reduction Estimates

The TSP plan contains a general commitment to the study of fugitive dust and other nontraditional control measures (see Attainment Demonstration discussion below). Therefore, EPA proposes to approve this portion of the San Joaquin Valley TSP plan.

4. Attainment Provision

The plan identifies adopted regulations which reflect an emission limit that requires reasonably available control technology for existing major source categories. In addition, the plan indicates that fugitive dust emissions comprise a major portion of the TSP inventory, and that reductions in these emissions will be necessary to attain the NAAQS. Due to (1) the unavailability of precise emission factors for the fugitive dust sources and (2) the need to further study potential control measures for

these sources, the San Joaquin Valley TSP plan cannot, at this time, quantify the expected emission reductions.

In such cases where study and implementation of nontraditional control measures is necessary to attain the standards, it is EPA policy that the plan need not provide a quantitative demonstration of attainment. Instead, the plan may provide a commitment and a schedule for the development, adoption, and implementation of those control measures necessary for the attainment of the primary TSP standards by December 31, 1982, and of the secondary TSP standard as expeditiously as practicable.

The TSP plan contains a commitment by the ARB to attain the primary TSP standard by December 31, 1982, and the secondary TSP standard as expeditiously as practicable. However, the plan does not contain commitments and schedules to perform specific studies, nor does it contain a commitment and schedules to implement those measures found to be reasonable. If the schedules and these commitments are submitted, a demonstration of attainment could be approved based on future implementation of nontraditional source control measures. EPA proposes to approve this portion of the TSP plan for San Joaquin Valley with the condition that the State submit the schedules and commitments noted above by October 1, 1980.

5. Reasonable Further Progress

The plan indicates that reasonable further progress cannot be quantified due to analytical problems and to a lack of information on measured TSP concentrations. However, if the nontraditional source study tasks, schedule, commitment and milestones were included in the plan, the plan would appear to be consistent with the requirements of Sections 172(b)(3) and 171(l), since it would provide for regular, incremental reductions needed for expeditious attainment based on future implementation of nontraditional and secondary particulate source control measures. EPA proposes to approve this portion of the San Joaquin Valley TSP plan with the same condition as in the Attainment Provision discussion.

6. Legally Adopted Measures

The TSP plan, as noted above, identifies adopted regulations which reflect an emission limit that is equivalent to reasonably available control technology for major source categories. In addition, the State has committed to develop and submit by December 31, 1981, a plan containing further analysis and control measures needed to attain the primary standard by December 31, 1982 and the secondary standard as expeditiously as possible.

As discussed in the Attainment Demonstration section of this notice, the TSP plan contains a minor deficiency since it does not contain a commitment and schedule for the development, adoption, and implementation of those control measures necessary for attainment by December 31, 1982, and for the secondary standard attainment as expeditiously as practicable. The Legally Adopted Measures section is deficient for the same reason, and is therefore proposed to be approved under the same conditions stated in the Attainment Demonstration section.

7. Emissions Growth

To satisfy the requirements of Section 172(b)(5) of the Act, the plan must provide either an emissions growth increment or an offset requirement for those emissions resulting from major new stationary source growth.

The plan contains an adopted New Source Review rule which requires emission offsets from major new or modified stationary sources. Therefore, EPA proposes to approve this portion of the San Joaquin Valley TSP plan.

8. Annual Reporting

The plan must contain a commitment for annual reports of reasonable further progress, including an updated emissions inventory. A commitment to such annual reporting is not included in the plan. EPA proposes to approve this portion of the San Joaquin Valley TSP plan with the condition that the State submit an Annual Report, including the information noted above, on July 1, 1981 and a commitment to submit annual reports hereafter.

9. Permit Program

As noted above in the discussion on the O_3, CO and SO_2 plans for Kern County, and in the separate Notice of Proposed Rulemaking for the Fresno, Stanislaus, San Joaquin, Kings, Madera, Merced and Tulare Plans, New Source Review rules have been adopted by either the local jurisdictions or the State and submitted to EPA.

EPA's criteria for approval of a new source permitting program are contained in Section 173, which also references essential portions of Sections 171 and 172. EPA has established further guidance based on Section 173: EPA's Emission Offset Interpretative Ruling in the January 16, 1979 Federal Register (44 FR 3274), and EPA's proposed amendments to regulations for New Source Review and to the Emission Offset Ruling in the September 5, 1979 Federal Register (44 FR 51924). The permitting program must be consistent with Section 173 and one or the other notice.

EPA's review indicates that the NSR regulations are not fully consistent with the above criteria. The submitted rules contain many substantial exemptions from lowest achievable emission rate and offset requirements. The definition of source is less stringest, and offset requirements are weak. These and other deficiencies are described in the Evaluation Report. EPA has determined that the deficiencies in the NSR regulations are minor deficiencies, with respect to Section 173. Therefore, EPA proposes to approve and incorporate into the SIP the NSR regulation with the following condition. The regulations must be revised and submitted as an SIP revision by March 1, 1981 and must satisfy Section 173 and must be consistent as a whole with either the January 16, 1979 Interpretative Ruling, or the September 5, 1979 proposal. An additional option, if EPA's final rulemaking on the September 5, 1979 proposal has been promulgated, would be for the revised regulations to be consistent with that rulemaking. However, it should be noted that when EPA does take final action on its September 5, 1979 proposal, the State will be under a statutory obligation to revise the NSR regulations within nine months to be consistent with that final action.

10. *Resources*

The plan does not specifically identify and commit to all financial and personnel resources needed for plan implementation, nor does the plan provide commitments to these resources on the part of all implementing agencies to satisfy the requirements of Section 172(b)(7). EPA is proposing to approve this portion of the San Joaquin Valley TSP plan with the condition that the State submit these commitments by October 1, 1980.

11. *Public and Government Involvement*

Through the State hearing process, the plan provides evidence of public, local government, and State involvement. The plan documents the process used in designating responsible entities for preparing and implementing the plan.

The plan identifies air quality, health, welfare, economic, energy and social effects of the plan provisions. In addition, the plan contains a summary of public comments and the tapes of the ARB hearing held on the plan.

EPA proposes to approve the Public and Government Involvement portion of

the San Joaquin Valley TSP plan submittal as meeting the requirements of Section 172(b)(9) of the Act.

12. *Public Hearing*

The plan meets the requirements of Section 172(b)(1) since it includes evidence that the plan was adopted by the State after reasonable notice and public hearing. Therefore, EPA proposes to approve this portion of the San Joaquin Valley TSP plan submittal.

Public Comments

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. The Administrator hereby issues this notice setting forth the SIP revision described above as proposed rulemaking, and advises the public that interested persons may participate by submitting written comments to the Region IX office.

The EPA Region IX Office specifically invites public comment on whether to conditionally approve the items identified in this notice as deficiencies in the NAP. EPA is further interested in receiving comment on the specified dates for the State to submit the corrections, in the event of conditional approval.

Comments received on or before October 15, 1980, will be considered. Comments received will be available for public inspection at the EPA Region IX Office and at the locations listed in the Addresses Section of this notice.

The Administrator's decision to approve, conditionally approve, or disapprove the proposed revisions will be based on the comments received and on a determination whether the revisions meet the requirements of Section 110(a)(2) and Part D of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

EPA believes the available period for comment is adequate because:

(1) The SJVAB Control Strategy has been available for inspection and comment since October 12, 1979;

(2) EPA's notice published in the December 4, 1979 Federal Register (44 FR 69684) indicated that the comment period would be 30 days; and (3) EPA has a responsibility under the Act to take final action as soon as possible after July 1, 1979 on that portion of the SIP that addresses the requirements of Part D.

EPA has determined that this action is "specialized" and therefore not subject to the procedural requirements of Executive Order 12044.

(Sections 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410, 7429, 7501 to 7508, and 7601(a)))

Dated: August 1, 1980.

Paul De Falco, Jr.,

Regional Administrator.

[FR Doc. 80-28318 Filed 9-12-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 81

[FRL 1605-4]

Designation of Areas for Air Quality Planning Purposes; Section 107 Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this notice is to propose Environmental Protection Agency approval of certain changes to designations with regard to the national ambient air quality standard attainment status of areas in the State of New York. Such designations are required by Section 107(d) of the clean Air Act and may be revised from time to time at the request of the state. Such a request was received from New York State and is the subject of this notice.

DATES: Comments must be received by November 14, 1980.

ADDRESSES: All comments should be addressed to: Charles S. Warren, Regional Administrator, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the proposal are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Air Programs Branch, Room 908, Region II Office, 26 Federal Plaza, New York, New York 10278.

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

New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, 212-264-2517.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act, as amended in August 1977, directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list of national ambient air quality standard attainment status designations for all areas within the state. EPA received such designations and promulgated them on March 3, 1978 (43 FR 8962). Subsequently, on January 25, 1979 (44 FR 5119), revisions to the designations for the states administered by the Region II Office of EPA (New York, New Jersey, the Commonwealth of Puerto Rico and the U.S. Virgin Islands) were promulgated.

On May 8, 1980 New York State requested that the following Air Quality Control Regions (AQCRs) be redesignated with respect to the national ambient air quality standards for particulate matter and sulfur oxides:

Particulate Matter

In the Niagara Frontier AQCR, the city of Buffalo (excluding a one-quarter mile wide strip of land bordering Lake Erie and parallel to Fuhrmann Boulevard between I-190 and Tifft Street) is currently designated non-attainment for the particulate matter secondary standard. The size of the non-attainment area is proposed to be reduced such that it would be defined as that portion of the city of Buffalo south of Genesee Street (excluding a one quarter mile strip of land bordering Lake Erie and parallel to Fuhrmann boulevard between I-190 and Tifft Street).

Other areas currently designated for secondary standard particulate matter non-attainment in the Niagara Frontier AQCR include the city of North Tonawanda west of Military Road, the Town of Cheektowaga west of Union road, the Town of West Seneca west of Union road, and the City of Lockport. North Tonawanda and West Seneca are proposed to be redesignated as "better than national standards." The area of non-attainment in Cheektowaga is proposed to be redefined as that porrtion south of Genesee road and west of Union road. Lockport's non-attainment area is proposed to be reduced to that portion north of State Routes 93 and 31.

The City and Town of Tonawanda, west of Military road, are both currently designated as unclassifiable for the particulate matter primary standard and non-attainment for the particulate matter secondary standard. These areas are proposed to be reclassified as "better than national standards."

In the Central AQCR, the city of Syracuse, south of I-690, north of State Route 5, east of I-81 and west of Teall Avenue, is currently designated as non-attainment for the particulate matter primary standard. This area is proposed to be redesignated as in attainment of the primary standard. The City of

Syracuse will remain classified as non-attainment for the secondary particulate matter standard as will the Villages of East Syracuse and Solvay.

In the Hudson Valley AQCR, the City of Albany east of U.S. Routes 9 and 9W is currently designated as "does not meet secondary standards" for particulate matter. This area of secondary standard non-attainment is proposed to be contracted to the City of Albany, east of State Route 32 and south of U.S. Route 20.

The Town of Catskill east of U.S. Route 9W, except for the Village of Catskill, is currently designated as non-attainment for the secondary standard for particulate matter. This area of non-attainment is proposed to be redefined as the Town of Catskill, east of U.S. Route 9W and south of Embought Road.

Sulfur Oxides

In the Southern Tier East AQCR the Town of Bainbridge is to be redesignated as "better than national standards" for sulfur oxides. In the Southern Tier West AQCR the Town of Corning is proposed to be redesignated as "better than national standards." The current designation of both towns with regard to sulfur oxides is "cannot be classified."

The following criteria are used by EPA in determining whether or not to approve a proposed redesignation:

1. No contraventions of any air quality standards are observed during the last consecutive eight calendar quarters, or
2. No contraventions of any air quality standards are observed during the last consecutive four quarters provided there has been a steady and substantial decrease in ambient air quality levels over the last consecutive eight quarters which can be attributed to a significant and quantifiable reduction in emissions.
3. Contraventions of particulate matter standards are shown to be due to fugitive dust emissions if the monitor is located in a non-industrial rural area.
4. Contraventions of particulate matter standards have been shown to be due to temporary activities.
5. Although monitoring data are preferred, determinations of nonattainment and nonattainment boundaries may also be based on monitoring data.

Based on EPA's review of the State's May 8, 1980 submittal and additional information received from the State on June 6, 1980 and July 21, 1980, EPA has determined, using the applicable criteria above (No's. 1, 4, and 5), that the State's proposal can be approved. All proposed changes in designation are either from "cannot be classified" to "better than national standards" or from "does not meet primary or secondary standards" to "better than national standards." Areas which remain designated as "cannot be classified" will be subject to further study by New York State and EPA to determine the actual attainment status of those areas.

Interested persons are invited to comment on any element of the subject proposal and on whether it meets Clean Air Act requirements. Comments received by November 14, 1980 will be considered in EPA's final decision. All comments received will be available for inspection at the Region II Office of EPA at 26 Federal Plaza, Room 908, New York, New York 10278.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this package and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: August 19, 1980.

(Section 107, Clean Air Act, as amended)

Charles S. Warren,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 80-28317 Filed 9-12-80; 8:45 am]
BILLING CODE 6560-01-M

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40 CFR Part 401

[FRL 1602-1]

Proposed Removal of Bis-(Chloromethyl) Ether(BCME) From the Toxic Pollutant List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to remove bis-(chloromethyl) ether from the list of toxic pollutants published in 40 CRR 401.15 pursuant to section 307(a)(1) of the Clean Water Act. While BCME is a carcinogen, a measurable exposure to aquatic life or humans through water is extremely remote since it decomposes rapidly in water. Additionally, it is not produced or in significant use in the United States.

DATES: Public comments on this proposed action must be submitted on or before November 14, 1980.

FOR FURTHER INFORMATION AND SUBMISSION OF COMMENTS CONTACT: Jacqueline V. Carr, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202-245-3036).

SUPPLEMENTARY INFORMATION: Section 307(a)(1) of the Clean Water Act requires EPA to publish a list of toxic pollutants. This section also authorizes the Administrator to add or remove substances from this list and provides that:

> The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms.

On March 27, 1979 (44 FR 18279), EPA published a notice to provide guidance to persons petitioning EPA for a change in the toxic pollutant list. The notice explained the information necessary to support such a petition. These information factors were to include, but not be limited to, the following:

(1) Toxicity of the pollutant:

a. Acute [96-hour LC50] toxicity to freshwater and marine organisms;

b. Maximum acceptable toxicant concentration to freshwater and marine organisms;

c. Embryo-larval and egg-fry tests on freshwater organisms;

d. Information on dose-related lethal or chronic sub-lethal effects on man, nonhuman mammals, vertebrates, and other aquatic organisms;

e. Information relating to known or suspected carcinogenicity, teratogenicity, and mutagenicity in man or in other animals.

(2) Persistence of a pollutant including its mobility and degradability in water.

(3) Bioconcentration, bioaccumulation, and biomagnification of a pollutant or of its degradation products or metabolites.

(4) Synergistic propensities and effects of the pollutant.

(5) Water solubility and octanol-water partition coefficient determinations for the pollutant.

(6) Extent of point source discharges into water including qualitative presence and quantitative concentrations of the pollutant in effluents, ambient water, benthic sediments, fish, and other plant and animal aquatic organisms.

(7) Potential exposure of persons to the pollutant through drinking water, surface water, fish or shellfish consumption. Potential exposure of aquatic organisms and wildlife to the pollutant.

(8) Annual production of the pollutant in the United States.

(9) Use patterns.

(10) The capability of analytical methods to identify and quantitatively determine the presence of the pollutant in ambient water or wastewaters.

On January 31, 1978, EPA published the list of 65 toxic pollutants identified by Congress in Table 1 of Committee Print Numbered 95–30 of the House of Representatives Committee on Public Works and Transportation (43 FR 4109). This list was codified in 40 CFR 401.15 on July 30, 1979 (44 FR 44501). Bis-(chloromethyl) ether ("BCME") was listed under number 16, chloroalkyl ethers (44 FR 44503).

EPA is proposing that BCME be removed from the list of toxic pollutants designated pursuant to section 307(a) of the Clean Water Act. The legislative history of the Clean Water Act of 1977 indicates Congress' clear intent that the Administrator have "the widest latitude" in designating pollutants as toxic and that "no pollutant listed in Committee Print Numbered 95–30 should be deleted without a clear finding that delisting will not compromise adequate control over the discharge of toxic pollutants" (Cong. Rec. Daily ed. S. 19649). EPA believes that data on bis-(chloromethyl) ether warrant such a finding. BCME does have carcinogenic properties, and exposure in the workplace is regulated by OSHA (29 CFR 1910.1008). However, EPA believes that it should be removed from the list of toxic pollutants designated under the Clean Water Act because (1) it is not persistent and degrades immediately upon contact with water; (2) it does not bioaccumulate; (3) there is only limited potential exposure of aquatic organisms; and (4) it is not present in point source discharges.

Persistence and Degradability

The physical properties of BCME are given in Table 1. BCME is a non-polar liquid at environmental temperature and pressure. The half-life associated with hydrolysis of BCME in water is about 38 sec. at 20° and neutral pH. *(37)* The reaction rate is not appreciably faster in either strongly basic or strongly acidic solutions, nor is the rate of volatilization of BCME competitive with the rate of hydrolysis. After five half-lives (190 sec. at 20°C), 96.9 percent of BCME would be hydrolyzed. Therefore, it is quite reasonable that no BCME has been detected in water samples. The transit time to the analytical apparatus is longer than 190 seconds.

Table 1.—*Physical and Chemical Properties of BCME*

Chemical formula	$ClCH_2OCH_2Cl$.[1]
Description	Colorless liquid.[2]
Molecular weight	114.96.[1]
Specific gravity (d15/4)	1.328.[2]
Melting point	−41.5° C.[1]
Vapor pressure (22° C.)	0.0395 atm.[1]
Solubility in water[3]	22,000 mg/L[1]
Log octanol/water partition[3] Coefficient	−0.38.[1]
Boiling point	104° C.[1]

[1] U.S. EPA, 1979. *(36)*
[2] IARC, 1973. *(13)*
[3] These values are estimates based on structure-property correlations and not experimentally determined data. The structure-property correlations are empirical relationships derived from data for other organic chemicals, not BCME.

In water, BCME's fate is determined by hydrolysis, because this is the chemical mechanism with the shortest half-life. Its tendency to absorb to particles would probably be quite limited even if enough BCME remained intact in the water column. Because the hydrolytic half-life of BCME is so brief, its concentration in water is quite small after even short time periods. For example, after 12 minutes (19 half-lives of hydrolysis), the concentration of BCME is 1-five hundred thousandth that of the initial concentration. *(2)* Therefore contributions of BCME to ambient water may be neglected in all cases but massive spills. Because the latter is a highly unlikely occurrence based on current use information, BCME's aquatic fate does not permit significant potential for human or aquatic organism exposure.

Potential for Bioaccumulation

Based on the estimated octanol/water partition coefficient, BCME shows little or no propensity towards accumulating in body tissues. *(3)* The thermodynamic constant for adsorption tends to correlate quite well with the water-octanol partition coefficient. The log of the octanol/water partition coefficient for BCME is estimated to be −0.38, indicating that BCME would be preferentially partitioned into water, rather than octanol, by more than a factor of 2. Chemical species with this distribution pattern show little or no tendency to adsorb on solid particles or bioaccumulate in organisms. *(4, 5)*

Potential Exposure of Aquatic Organisms

Worst case analysis for potential exposure to BCME shows that in the spring, following snow melt, the flow in streams reaches an annual maximum. During conditions of such high flow, any introduced matter (pollutants, waste streams, etc.) may be carried farther than at other times before they are chemically or physically degraded (if at all). For calculation purposes, the following assumptions were made: (1) a spring time flow velocity of 2 feet per second (fps); (2) well mixed water column (e.g., homogeneous) at a temperature of 0°C with an attendant BCME hydrolytic half-life of 277 sec. *(37)*; (3) BCME discharge is sufficient to produce a 100 ppm concentration below an outfall; (4) volatilization is negligible. It is estimated that within a distance of 528 feet (0.1 mile, 0.16 kilometers) the concentration has been reduced to 50 ppm by hydrolysis alone. By the time (17.6 minutes) that unit volume of water containing the BCME has moved 0.4 miles (0.64 km), the concentration has been reduced to 6.3 ppm. Mean annual flow rates are normally lower than flow rates during spring months; 0.5 fps would be a typical figure. At this velocity and assuming a water temperature of 20°C, the BCME concentration would be reduced to 3.7×10^{-7} ppm within 0.1 miles (p.16km) of the source of discharge.

These conditions would also tend to limit the movement of subsurface BCME to the surface as it would be hydrolyzed first, thus minimizing the possibility of volatilization of any BCME remaining in the water column. Thus the fate of BCME is constrained to hydrolysis in the aquatic environment, and complex intermedia modeling to evaluate fate is unnecessary. Boundaries of BCME movement are well-defined and transfer between compartments is negligible. Exposures may therefore be analyzed for separate compartments without loss of accuracy.

Extent of Point Source Discharges

EPA has found that in approximately 100 effluent samples taken from textile manufacturing plants, no BCME was detected. *(6)* In the analysis of 2,554 water samples performed by EPA's Effluent Guidelines Division, only two contained measurable amounts of BCME. *(7)* These samples containing 22 and 231 ppb were taken from an organic chemicals outfall and the raw wastes of a plastics manufacturing operation. No BCME was detected in the final effluent of the latter. A monitoring study conducted by EPA detected no BCME in 204 samples. *(8)* None was detected in a third study by Shakelford and Keith. *(9)* Neither was BCME detected in drinking water from studies by NOMS *(10)*, NORS *(11)*, and SRI. *(12)*

There are no quantitative data available on the current production and use of BCME. Professional consensus is that BCME is probably not in production or in significant use in this country today. *(2)* In 1973 the Stanford Research Institute and Chemical Information Services reported no evidence of BCME

for sale to others for commercial use. (*13*) Its production in the United States was limited to captive use in the synthesis of other organic chemicals. Although about 70 patents "describing the preparation of various textile aids from chloromethyl ether * * *" have been filed since 1940, 28 of them from 1958 to 1968, sales appeared to have been limited to laboratory quantities. (*14*)

Known uses of BCME have been: crosslinking of cellulose, preparation of styrene-butadiene and styrene polymers, in surface treatment of vulcanized rubber to increase adhesion of epoxy resins and polyurethane elastomers, and as an intermediate in the textile industry—especially in the manufacture of flame retardant fabrics.

Dow Chemical, (*15*) which is one of the three major U.S. manufacturers of anion exchange resins, uses chloromethyl methyl ether (CMME) in the resin formation process. The two other major manufacturers of these resins, Diamond Shamrock, Inc. and Rohm and Hass Co. (*16, 17*) use similar processes. These companies use methanol, HCl and formaldehyde to generate CMME. BCME was detected in this non-aqueous reaction mixture in amounts (0.5 to 4 percent) which varied with operating conditions. (*19*) CMME performs as a chloromethyl group donor to the aromatic substrates of the resin.

Because BCME gives up its chloromethyl group more readily than CMME, it is completely consumed during the processes.

Walker (*19*) notes the formation of BCME as a byproduct from zinc chloride catalyzed synthesis of chloromethyl esters from phthalyl and acyl chlorides with paraformaldehyde. These results suggest that any acidic solution which contains chloride ion and formaldehyde should be considered a potential source of BCME. (*20*) The combination of strong HCl and aldehydes may be found in several types of manufacturing operations, especially in textiles. As reported earlier, extensive measurements have not found any BCME in effluent samples taken from textile manufacturing plants.

Intermedia Impact

In air, BCME has greater stability and persists longer. BCME is quite stable in moist air. Tou and Kallos (1974) (*1*) obtained a 105 percent recovery of BCME when it was introduced as a gas into the headspace of a reaction vessel containing water. The hydrolytic half-life of BCME in humid air is greater than 25 hours. (*21*) Almost 20 days would be required to reduce the concentration by the same magnitude as is accomplished by 12 minutes in water.

In industrial environments, the concern lies primarily with the stability of gaseous BCME and formation of BCME from other organic compounds.

Other potential sources of BCME in then on-aquatic environment are those industrial processes which bring gaseous hydrochloric acid in contact with formaldehyde, which is the reverse of the BCME hydrolysis reaction. Bis-(chloromethyl) ether is formed when formaldehyde and HCl react in air at concentrations ranging from 500–3000 ppm,(*38*) and these compounds can possibly be present in the atmosphere of chemical plants.(*22*) Furthermore, it may be formed in non-aqueous process reactions commonly employed in organic synthesis.(*24*)

OSHA regulations are designed to protect workers in industrial settings where BCME is manufactured, processed, used, or stored. The regulations pertaining to BCME (29 CFR 1910.1008) include provisions for containment, transfer, contamination control, de-contamination and surveillance.

Carcinogenic Properties

In recent years alkylating agents have come under intense scrutiny because of their mutagenic and tumorigenic activities. One such alkylating agent is BCME. BCME was first demonstrated to be carcinogenic by Van Duuren, et al.(*14*) in a skin-painting study with female ICR/Ha Swiss mice. BCME (2 mg in 0.1 ml benzene) was applied to the skin 3 times per week for 325 days. Thirteen of the 20 BCME-treated mice (65 percent) develop papillomas, 12 of which progressed to squamous cell carcinomas.

The carcinogenicity of BCME has subsequently been confirmed in experiments involving cutaneous exposure(*23, 24*) subcutaneous administration(*25, 26*) and inhalation exposure.(*26, 27, 28, 29*) For example, a single subcutaneous injection of BCME (12.5 ul/kg) into newborn mice resulted in pulmonary tumors in 45 percent of the treated mice within 6 months compared to a 14 percent incidence of lung tumors in control mice.(*25*)

BCME has also been reported to be strongly mutagenic in several bacterial strains, especially *Escherichia coli*.(*30*) Human epidemiological data show an increased incidence (6.7 percent vs 2 percent for controls) of aberrant cells (peripheral lymphocytes) in 12 workers exposed to BCME for 2 years.(*31*)

BCME has also been associated with human cancer. Epidemiological evidence suggests BCME may constitute a lung cancer risk for man.(*32, 33*) A high incidence (33 percent) of carcinoma, predominantly oat-cell carcinoma of the lung, was reported for 18 research laboratory workers exposed to BCME.(*34*)

Pasternack, et al.,(*35*) in a retrospective cohort mortality study, noted an increased risk of respiratory cancer in workers exposed to high levels of BCME. Deaths due to causes other than cancer were shown to be non-work related. DeFonso and Kelton(*18*) performed an epidemiological study on 2,285 workers at a plant manufacturing anion exchange resins. Records showed 669 of the workers were exposed to BCME and cause of death was known for 95.3 percent of them. Based on a time-weighted average exposure rating (TWER) rather than actual BCME concentratons, they concluded that the risk of lung cancer and subsequent death was increased by a factor of 3.8. No excess numbers of respiratory cancer were found in workers exposed to lower levels of BCME, but the data are insufficient to even speculate on a possible threshold concentration.

Conclusion

Although the carcinogenic potential of BCME through air exposure is well documented, EPA believes that BCME does not present a risk to human health or the environment by exposure from water. This conclusion is based on the instability of the substance in water, its lack of potenital for bioaccumulation, and the lack of point source discharge.

Removal of BCME from the 307(a)(1) list would have no adverse impact on the aquatic environment due to the extremely low stability of BCME in water and its failure to persist in the aquatic environment except for very short periods of time. Because hydrolysis of BCME occurs before its volatilization to the air, BCME concentration in the atmosphere is not expected to increase because of this action. Therefore, an intermedia impact is not expected. This proposed removal action does not affect the validity of BCME's water quality criterion expected to be published this year.

Dated: September 3, 1980.

Douglas M. Costle,

Administrator.

In 40 CFR Subchapter N. Part 401, § 401.15 is proposed to be amended as follows:

§ 401.15 Toxic pollutants.

* * * * *

16. Chloroalkyl ethers (chloroethyl and mixed ethers)

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, and 483

Conditions of Participation for Skilled Nursing and Intermediate Care Facilities; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Conditions of Participation for Skilled Nursing and Intermediate Care Facilities were published as a Notice of Proposed Rule Making in the Federal Register on July 14, 1980 (45 FR 47368) with a 60-day comment period. In view of the numerous requests we have received for an extension of the comment period and in view of the complexity of the issues involved we have decided that an extension of the comment period is warranted. In view of these facts, the comment period has been extended 30 days until October 14, 1980.

DATE: We will consider written comments or suggestions which are mailed on or before October 14, 1980.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, P.O. Box 17082, Baltimore, Maryland 21235.

In commenting, please refer to HSQ–53P. Comments will be available for public inspection beginning approximately 2 weeks after publication, in room 309G, Hubert Humphrey Building, 200 Independence Avenue, Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:30 p.m., telephone (202) 245–7890.

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble of the rule.

FOR FURTHER INFORMATION CONTACT: Mr. J. Richard Lenehan, Jr., Division of Long Term Care, Health Standards and Quality Bureau, Health Care Financing Administration, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, (301) 594–7651.

Dated: September 11, 1980.
Earl M. Collier, Jr.,
Acting Administrator, Health Care Financing Administration.

Approved: September 11, 1980.
Patricia Roberts Harris,
Secretary.

[FR Doc. 80-28599 Filed 9-12-80; 9:15 am]
BILLING CODE 4110-35-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5895]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

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).

DATES: 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.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872, (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator 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.

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)
Alabama	City of Alabaster, Shelby County	Buck Creek	Just upstream of Industrial Road (State Highway 66)	*452
			Just downstream of 1st Avenue West (State Highway 44)	*461
			Just downstream of 6th Avenue Southwest	*469
		Peavine Creek	Just upstream of Interstate Highway 65	*455
			Just upstream of County Road 11	*460
	Maps available for inspection at City Hall, P.O. Box 277, Alabaster, Alabama 35007.			
	Send comments to Mayor Rubin or Mr. Thomas M. Allen, Building Inspector, City Hall, P.O. Box 277, Alabaster, Alabama 35007.			
Alabama	Colbert County (unincorporated areas).	Spring Creek	50 feet upstream from the center of Old Jackson Highway (County Road 55).	*439
			50 feet upstream from the center of Jackson Highway (U.S. Highway 43).	*456
		Dry Creek	50 feet upstream from the center of Southern Railway	*486
			50 feet upstream from the center of Wilson Dam Highway (State Highway 133).	*498
		Pond Creek	50 feet upstream from the center of Second Street Road (State Highway 184).	*518
			50 feet upstream from the center of Gnat Pond Road (County Road 61).	*534
	Maps available for inspection at Colbert County Courthouse, Tuscumbia, Alabama.			
	Send comments to Honorable Bruce Gargis, Colbert County, Courthouse, Tuscumbia, Alabama 35647.			
Alabama	City of Jasper, Walker County	Town Creek	Just upstream of San Francisco Railway	*305
			Just upstream of 19th Street	*315
			Just upstream of Wright Street	*327
		Yanyard Creek	Just upstream of 19th Street	*320
			Just upstream of Frank Evans Road	*331
		Poley Creek	Just upstream of 36th Avenue	*384
			Just upstream of Shererwood Drive	*390
		Poley Creek Tributary 1	Approximately 1,300 feet upstream of Confluence with Poley Creek	*386
	Maps available for inspection at City Engineer's Office, City Hall, 400 West 19th Street, Jasper, Alabama 35501.			
	Send comments to Mayor Nicholson or Mr. Dick Freeman, City Manager, City Hall, P.O. Box 1589, Jasper, Alabama 35501.			
Alabama	Madison County (unincorporated areas).	Flint River	100 feet upstream of center of Hobbs Island Road	*578
			100 feet west of west end of Sneed Avenue	*585
		Brier Fork Flint River	50 feet downstream of Old Dam	*675
			100 feet upstream of center of Moores Mill Road	*692
		Beaverdam Creek	100 feet downstream of U.S. Highway 231/431	*710
		Indian Creek	50 feet upstream of center of Southern Railway Bridge	*616
			Intersection of Creek and center of State Route 72	*669
	Maps available for inspection at Madison County Courthouse, Huntsville, Alabama.			
	Send comments to Honorable James Record, Madison County, Courthouse, Huntsville, Alabama 35801.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	Town of Pelham, Shelby County	Bishops Creek	Just upstream of Seaboard Coast Line Railroad	*418
			Just upstream of Bearden Road	*435
			Just upstream of Cross Creek Trail	*445
			Just upstream of Chandalar Drive	*447
		Buck Creek	Just upstream of Louisville and Nashville Railroad	*423
			Just upstream of Alabama Highway 52	*435
		Coales Creek	Just upstream of Seaboard Coast Line Railroad	*442
		Hogpen Creek	Just upstream of I-65	*451
			Just upstream of Alabama Highway 52	*465
		Peavine Creek	Just upstream of Louisville and Nashville Railroad	*436
			Just upstream of Alabama Highway 31	*436
	Maps available for inspection at City Hall, Pelham, Alabama 35124.			
	Send comments to Mayor Dunaway or Mr. Paul Yeager, City Engineer, City Hall, P.O. Box 277, Pelham, Alabama 35124.			
Alabama	Town of Vincent, Shelby County	Spring Creek/Blue Spring Branch/Tributary Two.	Just upstream of U.S. Highway 231	*422
			Just upstream of Southern Railroad	*438
			Just downstream of confluence of Tributary Two with Blue Spring Branch.	*451
			Just upstream of County Highway 81 crossing of Tributary Two	*468
		Upper Spring Creek	Just upstream of Southern Railway crossing near Mistletoe Lane	*436
	Maps available for inspection at City Hall, Main Street, Vincent, Alabama 35178.			
	Send comments to Mayor Clinkscales or Mr. Robert D. Greene, Councilman, City Hall, P.O. Box 49, Vincent, Alabama 35178.			
Connecticut	East Lyme, Town, New London County.	Long Island Sound	Entire Shoreline within Community	*11
		Fourmile River	Confluence with Long Island Sound	*11
			State Route 156/West Main Street	*11
			Downstream of Breached Dam, located approximately 1.2 miles from confluence with Long Island Sound.	*16
			Upstream of Breached Dam, located approximately 1.2 miles from confluence with Long Island Sound.	*25
			Downstream Colton Road	*46
			Upstream Colton Road	*49
			Downstream of Green Valley Lakes Road	*55
			Approximately 700' upstream Overbrook Road	*60
			Approximately 3,730' upstream of Overbrook Road	*70
			Downstream Boston Post Road	*75
			Upstream Boston Post Road	*82
		Pattagansett River	Confluence with Long Island Sound	*11
			Downstream Brook Road	*12
			Upstream Brook Road	*13
			Upstream Bush Pond Dam (Breached)	*20
			Upstream Foxbury Road	*25
			Downstream Society Road	*29
			Downstream Industrial Park Road	*35
			Upstream U.S. Route 1/Interstate 95	*41
			Upstream Wooden Bridge located 960 feet downstream of State Route 51.	*45
			Upstream State Route 51	*50
			Approximately 50' downstream of Pattagansett Lake Dam	*58
			Approximately 20' downstream of Pattagansett Lake Dam	*62
		Latimer Brook	Confluence with Niantic River	*11
			Approximately 1,160' downstream of U.S. Route 1	*16
			Approximately 830' downstream of U.S. Route 1	*21
			Approximately 490' downstream of U.S. Route 1	*26
			Approximately 150' downstream of U.S. Route 1	*32
			Upstream U.S. Route 1	*37
			Upstream State Route 51/Boston Post Road	*47
			Approximately 2,750' downstream of Colony Road	*57
			Approximately 830' downstream of Colony Road	*62
			Upstream Colony Road	*70
			Approximately 800' downstream of Wooden Bridge	*73
			Upstream Wooden Bridge	*78
			Approximately 1,960' upstream of Wooden Bridge	*79
	Maps available at the Office of the Town Clerk, and Town Engineer, Town Hall, East Lyme, Connecticut.			
	Send comments to Honorable George Seebeck, First Selectman of East Lyme, P.O. Drawer 579, Niantic, Connecticut 06357.			
Georgia	City of Clarkston, De Kalb County	South Fork Peachtree Creek	Just upstream of Casa Drive	*941
			Just upstream of Montreal Road	*954
	Maps available for inspection at City Clerk's Office, City Hall, 3921 Church Street, Clarkston, Georgia 30021.			
	Send comments to Mayor Whaley or Mr. John M. Rawlins, City Councilman, City Hall, 3921 Church Street, Clarkston, Georgia 30021.			
Illinois	(V); Antioch, Lake County	Sequoit Creek	Just upstream State Route 173	*741
			Just downstream Highview Drive	*743
			Just upstream Highview Drive	*748
			Just upstream Tiffany Road	*755
			Just upstream Cunningham Drive	*762
			About 1.2 miles upstream Soo Line Railroad	*766
		Silver Lake Drain	At mouth at Sequoit Creek	*766
			About 0.44 mile upstream of mouth	*766
		Cross Lake Tributary	At mouth at Cross Lake	*813
			About 100 feet upstream Bridgewood Drive	*814

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Antioch Lake Drain	Just upstream Hillside Avenue	*749
			Just upstream outlet for Lake Antioch	*757
		Cross Lake	Shoreline	*813
		Lake Marie	Shoreline	*742
		Antioch Lake	Shoreline	*757
		Lake Catherine	Shoreline	*742
	Maps available for inspection at the Village Hall, 874 Main Street, Antioch, Illinois.			
	Send comments to Honorable Michael J. Haley, Village President, Village of Antioch, Village Hall, 874 Main Street, Antioch, Illinois 60002.			
Illinois	Bartlett, Village, Cook and Du Page Counties.	West Branch Du Page River	Upstream Army Trail Road	*730
			Downstream Shick Road	*742
			Upstream Illinois Central Gulf Railroad	*746
			Upstream of the upstream boundary of Wayne Grove Forest Preserve	*753
			Upstream Corporate Limits	*759
		Brewster Creek	Downstream Corporate Limits	*774
			Upstream State Route 59	*786
		Country Creek	Approximately 500' upstream from confluence of Country Creek to West Branch Du Page River.	*749
			Approximately 2,000' downstream of Stearns Road	*753
			Upstream of Stearns Road	*768
			Upstream of Brookside Drive	*773
			Downstream of Devon Avenue	*782
	Maps available for review at the Bartlett Village Hall, 228 South Main Street, Bartlett, Illinois			
	Send comments to Honorable Richard G. Betz, Village President of Bartlett, 228 South Main Street, Bartlett, Illinois 60103.			
Illinois	(V), Bluffs, Scott County	Wolf Run Creek	Just downstream of Rockwood Street and approximately 420 feet downstream of corporate limits.	*460
			Approximately 130 feet downstream of State Route 100	*472
			Just upstream of State Route 100	*473
			Just downstream of the eastern corporate limits	*481
	Maps available for inspection at the Village Hall, Bluffs, Illinois.			
	Send comments to Honorable Orville L. Gathard, Village President, Village of Bluffs, Village Hall, Bluffs, Illinois 62621.			
Illinois	(V), Liverpool, Fulton County	Illinois River	Entire length of community along Illinois River	*455
	Maps available at Village Clerk's Office, Liverpool, Illinois.			
	Send comments to Honorable John Barton, Village President, Village of Liverpool, P.O. Box 182, Liverpool, Illinois 61543.			
Illinois	(C), Waukegan, Lake County	Des Plaines River	At southern Corporate limits (about 2,700 feet downstream of unnamed road).	*660
			About 700 feet upstream of St. Sava Monastery footbridge over Des Plaines River.	*681
		Suburban Country Club Tributary	At southern corporate limits	*665
			Just downstream of Shirley Drive	*668
			Just downstream of Chicago and North Western Railroad	*669
		Bull Creek	About 980 feet downstream DeWoody Avenue	*653
			Just upstream DeWoody Avenue	*659
			Just downstream Beach Road	*663
			Just upstream Beach Road	*669
			About 500 feet upstream Beach Road	*670
		North Shore Ditch	Just upstream of Montesano Avenue and about 200 feet west of Western Avenue.	*648
			Just upstream Blanchard Road	*651
			About 2,450 feet upstream Blanchard Road	*654
		Waukegan River	Just upstream Glen Flora Avenue	*651
			Approximately 150 feet upstream Commonwealth Edison Access Road.	*653
			Just downstream Sunset Avenue	*656
		Lake Michigan	Shoreline affecting City of Waukegan	*584
	Maps available for inspection at the City Clerk's Office and Planning Commission, Municipal Building, 106 North Utica, Waukegan, Illinois.			
	Sends comments to Honorable William Morris, Mayor, City of Waukegan, Municipal Building, 106 North Utica, Waukegan, Illinois 60085.			
Indiana	(T), Cayuga Vermillion County	Vermillion River	About 2,200 feet downstream easter corporate limits	*498
			At upstream corporate limits	*501
	Maps available for inspection at the Town Hall, Cayuga, Indiana.			
	Send comments to Honorable Otto Julick, Jr., Mayor, Town of Cayuga, P.O. Box 33, Cayuga, Indiana 47928.			
Indiana	(T), Newport, Vermillion County	Little Vermillion River	Just upstream of the Missouri Pacific Railroad	*494
			About 650 feet upstream from the upstream corporate limit	*499
	Maps available for inspection at the Newport Firehouse, P.O. Box 65, Newport, Indiana.			
	Sent comments to Honorable Rick Youmans, President of the Town Board, Town of Newport, Newport Firehouse, P.O. Box 65, Newport, Indiana 47966.			
Kentucky	Unincorporated areas of Boone County.	Ohio River	Just upstream of Gunpowder Creek	*481
			Just upstream of Arnold Creek	483
			Just upstream of Woolper Creek	*486
			Just upstream of Wilson Creek	*489
			Just upstream of Sand Run	*491
			Just upstream of Muddy Creek	*493
	Maps available for inspection at Boone County Courthouse, Building No. 9, Union Square, Burlington, Kentucky 41005.			
	Send comments to Judge Bruce Ferguson, Boone County Courthouse, P.O. Box 266, or Mr. Conrad Toberate, Building Inspector, Boone County Courthouse, P.O. Box 193, Burlington, Kentucky 41005.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Kentucky	City of Paris, Bourbon County	Stoner Creek	Just upstream of Louisville and Nashville Railroad	*795
			Just upstream of North Main Street (U.S. Highways 68 and 460)	*797
		Houston Creek	Just upstream of Lilleston Avenue	*798
			Just downstream of Georgetown Road	*807
			Just downstream of U.S. Highway 27	*816
			Just upstream of Lexington Road (U.S. Highways 27 and 68)	*829
	Maps available for inspection at City Hall, 800 Pleasant Street, Paris, Kentucky 40361.			
	Send comments to Mayor Castle or Mr. Douglas Taylor, City Manager, City Hall, 800 Pleasant Street, Paris, Kentucky 40361.			
Michigan	(T), Hastings, Barry County	Thornapple River	Western corporate limits	*785
			About 3,800 feet downstream River Road	*793
			Just upstream McKeown Road	*799
			About 850 feet upstream Charleton Road	*803
		Fall Creek	Downstream corporate limits	*813
			About 780 feet upstream Campground Road (downstream crossing)	*831
			About 100 feet downstream Campground Road (upstream crossing)	*841
			About 5,330 feet upstream Campground Road (upstream crossing)	*844
	Maps available for inspection at the Township Hall, 3853 South Broadway, Hastings, Michigan.			
	Send comments to Honorable Richard Thomas, Township Supervisor, Township of Hastings, Township Hall, 3853 South Broadway, Hastings, Michigan 49058.			
Michigan	(T) Ypsilanti, Washtenaw County	Huron River	Just upstream Rawsonville Road	*654
			Just downstream of Ford Dam	*658
			Just upstream of Ford Dam	*686
			Approximately 2,600 feet downstream of La Forge Road	*704
			Just downstream of La Forge Road	*707
			Just downstream of of Conrail	*718
			Approximately 500 feet upstream of Superior Road	*720
		Paint Creek	Just upstream of Bemis Road	*693
			Approximately 600 feet downstream of retention pond weir	*735
			Just upstream of retention pond weir	*742
			Just downstream of Interstate 94	*750
			Approximately 1,800 feet upstream of Interstate 94	*755
			Just downstream of Michigan Avenue	*756
			Just upstream of Michigan Avenue	*760
			About 900 feet upstream of Cobble Creek Road	*762
		West Branch of Paint Creek	Approximately 300 feet upstream of Bemis Road	*700
			About 200 feet downstream of Merritt Road	*710
			About 500 feet upstream of Merritt Road	*712
		Ford Lake	Shoreline in Township of Ypsilanti	*686
	Maps available for inspection at the Township Hall, 7200 Huron River Drive, Ypsilanti, Michigan.			
	Send comments to Honorable Astor J. Wallace, Township Supervisor, Township of Ypsilanti, Township Hall, 7200 Huron River Drive, Ypsilanti, Michigan 48197.			
Minnesota	Northfield (City), Rice County	Cannon River	100 feet upstream from center of Second Street Bridge	*904
			100 feet upstream from center of Fifth Street	*913
			50 feet upstream from center of State Trunk Highway 3	*916
	Maps available for inspection at 801 Washington Street, Northfield, Minnesota.			
	Send comments to Honorable Arnold Nelson, 801 Washington Street, Northfield, Minnesota 55057.			
Minnesota	(C) Princeton, Mille Lacs and Sherburne Counties.	Rum River	About 2.3 miles downstream State Highway 95	*951
			About 300 feet upstream of State Highway 95	*965
			About 0.9 mile upstream of State Highway 95	*967
		West Branch Rum River	At mouth	*965
			Just upstream of U.S. Highway 169 Bypass	*970
			About 0.5 mile upstream of U.S. Highway 169 Bypass	*972
	Maps available at the Office of the City Clerk, City Hall, 206 South Fifth Avenue, Princeton, Minnesota.			
	Send comments to Honorable Richard L. Anderson, Mayor, City of Princeton, City Hall, 206 South Fifth Avenue, Princeton, Minnesota 55371.			
Missouri	(C) Novinger, Adair County	Davis Branch	About 1,100 feet downstream of Second Street	*762
			Just downstream of Second Street	*765
			About 2,800 feet upstream of Missouri Avenue	*779
	Maps available for inspection at the City Hall, P.O. Box 277, Novinger, Missouri.			
	Send comments to Honorable Juanita Sommers, Mayor, City of Novinger, City Hall, P.O. Box 277, Novinger, Missouri 63559.			
Missouri	(C) Sullivan, Franklin and Crawford Counties.	Winsel Creek	About 1,200 feet downstream of County Highway AF	*904
			Just downstream of County Highway AF	*907
			Just downstream of Elmont Road	*939
			Just upstream of Elmont Road	*944
	Maps available for inspection at the City Hall, 210 Washington Avenue, Sullivan, Missouri.			
	Send comments to Honorable Charles Strauser, Mayor, City of Sullivan, City Hall, 210 Washington Avenue, Sullivan, Missouri 63080.			
New Jersey	Califon, Borough, Hunterdon County.	South Branch Raritan River	Downstream Corporte Limits	*455
			Upstream Califon Dam	*468
			Upstream Corporate Limits	*474
	Maps available at Borough Clerk's Office, Municipal Building, Main Street, Califon, New Jersey.			
	Send comments to Honorable Marie Koch, Mayor of Califon, P.O. Box 354, Califon, New Jersey 07830.			

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	Churchville, Village, Monroe County.	Black Creek	Downstream Corporate Limits	*559
			Upstream of Conrail	
			Upstream of East Buffalo Street	*507
			Upstream of Bangs Road	*571
			Upstream Corporate Limits (extended)	*572
Maps available at Village Hall, 9 E. Buffalo Street, Churchville, New York.				
Send comments to Honorable Joseph Carr, Jr., Mayor of Churchville, 9 E. Buffalo Street, Churchville, New York 14428.				
New York	Depew, Village, Erie County	Scajaquada Creek	Downstream Corporate Limits	*659
			Confluence of North Branch Scajaquada Creek	*667
			Grant Avenue (Upstream)	*675
			Upstream Corporate Limits	*686
		Cayuga Creek	Downstream Corporate Limits	*629
			Borden Road (Upstream)	*638
			Transit Road (upstream)	*645
			Upstream Corporate Limits	*651
		North Branch Scajaquada Creek	Confluence with Scajauada Creek	*667
			French Road (Upstream)	*677
			Colony Road (Upstream)	*679
Maps available at the Village clerk's office, Municipal Building, 85 Manitou Street, Depew, New York.				
Send comments to Honorable Roger Paluszak, Municipal Building, 85 Manitou Street, Depew, New York 14043.				
New York	LeRoy, Village, Genessee County	Tributary to Mud Creek	Downstream Corporate Limits	*870
			Upstream Orchard Place	*875
			Access Road	*876
			Upstream East Avenue	*878
			Upstream South Avenue	*888
			South Street	*892
			Upstream Corporate Limits	*894
Maps available at the Village Hall, LeRoy, New York.				
Send comments to Honorable Robert E. Yacuzzo, Mayor of LeRoy, Village of LeRoy, 3 West Main Street, LeRoy, New York 14482.				
New York	Riga, Town, Monroe County	Black Creek	Downstream Corporate Limits	*544
			Upstream Burnt Mill Road	*555
			Upstream Interstate Highway 490 (upstream crossing)	*560
			Upstream Bangs Road	*571
			Upstream Corporate Limits	*573
Maps available at Town Hall, 8 South Main Street, Churchville, New York.				
Send comments to Edgar Moore, Supervisor, Town of Riga, Town Hall, 8 South Main Street, Churchville, New York 14428.				
New York	Waterloo, Village, Seneca County.	Seneca River	Upstream Gorham Street	*432
			North Branch upstream of Washington Street	*438
			Downstream Locust Street	*444
			Upstream Corporate Limits	*448
Maps available at the Village Hall, 4 West Main Street, Waterloo, New York.				
Send comments to Honorable Marion DeCicca, Mayor of Waterloo, P.O. Box 340, Waterloo, New York 13165.				
Ohio	(V), Bratenahl, Cuyahoga County	Lake Erie	Shoreline	*570
Maps available for inspection at the Office of the Village Clerk, Bratenahl Village Hall, 411 Bratenahl Road, Cleveland, Ohio.				
Send comments to Honorable Richard McKeon, Mayor, Village of Bratenahl, Bratenahl Village Hall, 411 Bratenahl Road, Cleveland, Ohio 44108.				
Ohio	(V), Brooklyn Heights, Cuyahoga County.	Cuyahoga River	Downstream corporate limit	*596
			Upstream corporate limit	*598
Maps available for inspection at the Office of the Village Clerk, Village Hall, 345 Tuxedo Avenue, Brooklyn Heights, Ohio.				
Send comments to Honorable Robert D. Cusick, Mayor, Village of Brooklyn Heights, Village Hall, 345 Tuxedo Avenue, Brooklyn Heights, Ohio 44131.				
Ohio	(V), Cuyahoga Heights, Cuyahoga County.	Cuyahoga River	About 130 feet downstream of the Harvard Denison Viaduct	*589
			Just upstream of the Harvard Denison Viaduct	*590
			About 2,800 feet upstream of Harvard Avenue	*591
Just downstream of State Route 21				*600
			About 120 feet upstream of confluence of Mill Creek	*602
Maps available for inspection at the Office of the Village Clerk, Cuyahoga Heights Village Hall, 4863 East 71st Street, Cleveland, Ohio.				
Send comments to Honorable Louis J. Bacci, Mayor, Village of Cuyahoga Heights, Cuyahoga Heights Village Hall, 4863 East 71st Street, Cleveland, Ohio 44125.				
Ohio	(C), Miamisburg, Montgomery County.	Great Miami River	About 1.0 mile downstream of Lindon Avenue	*700
			About 1.1 miles upstream of Sycamore Street	*706
		Sycamore Creek	Confluence with Great Miami River	*704
			About 400 feet downstream of 9th Street	*705
			Just downstream of 12th Street	*740
		Sycamore Creek Tributary	Just downstream of Kercher Street	*721
			Just upstream of Kercher Street	*730
			Just downstream of Richard Street	*747
Maps available for inspection at the City Hall, 10 North First Street, Miamisburg, Ohio.				
Send comments to Honorable Mark Gibson, City Administrator, City of Miamisburg, City Hall, 10 North First Street, Miamisburg, Ohio 45342.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Ohio	(C), Shaker Heights, Cuyahoga County.	Doan Brook	About 100 feet downstream corporate limits	*833
			About 150 feet upstream of Fairhill Road	*888
			Just upstream of the footbridge located 230 feet upstream of Coventry Road.	*897
			Just upstream of dam near South Park Boulevard	*907
			Just downstream of North Woodland Road	*909
			About 200 feet upstream of North Woodland Road	*916
			About 150 feet upstream of Shaker Boulevard	*923
			Just downstream of South Woodland Road	*932
			Just upstream of South Woodland Road	*937
			About 500 feet upstream of Parkland Drive	*943
			Just upstream of dam located 660 feet upstream of Parkland Drive	*954
			Just upstream Lee Road	*963
			Just upstream Andover Road	*973
			About 1,100 feet upstream of Attleboro Road	*977
			About 200 feet upstream of Torrington Road	*995
			About 4,400 feet upstream of Torrington Road	*1,022
	Maps available for inspection at the Office of the City Clerk, City Hall, 3400 Lee Road, Shaker Heights, Ohio.			
	Send comments to Honorable Walter Kelley, Mayor, City of Shaker Heights, City Hall, 3400 Lee Road, Shaker Heights, Ohio 44128.			
Pennsylvania	Center, Township, Beaver County	Ohio River	Downstream Corporate Limits	*702
			Approximately 5,200 feet upstream of downstream corporate limits	*703
			Confluence of Elkhorn Run	*706
			Upstream Corporate Limits	*706
		Raccoon Creek	Upstream side Beaver Valley Expressway	*760
			Upstream Corporate Limits	*767
		Elkhorn Run	Confluence with Ohio River	*706
			Downstream side Tank Road	*706
			Upstream side Private Drive (approximately 1,785 feet upstream of Tank Road).	*733
			Approximately 30 feet downstream confluence of Moon Run	*750
			Approximately 40 feet upstream of 1st crossing of Vankirk Road	*840
			Upstream of 2nd crossing of Vankirk Road	*852
			Vankirk Road (extended)	*871
			Approximately 1,320 feet downstream of Legislative Route 04074	*893
			Upstream Legislative Route 04074	*910
			Upstream 1st crossing of Elkhorn Road	*927
			Upstream 2nd crossing of Elkhorn Road	*945
			Confluence of Shafers Run	*960
			Upstream Temple Road	*977
			Approximately 130 feet upstream Chapel Road	*1,004
		Tributary A	Confluence with Elkhorn Run	*965
			Upstream Private Drive	*1,010
			Approximately 190 feet upstream Temple Road	*1,054
		Shafers Run	Confluence with Elkhorn Run	*960
			Upstream side Private Drive	*997
			Confluence of Tributary B	*1,017
			Approximately 400' downstream of State Route 51	*1,031
		Tributary B	Confluence with Shafers Run	*1,017
			Approximately 785' upstream of confluence with Shafers Run	*1,038
		Tributary C	Confluence with Shafers Run	*1,015
			Approximately 970' upstream of confluence with Shafers Run	*1,040
			Approximately 130' upstream Woodland Drive	*1,069
		North Branch, Moon Run	Approximately 815' downstream of Private Drive	*883
			Upstream of Private Drive	*899
			Upstream of Chapel Road	*945
			Approximately 1,600' upstream of Chapel Road	*974
		South Branch, Moon Run	Approximately 535' downstream of Chapel Road	*1,003
			Approximately 800' upstream of Chapel Road	*1,013
			Downstream of Private Road	*1,051
			Upstream of Poplar Avenue	*1,066
			Approximately 1,075' upstream of Poplar Avenue	*1,083
		Tributary D	Confluence with South Branch Moon Run	*1,043
			Downstream of Poplar Avenue	*1,066
			Upstream of Private Drive	*1,075
			Approximately 1,020' upstream of Private Drive	*1,101
		Logtown Run	Confluence with Tributary E	*969
			Upstream of Academy Drive	*1,026
			Approximately 1,425' upstream of Academy Drive	*1,051
			Approximately 0.56 mile upstream of Academy Drive	*1,102
		Tributary E	Confluence with Logtown Run	*969
			Downstream of 1st Private Drive	*988
			Upstream of 1st Private Drive	*1,011
			Downstream of 2nd Private Drive	*1,018
			Upstream of 2nd Private Drive	*1,037
			Approximately 470' upstream of 2nd Private Drive	*1,040
	Maps available at the Center Township Building, Aliquippa, Pennsylvania			
	Send comments to Honorable Joseph Yezzi, Chairman of the Center Board of Supervisors, 224 Center Grange Road, Aliquippa, Pennsylvania 15001.			
Pennsylvania	North Catasauqua, Borough, Northampton County.	Lehigh River	Downstream Corporate Limits	*280
			Upstream Eugene Street	*284
			Upstream Corporate Limits	*289

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Catasauqua Creek	Downstream Corporate Limits	*303
			Upstream Private Farm Road	*312
			Upstream Private Road	*320
			Upstream Corporate Limits	*326
Maps available at the Borough Hall, Fourth and Arch Streets, North Catasauqua, Pennsylvania.				
Send comments to Honorable Geoffray M. O'Donnell, Council President of North Catasauqua, 1304 Lincoln Street, North Catasauqua, Pennsylvania 18032.				
Pennsylvania	Richland, Township, Bucks County.	Beaver Run	Confluence with Licking Creek	*489
			Upstream Conrail	*493
			Upstream South Old Bethlehem Pike	*497
			Upstream State Route 309	*500
			Upstream Trumbauersville Road	*504
		Licking Run	Approximately 1,900' upstream of confluence with Tohickon Creek	*486
			Downstream Erie Road	*491
			Upstream Corporate Limit	*493
		Morgan Creek	Confluence with Tohickon Creek	*485
			Upstream State Route 313	*486
			Upstream Conrail	*492
			Upstream South Old Bethlehem Pike	*496
			Upstream State Route 390	*498
			Upstream Scholl's School Road	*502
			Upstream Corporate Limits	*509
		Tohickon Creek	Approximately 3,200' downstream of Erie Road	*485
			Upstream State Route 212	*490
			Approximately 4,000' upstream of State Route 212	*493
Maps available at the Richland Municipal Building, 1328 California Road, Quakertown, Pennsylvania.				
Send comments to Honorable Alec Jamieson, Chairman of the Richland Board of Supervisors, R.D. 4, Quakertown, Pennsylvania 18951.				
Pennsylvania	Straban, Township, Adams County.	Rock Creek	Downstream Corporate Limits	*461
			State Route 116 (Upstream)	*479
			U.S. Business Route 15 (Upstream)	*483
			Approximately 3,500' upstream of Boyds School Road	*490
		Rock Creek Tributary 1	Confluence with Rock Creek	*462
			State Route 116 (Upstream)	*474
			Natural Springs Road (Upstream)	*486
			Approximately 2,400' upstream of Natural Springs Road	*498
		Rock Creek Tributary 2	Confluence with Rock Creek	*481
			Approximately 1,300' downstream of Legislative Route 01040	*492
			Legislative Route 01040 downstream side	*502
		Rock Creek Tributary 3	Confluence with Rock Creek	*491
			Put Road (Upstream)	*506
			Approximately 1,800' upstream of Put Road	*590
		Plum Run	Downstream Corporate Limits	*483
			State Route 116	*497
			Approximately 2,000' upstream of State Route 116	*501
			Approximately 800' upstream of Rocky Grove Road extended	*528
Maps available at the residence of Mr. Weaner, Township Secretary, Weaners Road, Gettysburg, Pennsylvania.				
Send comments to Honorable Emery Sibert, Chairman of the Straban Board of Supervisors, R.D. 2, New Oxford, Pennsylvania 17350.				
South Carolina	City of Hanahan, Berkeley County	Atlantic Ocean	Along Goose Creek just upstream of North Rhett Avenue	*11
			Along Turkey Creek just upstream of Murray Avenue	*11
			Along Unnamed Tributary to Goose Creek, just downstream of Yeamans Hall Road.	*11
Maps available for inspection at City Hall, 1255 Yeamans Hall Road, Hanahan, South Carolina 29410.				
Send comments to Mayor Williams or Mr. Dan Davis, City Administrator, City Hall, 1255 Yeamans Hall Road, Hanahan, South Carolina 29410.				
South Carolina	Town of Summerville, Dorchester County.	Sawmill Branch	Just upstream of Newington Boulevard	*31
			Just upstream of State Highway 165	*39
			Just upstream of Richardson Avenue	*48
Maps available for inspection at Town Engineer's Office, Town Hall, 104 Civic Center, Summerville, South Carolina 29483.				
Send comments to Mayor Myers or Mr. Jerry Blackwell, Town Engineer, Town Hall, 104 Civic Center, Summerille, South Carolina 29483.				
Washington	Battle Ground (Town), Clark County.	Wooden Creek	25 feet upstream of intersection of Wooden Creek and East A Street	*287
			25 feet upstream of intersection of Wooden Creek and 142nd Avenue	*293
Maps available at Town Hall, 400 East Main, Battle Ground, Washington.				
Send comments to the Honorable Everett A. Eaton, Mayor, Town of Battle Ground, Town Hall, P.O. Box 233, Battle Ground, Washington 98604.				
Wisconsin	(C), Brillion, Calumet County	Unnamed Ditch	Just upstream of downstream corporate limit	*814
		Arien's Ditch	Just downstream of west Ryan Street	*814
		Black Creek	Just upstream of South Main Street	*810
			At upstream corporate limit	*812
		Spring Creek	Just upstream of Sunset Drive	*810
			About 0.18 mile upstream of South Glenview Avenue	*817
			Just upstream of South Main Street	*819
			Just upstream of East Water Street	*823
			At upstream corporate limits	*825
Maps available for inspection at the City Clerk's Office, City Hall, 130 Calumet Street, Brillion, Wisconsin.				
Send comments to Honorable Clarence Wolf, Mayor, City of Brillion, City Hall, 130 Calumet Street, Brillion, Wisconsin 54110.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(V), Combined Locks, Outagamie County.	Fox River	Downstream corporate limit	*660
			Downstream face of Combined Locks Dam	*661
			Upstream face of Combined Locks Dam	*677
			Downstream face of Little Chute Dam	*680
			Upstream face of Little Chute Dam	*682
		Garners Creek	Mouth at Fox River	*660
			Just upstream of State Street bridge	*664
			Just downstream of Park Street bridge	*672

Maps available for inspection at the Village Clerk's Office, Village Hall, 405 Wallace Street, Combined Locks, Wisconsin.

Send comments to Honorable David Pennings, Village President, Village of Combined Locks, Village Hall, 405 Wallace Street, Combined Locks, Wisconsin 54113.

Wisconsin	(Uninc.) Dodge County	Rock River	Just upstream State Highway 60	*849
			About 2,200 feet upstream from State Highway 60 at City of Hustiford corporate limits.	*850
			Just upstream County Highway S	*857
			About 2 miles upstream County Highway S	*857
			About 2.25 miles upstream County Highway S at City of Horicon corporate limits.	*858
		Sinnissippi Lake	Entire shoreline within county	*857
		Fox Lake	Entire shoreline within county	*862
		Beaverdam Lake	Entire shoreline within county	*873
		Crawfish River	Just upstream of county boundary	*823
			About 2.1 miles upstream from county boundary at City of Columbus corporate limit.	*826
			Just downstream from Chicago-Milwaukee-St. Paul and Pacific Railroad.	*831
			About 0.4 mile upstream from Chicago-Milwaukee-St. Paul and Pacific Railroad at City of Columbus corporate limits.	*832
			Just upstream from U.S. Highway 151 bypass	*834
			Just downstream State Highway 73 at county boundary	*835
		East Branch, Rock River	Just upstream from Mayville extraterritorial limits	*922
			About 2 miles upstream from Mayville corporate limit	*923
			Just downstream from Gill Road	*926
			About 0.3 mile downstream from Village of Theresa corporate limit	*931
			Just downstream from Village of Theresa corporate limit	*932
		Maunesha River	About 0.34 mile upstream from State Highway 19	*792
			About 1.8 miles upstream from State Highway 19 at county boundary	*796
		Silver Creek	Just upstream from City of Watertown corporate limits	*813
			Just upstream from U.S. Highway 16	*817
			About 0.25 mile upstream from U.S. Highway 16	*817
		Davy Creek	About 1.16 miles downstream from Lincoln Road	*849
			Just downstream from State Highway 67	*849

Maps available for inspection at the Dodge County Office Building, Juneau, Wisconsin.

Send comments to Honorable H. J. Kreutzmann, Chairman of the County Board, Dodge County Courthouse, Juneau, Wisconsin 53039.

Wisconsin	(V), Little Chute, Outagamie County.	Fox River	Downstream corporate limits	*658
			Just downstream Combined Locks Dam	*661
			Just upstream Combined Locks Dam	*677
			Just downstream Little Chute Dam	*680
			Just upstream Little Chute Dam	*682
			Upstream corporate limits	*684

Maps available for inspection at Village Clerk's Office, Village Hall, P.O. Box 163, Little Chute, Wisconsin.

Send comments to Honorable Edward H. Spierings, Village President, Village of Little Chute, Village Hall, P.O. Box 163, Little Chute, Wisconsin 54140.

(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 Insurance Administrator)

Issued: August 28, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-28191 Filed 9-12-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5818]

Revision of Proposed Flood Elevation Determinations for the City of Daphne, Baldwin County, Ala., Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

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 City of Daphne, Alabama.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published at 45 FR 31439 on May 13, 1980 and in the *Eastern Shore Courier*, published on or about May 1, 1980, and May 8, 1980, and hence supersedes those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper

of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, Daphne, Alabama.

Send comments to: Honorable Victor A. Guarisco, Mayor, City of Daphne, P.O. Drawer 400, Daphne, Alabama 36526.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, Room 5148, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Revised proposed base (100-year) flood elevations are listed below for selected locations in the City of Daphne, 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 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).

These modified 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.

The modified elevations are in the area between Campbell Swamp and the citys' southern corporate limit, within approximately 350 feet of the Mobile Bay Coast. The eastern boundaries of Zone V15, elevation 14 feet and Zone A12, elevation 12 feet, were moved approximately 200 feet inland. For further clarification of the areas affected be these modified elevations refer to the maps located at the above mentioned address.

(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 Insurance Administrator)

Issued: August 28, 1980.

Gloria M. Jimenez,

Federal Insurance Administratcr.

[FR Doc. 80-28356 Filed 9-12-80; 8:45 am]

BILLING CODE 6718-03-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Parts 1010 and 1060

Civil Rights Program Requirements of CSA Grantees; Civil Rights Regulations

AGENCY: Community Services Adminstration.

ACTION: Proposed rule.

SUMMARY: The Community Services Administration is proposing specific amendments to Part 1010 Civil Rights Program Requirements of CSA Grantees; Civil Rights Regulations, 45 CFR 1010 published at 44 FR 70145 on December 6, 1979 as a Final Rule, in order to implement Title IX of the Education Amendments of 1972 as amended, 20 U.S.C. 1681 *et seq.*, which prohibits with certain exceptions descrimination in Federally assisted education programs or activities on the basis of sex. CSA has determined that this proposed amendment is a significant rule and as such must be published in the Federal Register for public comment.

DATES: Comments must be received on or before November 14, 1980.

ADDRESS: Send comments to Ms. Mosina Jordan, Associate Director for Human Rights, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506, Rm. 500.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Diamond, Community Services Administration, Office of Human Rights, 1200 19th Street NW., Washington, D.C. 20506, phone no. (202) 653–5675; Teletypewriter (202) 254–5435.

SUPPLEMENTARY INFORMATION: The Community Services Administration has determined that its statutory authority under 42 U.S.C. 2971c *et seq.*, Economic Opportunity Act of 1964, as amended, is sufficiently broad to prohibit discrimination in Federally assisted education programs or activities on the basis of sex. Furthermore, this statutory authority is more inclusive than Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*, and will, consequently, provide more comprehensive coverage than a separate Title IX regulation.

CSA requested guidance from the Department of Justice (DOJ) concerning the possibility of amending this part to include the requirements of Title IX in lieu of proposing a specific regulation implementing Title IX. DOJ's Task Force on Sex Discrimination, Office of Coordination and Review, concurred with CSA's analysis and proposed specific amendments to this part which would make this part consistent with those regulations implementing Title IX of the Education Amendments of 1972 (See 45 CFR Part 86 and 7 CFR Part 15a).

CSA will only consider comments which address implementation of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* through this part.

In addition CSA is deleting subpart 1060.4 Resolving Complaints of Discrimination in Employment Program Participation and Benefits Against CSA Grantees which inadvertently was not deleted when the Final Rule on Civil Rights Regulations was published on December 6, 1979 in the Federal Register.

(Sec. 602, 78 Stat. 530, 42 U.S.C 2942)

William W. Allison,

Deputy Director, Community Services Administration.

45 CFR Part 1010 is amended as follows:

1. *"Authority"* is amended to read as follows:

The provisions of this part are issued under Section 602, 623, 603, 223 and 244(8) of the Economic Opportunity Act of 1964, as amended, 78 Stat. 528, 42 U.S.C. 2942; 86 Stat. 696, 42 U.S.C. 2971c; 78 Stat. 530, 42 U.S.C. 2943; 81 Stat. 701, 42 U.S.C 2837; Section 602 and 603, Title VI, Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d–1; 78 Stat 253, 42 U.S.C. 2000d–2; Executive Order 11764, 28 CFR Parts 24 and 50.3; Education Amendments of 1972, Pub. L. 92–318, as amended by Section 3 of Pub. L. 93–568, 88 Stat. 1855, except §§904 and 906 thereof; 412 of Pub. L. 94–482, 90 Stat. 2234; 20 U.S.C. §§1681, 1682, 1683, 1685, 1686.

§1010.1–1 [Amended]

2. Section 1010.1–1 is amended to read as follows:

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*; Section 623 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971c; and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§1681, 1682, 1683, 1685, and 1686, to the end that:

3. Section 1010.1–1(b) is amended to read as follows:

* * * * *

(b) No person on the ground of sex be excluded from participation in, or be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under the Economic Opportunity Act of 1964, as amended.

§ 1010.1–3 [Amended]

4. Section 1010.1–3 is amended by adding a new paragraph (n) as follows:

(m)(7)* * *;

(n) 'Title IX' means Title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by Section 3 of Pub. L. 93–568, 88 Stat. 1855 and Section 412 of Pub. L. 94–482, 90 Stat. 2234 (except Sections 904 and 906 thereof); 20 U.S.C. §§ 1681, 1682, 1683, 1685, 1686.

§ 1010.10–1 [Amended]

5. Section 1010.10–1(b) is amended to read as follows:

* * * * *

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under the Economic Opportunity Act of 1964, as amended.

§ 1010.10–3 [Amended]

6. Section 1010.10–3(e) is amended to read as follows:

* * * * *

(e) Enforcement of Title VI, Section 623 of the Economic Opportunity Act of 1964, as amended, Title IX, and this part with respect to covered employment practices shall not be superseded by state and local merit systems relating to the same grantee.

§ 1010.20–2 [Amended]

7. Section 1010.20–2(a)(6) is amended to read as follows:

* * * * *

(a) * * *

(6) A comprehensive self-analysis, which shall include a comparison of the provision of benefits and services on the basis of race, sex, and national origin as to the eligible racial, sexual, and national origin population. This analysis shall also include a comparison of the grantee's employment by race, sex and national origin characteristics of the relevant workforce. Where significant disparities are found, the recipient shall determine the reasons and, if appropriate, must take specific steps to correct these disparities.

§ 1010.50–3 [Amended]

8. Section 1010.50–3 is amended to read as follows:

(a) Nothing in this part shall be deemed to supersede Executive Order 11246 and regulations issued thereunder, or any other statutes, regulations or instructions insofar as they prohibit discrimination on the grounds of race, color, national origin or sex in any program or situation to which this part is applicable, or prohibit discrimination on any other ground.

(b) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of race, color, national origin or sex to practice any occupation or profession.

(c) The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

§§ 1060.4–1–1060.4–7 [Deleted]

9. Part 1060—General Characteristics of CSA Funded Programs is amended by deleting subpart 1060.4, Resolving Complaints of Discrimination in Employment, Program Participation and Benefits Against CSA Grantees §§ 1060.4–1 through 1060.4–7.

[FR Doc. 80-28216 Filed 9-12-80; 8:45 am]
BILLING CODE 6315-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 61

[Docket No. 21005]

Interface of the International Telex Service With the Domestic Telex and TWX Services; Order Setting Comments and Reply Comments Dates

AGENCY: Federal Communications Commission.

ACTION: Request for comments; order.

SUMMARY: In a decision in the *Computer II* proceeding, the FCC required that all carrier-provided customer premises equipment be provided on an untariffed and unbundled basis. The Commission requests comments on the question of whether the policies and rules set forth in the *Computer II* decision are not, or should not be, applicable to international telex terminal equipment and that such equipment should not be deregulated and offered separately from a carrier's basic transmission service.

DATES: Comments must be received on or before September 29, 1980, and Reply Comments must be received on or before October 8, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Jill Ross, Enforcement Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202–632–4890).

Order

In the matter of Interface of the International Telex Service with the Domestic Telex and TWX Services, Docket No. 21005. See 45 FR 29865, May 6, 1980.

Adopted: Septembr 9, 1980.

Released: September 9, 1980.

1. In its Report, Order and Notice of Proposed Rulemaking in the above-captioned matter, *Customer Use of Telex Service, (Unbundling Order)* 76 FCC 2d 61 (1980), the Commission, *inter alia*, sought comment on the deregulation of carrier provided international telex terminal equipment. By subsequent Order, dated April 25, 1980, the Chief, Common Carrier Bureau, extended the comment period pending the release of *Computer II*, Amendment of § 64.702 of the Commission's rules and regulations (Second Computer Inquiry), Docket No. 20828, 77 FCC 2d 384 (1980). For reasons more fully explained below, we believe the Commission's Final Decision in *Computer II*, requiring that all carrier-provided customer premises equipment be provided on an untariffed and unbundled basis, is itself applicable to the International Record Carriers' provision of international telex terminal equipment, thereby resolving the question proposed in the above-captioned proceeding. Even if doubt exists as to the applicability of *Computer II*, we believe that its determinations of law and policy indicate a similar result with respect to IRC terminal equipment.

2. After setting for comment the question of deregulation of all carrier provided customer-premises equipment, *Tentative Decision and Further Notice of Inquiry and Rulemaking*, 72 FCC 2d 358, 441 (1979), the Commission determined in its Final Decision that the provision of such equipment was

separable from the provision of transmission services and as such was not a carrier activity subject to Title II regulation. Final Decision in *Computer II, supra,* paras. 168–183. In considering the nature of the terminal equipment market in general, the effects of advances in technology on equipment design and use and the Commission's statutory responsibility to ensure the reasonableness of rates charged for basic transmission services, the Commission found the deregulation of all carrier-provided customer premises equipment better served the objectives of the Act. Accordingly, the Commission required the eventual unbundling and detariffing of all carrier provided customer premises equipment. See Revisions to Rule 64.702, Section (e), Appendix to Final Decision in *Computer II.* In this way, the Commission sought to ensure that the costs attributable to the regulated service were separated from the competitive provision of unregulated equipment used in conjunction with the service. See *Computer II,* at para. 156. The Commission did not distinguish or exempt the provision of international telex equipment by the IRCs.[1]

3. The *Unbundling Order* also required the IRCs to file new telex tariffs establishing separate cost-based charges for terminal equipment, tielines, and transmission. *Unbundling Order, supra,* at 79, 80–81, 83. Although the resulting tariff revisions were permitted to go into effect, the Commission set them for investigation. *ITT World Communications, Inc., et al.,* CC Docket No. 80–339, Memorandum Opinion and Order, released August 8, 1980 *(Investigation Order).* In *Computer II* the Commission found that the provision of terminal equipment is not a carrier activity subject to Title II jurisdiction and required all carriers to detariff such equipment by March, 1982. However, prior to that date, carriers are not foreclosed from offering customer premises equipment on either a tariffed or non-tariffed basis. *Computer II, supra,* at para. 165. Therefore, while the tariffing requirements set forth in the *Unbundling Order* relating to telex terminal equipment would be moot as to equipment offered after March, 1982, the requirement that equipment charges be unbundled from access and transmission charges retains full force and effect for equipment offered pursuant to tariff in the interim period.

4. Accordingly, it is ordered, that any party believing that the policies and rules set forth in *Computer II* are not, or alternatively, should not be, applicable to international telex terminal equipment and that such equipment should not be deregulated and offered separately from a carrier's basic transmission service, is hereby notified to file comments setting forth fully its reasons and all underlying support no later than September 29, 1980, with reply comments no later than October 8, 1980.

5. This action is taken pursuant to delegated authority, 47 CFR 0.291.

Philip L. Verveer,

Chief, Common Carrier Bureau.

[FR Doc. 80-28446 Filed 9-12-80; 8:45 am]

BILLING CODE 6712-01-M

[1] On the other hand, the Commission explicitly reserved the application of the separate subsidiary requirements to the international service providers until completion of the international resale inquiry. *Computer II* at paras. 267–69.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Air Brake

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for rulemaking.

SUMMARY: The agency grants a petition from the Berg Manufacturing Company to commence rulemaking on Standard No. 121, *Air Brake Systems.* The Berg petition asks the agency to modify section S 5.2.1.1 of the standard to remove the requirement that a separate reservoir be provided that is capable of releasing the vehicle's parking brakes. They request an amendment that will permit the use of the tractor's air supply to release the parking brakes. Preliminary data available to the agency indicates that this amendment could simplify the brake requirements and reduce their costs without lessening the level of safety existing in brake systems. The agency by this notice grants the Berg petition and will issue a notice of proposed rulemaking shorty seeking comments on this issue.

FOR FURTHER INFORMATION CONTACT: Mr. John Machey, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–1715).

(Secs. 103, 119, and 124, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1410a); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on September 9, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-28393 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 358 (Sub-1)]

Change of Policy, Railroad Contract Rates; Standards and Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Postponement of due date for filing comments in proposed rulemaking.

SUMMARY: This proceeding involves proposed standards for railroad contract rates. On April 29, 1980 (45 FR 28381) we requested comments by June 13, 1980. The comment date has been postponed three times previously (45 FR 39317, June 10, 1980; 45 FR 47172, July 14, 1980; and 45 FR 54385, August 15, 1980) and currently is September 15, 1980. At this time, because of pending relevant legislation, we intend to postpone indefinitely the comment due date.

DATES: The due date for filing comments is postponed indefinitely.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 275–7693 or Jane Mackall (202) 275–7656.

Decided: September 4, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-28361 Filed 9-12-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 223, 224, 225, 226, and 277

Scoping Meeting on Regulations To Reduce Sea Turtle Mortality in Southeastern U.S. Waters

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Announcement of public scoping meeting.

SUMMARY: The National Marine Fisheries Service intends to prepare a draft supplement to the Final

Environmental Impact Statement (FEIS) issued on July 28, 1978, which listed and protected the green sea turtle, loggerhead sea turtle, and olive (Pacific) ridley sea turtle under the Endangered Species Act of 1973. A public meeting will be held to scope and plan the range of issues, alternatives, and impacts to be considered by the proposed action. The scoping meeting will be held as part of proposed rulemaking to require excluder panels on shrimp trawls in specific areas during certain periods of time to reduce the incidental catch and mortality of sea turtles.

DATE: The scoping meeting will be held at 9:00 a.m., October 2, 1980, at the Admiral Benbow Inn (Airport), 1419 Virginia Avenue, Atlanta, Georgia 30337.

ADDRESS: Regional Director, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, Fishery Adminstrator, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813) 893–3366.

SUPPLEMENTARY INFORMATION: The scoping meeting will be held as part of proposed rulemaking to require excluder panels on shrimp trawls in specific areas during certain periods of time to reduce the incidental catch and mortality of sea turtles. These areas are generally defined as the coasts of South Carolina, Georgia and the middle and upper east coast of Florida and coast of Padre Island, Texas. The times are generally May–August each year. These areas and times will be further defined and other areas may be identified during the rulemaking process.

Alternatives to the proposed action are: (1) Require excluder panels on all shrimp trawls in all areas, at all times; (2) issue permits to allow for the resuscitation of incidentally caught sea turtles; and (3) limit the time of shrimp trawling in areas of turtle abundance.

Dated: September 5, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–28456 Filed 9–12–80; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Parts 611, 662, and 680

Precious Corals Fishery; Proposed Regulations

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Proposed regulations.

SUMMARY: The purpose of this announcement is to publish the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (FMP) prepared and submitted by the Western Pacific Fishery Management Council and to solicit comments on the proposed regulations for domestic fishing that will implement the FMP. The FMP was approved by the Secretary of Commerce on May 20, 1980, pursuant to the Fishery Conservation and Management Act of 1976.

DATE: Comments are invited until October 30, 1980.

ADDRESS: Comments should be addressed to: Denton R. Moore, Chief, Permits and Regulations Division, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235, Telephone (202) 634–7432.

FOR FURTHER INFORMATION CONTACT: Alan W. Ford, Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731. Telephone 213–548–2575, or Mr. Doyle E. Gates, Administrator, Western Pacific Program Office, Southwest Region, P.O. Box 3830, 2570 Dole Street, Honolulu, HI 96812. Telephone 808–946–2181.

SUPPLEMENTARY INFORMATION: The Fishery Conservation and Management Act of 1976, Pub. L. 94–265, as amended, 16 U.S.C. 1801 et seq. (the "Act"), authorizes the Secretary of Commerce (the "Secretary") to promulgate regulations implementing approved FMPs prepared by the Regional Fishery Management Councils for their geographic areas of concern.

Pursuant to Title III of the Act, the Western Pacific Fishery Management Council prepared and submitted to the Secretary an FMP for precious corals in the fishery conservation zone (FCZ) of the central and western Pacific Ocean seaward of American Samoa, Guam, and Hawaii. The FMP was approved by the Assistant Administrator for Fisheries pursuant to an appropriate delegation of authority from the Secretary.

The FMP covers domestic and foreign fishing for species of precious corals in the FCZ of the western Pacific region. Precious corals are characterized by great longevity, slow growth, and relatively low rates of mortality and recruitment. Beds of precious corals are most often found in deep water (300–500 m.) on solid substrate where bottom currents are frequently strong. Only six beds of precious corals have been located, all in the Hawaiian Islands chain. other beds are almost certain to exist within the FCZ.

The FMP establishes a set of conservation and management measures designed to achieve a balance between protection of coral resources by limitations on harvest, and identification of beds and assessment of yield potentials by allowing a harvest.

Management Area Categories. Four categories of management areas are designated.

1. Established Beds are coral beds which have been surveyed and observed and for which estimates of maximum sustainable yield (MSY) are reasonably precise. Only selective gear would be permitted on an Established Bed. There would be one Established Bed at the initial implementation of the FMP (i.e. the Makapuu Bed), but new established beds could be designated as better data become available.

2. Conditional Beds are coral beds for which MSY's can be estimated by comparing their size relative to the Makapuu Bed. It is assumed that the conditions at Makapuu are representative of conditions at all other beds. There would be four Conditional Beds initially. Selective gear would be required at two small Conditional Beds. Non-selective gear could be used at the other two Conditional Beds.

3. Refugia are specific beds which are set aside to serve as baseline study areas and possible reproductive reserves. On refugium is identified initially. No coral harvesting would be permitted on Refugia Beds.

4. Exploratory Permit Areas are the unexplored portions of the FCZ in which coral beds are almost certain to exist but no beds have yet been located. There are three such areas: the portion of the FCZ seaward of American Samoa, Guam, and Hawaii, respectively. Selective or non-selective gear could be used except in the part of the Exploratory Area off the main Hawaiian Islands, i.e., south and east of a line midway between Niihau and Nihoa Islands.

The regulations define areas around beds within which selective gear would be required. These areas are larger than the beds so enforcement by aerial and vessel surveillance can be effective.

The FMP provides that as new beds are located and data become available for more accurate or precise determinations of MSY and optimum yield (OY), beds may be upgraded from Conditional or Established categories with appropriate gear restrictions.

Optimum yield. OY's and quotas are established by management area category. Except at the Makapuu Bed, where OY is established for a two-year period, OY's are set for one year

seasons from July 1 through the following June 30.

Quotas. Specific quotas are set forth in Table I of these regulations. It should be noted that, at the Conditional Beds where non-selective gear is permitted, the OY's for non-selective gear would be only one-fifth (20%) of the quota if selective gear were used. This is to account for the harvest of immature colonies and for the loss of colonies knocked down but not recovered by non-selective gear. If both selective and non-selective methods are used on a Conditional Bed, that Bed would be closed if the sum of the selective harvest plus five (5) times the non-selective harvest of any single species reaches the quota for that species; i.e., if $S + 5N = Q$, where S = selective harvest of a species, N = non-selective harvest of that species, and Q = quota for that species on a Conditional Bed, that bed will be closed. A Conditional Bed will be closed to further fishing when the quota for any single species is reached if non-selective gear is used, to prevent overfishing of that species. Exploratory Areas will be closed to further fishing when the total quota is reached, irrespective of the species composition of the catch.

Permits. Vessels of the United States must have permits to engage in fishing for corals. Permits are area-specific and fishing may be conducted only under one permit at a time. Permits are obtained at no cost from the Regional Director.

Foreign Fishing. The FMP provides allowance for foreign fishing in Exploratory Areas, up to a maximum of 1000 kg. all species combined, per area, per year, so long as one-half of the quota has not been taken by domestic fishing at the midway point of the fishing year. Regulations for foreign fishing within the FCZ under this FMP have proposed in the form of amendments to Part 611, Foreign Fishing Regulations.

Reporting Requirements. Permit holders will maintain a log of their daily fishing operations and will submit to the Regional Director within 72 hours of landing coral, a copy of the logbook forms pertaining to each species of precious coral landed.

Size Limitation. Pink coral colonies harvested from the Makapuu, Kaena Point and Ke-ahole Beds must be 10 inches or greater in height. This is to insure that yield per recruit will be high and that the productive potential of the colonies will be realized. No other size limits are proposed.

Incidental Harvest. A vessel may not retain any precious corals harvested incidental to other fishing operations unless the vessel has a permit to harvest corals in the applicable area. Such catches must be reported to the Regional Director and will be counted against the applicable quota.

Northern Mariana Islands and U.S. Possessions. The FMP contains recommendations for Secretarial action to implement similar and consistent conservation and management areas for the FCZ seaward of the Commonwealth of the Northern Mariana Islands and U.S. Possessions in the Western Pacific Region. These areas are outside the Council's geographic area of responsibility. No regulations are proposed at this time.

All interested parties are encouraged to submit written comments, or data concerning the FMP and these proposed regulations, which would implement the approved plan. Comments relating to problems in implementing this management plan are particularly encouraged. Comments may be submitted to the Assistant Administrator for Fisheries, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235. All such submissions received before October 30, 1980, will be considered before final action is taken on the implementing regulations.

A notice of availability of the final Environmental Impact Statement associated with this FMP was published January 28, 1980 (45 FR 6472).

Note.—The Assistant Administrator has determined that this is a significant action under Executive Order 12044, and a draft regulatory analysis has been provided to the Chief Economist of the Department of Commerce, and can be obtained from the Regional Director, whose address is listed above.

The Precious Corals Fishery FMP is set forth following the proposed amendments.

Authority: 16 U.S.C. 1801 *et seq.*

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

Foreign Fishing Regulations

It is proposed to amend 50 CFR Part 611 as follows:

§ 611.20 Appendix I [Amended]

A. Amend Appendix I to Section 611.20 as follows:

Appendix 1

Species	Species code	Areas	OY	DAH	DAP	JVP= (DAH−DAP)	DNP	Reserve	TALFF
3. Western Pacific Ocean Fisheries:									
C. Precious corals fishery (precious coral)	682	Hawaii	1.0	0	0	0	0	1.0	0
		Guam	1.0	0	0	0	0	1.0	0
		American Samoa	1.0	0	0	0	0	1.0	0

B. Add new § 611.82 as follows:

§ 611.82 Precious coral fishery.

(a) *Purpose* This section regulates foreign fishing under a Government International Fishery Agreement for precious corals within the United States fishery conservation zone (FCZ) seaward on Hawaii, Guam, and American Samoa.

(b) *Authorized fishery.*

(1) Allocations. Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF and reserves.* The total allowable levels of foreign fishing (TALFF's) for the precious coral fishery are set forth in Appendix I to § 611.20.

(3) The quotas for Exploratory Areas shall be held in reserve for harvest by vessels of the United States in the following manner:

(i) At the start of the fishing year (July), the reserve for each Exploratory Area shall equal the quota minus the

expected domestic annual harvest for that year.

(ii) As soon as practicable after December 31 each year, the Regional Director shall determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(4) The Regional Director shall releases to TALFF an amount of coral equal to 1,000 kg. minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(5) The Regional Director shall publish in the Federal Register a notice of his determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(c) *Species definitions.* The term precious coral means any of the following species of coral:

Pink coral (also known as red coral)	*Corallium secundum.*
Pink coral (also known as red coral)	*Corallium regale.*
Pink coral (also known as red coral)	*Corallium laauense.*
Gold coral	*Gerardia sp.*
Gold coral	*Callogorgia gilberti.*
Gold coral	*Narella sp.*
Gold coral	*Calyptrophora sp.*
Bamboo coral	*Lepidisis olapa.*
Bamboo coral	*Acanella sp.*

(d) *Effort restrictions.* None.

(e) *Open season.* Foreign fishing authorized under this subpart may be conducted throughout the year until the national allocation has been reached. This fishery will be closed in accordance with § 611.15.

(f) *Prohibited species.* All species of fish over which the United States execises fishery management authority and for which there is no applicable national allocation are prohibited species and shall be treated in accordance with § 611.13.

(g) *Open area.* Foreign vessels may engage in fishing for precious corals in the United States FCZ seaward of Hawaii, Guam, and American Samoa, except in those coral beds designated in § 611.82(h).

(h) *Closed areas.* The following precious coral beds are closed to all foreign fishing:

	Midpoint
(1) Ke-ahole Point, Hawaii	19°46.0'N., 156°06.0'W.
(2) Makapuu, Oahu, Hawaii	21°18.0'N., 157°35.5'W.
(3) Kaena Point, Oahu, Hawaii	21°35.4'N., 158°33.9'W.
(4) WestPac Bed	23°18.0'N., 162°35.0'W.
(5) Brooks Banks	24°06.0'N., 166°48.0'W.
(6) 180 Fathom Bank, N.W. of Kure Atoll	28°50.2'N., 178°53.4'W.

This closure shall include an area covered by a two nautical mile radius from the midpoint of each coral bed.

(i) *Gear restrictions.* No foreign vessel fishing for coral may use gear other than:

(1) dredges with tangle nets; or

(2) selective gear. Selective gear means gear which can be used to harvest coral selectively by differentiating as to type, size, quality, or other characteristics.

(j) *Collection, maintenance and reporting of data.* In addition to the requirements of § 611.9, each foreign nation or foreign fishing vessel shall collect, maintain, or report on a timely basis, accurate data relating to fishing operations as specified in this section. All submissions required by this section shall be sent to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, or, in the case of logbook data, shall be hand delivered to the National Marine Fisheries Service observer (if an observer is on board the vessel) upon his request. The following log and reports are required:

(1) Whenever a permitted vessel delivers coral harvested under a permit, the permittee shall within 72 hours mail to the Regional Director a copy of the log with complete harvest information for the coral sold or delivered including:

(i) Name of vessel;

(ii) Call sign of vessel;

(iii) Permit number of vessel;

(iv) Area fished;

(v) Depth of water;

(vi) Weight of coral harvested by species (landed weight, air dried for at least 24 hours);

(vii) Fishing effort in hours;

(viii) Dates of harvest;

(ix) Method of harvest;

(x) Observations that may be made about the habitat (current, botton type, bottom topography, bottom slope);

(xi) Amount of coral sold by species;

(xii) Sale price;

(xiii) Date of sale; and

(xiv) Name of buyer.

(2) Annual report. Each nation whose vessels engage in the precious coral fishery shall submit by November 30 of the following fishing year, annual catch and effort statistics as follows: (i) Catch in kg by gear type by month by area to the nearest one-half degree (0.5°) latitude and by one degree (1°) longitude, by the following species groupings: pink (red), gold, bamboo, other precious coral and non-precious coral; and (ii) effort, in hours fished by month by area to the nearest one-half degree (0.5°) latitude and one degree (1°) longitude.

2. It is proposed to add a new Part 680 to Title 50 CFR as follows:

PART 680—DOMESTIC PRECIOUS CORAL REGULATIONS

Subpart A—General Provisions

Sec.

680.1 Purpose and scope.
680.2 Relation to State laws.
680.3 Definitions.
680.4 Area designations.
680.5 Permits.
680.6 Recordkeeping and reporting.
680.7 Vessel information.
680.8 Prohibitions.
680.9 Enforcement.
680.10 Penalties.

Subpart B—Management Measures

680.20 Catch limitations.
680.21 Precious coral size limits.
680.22 Closures.
680.23 Area restrictions.
680.24 Gear restrictions.
680.25 Test fisheries (Reserved).

Subpart A—General Provisions

§ 680.1 Purpose and scope.

(a) The purpose of this Part is to implement the Precious Coral Fishery Management Plan developed by the Western Pacific Regional Fishery Manaement Council pursuant to the Fishery Conservation and Management Act of 1976, as amended (the "Act").

(b) These regulations govern fishing for precious coral by fishing vessels of the United States within the United States fishery conservation zone (FCZ) seaward of the Hawaii, Guam, and American Samoa.

(c) For those regulations governing precious coral fishing by foreign vessels, see 50 CFR 611.82.

§ 680.2 Relation to state law.

This part recognizes that any State law which pertains to vessels registered under the laws of that State, while in the Western Pacific Council Precious Coral Management Area, including any State landing laws, and which is consistent with the Precious Coral Management Plan, shall continue to have force and effect respecting fishing activities addressed herein.

§ 680.3 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this Part have the following meanings:

(a) *Act* means the Fishery Conservation and Management Act of 1976, as amended, (16 U.S.C. 1801–1882).

(b) *Assistant Administrator* means the Assistant Administrator for Fisheries, NOAA, or a designee.

(c) *Authorized Officer* means:

(1) Any commissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified enforcement agent or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Act; and

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this subsection.

(d) *Conditional Beds* means coral beds for which optimum yields are estimated, (on the basis of bed size relative to established beds).

(e) *Dead Coral* means any precious coral which contains holes from borers or is discolored or encrusted at the time of removal from the seabed.

(f) *Established Beds* means coral beds having a history of harvest, which are sufficiently documented that optimum yields have been established on the basis of biological stock assessment techniques.

(g) *Exploratory Beds* means coral beds other than established beds, conditional beds or refugia.

(h) *Fish* means finfish, mollusks, crustaceans, and all other forms of marine animal or plant life other than marine mammals, birds and highly migratory species.

(i) *Fishery Conservation Zone (FCZ)* means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

(j) *Fishing* means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;

(4) Any operations at sea in support of or in preparation of (1) through (3) above.

(k) *Fishing Vessel* means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for fishing or for assisting or supporting a vessel engaged in fishing.

(l) *Land or Landing* means bringing fish to shore or off-loading fish from a vessel.

(m) *Live Coral* means any precious coral which is free of holes from borers, and has no discoloration or encrustation on the skeleton at the time of removal from the seabed.

(n) *Non-precious Coral* means any species of coral other than those listed below under *Precious Coral.*

(o) *Non-selective Gear* means any gear used for harvesting corals that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead corals.

(p) *Operator,* with respect to any vessel, means the master or other individual on board and in charge of that vessel.

(q) *Owner,* with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the designation, function or operation of the vessel; or

(4) Any agent designated as such by any person described in paragraph (1), (2), or (3) of this definition.

(r) *Person* means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(s) *Precious coral* means any of the following species of corals:

Pink coral (also known as Red coral).	*Corallium secundum.*
Pink coral (also known as Red coral).	*Corallium regale.*
Pink coral (also known as Red coral).	*Corallium laauense.*
Gold coral	*Gerardia sp.*
Gold coral	*Callogorgia gilberti.*
Gold coral	*Narella sp.*
Gold coral	*Calyptrophora sp.*
Bamboo coral	*Lepidisis olapa.*
Bamboo coral	*Acanella sp.*

(t) *Regional Director* means Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731, or a designee.

(u) *Refugia* means coral beds that are closed to the harvest of coral.

(v) *Secretary* means the Secretary of Commerce or a designee.

(w) *Selective Gear* means any gear used for harvesting corals that can discriminate or differentiate between type, size, quality, or characteristics of living or dead corals.

(x) *State* means the State of Hawaii, the Territory of Guam, and the Territory of American Samoa.

(y) *United States fish processors* means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(z) *United States harvested fish* means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan or preliminary fishery management plan has been implemented under the Act.

(aa) *Vessel of the United States means:*

(1) any vessel documented or numbered by the Coast Guard under United States law; or

(2) any vessel, under five-net tons, registered under the laws of any State.

(bb) *Western Pacific Council Precious Coral Management Area* means the FCZ of the United States seaward of the State of Hawaii, the Territory or Guam, and the Territory of American Samoa.

§ 680.4 Area designations.

(a) *General.* The Precious Coral Beds in the Western Pacific Council Precious Coral Management Area are divided into four categories. Each bed is designated by a permit Area Code and assigned to a category.

(b) *Categories/Permit Areas.*—(1) *Established Beds.*

Makapuu (Oahu), *Permit Area E–B–1,* which includes the waters within a radius of 2.0 nautical miles of a point at 21°18.0′ N. lat., 157°35.5′ W. long.

(2) *Conditional Beds.* (i) *Ke-ahole Point* (Hawaii), *Permit Area C–B–1,* includes the water within a radius of 0.5 nautical miles of a point at 19°46.0′ N. lat., 156°06.0′ W. long.

(ii) *Kaena Point* (Oahu), *Permit Area C–B–2,* includes the waters within a radius of 0.5 nautical miles of a point at 21°35.4′ N. lat., 158°22.9′ W. long.

(iii) *Brooks Bank, Permit Area C–B–3,* includes the waters within a radius of 2.0 nautical miles of a point at 24°06.0′ N. lat., 166° 48.0′ W. long.

(iv) *180 Fathom Bank, Permit Area C–B–4,* N. W. of Kure Atoll, includes the waters within a radius of 2.0 nautical miles of a point at 28°50.2′ N. lat., 178°53.4′ W. long.

(3) *Refugia. Westpac Bed, Permit Area R–1,* which includes the waters

within a radius of 2.0 nautical miles of a point at 23°18.0' N. lat., 162°35.0' W. long.

(4) *Exploratory areas.* (i) *Permit Area X–P–H* includes all coral beds, other than Established Beds, Conditional Beds, or Refugia, in the United States FCZ seaward of the State of Hawaii.

(ii) *Permit Area X–P–AS* includes all coral beds, other than Established Beds, Conditional Beds, or Refugia, in the United States FCZ seaward of American Samoa.

(iii) *Permit Area X–P–G* includes all coral beds, other than Established Beds, Conditional Beds, or Refugia, in the United States FCZ seaward of Guam.

§ 680.5 Permits.

(a) *General.* (1) No vessel of the United States may fish for, take, or retain precious coral in the Western Pacific Council Precious Coral Management Area unless a permit has been issued for it under this section.

(2) Each permit shall be valid for fishing only in the bed or area specified in the permit. Permit areas are described in § 680.4.

(3) Not more than one permit shall be valid for any one vessel at any one time.

(4) Not more than one permit shall be valid for one person at any one time.

(5) The holder of a valid permit to fish one bed or area may obtain a permit to fish another bed or area only upon surrendering to the Regional Director any permit previously issued under this Part.

(b) *Applications.* (1) An application for a permit under this section shall be submitted to the Regional Director by the vessel owner or operator at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) Each applicant shall supply the following information to the Regional Director when applying for a permit. Each application shall be signed by the vessel owner or operator and contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The owner's name, mailing address, and telephone number;

(iii) The operator's name, mailing address and telephone number;

(iv) The name of the vessel;

(v) The vessel's United States Coast Guard documentation number or State license number;

(vi) The radio call sign of the vessel;

(vii) The home port of the vessel;

(viii) The engine horsepower of the vessel;

(ix) The approximate fish hold capacity of the vessel;

(x) The type and quality of fishing gear used by the vessel;

(xi) The permit area in which the applicant proposes to fish;

(xii) Whether the application is for a new permit or a renewal; and

(xiii) The number and expiration date of any prior permit for the vessel issued under this section.

(c) *Fees.* No fee is required for a permit under this Part.

(d) *Change in Application Information.* Any change in the information specified in paragraph (b) of this section shall be reported to the Regional Director ten days prior to the effective date of the change.

(e) *Issuance.* (1) Within 60 days after receipt of a properly completed application the Regional Director shall determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director shall notify in writing the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application shall be considered abandoned.

(f) *Expiration.* Permits issued under this section shall expire on June 30 following the issuance of the permit.

(g) *Renewal.* An application for a renewal of a permit shall be submitted to the Regional Director in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit which has been substantially altered, erased, or multilated shall be invalid.

(i) *Replacement.* Permits may be issued to replace lost or mutilated permits. An application for a replacement permit shall not be considered a new application.

(j) *Transfer.* Permits issued under this section are not transferable or assignable to other persons. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section shall be on board the vessel at all times while the vessel is fishing for coral in the FCZ. Any permit issued under this section shall be displayed for inspection upon request of any Authorized Officer.

(l) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this Part. As specified in that subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Act or this Part; or if a civil penalty or criminal fine imposed under the Act, and pertaining to such a vessel, is not paid.

§ 680.6 Recordkeeping and reporting.

(a) *Logbook.* The operator of any fishing vessel fishing for precious coral, subject to this Part shall:

(1) Maintain on board the fishing vessel, while fishing for precious coral, an accurate and complete fishing logbook in the required format supplied by the Regional Director, recording all information specified in Section 680.6(b);

(2) Make the fishing logbook available for inspection by an Authorized Officer or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspection;

(3) Keep the fishing logbook one year after the date of the last entry in the logbook; and

(4) Within 72 hours of each landing of precious coral, submit to the Regional Director a copy of the log sheet(s) pertaining to that precious coral.

(b) *Information.* Fishing logbooks shall contain the following information for all precious coral taken under this Part:

(1) Vessel information.

(i) Name of vessel;

(ii) Call sign of vessel; and

(iii) Permit number of vessel.

(2) Fishing information.

(i) Date of harvest;

(ii) Fishing effort in hours;

(iii) Method of harvest;

(iv) Area fished;

(v) Depth of water;

(vi) Weight of coral harvested, by species (landed weight, air dried for at least 24 hours); and

(vii) Observations that may be made about the habitat (current, bottom type, bottom topography, bottom slope, proximity to land, etc.).

(3) Sale information.

(i) Amount of coral sold (by species);

(ii) Sale price;

(iii) Date of sale; and

(iv) Name of buyer(s).

(4) Any other information specified in the permit.

§ 680.7 Vessel information.

(a) *Official Number.* The official number is the documentation number issued by the Coast Guard or the certification number issued by a State or the Coast Guard for undocumented vessels. Each fishing vessel subject to this Part shall display its Official Number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The official number shall be affixed to each vessel subject to this Part in block Arabic numerals at least 18 inches in height for fishing vessels of 65 feet in length or longer and

at least ten inches in height for all other vessels. Markings must be legible and of a color that contrasts with the background.

(c) *Duties of Operator.* The operator of each fishing vessel subject to this Part shall:

(1) Keep the displayed official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the Official Number from an enforcement vessel or aircraft.

§ 680.8 Prohibitions.

(a) *Permits.* No person shall fish for, take, or retain precious coral in the Western Pacific Council Precious Coral Management Area unless either the owner or operator of the vessel from which the fishing occurs has been issued a permit under this Part and such permit is on board the vessel.

(b) *Fishing.* No person shall fish for, take, or retain any species of precious coral in the Western Pacific Council Precious Coral Management Area:

(1) By means of gear or methods prohibited by this Part;

(2) In refugia specified in this Part;

(3) In a bed for which the quota specified in this Part has been attained; or

(4) In violation of any permit issued under this Part.

(c) *Pink coral size limit.* No person shall take and retain or possess on fishing vessels any pink coral from the Makapuu Bed (Permit Area E–B–1), Keahole Point Bed (Permit Area C–B–1), or Kaena Point Bed (Permit Area C–B–2), which is less than the minimum length specified in this Part.

(d) *Possession and sale.* No person shall possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of precious coral which was taken in violation of the Act, this Part, or any regulation issued under the Act.

(e) *Presumption.* It shall be a rebuttable presumption that any precious coral found on board a fishing vessel in the Western Pacific Council Precious Coral Management Area was caught and retained in violation of this Part unless:

(1) A valid permit has been issued for the vessel pursuant to this Part, or

(2) The owner or operator of the vessel can document the origin of that coral by receipts of purchase, invoices, or other documentation.

(f) *Search and inspection.* No person shall:

(1) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this Part, or any other regulations issued under the Act;

(2) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an Authorized Officer in the conduct of any search or inspection described in paragraph (1) of this subsection;

(3) Resist a lawful arrest for any act prohibited by this Part;

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person by an Authorized Officer, knowing that such other person has committed any act prohibited by this Part; or,

(5) Violate any other provision of this Part, the Act, or any regulation or permit issued under the Act.

(g) *Transfer to foreign vessel.* No person shall transfer directly or indirectly, or attempt to so transfer, any United States harvested coral to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act which authorizes the receipt by such vessel of United States harvested coral of the species concerned.

§ 680.9 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, permit, and catch for purposes of enforcing the Act and this Part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are those which may be used:

(1) "L" meaning "You should stop your vessel instantly";

(2) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(3) "AA AA AA etc." which is the call to an unknown station, to which the signaled vessel should respond by illuminating the vessel identification required by section 680.7.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) Provide a safe ladder for the Authorized Officer and his party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other action as required to ensure the safety of the Authorized Officer and his party and to facilitate the boarding.

§ 680.10 Penalties.

Any person or fishing vessel found to be in violation of this Part is subject to the civil and criminal penalty provisions and forfeiture provisions of the Act, and to 50 CFR Parts 620 (Citations) and 621 (Civil Procedures) and other applicable law.

Subpart B—Management Measures

§ 680.20 Catch limitations.

(a) *Fishing Year.* (1) The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapuu Bed, which has a two-year fishing period that begins July 1, and ends June 30 two years later. (2) The effective date for calculating the initial fishing period shall be July 1, 1980.

(b) *Quotas.* The quotas limiting the amount of precious coral which may be taken in the Western Pacific Council Precious Coral Management Area during the fishing year are as given in Table I of this section. Precious coral harvested after July 1, 1980 will be counted toward the 1980-1981 harvest quotas.

Table I.—*Quotas for Management Area Categories*

Name of coral bed	Type of bed	Harvest quota	Year	Gear restrictions
Makapuu	Established	Pink coral—2,000 kg	2	Selective only.
		Gold coral—600 kg	2	Do.
		Bamboo coral—500 kg	2	Do.
Ke-ahole Point	Conditional	Pink coral—67 kg	1	Selective only.
		Gold coral—20 kg	1	Do.
		Bamboo coral—17 kg	1	Do.
Kaena Point	Conditional	Pink coral—67 kg	1	Selective only.
		Gold coral—20 kg	1	Do.
		Bamboo coral—17 kg	1	Do.
Brooks Bank	Conditional	Pink coral [1]—444 kg	1	Selective or nonselective.
		Gold coral—133 kg	1	Do.
		Bamboo coral—111 kg	1	Do.
180 Fathom Bank	Conditional	Pink coral [1]—222 kg	1	Selective or nonselective.
		Gold coral—67 kg	1	Do.
		Bamboo coral—56 kg	1	Do.
Westpac Bed	Refugia	Zero		No fishing for coral authorized.
All	Exploratory	1,000 kg, all species combined, per area.	1	Selective or nonselective [2]

[1] Only ⅓ the indicated amount would be allowed if nonservice gear is use. If both selective and nonselective methods are used, the bed will be closed when (S+5N=Q), where S=selective harvest amount, N=nonselective harvest amount, and Q=total harvest quota, for any single species on that bed.

[2] Selective gear only may be used in the FCZ seaward of the main Hawaiian Islands; i.e., south and east of a line midway between Nihoa and Niihau Islands. Nonselective gear or selective gear may be used in all other portions of exploratory areas.

(c) *Conditional Bed Closure.* A conditional bed shall be closed to all nonselective coral harvesting after the quota for one species of coral has been taken, as set forth in Table I.

(d) *Reserves and Reserve Release.* The quotas for Exploratory Areas shall be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for each Exploratory Area shall equal the quota minus the expected domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Director shall determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(3) The Regional Director shall release to TALFF an amount of precious coral equal to 1,000 kg. minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) The Regional Director shall publish in the Federal Register a notice of his determination and a summary of the information on which it is based as soon as practicable after the determination is made.

§ 680.21 Precious coral size limit.

(a) Makapuu Bed. Pink coral harvested from the Makapuu Bed (E–B–1) shall have attained a minimum height of ten inches.

(b) Ke-ahole Point Bed. Pink coral harvested from the Ke-ahole Point Bed (C—B–1) shall have attained a minimum height of ten inches.

(c) Kaena Point Bed. Pink coral harvested from the Kaena Point Bed (C–B–2) shall have attained a minimum height of ten inches.

(d) There are no size limits for precious coral from other beds or other species.

§ 680.22 Closures.

Determinations of Closure Data.

(a) If the Regional Director determines that the harvest quota for any coral bed(s) shall be reached prior to the end of the applicable fishing year, or of the two-year fishing period at Makapuu Bed, he shall issue a field order closing the bed(s) involved by publication of a notice in the Federal Register, and through appropriate news media. Such field order shall indicate the reason for the closure, the bed(s) being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

(c) *Emergency Closures.*

(1) The Secretary may issue emergency regulations under Section 305(e) of the Act, if an emergency involving the precious coral resource is determined to exist. Emergency regulations will be announced by publication of a notice in the Federal Register. Information on emergency regulations will be disseminated to affected persons through appropriate news media.

(2) The Council may, at any time, make recommendations to the Secretary for emergency regulations under this section.

§ 680.23 Area and time restrictions.

(a) *Area Restrictions.* It is unlawful to fish for coral in the WestPac Bed. The specific area closed to fishing is all waters within 2 nm of the midpoint of latitude 23° 18.0' N longitude 162° 35.0' W.

(b) *Time Restrictions.* None.

§ 680.24 Gear restrictions.

(a) *Selective Gear.* Only selective gear may be used to harvest coral from the FCZ of the main Hawaiian Islands, i.e., south and east of a line midway between Niihau and Nihoa Islands.

(b) *Selective or Non-Selective Gear.* Either selective or non-selective gear may be used to harvest coral from Brooks Bank, 180 Fathom Bank, and from exploratory areas other than the FCZ off the main Hawaiian Islands.

Fishery Management Plan for the Precious Coral Fisheries (and Associated Nonprecious Corals) of the Western Pacific Region

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Executive Summary

The Fishery Conservation and Management Act of 1976 (Pub. L. 94–265) provides for United States exclusive management authority over the fishery resources and fisheries within a Fishery Conservation Zone (FCZ) extending from the seaward boundary of the territorial sea (3 miles from shore) to a distance of 200 nautical miles from shore. The responsibility for developing management plans for the fisheries in the FCZ is vested by the Act in eight Regional Fishery Management Councils. The Western Pacific Fishery Management Council is responsible for the fisheries off the coasts of Hawaii, Guam and American Samoa. The Council may also recommend measures to be implemented in the FCZ beyond the area of concern in the Northern Mariana Islands. Implementation and enforcement of any regulations pertinent to fishery management within the FCZ are the responsibility of the Secretary of Commerce. This Precious Corals Fishery Management Plan has been developed by the Western Pacific Fishery Management Council and will be submitted to the Secretary of Commerce for approval and implementation. The major objectives of the Plan are to obtain Optimum Yields of precious corals in the FCZ and maximize the benefits of the precious coral fisheries to the nation. Precious corals are known or believed to occur in the FCZ seaward of Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and off other United States island possessions in the central and western Pacific Ocean.

In the Management Plan, precious coral beds are treated as separate management units. The beds are classified as Established, Conditional or Exploratory. Established Beds are those which have a history of harvest and for which Optimum Yields have been determined on the basis of scientific data. Conditional Beds are those for which locations and approximate area are known and for which estimates of Optimum Yield can be derived by analogy with Established Beds, but which require additional data for determination of Optimum Yields. Exploratory Areas comprise all other area in the FCZ of the Western Pacific Region. Only one coral bed has been studied adequately enough to be classified as Established. It is off Makapuu, Oahu, Hawaii. Five other beds are classified as Conditional, all of them off the Hawaiian Islands (See Figures 1 and 2).

Management measures are prescribed for commercial harvest from all three bed categories, otherwise referred to as permit areas. There is no recreational fishery. The prescribed measures are summarized as follows: (1) Optimum Yields have been determined for pink (*Corallium secundum*), gold (*Gerardia* sp.) and bamboo (*Lepidisis olapa*) coral populations in the Makapuu Bed. These Optimum Yields are based on estimates of Maximum Sustained Yield (MSY). Rounded estimates of MSY for the three species in the Makapuu Bed are 1,000 kg/year for pink coral, 300 kg/year for gold coral and 250 kg/year for bamboo coral. Optimum Yields have been set at double these values for twice the time, i.e. for 2 years. The adjustment to 2 year periods is proposed because of socio-economic considerations. (2) Optimum Yields for Conditional Beds are determined by their areas in relation to the area of the Makapuu Bed, assuming the same MSY per unit area, and reducing the OY to 20% of the MSY if non-selective harvesting methods are used. (3) U.S. harvesting and processing capacity and expected annual harvest and processing levels from the Makapuu Bed and all Conditional Beds are equal to the levels proposed for Optimum Yield, and therefore no surplus exists in these areas which can be allocated to foreign fisherman or to joint venture operations. Domestic processing capacity is sufficient to process expected domestic harvest. (4) Until the definitive Optimum Yields of beds in Exploratory Areas can be determined, an initial Optimum Yield for each of those Areas (Hawaii, Samoa, Guam, and the Northern Marianas and other U.S. island possessions) is set at 1,000 kg total of all species. All 1,000 kg are held in reserve for the domestic fishery during the first six months of the first year, at the end of which period the TALFF (=1,000−2× domestic catch), if any, is made available for foreign fishing. In subsequent years the DAH would equal the previous year's domestic catch and the domestic reserve=1,000−DAH. At the end of six months TALFF would be established to equal 1,000 kg minus two times the domestic catch in the preceding 6 months. (5) Other species of precious corals and associated non-precious corals which are known or are believed to occur in the FCZ are included in the plan. No specific conservation and management measures are proposed at this time; Optimum Yields have not been determined. This plan may be amended to manage these species as more data become available and as the need arises. (6) A prohibition on the use of dredging techniques is recommended for all permit areas where selective harvesting methods are current practice and for the FCZ seaward of the main Hawaiian Islands. (7) A quota for dredging is provided in all other permit areas under specified conditions. (8) Taking of precious coral in the FCZ incidental to other fisheries is allowed for both domestic and foreign fishermen, subject to reporting requirements and return of the coral to the sea. (9) A recommendation is made to provide for closing certain coral beds to commercial or exploratory fishing as refugia or reserves, and to designate as the first such reserve the WesPac Bed, situated between Nihoa and Necker Islands, off the Northwestern Hawaiian Islands. Other refugia may be designated by amendment to this plan. (10) Permits are required for domestic and foreign fishermen, subject to extensive reporting requirements and conditions which embody the above provisions. Vessels may be required to carry observers. The proposed management measures are designed to

maximize overall benefits to the nation and are consistent with the National Standards of the FCMA.

I. Introduction

This is a Fishery Management Plan (FMP) for the precious coral and associated non-precious coral fisheries within the United States Fishery Conservation Zone of the central and Western Pacific region. It has been prepared by the Western Pacific Regional Fishery Management Council under the authority of the Fishery Conservation and Management Act of 1976 (FCMA) (Pub. L. 94-265).

The FCMA provides for the conservation and management of fishery resources of the United States be establishing a Fishery Conservation Zone of 200 nautical miles, within which the United States has exclusive management authority over all fishery resources except highly migratory species which are defined as tuna. The Act calls for the preparation and implementation of Fishery Management Plans, through which the objectives of a national fishery management program may be accomplished.

The Fishery Management Plans provide the basis for the determination of annual harvest predicated on scientific information and involving the needs of the States, the fishing industry, recreation groups, consumers, environmental organizations and other interested parties. In essence, the allowable catch of any fishery resource will be based on the Optimum Yield from that resource.

The fishery management unit in this case comprises a number of discrete populations or beds of precious corals and associated non-precious corals within the FCZ off the shores of U.S. islands in the central and western tropical and subtropical Pacific. At present only one such bed is the object of consistent exploitation by a domestic fishery. Others are or may have been subject to poorly documented harvesting by foreign fishermen, while others have been located by exploratory surveys but are not yet under exploitation. There are undoubtedly other precious coral beds in the region which will eventually be prospected and exploited, and it is prudent to make some preliminary provision for their conservation, in view of the ease with which this resource can be overfished.

In this FMP, precious coral beds which have a history of exploitation and for which a Maximum Sustainable Yield (MSY) can be estimated based one scientific data, are designated Established Beds. Others for which only the locations and approximate area are known are called Conditional Beds, while those which are yet to be located are referred to as Explopratory Areas. (See Section IV.F.2, for fuller definition of these categories.) Under this plan, five portions of the FCZ—the portions around Hawaii, Guam, American Samoa, U.S. Possessions and the Northern Mariana Islands—are designated Exploratory Areas for purposes of setting quotas for identification of and harvests from Exploratory Beds.

The major objective of the Plan is to achieve the optimum yield of precious corals which occur within the Fishery Conservation Zone (FCZ) of the United States in the Central and Western Pacific Ocean. The term optimum yield is defined in the Act as that amount of "fish" which will provide the greatest overall benefit to the Nation, and which is prescribed as such on the basis of the maximum sustained yield (MSY) as modified by any relevant economic, social or ecological factor. Species of precious corals which are considered in this document include the precious pink coral, *Corallium secundum*, the gold coral, *Gerardia* (formerly *Parazoanthus*) sp., and the bamboo coral, *Lepidisis* (formerly *Keratoisis nuda*). Other species of precious coral and other corals on the continental shelf or in the FCZ are also include in the plan although specific Conservation and Management Measures are limited at this time to permit and data collection requirements. Further management measures for these corals will be included in the plan sequentially on an as needed basis. Areas condidered in this document include the Hawaiian Islands, American Samoa, Guam, the Commonwealth of the Northern Marianas and other U.S. island possessions in the Central and Western Pacific Ocean.*

Included in the management plan are estimates of optimum yield for species of greatest commercial importance and recommendations for measures that are deemed necessary in order to achieve optimum yield.

II. Description of the Fishery

A. Stocks

Within the FCZ of the United States in the central and western tropical Pacific (Figures 1-4), the only fishery for precious corals is in the Hawaiian Islands. The fishery is based on two groups of species, one in deep water near 400 meters and another in much shallower water between 40 and about 80 meters. Both fisheries are entirely commercial, i.e. non-recreational. At the present time the bulk of the catch of deep species consists of pink (*Corallium secundum*) and gold corals (*Gerardia* sp., = *Parazoanthus* sp.). A third species, bamboo coral (*Lepidisis olapa*) co-occurs with pink and gold coral and is considered to be of immediate economic potential. Other potential species of precious coral, including the shallow water black corals, are listed in Table I.

The shallow water fishery consists of three species of black coral *Antipathes dichotoma, Antipathes grandis* and *Antipathes ulex*. About 90% of the catch consists of the first species, 9% the second and 1% the third. Approximately 85% of all black corals harvested in the state of Hawaii are taken within the Territorial Sea.

The FMP contains specific management measures for *Corallium secundum, Gerardia* sp. and *Lepidisis olapa*. Measures for black corals are currently being developed jointly by the State of Hawaii and the WPRFMC, and will be added to the plan on a sequential basis. As it appears likely that other species of precious coral and other corals in the FCZ will be subject to harvest, additional measures for these species will also be added to the plan on a sequential basis.

Pink coral, *C. secundum*, and bamboo coral, *Lepidisis olapa*, belong to the Order Gorgonacea in the Subclass Octocorallia of the class Anthozoa in the Phylum Coelenterata. Gold coral, *Gerardia* sp., and black coral, *Antipathes* sp., belong to separate Orders, Zoanthidea and Antipatharia, in the Subclass Hexacorallia, also in the class Anthozoa and the Phylum Coelenterata.

Precious corals are known to exist in Hawaii, Samoa, Guam and the Commonwealth of the Northern Marianas and other U.S. possessions, but little is known of their distribution and abundance. What little knowledge is available of the distribution and abundance of precious corals in the Western Pacific can be summarized as follows:

American Samoa—One or more species of black coral of commercial quantity and quality are known to exist at depths of 40 meters and deeper, but these stocks are within the jurisdiction of American Samoa.

Table I.—*Actual and potential precious corals in the Western Pacific*

Scientific name	Common name	Harvest status
Corallium secundum.	Pink coral	Harvested.
Corallium regale	Pink coral	Not harvested.
Corallium laauense.	Pink coral	Not harvested.
Gerardia sp.	Gold coral	Harvested.
Callogorgia gilberti	Gold coral	Not harvested.
Narella sp.	Gold coral	Not harvested.
Calyptrophora sp.	Gold coral	Not harvested.
Lepidisis olapa [1]	Bamboo coral	Not harvested.
Acanella sp.	Bamboo coral	Not harvested.
Antipathes dichotoma.	Black coral	Harvested.
Antipathes grandis	Black coral	Harvested.
Antipathes ulex	Black coral	Harvested.

[1] Previously known as *Keratoisis nuda.*

The only information available on deeper water precious corals comes from reports by fishermen. Pink coral has been reported off Cape Taputapu, but there are no data on quantity, quality and depth (Ian Swan, personal communication). Unidentified precious corals have also been reported off Fanuatapu Island at a depth of 90 m (possible bamboo coral) and on the sides of an uncharted seamount three-fourths of a mile off the northwest tip of Falealupo at a depth of about 300 meters (Bill Travis, personal communication).

Guam and the Commonwealth of the Northern Marianas—No commercially important quantities of precious coral have been found on U.S. surveys in the Northern Marianas (Grigg and Eldredge 1975). However, Japanese fishermen (personal communication) claim to have taken some *Corallium* off Rota, Saipan and north of Pagan Island.

Other U.S. island possessions—Japanese fishermen report that in 1975 alone, a harvest

*Pending amendment of the Fishery Conservation and Management Act, the Western Pacific Fishery Management Council has no statutory authority to prescribe management measures for fisheries in the Fishery Conservation Zone off the Northern Marianas or minor United States Pacific island possessions. References to management measures for precious coral fishing in those areas in this Plan are in the nature of recommendations which may be implemented by the Secretary of Commerce by actions pursuant to Sec. 201(g) or Sec. 304(c) of the Act.

of 100 metric tons of red corals (*Corallium* spp.) was taken from grounds within 200 miles of Midway, Wake, Yap and Saipan (EIS/PMP Precious Corals, DOC, 1977). However, the magnitude of this estimate (approximately the world production in 1970) casts some doubt on its validity. On the other hand, none of the deep precious coral beds off Wake or Yap have been surveyed by U.S. scientists and only the most preliminary U.S. data are available for the Saipan and Midway areas.

Hawaii—Beds of pink, gold and/or bamboo coral have been found at six locations off the Hawaiian Archipelago (Grigg 1974) (Figures 1 & 2). These are as follows:

Description	Lat. N.	Long. W.	Area in square-kilometer
1. Off Ke-ahole Point, Hawaii	19°46.0'	156°06.0'	0.24
2. Off Makapuu, Oahu (Fig. 5)	21°18.0'	157°35.5'	3.60
3. Off Kaena Point, Oahu	21°35.4'	158°22.9'	0.24
4. WesPac Bed, between Nihoa and Necker Islands	23°18'	162°35'	0.8
5. Brooks Bank	24°06.0'	166°48.0'	1.6
6. 180 Fathom Bank, north of Kure Is	28°50.2'	178°53.4'	0.8

With the exception of the Makapuu Bed and those beds (if any) harvested by foreign fishermen, all other precious coral beds within the U.S. fishery conservation zone are believed to be in an unexploited or "virgin" state. The Makapuu Bed has been harvested off and on since 1966 (see Table II, page 10). The area and the pre-fishery standing crop of pink coral in the bed are estimated to be 4.5 km² and 43,500 kg, respectively. Over a 10-year period only about 16% of the original standing crop of pink coral has been harvested; this averages 1.6% per year, and is below estimates of MSY (see section III–F). However, in three of four years the estimate of MSY has been exceeded (see Table II). Of the other five areas, WesPac Bed, Brooks Bank and 180 Fathom Bank are considered to hold the most promise for domestic harvesters. There are undoubtedly many other undiscovered beds, especially off the Northwestern Hawaiian Islands, where few surveys have been conducted. The large yields (see following section) reported to have been taken by foreign fishermen from the Milwaukee Banks (Lat. 32.5°N, Long. 173.0°E), which are outside the U.S. Fishery Conservation Zone, are indications of the potential in the Northwestern Hawaiian Islands. Because of the sessile habit of precious corals and the large distances which separate the known beds, it is a reasonable assumption to treat each bed as a separate management unit, even though nothing is known of the relationship between stock and recruitment, particularly with respect to the possibility of recruitment to one bed arising from reproduction on a different bed.

There are no known Indian treaty, native Hawaiian or other indigenous traditional uses, claims or rights associated with precious corals. If any rights or ceremonial values are identified, this plan will be amended as necessary.

B. History of Exploitation

Although a precious coral fishery has existed in the Mediterranean Sea since about 3000 B.C., precious coral was not discovered in the Pacific until the early 19th century off Japan. Historically, the primary method of fishing in both the Mediterranean Sea and off Japan has been dredging. Initially little fishing occurred off Japan until 1868, the year of the Meiji Reform. Prior to 1868, coral was confiscated from fishermen by the Shoguns, therefore little incentive existed for commercial fishing. After 1868, however, this custom was abolished and the fishermen were allowed to market coral products freely. Shortly after 1868, about 100 boats began harvesting coral, soon exhausting local grounds near Japan. Subsequent catch and effort depended on the discovery of new grounds and has been extremely variable up to the present time. The pattern of the coral fishery in Japan has been one of exploration, discovery, exploitation and depletion. In spite of the obvious need to control fishing effort, there has been no effective management of the fishery.

Catch and effort data collected in Taiwan for the years 1924–1940 (Anon., 1956), shown in Figures 6 and 7, show substantial variation over time. However, catch per effort was much less variable except for a very large increase at the end of the period (which may reflect the discovery of new fishing grounds). The data correspond reasonably well to the assumptions of the surplus production model and suggest that MSY/OY could have been achieved with 50–60 boats, which, in fact, is the level at about which the fishery apparently stabilized.

Until recent years, the precious coral fishery in the Pacific was centered off Japan, Okinawa and Taiwan (Grigg, 1971). Depletion of the beds in these areas, however, led to wide ranging exploratory efforts primarily on the part of Japanese fishermen. In 1965, Japanese coral fishermen discovered a very large bed of pink coral contiguous with the Hawaiian Archipelago on the Milwaukee Banks about 500 miles northwest of Midway Island. Milwaukee Banks, including Kinmei Seamount, have an area slightly greater than 300 km². Few data are available concerning the amount of pink coral Japanese fishermen harvested from Milwaukee Banks. However, in 1969 alone, they reportedly took about 113,000 kg (H. Ozawa*, personal communication, 1970).

Prompted by the discovery of pink coral on the Milwaukee Banks, U.S. scientists in 1966 discovered a commercial bed of *Corallium secundum* between 350 and 450 m depth in the Molokai Channel off Makapuu, Oahu. Shortly thereafter, a small group of fishermen began dredging this Makapuu bed on a limited scale. This activity continued on and off for about 3 years until high costs of operation and bad weather led to its discontinuation. About 1,800 kg (4,000 lb) were harvested during this period. After an abortive attempt in 1969 at harvesting with a remote T.V. camera assembly by a Seattle firm (Jacobsen Brothers), research at the University of Hawaii by the Sea Grant Program led to the development of a selective harvesting system utilizing a submersible. Maui Divers of Hawaii, Ltd. adopted this system and began harvesting the Makapuu Bed in 1973. Total annual landings of pink and gold coral from the Makapuu Bed between 1966 and 1977 are given in Table II.

*H. Ozawa was the Managing Director of the All Nippon Coral Fishery Union in 1970.

Table II.—*Annual Harvest of Pink and Gold Coral From the Makapuu Bed*[1]

[Harvest in kilograms]

	Gear	Pink	Gold	Knockdown[2]
Year:				
1966–69	Dredge	1,800	0	2,700
1970–72	(3)	(3)	(3)	
1973	Submersible	538	0	
1974	do	2,209	734	
1975	do	1,385	621	
1976	do	400	363	
1977	do	1,421	329	
1978 (January to June)	do	474	50	

[1] In 1977, 2.7 kg of pink coral and 106 kg of gold coral were harvested from the Ke-ahole Point Bed off the Island of Hawaii.

[2] During 1966 to 1969 when dredges were used in the Makapuu Bed the amount of coral dislodged from the bottom and not recovered must also be considered. Simulated harvesting trials in shallow water indicate that tangle dredges are about 40% efficient for one drag. Therefore for every kilogram harvested, 1.5 kg is assumed to have been knocked down and lost.

[3] No harvesting.

In the past, there has been no *documented* foreign harvest of precious coral within the U.S. conservation zone. However, in 1975 Japanese vessels reportedly harvested about 100 MT of precious corals within 200 miles of Midway, Wake, Yap and Saipan Islands (EIS/PMP Precious Corals, DOC, 1977). However, because the *world* landings in 1970 were only about 85 MT (H. Ozawa, personal communication), this report is somewhat doubtful. In 1976 and 1977, Taiwanese dredgers were reportedly operating on the Milwaukee Banks and may also have harvested precious corals within the U.S. Fishery Conservation Zone. On June 8, 1977, the U.S. Coast Guard reported entry of a Taiwanese coral fishing vessel, *C/B Hai Tien No. 2,* to Midway Island, which informed the Coast Guard that about 30 other vessels would soon be dredging in the Milwaukee Banks area. The Milwaukee Banks are approximately 280 miles northwest of the U.S. 200 mile limit. Japanese and Taiwanese vessels are presently allowed to fish on seamounts west of 180° longitude and north of 28° latitude in the FCZ for pelagic armorheads and alfonsins. Some incidental catch of precious corals may result from this activity, but retention of the incidentally caught coral is prohibited. Catches must reported.

C. Vessels and Gear

1. Historically, both in the Mediterranean Sea and in the far western Pacific, the primary method used to harvest precious coral has been dredging with tangle nets. Over the long history of the fishery, gear design has varied, but it has always centered around the basic idea of a dredge (weighted tangles) (Figure 8). The weights serve to keep the dredge on the bottom as well as dislodge the coral while the nets entangle it.

Off Hawaii the first attempt to selectively harvest precious coral was by the Jacobsen Brothers in 1969 using a remotely controlled manipulator guided by a television camera. This technology proved to be uneconomical, but was the first step which led to the development of a successful system of selective harvest utilizing a manned submersible. Remotely controlled vehicles for the harvest of precious coral are currently being developed by separate companies in Hawaii and Taiwan.

The vessels utilized in the coral fishery differ largely as a function of the method of collection. Foreign dredging vessels range between 40 and 100 feet in length and employ crews which vary between 3 and 20 men. Typically, the dredges are lowered and raised by line haulers which are located amidships and operated over the side of the vessel. Dredging usually is accomplished without power. The ship is simply allowed to drift positioned at right angles to the current. Japanese fishermen usually deploy from 4 to 8 dredges simultaneously. Some larger vessels are able to handle up to 16 lines at once. Given good weather, Japanese coral fishermen continue dredging 24 hours a day, rotating the crew. The same grounds are often redredged.

In 1975, about Japanese vessels (of which 26 were specialized) were engaged in harvesting precious corals off Miday, Wake, Yap and Saipan (Akira Matsura*, personal communication). Most likely the entire Japanese coral fleet is considerabaly larger. In Taiwan, about 30 coral dredgers operate seasonally (summer) out of the Peng-hu (Pescadores) Islands.

The vessels employed by the domestic fishery off Hawaii include a two-man submersible, a towing barge (the LRT) and a 70-foot surface support and towing vessel.

The submersible, *Star II,* is launched and recovered from the LRT below the surface at a depth of about 60 feet. Three SCUBA divers are required for this operation. The coral harvesting gear on *Star II* consists of a coral cutter, wire basket and hydraulic claw (Figure 9). Coral which is harvested selectively is packed in the basket. Maximum payload is about 200 pounds, but the average per dive is about 60 pounds.

2. Evaluation of Gear Performance and Efficiency. Off Hawaii in 1972, experimental trials using dredging and selective harvesting methods were conducted on the Makapuu Bed. The dredge consisted of a concrete-filled cylinder (80 lbs.) with 6-foot hanks of nylon netting attached to eyebolts (Figure 8). the selective method was the use of the submersible, *Star II.* Data were compared in order to evaluate the ecological and economic efficiency of both techniques (Grigg, Bartko and Brancart, 1973). The results favor the selective method. However, this was in part due to the method of dredging employed. Only one dredge was used in the test whereas Japanese fishermen may drag up to 16 dredges simultaneously.

The size frequency distribution of coral collected with the submersible was characterized by larger pieces of higher quality than fragments collected by dredging (Figure 10). On the average, one day of effort with the submersible produced a catch about 10 times the value of an equal day's effort dredging with one coral net. However, if 10 nets were deployed simultaneously, the value of the coral produced should be about the same. Hence, the major advantage of utilizing a submersible was not gross production but rather selectivity.

The advantages and disadvantages of the two methods are outlined in Table III.

There are several advantages of a submersible over a dredge. First, the use of a submersible permits selective harvest; immature colonies can be avoided and other benthic species are not disturbed. Second the capacity for selectivity allows the use of a size limit as a management tool. The advantage of this is that the maximum sustained yield at an optimum size is theoretically about twice what it is if no size limit is imposed (dredging) (see Section III–F). This is because dredging leads to growth-overfishing, that is young colonies are harvested before reaching their maximum potential for growth. Thirdly, with a submersible, nearly all the coral dislodged from the botton is brought to the surface. Dredges, on the other hand, only recover about 40% of what is initially "knocked down."[1] Dredges, of course, can be dragged repeatedly over the same area. Hence overall recovery with a dredge could be significantly greater than 40% For example, three replicate hauls should theoretically collect 78% of the coral, four hauls, 87% recovery. Catch per unit effort, of course, would be progressively less and at some point, depending on costs, the operation would cease to be profitable. Exactly where this point lies no doubt varies with the quality and quantity of coral in each bed. A forth advantage of a submersible over dredging is that a larger percentage of high quality coral may be collected.

*Japanese Fishery Agency.

[1] The estimate of efficiency for tangle nets is based on simulated trails in shallow waters in Kaneohe Bay, Hawaii. Recovery of planted coral on the bottom for the five trails was 35, 39, 44, 40, 42, percent producing an average recovery rate of 40%.

TABLE III.—*Advantages and Disadvantages of Two Coral-Harvesting Systems*

Submersible	Dredging
Advantages	
Permits selective harvesting, i.e. little or no damage to other components of the ecosystem.	Relatively inexpensive, low capital and operating costs.
Permits the use of a size limit as an aid to conservation, however breakage makes enforcement difficult.	May be more productive per 24-hour day, if multiple dredges employed.
Permits a yield per recruit twice that obtainable by non-selective fishing. Maximizing yield per recruit will also maximize total yield, when recruitment is constant or independent of stock size.	
Practically no waste	Able to harvest continuously
Larger percentage of high quality coral	Major equipment readily adaptable for other uses.
Disadvantages	
High capital and operating costs	Nonselective harvesting, immature colonies unprotected.
Requires prepartion, maintenance and repairs of expensive, specialized equipment.	Ecologically more destructive, other species and habitats disturbed.
Need for support vessels	More wasteful, some coral dislodged from the bottom may not be recovered.
Shutdown idles high capital investment	Larger percentage of lower values-coral.
May have limited depth capability and not fully utilize the resource.	

Advantages of dredging over a submersible include the following. First, dredging is considerably less costly than operating a submersible. In some cases, dredging may also be actually more economical since more than one dredge can be employed and because the operation may be continuous on a 24 hour basis. The equipment is also readily adaptable to other fishing technologies, which may have economic advantages in areas where diversified fishing is profitable. A submersible requires several support vessels and service and maintenance, both quite costly. A major breakdown of a submersible system or a closed season would both result in idling a significant amount of capital investment. Also, dredges have no depth limits *per se* while submersibles do. In Hawaii, *Star II* has an operational depth limit of 1200 feet (365 m) which curtails full utilization of precious corals (see Table IV). Finally, in the event that distant or deeper coral beds are discovered, selective harvesting may be economically prohibitive or simply not possible, in which case dredging may be the only feasible alternative. Exploration for beds might also be best accomplished by dredging techniques.

Depending on desired goals and varying circumstances, such as the abundance of the resource, either system might be a more "efficient" or desirable alternative. It may be more profitable for industry to utilize a submersible so as to more fully utilize the resource, or if quotas are not overly restrictive, dredging may offer clearcut economic advantages. Hence, the benefits of slective harvest vis-a-vis dredging must be considered on a case by case basis. Clearly there are economic and social tradeoffs which may not be the same for all locations in the Pacific.

D. *Global Economics of the Precious Coral Industry*

1. Worldwide, the precious coral jewelry industry is valued at about $500 Million/year (retail sales). This arises from a world production of raw coral worth between $5–$10 million (H. Ozawa, personal communication). In 1976, about 95 percent of the world's production was harvested from the Pacific Ocean. Most of this coral is sold to international buyers through a system of closed auctions in Japan that are operated by coral fishing associations. World jewelry production today is dominated by Japaneses and Italian manufacturers.

In Hawaii most precious coral sold in the market place is purchased in the Orient. These stones are mounted in Hawaii in order to save import taxes on finished jewelry. A survey in 1971 showed at least 15 manufacturers producing jewelry and 150 to 200 retail outlets (Poh, 1971). Since then, there has been little or no increase in the number of major manufacturers. However, the number of retail outlets has increased by a factor of about two or three.

Retail sales in 1978 in Hawaii for both imported and locally produced coral jewelry were about $20 million (Clifford Slater, personal communication), This total represents a sevenfold increase since 1969 (see Tompson, 1975). This is based on pink, black and gold coral sales. Of the pink coral, about 80% is imported from the Orient in a polished but uncut state. Almost 100% of the black and gold coral sales are of locally harvested coral

2. *Domestic Commercial Harvest.* The domestic fishery for pink and gold coral in Hawaii is carried out by one submersible, two support craft, and about 12 people. The annual harvest capacity of the fishery is at least 3000 kg of pink and gold coral combined. The actual annual harvest in the 1974–77 period averaged less than 2000 kg (Table II).

Estimates of the ex-vessel value of raw pink and gold coral are given in Table IV. Also, for purposes of management analysis, an estimate of the ex-vessel price may be determined from: the price of imported polished—unset coral, the retail price differential between pink and gold coral jewelry, the relative value of the coral gem in a jewelry setting, and the costs of production at the harvesting and processing stages. The total ex-vessel value of pink and gold coral for 1977 was $262,000 (Table IV).

Table IV.—*Estimated Ex-vessel Value of Pink and Gold Raw Precious Coral Harvested in Hawaii, by Year, 1975–77*

Year	Pink	Per kilogram	Gold	Per kilogram	Total
1975	$190,000	$137	$71,000	$114	$261,000
1976	94,000	136	42,000	114	136,000
1977 [1]	215,000	150	47,000	147	262,000

[1] Projection based on the actual value in the first three quarters of the year.

The value of raw coral is determined by color, size, and condition (living or dead and solid or wormy). For pink coral, the most valuable pieces are light pink or "angelskin." Lighter pink or darker red shades are lower priced. For gold coral, the most valuable shades are dark golden-brown. No dollar value can be estimated for bamboo coral at this time.

3. *Domestic Commercial Processing.* The processed commercial product relevant to the Fishery Management Plan is polished-unset precious coral. The primary supply of this product is imports to Hawaii. The domestic harvest of precious coral from the Makapuu Bed and other potential exploitable beds provides the domestic industry with the raw material to produce an alternate source of polished-unset precious coral. About 35 jobs are directly related to processing raw coral harvested locally.

Value added at the processing stage of producing polished-unset coral from landed raw coral is approximately 100%. That is, $100 of value is added to every $100 of raw coral processed to produce $200 worth of polished-unset precious coral. These estimates are based on the cost of imported polished-unset coral and average costs of different stages of production reported confidentially from industry sources.

The estimated value of pink and gold polished-unset coral produced in 1976 was about $423,000. This included some raw coral from previous years' inventories. In the same year the coral jewelry manufacturers imported polished-unset coral at a cost of about $1,538,000 (see Table V).

Table V.—*Value of Polished-Unset Precious Coral Imports to Hawaii; Percent of Total Coral Imports, by Country of Orgin and Year, 1973–76*

Country	1973		1974		1975		1976	
	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent
Hong Kong	59,192	11.3	66,770	13.2	17,633	3.3	64,226	4.2
Japan	241,862	46.4	226,109	44.7	153,929	28.4	277,592	18.1
Philippines	0		0		73,450	13.6	42,005	2.7
Taiwan	220,496	42.3	203,354	40.8	247,167	45.7	1,130,382	73.5
Others	264	0.05	7,020	1.4	49,025	9.1	23,442	1.5
Total	521,814	100.0	506,253	100.0	541,204	100.0	1,537,737	100.0

Source: Hawaii Custom District, Report Number IA-253, 1973–76.

E. Employment

While the number of people directly employed in the harvesting (12) and processing (35) of locally produced precious coral in Hawaii is not great, about 800 persons are engaged to some extent in the precious coral business there. Most jobs are in wholesale and retail sales.

F. State and Federal Tax Revenues and Multiplier Effects

Considering the excise tax on all retail precious coral products sold in Hawaii, revenues to the State (4%) amounted to about $800,000 in 1978 (Clifford Slater, personal communication). About 20% of this can be attributed to local production of pink and

gold coral in 1978. If wholesale taxes, State and Federal income taxes and operational taxes associated with the entire industry are taken into account, State and Federal tax revenues combined are about 2.5 million annually. About $500,000 of this is based on local production.

If a multiplier effect of two (Anderson et al., 1975) is used to show the impact of the total retail sales of the industry based on local production ($4 million) on the economy of the State, a figure of about $8 million annually is produced. Eight million dollars is about one tenth of one percent of the Gross State Product of $6.6 billion (Bank of Hawaii, 1976). If the total industry is considered with the same multiplier, the value is 40 million or 0.6 percent of the Gross State Product in 1976.

The relevance of economic data for the total precious coral trade of Hawaii to the management of the domestic pink coral fishery has been questioned, in view of the small contribution of domestically harvested coral to the overall business. Some persons in the business believe that the existence of even this small fishery tends to enhance the acceptance of all precious coral products in the market by lending a background of local color to the jewelry, particularly when it is offered as souvenir items for visitors. This contention is, of course, difficult to evaluate or, if valid, to quantify the effect. It is deemed, however, sufficient reason to include some data on the larger trade within which the domestic coral business operates.

G. Jurisdiction

Federal jurisdiction over natural resources on the Continental Shelf outside of 3 miles was established in 1953 by the passage of the Outer Continental Shelf Lands Act. This Act delegated to the Secretary of Interior the responsibility for managing natural resources of the seabed and subsoil of the outer shelf. In the 1958 Convention on the Continental Shelf, natural resources were defined as "mineral and other non-mineral resources of the seabed and subsoil together with living organisms belonging to sedentary species". Had there been a need to manage precious coral fisheries in 1958, this definition would have probably been used to establish jurisdiction within the Department of Interior.

In 1964, legislation was passed which prohibited foreign fishermen from harvesting Continental Shelf fishery resources within the contiguous zone of the United States (12 miles) except as provided by international treaty or Federal permit. Known as the Bartlett Act (Pub. L 88-308), this legislation was amended in 1971 to specifically include six species of precious coral, which thereby defined them as creatures of the Continental Shelf. Since the Bartlett Act referred to all creatures of the Continental shelf, other species of precious coral which are sedentary and occur on the shelf, even though not specifically listed in the Act by name, were covered by the legislation. The Bartlett Act reserved harvesting rights to U.S. nationals but did not contain any provisions for management. On March 1, 1977, the Bartlett Act was replaced by Pub. L. 94-265, the FCMA. In 1977, policies for foreign harvest of precious corals within the Fishery Conservation Zone were established by the Secretary of Commerce and are contained in a draft Preliminary Management Plan (PMP) for precious corals and a PMP for seamount fisheries. These policies would prohibit all foreign harvest everywhere in the Central and Western Pacific FCZ except incidental to trawling on seamounts west of 180° longitude and north of 28°N latitude. Such incidental catches of precious coral must be recorded and returned to the sea. The PMP for precious corals has not been implemented, as it provided a zero TALFF, and no foreign fishing applications were received. The seamount fishery, however, is controlled by a PMP with prohibition on retention of corals taken by trawl.

With regard to domestic fisheries, most functions within the Department of Interior having to do with marine species were transferred to the Department of Commerce (DOC) in 1970 under Reorganization Plan No. 4 prepared by President Richard M. Nixon. However, the Department of Interior (DOI) retained authority to manage natural resources, including coral communities, of the Outer Continental Shelf. After the Secretary of Interior (Secretarial Order 2978, 40 FR 42039) placed a moratorium on the taking of any viable corals in Federal waters on September 10, 1975, the Department of Interior developed a set of regulations which presently allow U.S. commercial coral harvesters to operate in Federal waters under permits issued by the Outer Continental Shelf offices of the Bureau of Land Management of the DOI (Federal Register Document-76-27063; Federal Register, Vol. 41, No. 181, September 16, 1976). See Section IV-I and Appendix III for details on provisions of the DOI permits. Present DOI regulations concerning fishing for corals in the FCZ will be replaced by the provisions in this plan on the date that implementing regulations for this plan take effect. Furthermore, a recent court decision (*United States* v. *Alexander* (U.S.C.A., 5th Cir.), 1979) casts serious doubt on the Secretary of Interior's authority under the Outer Continental Shelf Lands Act to require permits of coral harvesters except as may relate to mineral leases.

In Hawaii, the State also exercises some authority under S306 of the FCMA over the harvesting of precious corals outside of 3 miles. The State adopted Regulation 41 of the Division of Fish and Game, Department of Land and Natural Resources, in July, 1977. This Regulation establishes a quota and/or permit system for the management of pink and gold coral in the Makapuu Bed, which lies about 6 miles off the island of Oahu. The quota applies only to pink coral. The State of Hawaii's jurisdiction over the Makapuu bed, as well as other interisland waters, remains an unsettled issue between the State of Hawaii and the Federal Government, but the management approach in this plan is consistent in most respects with the State of Hawaii regulations.

III. Biology

A. Life History

Precious corals are characterized by great longevity, slow growth, and relatively low rates of mortality and recruitment (Grigg, 1976). As a result, unfinished coral populations should be relatively stable from year to year, and moderate changes in vital rates should have comparatively small effects on total abundance. Not unexpectedly, precious coral populations recover very slowly from overharvesting, and must be exploited with caution. Evidence that precious corals do recover comes from the history of the fishery in the Mediterranean Sea, where in the 19th century fishing on beds was rotated every 9 years (Tescione, 1065). Japanese fishermen claim that more than 50 years are required for recovery in the Pacific (Japanese fishermen, personal communication).

Pink, gold, and bamboo corals and other corals covered by this plan all have larval planktonic and sessile adult stages. Larvae settle on solid substrata, where they form colonial branching colonies. The length of the larval stage for all deep species is unknown. In the species of primary commercial importance, *Corallium secundum*, the sexes are separate and the reproductive cycle are annual with spawning occuring during summer months in Hawaii (Grigg, 1976). Very little is known about predator-prey and other ecological relationships between the sessile stages of precious corals and other plants and animals. The sparse research that has been done suggests that microzooplankton and particulate organic matter are important in the diet of gorgonians (Grigg, 1970). There are no known predators on precious corals.

A large number of commensals are known generally (Hyman, 1940) to be associated with anthozoans. Many other species of gorgonian corals as well as invertebrates and fish are known to occur within the habitat of pink, gold and bamboo corals in the Hawaiian Islands. At least 37 species in the Order Gorgonacea alone have been described from the Makapuu Bed (Grigg and Bayer, 1976). Ten species of black coral (Order Antipatharia) are also known to occur in the depth zone of precious corals (300-475 m) in the Hawaiian Islands Grigg and Opresko, 1977). None of these black corals are of commercial importance. Species of possible commercial importance, although they are rarely observed in the Makapuu Bed, include the shrimp *Heterocarpus ensifer* and the fisheries, *Seriola dumerilii*, (kahala) and *Etelis carbunculus* (onaga). No species of either threatened or endangered wildlife are known to occur at depths where precious corals are found in the Western Pacific (see Appendix IV).

At least two species are known to be epizoic commensals of *Corallium secundum*. These are an anemone *Palythoa* sp. and a polychaete worm, *Palynoe* sp. the anemone attaches to the skeleton but causes no injury to the coral tissue or skelton; rarely more than 2 or 3 anemones occur on the same colony. The polychaete worms live in burrows or worm runs of their own making in the coral tissue or coenenchym. They cause no injury to the skeleton or the living tissue.

B. Distribution, Abundance and Habitat

The distribution of precious coral beds in the Hawaiian Archipelago, American Samoa, Guam the Commonwealth of the Northern Marianas and other U.S. Pacific island possessions is described in Section II.A. of this report. The vertical or depth zonation of

precious corals in Hawaiian waters is given in Table VI.

Table VI.—*Vertical Zonation of Species of Precious Corals in Hawaii*

Common name	Scientific name	Depth range (m)
Black coral	*Antipathes dichotoma*	30–100[1]
Black coral	*Antipathes grandis*	40–100[1]
Pink coral	*Corallium secundum*	350–475[2]
Gold coral	*Gerardia* sp.	300–400[2]
Bamboo coral	*Lepidisis olapa*	330–475[2]

[1] Based on observations from a submersible.
[2] Based on observations from a submersible and data collected with a remotely operated television camera.

In the Hawaiian Archipelago, stocks of precious corals may be more abundant in the northwestern end of the island chain, where large areas of potential habitat exist on seamounts and banks near 400 m depth. The combined area of the Milwaukee Banks and Kinmei Seamount (400–500 miles northwest of Midway Island), for example, is over 300 km². In contrast, the area of the major bed off Oahu (Makapuu) is estimated to be 3.6 km². The dimensions of the Makapuu Bed actually cover about 4.5 km² (Figure 5). However, observations from the submersible *Star II* have shown that about 20% of this area includes barren patches and irregular lenses of thin sand deposits. Therefore the area used for the purpose of extrapolating density is taken as 80% of 4.5 km² or 3.6 km².

Annual harvest of *Corallium* in 1969 by the Japanese on the Milwaukee Banks was reported to be 113,000 kg (H. Ozawa, personal communications). This compares to a range of annual harvest of *Corallium* of Makapuu of 438 to 2209 kg in the years 1966 to 1976. If the highest yields for both areas are expressed on a per km² basis (Milwaukee=376 kg/km², Makapuu=611 kg/km²), Makapuu actually has a higher yield area. However, since comparative data on fishing effort are lacking, interpretation of these figures is difficult. Nevertheless, the habitat area and total yields at the Milwaukee Banks are far greater in absolute terms than off the high islands at the southeastern end of the Archipelago.

In the high islands, beds of precious corals have been found only within island channels and off promontories such as Ke-ahole Point on the Big Island of Hawaii. Precious corals are only found on solid substrata, which in deep water invariably occurs only where bottom currents are frequently strong (>25 cm/sec).

The only bed that has been accurately surveyed in the Hawaiian chain is off Makapuu, Oahu. In 1971, densities in commercial species were determined in an unexploited section of the bed and the size frequency distribution of pink coral was determined (Grigg, 1976). The average density of pink coral in the Makapuu Bed is 0.022 colonies/m². Extrapolation of this figure to the entire bed (3.6 million m²) gives a standing crop of 79,200 colonies. The 95% confidence limits of the standing crop are 47,200 to 111,700 colonies. Conversion of standing crop of colonies to biomass produced an estimate of 43,500 kg for *C. secundum* in the Makapuu Bed.

The estimates of density for gold coral (*Gerardia* sp.) and bamboo coral (*Lepidistis olapa*) in the Makapuu Bed are 0.003 colonies/m², and 0.01 colonies/m², respectively (Grigg, 1974). However, the distributional patterns of both of these species are very patchy, much more so than *Corallium secundum*, and the area where they occur is only about half that for pink coral or 1.8 km². The corresponding estimates of unfished abundance for gold and bamboo coral are 5,400 and 18,000 colonies, respectively. Data for the mean weight of colonies in the populations of gold and bamboo coral in the makapuu Bed are lacking, but rough estimates are 2.2 kg for gold coral and 0.6 kg for bamboo coral. Multiplying mean weights by densities led to rough estimates of standing corp of about 11,880 kg for *Gerardia* sp. and 10,800 kg for *Lepidisis* sp.

C. Growth and Mortality Rates

An analysis of growth rings in the cross sections of pink coral branches suggested that colony height increases about 0.9 cm/yr, at least to an age of about 30 years (Grigg, 1976). The equation for the regression of height on time is as follows:

$H=\alpha+\beta T$

where:

H=height (cm)
T=Time (yr)
α=2.63
β=0.89

A similar relation for weight [1] as a function of height is given by the equation:

$W=aH^b$

where:

W=weight (gm) (landed weight)
a=0.8
b=2.27

The largest colonies of pink coral found at Makapuu are rarely more than 60 cm in height. Gold coral colonies may reach a height of 250 cm, while *Lepidisis olapa* grows to about 300 cm.

The natural mortality rate for pink coral was calculated by first converting the size-frequency distribution of the unfished stock to an age frequency distribution and then determining the rate of diminution in progressively older age classes (Grigg, 1976). The best estimate of the annual instantaneous natural mortality rate of *C. secundum* in the Makapuu Bed turned out to be 0.066. This is equivalent to an annual survival rate of about 93% in the absence of fishing. Mortality rates for gold and bamboo coral are not available because their growth rates and age structures are unknown.

D. Reproduction and Recruitment

Pink corals reach sexual maturity at a height of about 12 cm (13 years), however, the data are not very precise (Grigg, 1976). The reproductive cycle is annual with spawning taking place during June and July.

The relationship between parent stock and recruitment in pink coral is unknown. However, because pink coral is long lived, and the population is composed of many year-classes, the standing stock should be relatively stable even with moderate year-to-year fluctuations in recruitment.

[1] Landed weights appropriately 24 hours air dry.

An estimate of steady state recruitment of the unexploited Makapuu stock was obtained by multiplying the virgin stock size (79,200 colonies) by the best estimate of annual instantaneous natural mortality (0.066). Given steady state, the instantaneous rate of recruitment should equal the instantaneous rate of natural mortality. This gives an estimate of annual recruitment to the Makapuu Bed of 5,277 colonies.

E. Biomass per recruit

Biomass per recruit as a function of age was calculated in the absence of fishing using a cohort (=all colonies produced in the same year) production model (Wetherall and Yong, 1977). In the model, the cohort gains weight until an age is reached where growth gains are overtaken by natural mortality losses.

This is the "critical age" at which the cohort reaches its maximum biomass in the absence of fishing. The formula for critical age is:

$T=(b/M-\alpha/\beta)$

where:

b=exponential coefficient in the weight-height relationship (p. 30)
M=instantaneous natural mortality rate
α=intercept of linear growth in height equation (p. 30)
β=slope of linear growth in height equation (p. 30)

The numerical result for pink coral is T=31.4 years.

The corresponding maximum biomass per recruit is given by the formula:

$MBPR=e-(b-\alpha M)/\beta a(\beta^b)^b/(M)$

where the new symbols are:

e=base of natural logarithms=2.71828
a=coefficient in weight-height relationship (p. 30)

For pink coral the maximum biomass per recruit, attained by a cohort at age 31.4 years, is MBPR=237 gm. This is shown as the peak in the top curve of Figure 11. Other curves in Figure 11 show the relationship between biomass per recruit and age when fishing takes place at constant rates (F>0) and there is no minimum age limit for harvested coral. Corresponding biomass per recruit curves for the case of a 25-year minimum harvest age are shown in Figure 12.

F. Yield Per Recruit

When fishing is done in such a way that all colonies of a cohort are removed at once, then the yield per recruit is identical to the biomass per recruit at the harvest age. Therefore the maximum yield per recruit is achieved by harvesting all survivors in a cohort of pink coral exactly at the critical age of 31.4 years, and in this case the maximum yield per recruit (MYPR) is = 237 gm. In practice this would require applying an infinite instantaneous fishing mortality rate exactly at age 31.4 years. Since this is not feasible, the 237 gm/recruit is a theoretical upper limit to the harvest that may actually be obtained.

More realistic figures of yield per recruit are obtained by considering a fishery which applies a steady finite fishing mortality rate to all ages in the cohort above a specified minimum harvest age. The results in this case are displayed in Figure 13. The effect of an

age limit of maximum yield per recruit is easily seen. For example, with a minimum harvest age of 30 years the maximum yield per recruit is essentially equal to the upper limit of 237 gm, whereas with a minimum harvest age of zero years the greatest yield per recruit possible is only 119 gm. Hence, if non-selective methods of harvest (e.g., dredging) are employed, the highest yield per recruit that can be expected is only half of the maximum yield per recruit theoretically possible under selective harvesting.

G. Sustainable Yield and MSY

The analysis above reflects a biological management approach in which the main consideration is achieving the highest possible efficiency in utilizing biological production for a cohort. As long as recruitment is constant or independent of stock size, a fishing policy which maximizes the yield per recruit will also maximize the total yield on a sustained basis, i.e., it will also produce the maximum sustainable yield (MSY). However, in many fisheries the level of recruitment may be strongly affected by the abundance of reproductive individuals in the stock, which is in turn determined partly by the fishing policy (such as minimum harvest age and fishing mortality rate).

Even though no specific information is available on the actual stock-recruitment relationship in pink coral, it is important to see how various hypothetical relationships would alter the analysis of best fishing policy. If recruitment is not constant, but is instead some decreasing function of spawning stock, then MSY will be reduced accordingly. Several hypothetical stock-recruitment curves are diagrammed in Figure 14. The diagonal line (curve 1) shows a proportional decline in recruitment as a direct function of spawning stock. The curves above the diagonal also show recruitment declining as a function of spawning stock, but at lesser rates, such that when the spawning stock (S) is 50% of its original level (SMAX), recruitment (R) is either 60% (curve 2), 70% (curve 3), 80% (curve 4), or 90% (curve 5) of its maximum level (RMAX). Curve 6 shows the model of constant recruitment.

Possible combinations of sustainable yield and minimum harvest age are shown in Figure 15, as computed in Wetherall and Yong (1977). The outer boundary (curve 6) gives the combination of sustainable yield and minimum harvest age for the constant recruitment case, assuming a steady recruitment of 5,000 colonies per year.

The maximum sustainable yield under this constant recruitment rate is

MSY = MYPR x R

= 237 gm/recruit x 5,000 recruits/yr

= 1185 kg/yr

This assumes a minimum harvest age of about 30 years and a very high instantaneous fishing mortality rate. When selective harvesting is not possible, then the maximum possible sustainable yield is less than 600 kg/yr.

The other curves (5, 4, 3, and 2) show the outer limits of the policy space (combinations of annual sustainable yield and minimum harvest age) corresponding to the other stock-recruitment models. As the stock-recruitment curves get steeper (i.e., progressively lower rate of recruitment for a give spawning stock), the minimum age limit necessary to maintain a specified sustainable yield increases. Further, the MSY is significantly less than 1185 kg/yr when recruitment is not constant. This analysis suggests a range of conservative alternative policies which might be adopted in the absence of any understanding of the true stock-recruitment relationship.

Maximum sustainable yield for the constant recruitment case was computed above analytically using the expression

$$MSY = A \cdot D \cdot M \cdot e^{-\left(b - \frac{cM}{F}\right) \cdot a \left(\frac{B_0}{R}\right)^b}$$

$$= R \cdot MYPR$$

Where the new symbols are:

A=area of Makapuu bed

D=average density of pink coral colonies on the bed before exploitation

M=instantaneous natural mortality rate

R=A×D×M

A rougher but quicker approach to estimating MSY is the approximation of Gulland (1970), viz.

$MSY^1 = 0.4\ M\ B_o$

Where

B_o=A×D×W=total biomass of unfished stock and

W=weighted average weight of a colony in the unexploited stock.

In the case of pink coral on the Makapuu bed:

$MSY^1 = (0.4)\ (.066)\ (43{,}500) = 1148$ kg/yr

The Gulland method is useful especially for gold and bamboo coral where details of population dynamics are relatively unknown. Using the best guesses of unfished biomass (B_o) and substituting the pink coral natutal mortality rate (m=0.066) in place of the unknown values, rough estimates of MSY for gold and bamboo coral were computed to be 313 kg/yr and 285 kg/yr. All estimates of MSY are summarized in Table VII. MSY cannot be estimated for other corals at this time.

[1] Landed dry weight.

Table VII. *Estimates of MSY of Precious Corals in the Makapuu Bed*

Species	Common name	Kilograms per year		Method of calculation
		MSY[1]	Rounded downward	
Corallium secundum	Pink coral	1,185	1,000	Cohort production model.
Do	do	1,148	1,000	Gulland.
Gerardia sp.	Gold coral	313	300	Do.
Lepidisis olapa	Bamboo coral	285	250	Do.

[1] Landed dry weight.

IV. Management

A. History of Research and Management

The precious coral fishery can be traced back to the Sumerian and Minoan cultures around 3000 B.C. in the Mediterranean Sea. Through this long history, occasional efforts to manage the fishery have been made. Periods of prohibition have been attempted more than once in several places, but invariably they were unsuccessful. The pattern of fishing usually was one of exploration, discovery, exploitation and depletion. When recovery occurred, it usually was brought about unintentionally by interruption of fishing by war. Between 1879 and 1890, off the Barbary Coast in Africa, fishing grounds were rotated (closed) for 9 or 10 year periods. However, lack of enforcement eventually led to severe depletion of the beds. The selection of a 9-10-year period for recovery was based on observations of fishermen and the early research of Lacaze-Duthier (1864), who first investigated the life history of *Corallium rubrum* in the Mediterranean Sea.

Until 1970, research on precious coral in the Pacific was limited to the early work of Kishinouye (1901) on reproductive behavior and studies by Kitahara (1904), who described the coral fishery in Japan in the late 19th century. Before 1868, coral fishing in Japan was inadvertently managed by virtue of the societal customs of the Shoguns, who confiscated coral thereby eliminating incentive for a commercial fishery. After 1868, no management of the stocks was attempted in Japan, probably because fishing activity ranged far beyond local waters.

In 1963, rich beds of *Corallium* were discovered about 100 miles south of Okinawa, and the Government in Okinawa attempted to regulate the harvest by requiring permits and limiting entry into the fishery. Unfortunately, too many permits were issued and the beds were rapidly depleted.

Furthermore, enforcement was lacking to prevent unlicensed fishermen from entering the fishery and this accelerated the decline.

In 1970, a Sea Grant research program was started at the University of Hawaii to investigate the ecology of precious coral and to determine the economic feasibility of developing a fishery in Hawaii. This research led to the development of a selective harvesting system which is currently in use in Hawaii (the *Star II* submersible and support craft). This research also generated data concerning distribution, abundance, growth, natural mortality, recruitment, and maximum sustained yield of precious corals in Hawaii and is the basis of the analysis presented in this report. A detailed account can be found in a Sea Grant Technical Report entitled "Fishery Management of Precious and Stony Corals of Hawaii" (Grigg, 1976).

The Makapuu Bed has been exploited periodically since 1966. Estimates of the harvest of pink and gold coral during this period are given in Table I. The first attempt to manage the precious coral fishery in Hawaii was by the State Division of Fish and Game. In 1977, the Division of Fish and Game passed Regulation 41, which contains provisions concerning permits, annual quotas and size limits (see Appendix II). The history of efforts to manage precious coral resources by the Federal government is given in Section II.G on Jurisdiction. The regulations of the Department of Interior are described in Section IV.I and Appendix III.

B. Management Objectives and Philosophy

1. The major objectives of this management plan are to obtain optimum yields of precious corals in the U.S. 200-mile fishery conservation zone, and to maximize the benefits of the resource to the nation. Optimum Yield is defined in the Act as the amount of "fish" which will provide the greatest overall benefit to the nation and is prescribed on the basis of MSY as modified by socio-economic and ecological factors. Given this definition, estimates of MSY have been calculated for pink, gold and bamboo corals in the Makapuu Bed and modified according to the definition given above.

In order to obtain maximum sustained yields of precious corals, several of their biological properties must be considered. Precious coral populations are relatively stable in nature because many year classes are usually present. Annual differences in recruitment and age-specific mortality rates therefore tend to be offsetting. This pattern of life history has two important consequences with respect to exploitation. First, the response of the population to exploitation or changes in the exploitation rate is drawn out over many years (see Figs. 16 & 17). The date presented in Figures 16 and 17 were produced by simulating the past history and future condition of a fishery for *C. secundum* in the Makapuu bed between 1964 and 2014 (50 years). In 1978, six different rates of exploitation were applied to a model of population for one year after which it was assumed that the fishery was closed and monitored for 37 years. In the model, recruitment was assumed to be constant until a level of two-thirds the spawning biomass was reached, after which recruitment was calculated as a direct function of spawning biomass. Examination of Figures 16 and 17 reveals that about 25 years are required before the population biomass and the spawning biomass recover within 95% of original values. Thus, age structure may be in a transitional state for many years.

The second important consequence of great longevity, and the associated slow rates of turnover in the populations, is that if a stock has been overexploited for several years, a long period of reduced fishing effort is required to restore the ability of the stock to produce a maximum sustained yield (Figures 16 and 17). Because of the long recovery time of precious corals, the most prudent policy for the management of newly discovered beds would be to permit commercial exploitation in Exploratory Areas only after assessments of the virgin stocks are made. The assessment should at least include total area of the bed and estimates of density of various species present. The most economical method of obtaining this information would be fishermen operating under exploratory fishing permits with detailed reporting requirements.

2. *Specific Management Objectives.* The specific objectives to be achieved by management measures adopted under this fishery management plan are as follows:

(1) to allow a fishery for precious coral in the fishery conservation zone in the western Pacific, but to limit the fishery so as to achieve the Optimum Yield on a continuing basis

(2) to prevent overfishing and wastage of the resource

(3) to encourage the use of selective harvesting methods

(4) to minimize the harvest of colonies of coral which are immature

(5) to minimize the harvest of colonies of coral which have not reached their full potential for growth

(6) to preserve an opportunity for low-investment equipment in the fishery (dredges)

(7) to encourage the discovery and exploration of new beds

(8) to provide for the establishment of refugia, i.e., beds completely protected from exploitation

(9) to encourage the development of new information concerning the distribution, abundance and ecology of precious corals.

C. Optimum Yield

A stated purpose of the Fishery Conservation and Management Act of 1976 is to provide for preparation and implementation, in accordance with national standards, of Fishery Management Plans which will achieve and maintain, on a continuing basis, the Optimum Yield (OY) from each fishery. Calculation of OY in this management plan involves several steps. First, MSY is estimated. OY is then derived by adjusting MSY lower or higher for ecological reasons; for example, to rebuild overfished stocks. OY may also be adjusted upward or downward depending on socio-economic considerations or information received via the public hearing process.

In the case of pink coral in the Makapuu Bed, the (downward rounded) estimate of MSY is 1,000 kg. On the basis of past harvest records, the Makapuu Bed does not appear to be in an overfished condition. Therefore, it is reasonable to base OY on MSY, with appropriate modification to include economic and social factors. See Appendix I for an economic analysis of various management options.

This anslysis shows that pulse fishing is more economically efficient than fishing continuously, if there are alternative uses for the fixed factors of production. Otherwise, continuous fishing is more efficient at annual quotas of about 1,000 kg for pink coral and 300 kg for gold coral for the single firm now harvesting the Makapuu bed.

The most likely situation is that the firm now harvesting coral with a submersible in the Makapuu bed will find alternative uses for the submersible and its support vessels during zero harvest years of a pulse fishing strategy. Without adequate information on the world coral market, projections of coral prices are not available. Projections on production cost changes are not available either. Therefore, assuming *prices and costs change at the same rate* and the fixed costs are defrayed during zero production years by alternative employment, pluse fishing is deemed the most efficient policy.

If the Optimum Yield is to be based on pulse fishing, the *biological* implications of different catch levels must also be examined. Although setting a 2-year quota of 2,000 kg would concentrate fishing effort in the first year and slightly reduce MSY over the long term, the decrease in negligible (Figure 18). When pulse fishing is simulated for 3- and 4-year periods (again with the entire catch in the first year), the biomass of the exploited population gradually decreases. The biological consequences of harvesting more than an average of 1,000 kg in one year are described in Section IV.F.1.B. Eight such options were tested, and in all cases the rates were not sustainable. Thus, a strategy of 2-year pulse fishing appears to be the best combination in terms of minimizing the biological risks and maximizing economic benefits. For this reason, Optimum Yields for precious corals in the Makapuu Bed have been set on the basis of 2-year quotas. Applying this criterion to pink, gold and bamboo coral gives (downward rounded) Optimum Yields of 2,000 kg, 600 kg, and 500 kg respectively for 2 years for the Makapuu Bed.

Optimum Yields are established for the Conditional Beds by assuming the same densities and population dynamics as for the Makapuu Bed, taking into account the areas of the beds relative to that of the Makapuu Bed, and reducing the resulting figure by 80%, if harvesting is to be by non-selective coral dredges. Thus, the annual quotas on each of these beds will be fractions or multiples of 200 kg of pink coral, 60 kg of gold coral and 50 kg of bamboo coral proportional to the area of the bed. If fishing on a bed is by nonselective methods, the bed will be closed when the quota is filled for any one of the three species, to prevent over-harvesting.

Because of the potential vulnerability of precious corals to over exploitation, a prudent policy for newly discovered and unsurveyed beds would be to fix Optimum Yields only after a careful assessment of their production potential. However, an

assessment of abundance and productivity can be accomplished only after a bed has been located, and as a practical matter, neither Federal nor State agencies are likely to receive funding to search the FCZ to locate coral beds. It must be left to private interests to conduct this exploratory fishing. This in turn poses a serious management problem: there must be a limit to the amount of corals allowed to be taken from an Exploratory Area to reduce the risk of overfishing, but the limit must be large enough to provide the economic incentive to engage in exploratory fishing.

There is no statistical basis for determining this limit; rather, the limit must be a judgmental decision. With respect to abundance, it is believed that there are coral beds scattered throughout the FCZ. Reports of past foreign operations and the detection of illegal foreign operations in 1978 provide evidence of foreign interest in (and perhaps knowledge of) coral resources in the FCZ. With respect to economic incentive, precious coral ex-vessel prices were about $150/kg. in Hawaii in 1977 (see Tables II and IV). Little is known, however, about the costs of operation for a submersible or for dredging, thus, break-even harvests for exploratory fishing cannot be estimated.

The Council's judgement is that an optimum yield of 1000 kg per year per Exploratory Area should provide sufficient incentive for both domestic and/or foreign exploratory fishing while posing little risk of overfishing. For this purpose, there are considered to be five Exploratory Areas, comprising the FCZ off American Samoa, Guam, the Northern Marianas, and the minor U.S. island possessions in the central and western Pacific Ocean, and those portions of the FCZ off the Hawaiian Islands that are not included in Established and Conditional Beds, as defined in this Plan. A quota of 1,000 kg/yr. of all species combined for each Exploratory Area is considered conservative. In Hawaii, this figure represents about one-third of the estimated MSY for these species in all Established and Conditional Beds. However, it is large enough to offer an economic incentive for exploration.

D. Domestic Fishing Capacity, Expected Harvest Level, and TALFF

1. *Established and Conditional Beds.* Domestic harvest from the Makapuu bed of all corals in 1974 was nearly 3,000 kg. (see Table II). The industry was operational on a continuous basis that year. Harvests then declined for two years, but increased again in 1977. The reasons for this pattern of harvests are not known, but it appears that the popularity of coral jewelry may be increasing such that demand and prices for corals (see Table V) justify more intensive fishing.

It has been pointed out that the maximum payload of the submersible in the corals fishery is about 200 pounds, or 90 kg. (Sec. II.C.2). If it is assumed that the average haul on a dive is approximately 60 lbs. (27 kg.), the submersible would have had to make about 110 dives to achieve the 3,000 kg. harvest made in 1974. This number of dives can be accomplished in about 37 weeks. Thus the 3,000 kg. harvest would seem to be a minimal measure of domestic capacity. It seems reasonable to estimate that domestic capacity would be at least one-third higher (i.e. 4,000 kg.) given the right conditions of price, harvest costs, and resource abundance.

Estimating expected domestic harvest is more difficult given the limited data available. Domestically harvested corals constitute only a small portion of the entire corals industry, and it appears that a large volume of low-priced imports could easily drive down the price and make the domestic product less competitive. On the other hand, coral jewelry is a popular item in the tourist markets, and producers may be willing to pay a premium or engage in long-term contracts to insure a stable supply of domestically harvested corals. It also would seem reasonable to conclude that domestic producers have learned how to use the submersible more effectively since 1974, and that the same number of dives would produce more coral per dive than in 1974, assuming sufficient availability of corals for harvest. Considering all these factors, the expected annual harvest is estimated to be 3,300 kg. per year (assuming management measures permit). This represents a 10% increase over the 1974 (peak year) harvest.

The OY for the Makapuu Bed is established to be 3,100 kg. (all species combined) over a two year period. This is the most fished and best studied bed in the FCZ and is quite close to the dominant processing and retailing center of Hawaii. It also is reserved for selective fishing techniques. It appears reasonable to expect that the OY for Makapuu will be harvested in the first year of the two year period so the submersible can be employed during the second year in alternative areas or uses. Thus, there would be more than 3,000 kg/year of "idle" selective capacity available to harvest the OY from the four Conditional Beds from which corals may be harvested (the fifth Conditional Bed is to be a refugium). If selective gear is used, OY for Conditional Beds (in aggregate) would be not more than 1,250 kg. per year, or 2,500 kg. over a two year period (all species combined). If non-selective gear is used, OY would be less. Therefore, it appears reasonable to conclude that domestic vessels can and will harvest the OY from Established and Conditional Beds. Therefore, the TALFF for these beds is zero.

2. *Exploratory Areas.* There is no evidence to indicate that owners of U.S. vessels have either the intention or the desire to conduct exploratory fishing in the FCZ, especially seaward of Guam and American Samoa. Conditions may be somewhat more favorable off Hawaii, given the proximity of the dominant market and the possibility that a vessel fishing a Conditional Bed with dredging gear could conduct some exploratory fishing with little additional cost. Domestic interests, however, are unlikely to make any investments in vessels and gear without some assurance that corals will be available.

Determination of OY and appropriate conservation and management measures for Exploratory Areas presents a unique problem, for the following reasons:

1. Lack of information. By definition, Exploratory Areas comprise all portions of the FCZ excluding the Established and Conditional Beds. There is general information on ocean depths and oceanic circulation patterns in the FCZ, and it is virtually certain that there are beds of precious corals in addition to known beds. There is, however, no information on which to base estimates of abundance and yield potentials except in gross terms. The appropriate level of harvest from each Exploratory Area will reflect a judgment as to acceptable risk of overfishing.

2. Need for exploratory fishing. It is unlikely that governmental or non-profit organizations will receive funds for exploratory surveys to identify and assess coral stocks in the FCZ. Therefore, exploratory commercial fishing must be relied on to generate data on location and yield potential of beds in Exploratory Areas. The level of harvest which will be sufficiently large to generate exploratory fishing can only be estimated.

3. Potential for foreign fishing. The FCMA provides that domestic interests must be given a preferential opportunity to harvest the OY from the fishery. If domestic fishing will not harvest the OY, the unharvested portion must be made available for foreign fishing. This may be especially appropriate for the Exploratory Areas because data from exploratory fishing are so critically needed.

4. Uncertainty. It is unknown whether domestic fishing will occur or, if it occurs, whether coral beds will be located. If a bed is located, harvest could occur quickly or slowly, depending on the bed's size, the density of corals on the bed, the gear used, and other factors. The absence of historic harvest or of evidence of domestic interest at this time does not mean that domestic harvest will not occur in the near future. There should be provision for unexpected domestic entry before making allowance for foreign fishing.

Considering the above, the Council proposes that a "reserve" approach be adopted, as follows:

The MSY per Exploratory Areas is estimated to be at least 1,000 kg. per year, all species combined.

Optimum Yield is 1,000 kg. per Exploratory Areas per year, all species combined.

Expected Domestic Harvest (DAH) in the first year is zero (0) kg., although domestic harvest potential is unknown; DAH will be determined each future year as set forth below.

The entire OY for the first year is to be held in reserve for the first six months.

As soon as practicable after the end of the first six months, the Director, NMFS, Southwest Region, will determine the amount to be released from the reserve. The release shall be equal to 1,000 kg. minus two times the domestic harvest in the first six months; that is, total allowable level of foreign fishing (TALFF) for the second six months (less time for determination of domestic harvest in the first six months) will be calculated by determining the domestic harvest in the first six months, multiplying that amount by two (2), and subtracting the product from 1,000 kg. If domestic harvest in the first six months is 500 kg. or more, there will be zero (0) TALFF for the second six months.

In each succeeding year, DAH will equal the previous year's harvest and the reserve

will equal 1,000 kg. minus the estimated DAH, for each Exploratory Area. TALFF will be determined in the same manner as in the first year. The following hypothetical examples show how the "reserve" system will work:

Year 1
DAH = 0
Domestic Reserve = 1,000 kg.
Domestic catch at end of 6 months = 300 kg.
TALFF = 1,000 − 2 (300) = 400 kg.
Domestic catch at end of year = 600 kg.

Year 2
DAH=600 kg.
Domesitc Reserve=400 kg.
Domestic catch at end of 6 months=350 kg.
TALFF=1,000−1 (350)=300 kg.
Domestic catch at end of year=700 kg.

Year 3
DAH=700 kg.
Domestic Reserve=300 kg.
Domestic catch at end of 6 months=200 kg.
TALFF=1,000−2 (200)=600 kg.
Domestic catch at end of year=400 kg.

Year 4
DAH=400 kg.
Domestic Reserve=600 kg.
Domestic catch at end of six months=500 kg.
TALFF=1,000−2 (500)=0 kg.
Domestic catch at end of year=1,000 kg.

Year 5
DAH=1,000 kg.
Domestic Reserve=0
Domestic catch at end of 6 months=500 kg.
TALFF=1,000−2 (500)=0
Domestic catch at end of year=1,000 kg.

The Council recognizes that this approach may be less than optimal for timely planning of foreign fishing effort in the FCA. As a partial offset, the Council recommends that NMFS notify foreign interests that they should submit foreign fishing permit applications in advance of the second six month period to expedite entry to the fishery *if* a TALFF is determined to exist for that period. This notification would not be a commitment to foreign interests but would signal an intent to cooperate so that if domestic fishing does not occur, foreign fishing can begin as soon as the reserve is released.

This conservation and management strategy will protect against overfishing by limiting harvesting to 1,000 kg. per Exploratory Area per year; will provide a preferential opportunity for domestic fishing by placing all or part of the OY in "reserve" for the first six months of each year, thus allowing time for start up and exploratory domestic fishing before any foreign fishing is permitted; will allow foreign fishing if domestic harvest does not occur; and will establish a system for determining the DAH, the reserve, and the TALFF during each of several years without need to amend the FMP each year.

E. Domestic Processing Capacity and Expected Processing Level

The largest annual domestic harvest since the submersible entered the fishery has been about 2,940 kg. (1974). There are no indications that domestic processing capacity was insufficient to process this level of harvest. The size of the market for polished-unset coral (Table V) suggests that domestic processing would expand rapidly with increased domestic harvest. The Council believes that domestic processing capacity and expected processing levels will equal the domestic harvest for the future. There is no known or suspected interest in joint ventures involving foreign vessel processing of U.S. harvested corals.

F. Management Measures—Options, Recommendations and Rationale

1. In developing a management plan for precious corals in the western Pacific, a number of options were considered for each management provision. All options for each provision are listed below. The policies recommended by the Western Pacific Council and the rationale for these decisions are also described. Where appropriate, reference is made to previous sections of the plan which contain more complete documentation and support for the recommendations of the Council. A draft set of suggested conservation and management measures which implement the recommendations is presented in Section IV.F.2. of the plan.

A. *Gear.* With regard to gear restrictions, six options were considered by the Council. They are as follows:

(1) To prohibit all forms of non-selective harvesting (dredging) in the FCZ.

(2) To allow unconditional non-selective harvesting everywhere in the FCZ.

(3) To allow conditional non-selective harvesting everywhere in the FCZ.

(4) To allow conditional non-selective harvesting in some areas where selective methods are not in current use.

(5) To allow unconditional selective harvest everywhere in the FCZ.

(6) To allow conditional selective harvest everywhere in the FCZ.

Policies 4) and 6) are recommended: to allow conditional non-selective harvesting in Exploratory Areas and on some Conditional Beds, excluding the FCZ seaward of the main Hawaiian Islands, i.e. south and east of a line midway between Niihau and Nihoa Islands; and to allow conditional selective harvest everywhere [1] in the FCA. This would prohibit non-selective harvesting in the areas such as Makapuu, where selective harvesting methods are established and capable of taking the Optimum Yield; or Ke-ahole Point or Kaena Point, which are such small beds that non-selective harvesting poses too great a risk of damage in view of the low economic return.

A discussion of the advantages and disadvantages of selective and non-selective (dredging) technologies is presented in Section II.C of the plan. Where allowed, non-selective harvesting would be subject to reduced quotas relative to quotas for selective methods (see below). This is because young colonies are not protected from exploitation during the period when their growth exceeds losses from natural mortality. Hence, with non-selective harvesting some growth-overfishing occurs. Also, with non-selective harvesting full recovery of pieces knocked down does not occur (Section II.C.2). The reason an allowance for non-selective harvesting is provided at all is the impracticality of utilizing selective methods in certain remote areas. Restricting harvest to selective methods could in practice close off large areas. This would be wasteful of the resource and would not produce new information concerning distribution and abundance. Both non-selective and selective harvest are subject to further conditions which are outlined below.

Both options recommended are consistent with the objectives of the plan (see Section IV.B.2) and the national standards of P.L. 94-265.

B. *Weight Quotas.* Two options were considered: to require or not require weight quotas on a per bed basis. The Council proposes to establish weight quotas for both non-selective and selective harvesting methods. For non-selective harvesting, the weight quota would be set equal to 20% of the quota that would apply if selective methods were in use. The rationale for this restriction is the finding that the MSY for pink coral with no size limit is approximately half what it is at optimum size of first capture (Section III.F).

Taking into account the efficiency of the dredges (40%) results in a further reduction of the quota to 20% (40% of 50%). For selective methods, the weight quotas are based on estimates of MSY (Section III.G). In the Makapuu Bed, eleven weight quotas for pink coral were considered. They are as follows: 1,000 kg/yr, 1,200 kg/yr, 2,000 kg/yr, 3,000 kg/yr, 4,000 kg/yr, 5,000 kg/yr, 6,000 kg/yr, 7,000 kg/yr, 8,000 kg/yr, 2,000 kg/2 yr, and 3,000 kg/3 yr. The option recommended is the tenth: 2,000 kg/2 yr. This option is selected because it is the most efficient quota considering all biological, economic and social factors (Section IV.D). Multiple year quotas in which fishing effort is concentrated in the first year also favor exploration in "off-years" when the equipment might otherwise not be in use. The 2-year quota is based on an estimate of MSY for pink coral, simply being double the amount for twice the time. The same formula was used to develop optimum yields for gold and bamboo coral.

For all harvest levels greater than 1,000 kg for one year, the harvest (even up to 8,000 kg) can be sustained only for several years, after which the population and catch severely decline. Two levels of harvest, 2,000 kg/yr and 4,000 kg/yr, were simulated using a computer model over a 37-year period to show the effects of these policies on both the parent population (Figure 18) and the catch (Figure 19). In the model, recruitment is assumed to be constant until a level of two-thirds the spawning biomass was reached after which it was set as a linear function of spawning biomass. In the case of continuous harvest at the 2,000 kg/yr level, the population is able to produce this yield for only 14 years after which significant reduction occurs. The 4,000 kg/yr option leads to collapse of this level of harvest in just 5 years. In the Makapuu Bed both the 2,000 kg/yr and the 4,000 kg/yr are wasteful in the long term and are inconsistent with the national standards of FCMA.

For Conditional Beds for which there are not good estimates of MSY but for which estimates of area are available, the quota, for

[1] Except Refugia.

each species of precious coral, initially could be set according to the ratio of the area of a bed to the area of the Makapuu Bed, i.e.

$$\frac{\text{Area of Bed}}{\text{Area of Makapuu Bed}} \times \text{MSY for Makapuu Bed}$$

Such beds are defined as Conditional Beds. For Conditional Beds on which non-selective harvesting is allowed the quota would be reduced by 80%.

For areas outside the Makapuu Bed, and the FCZ seaward of the main Hawaiian Islands Conditional Beds, it is proposed to allow either non-selective or selective methods, subject to a limit of 1,000 kg. per Exploratory Area per year. The quota for Exploratory Areas is suggested on the basis of providing a minimum economic incentive for exploration (See p. 44). Of the 1,000 kg. per Exploratory Area per year, 1,000 would be established as a reserve for domestic fishermen for the first six months of the first year at the end of which period a TALFF would be established on the basis of TALFF=1,000 kg.−2 x domestic catch. In subsequent years the DAH would equal the previous year's domestic catch and the domestic reserve = 1,000 − DAH. At the end of six months TALFF would be established to equal 1,000 kg. minus two times any domestic catch. A 1,000 kg. quota is judged to be of sufficient value as to provide an economic incentive for exploratory fishing. For this reason the absolute amount of the quota is the same regardless of the type gear employed (selective or non-selective).

The plan envisions that a new bed identified in a Exploratory Area will be designated a Conditional Bed, with a quota based on its estimated area, once and area estimate has been made. Fishing in Exploratory Areas will be controlled by permits to be granted by the Regional Director, NMFS for a one-year term, with provision for a one-year renewal.

All weight quotas recommended in the plan are consistent with the objectives of the plan (Section IV.B) and the national standards of P.L. 94-265. With respect to the Makapuu Bed, the quota recommended for pink coral is also consistent with State law (Appendix III), except that the quota is based on dry weight of live coral only.

C. *Size Limits.* The options for a size limit apply only to selective harvesting methods in the Makapuu Bed and the Conditional Beds off Ke-ahole Point, Hawaii and Kaena Point, Oahu. Since dredging is allowed everywhere else (except in the FCZ seaward of the main Hawaiian Islands), the size limit at this time can apply only to these beds. The alternatives considered were whether or not to require a size limit and if so, what it should be and whether it should be voluntary or compulsory. For pink coral, four size limits were considered: 8, 9, 10 or 11 inches in height measured from the base to the greatest vertical extremity of the colony.

For pink coral a compulsory size limit of 10 inches is proposed for beds on which only select harvesting techniques may be used. Size limits for gold and bamboo corals are not recommended at this time because of inadequate information. The rationale for selecting a 10-inch limit is based on several arguments. First, the size limit which corresponds to MSY is actually 11 inches (Section III.F). However, a slightly smaller size is favored because catch-per-unit effort would be greater than it is with an 11-inch limit while the effect on yield would be negligible (Figures 11 and 13). MSY is adjusted downward to account for a 10-inch size limit (Section III.G). Second, a 10-inch limit is consistent with current practice. Industry claims that harvesting colonies less than 10 inches is not economically practical, because the return does not justify the time spent harvesting. Third, a 10-inch size limit is equivalent to an age of 28 years, and this is approximately 15 years after colonies reach reproductive maturity. Hence, an adequate reproductive cushion (Grigg, 1976) would appear to be provided by a 10-inch size limit.

Because a size limit of 10 inches almost doubles the MSY that would be obtained with no size limit (Section III.G and Figure 13), it promotes efficiency in the utilization of the resource, which is consistent with the national standards of P.L. 94-265, Hawaii State Division of Fish and Game Regulation 41 (Appendix III) and the objectives of this plan (Section IV.B).

Unfortunately much of the pink coral is unavoidably broken during collection, making enforcement of any size limit difficult. Breakage varies depending on handling which itself is a variable due to weather, size of the load and chance. One method that might work would be to calculate an average weight and stem diameter for colonies 10 inches in height. The weight of the load could then be divided by the average weight of a 10-inch colony. This division would produce a number that would equal the minimum number of pieces equal to or larger than the stem diameter equivalent to 10 inches in height. For example, if the stem diameter equivalent to 10 inches in height is one inch and the average weight of a 10-inch colony of pink coral is 2 pounds and if a particular day's load is 50 pounds, then at least 25 pieces in the load should measure at least one inch in maximum diameter.

The calculations for the example are as follows:

$$\frac{\text{50 lbs (catch)}}{\text{2 lbs (weight average (colony of 10 in.)}} = 25 \text{ pieces} \geq \text{stem diameter 1 inch}$$

The Council will reconsider this size limit as a managerment measure if it is found that enforcement is inordinately difficult or expensive.

D. *Royalties.* The options considered for this provision were whether or not to impose royalty fees on the basis of the weight or value of precious coral harvested. Royalties are a feature of management regime for coral fisheries established by BLM, DOI. The recommendation is against the impostition of royalties because the FCMA states that regulations promulgated to implement fishery management plans may not require fees for domestic fishermen beyond the cost of administering the permit system. Presumably royalties would exceed the cost of administration. Also the Council sees no merit in proposing royalties for corals when no other FMP has proposed royalties. The Council considers the employment and taxes generated by the industry to be adequate compensation to the public for use of a common property resource.

E. *Incidental Catch.* The options considered were whether or not to allow incidental catch of corals by vessels fishing for other species of fish and if so under what conditions. The recommendation is to allow incidental catch of all precious corals in the FCZ for both domestic and foreign fishermen, however, subject to certain conditions. It is recommended that domestic and foreign fishermen be allowed to incidentally harvest precious coral, but that they be required to submit detailed monthly reports of such catches to the NMFS. It is further recommended that non-retention apply for both domestic and foreign fishermen. It is also proposed that should the amount of incidental harvest of precious coral be significant (more than 50 kg per vessel per year), the Secretary of Commerce should be so notified so that more restrictive measures can be imposed on an emergency basis.

This policy seeks to encourage the development of fisheries which may take coral incidentally, such as trawling for finfish; gaining new information on coral resources from such incidental taking; and discouraging uncontrolled coral harvesting under the guise of incidental catches.

F. *Refugia.* With respect to Refugia or preserves, that is, beds which would be closed for some period of time to exploitation, the options considered were whether provision should be made for such preserves, and if so, which areas, if any, should be so designated at this time. It is recommended that one Refugium be established immediately. The reasons for establishing Refugia are: (1) to preserve coral beds as natural areas for purposes of research; (2) to establish control areas that could be used in the future to measure environmental impacts of coral harvesting; and (3) to establish possible reproductive reserves for enhancement of recruitment into adjacent areas. WesPac Bed, between Nihoa and Necker Islands (Lat 23°18.0'N, Long. 162°35.0'W), is recommended for designation as the first such Refugium because of its central location within the Hawaiian Archipelago, which favors recruitment into adjacent areas. No commercial or exploratory harvest of precious coral is permitted in Refugia. However, other types of fishing will be allowed subject to restrictions on incidental catch of corals (Section IV.F.1.E.)

G. *Season.* Seasons were also considered. The recommendation is against setting any seasonal restrictions. This decision rests on the observation that there is little biological

basis for establishing a closed season, other than to reduce fishing effort. Natural mortality rates are relatively low for pink corals and are probably also low for gold and bamboo coral as judged by their longevity. Therefore it matters little in terms of the reproductive potential of a colony whether it is harvested before, during or after the reproductive season. The reproductive season for pink coral in Hawaii is June and July (Grigg, 1976). Because reproduction is iteroparous (year after year), the impact of removing a colony in June of any given year is essentially the same as removing that colony in any other month. Hence if summer months were closed to the fishery, and the annual harvest did not change, the benefit would be insignificant. By contrast, and adverse effect could occur if the safest and most accessible months (due to weather) were not open. Summer closure could pose a hardship on the industry and discourage exploration.

H. *Limited Entry.* Limited entry was considered but is not recommended. There is no sign at the present time that the fishery is being overfished due to excess capital investment or to the open access nature of the resource. In the precious coral fishery in the western Pacific, the need to increase information concerning the resource would favor non-restricted entry (increased effort).

I. *Permits and Conditions.* A requirement for permits, and the conditions under which required, were considered. The Council is in favor of permits, to include all conditions covered in provisions A–H as well as extensive reporting requirements.

Information is to be documented in daily log books and be provided to the appropriate representative of the Secretary of Commerce.

Permits are to be *area specific* with reference to Established Beds, Conditional Beds or Exploratory Areas (see next section for definitions). The duration of the permits is also area specific.

Further details concerning permits and other management measures are contained in the next section of the plan.

2. *Proposed Specific Conservation and Management Measures.*

The following are recommended management measures under which permits to harvest and possess precious corals and associated nonprecious corals for domestic fishermen are to be granted:

Limittion of Permit

Not more than one permit shall be issued to any one person. No permit shall be valid on more than one vessel. Permits shall not be assigned or transferred from person to person nor from vessel to vessel.

Duration of Permit

Permits shall be effective from July 1st* through June 30th* or, if issued after the beginning of such term, for the remainder thereof.

Permit Areas

A permit will be required for the harvest of precious corals, including the species *Corralium secundum, Gerardia sp.* and *Lepidisis olapa,* and for nonprecious corals taken with precious corals, in any or all Western Pacific Regional Fishery Management Council (FCZ) permit areas described below.

For the purposes of this plan there are three designated permit area categories. These are:

I. *Established Beds* (E–B) shall include only coral beds having a history of harvest and those sufficiently documented to the extent that an optium yield quota consistent with the provisions of the FCMA of 1976 has been established. *Makapuu (Oahu)* E–B–1 *Permit Area* shall include the waters enclosed by the lined area delineated in Figure 5.

II. *Conditional Beds* (C–B) shall include known coral beds for which optimum yield quotas are derived through size relationships to the Makapuu Bed. Estimates of areas of Conditional Beds are based on data accumulated from over 200 dredge haul stations and 33 submersible dives in Star II throughout the Hawaiian Islands.

Ke-ahole Point (Hawaii), C–B–1 *Permit Area,* shall include the waters within a 0.24 km^2 are around a midpoint of Lat. 19°46.0'N, Long. 156°06.0'W.

Kaena Point (Oahu), C–B–2 *Permit Area* shall include the waters within a 0.24 km^2 area around a midpoint of Lat. 21°35.4'N, Long. 158°22.9'W.

Brooks Banks, C–B–3 *Permit Area,* shall include the waters within a 1.6 km^2 area around a midpoint of Lat. 24°06.0'N, Long. 166°48.0'W.

180 Fathom Bank (northwest of Kure), C–B–4 *Permit area,* shall include the waters within a 0.8 km^2 area around a midpoint of Lat. 28°50.2'N, Long. 178°53.4'W.

III. Refugia *Wespac Bed,* R–1 *Permit Area,* shall include the waters within a 0.8 km^2 area around a midpoint of Lat. 23°18.0'N, Long. 162°35.0–'W.

IV. *Exploratory Permit* Areas (X–P) Area shall include all beds, other than Established and Conditional Beds and Refugia in each of five areas: Hawaii, American Samoa and Guam, the Northern Marianas and the combined FCZ's around all other U.S. Islands in the Central and western Pacific. These may be designated X–P–H, X–P–AS, X–P–G, X–P–NM and X–P–I. A new bed located by exploratory fishing will become a Conditional Bed when sufficient data have been collected to estimate size and yield from the bed.

Season and Quotas

(1) The coral harvesting season shall open July 1 in all permit areas.

(2) *Closing Date Makapuu,* E–B–1, *Permit Area.* The coral harvesting season in Makapuu E–B Permit Area will be a 2-year period extending from July 1 of the first year through June 30 of the second year. The season shall be closed prior to June 30 of the second year by the Regional Director, NMFS if it is estimated that the season catch in Permit Areas in E–B–1 will have reached 2,000 kg of pink coral, 600 kg of gold coral, and 500 kg of bamboo coral prior to June 30. All live coral harvested will be retained by the permittee and shall be counted against the Quota.

(3) *Closing date C–B–1–4 Permit Areas.* Coral harvesting in Permit Areas C–B–1 through 4, shall be for one-year periods extending from July 1 through June 30. The season shall be closed prior to June 30 by the Regional Director if it is estimated that the season catch for C–B–1–4 Permit Areas will have filled the one-year quota prior to June 30. One-year quotas for non-selective harvesting can be computed on the basis of the following formulas.

$$\text{(i)}\quad \frac{\text{Area of C–B–1–4 Beds}}{\text{Area of Makapuu Bed}} \times 200\ \text{kg} = \text{1-year conditional quota for pink coral}$$

$$\text{(ii)}\quad \frac{\text{Area of C–B–1–4 Beds}}{\text{Area of Makapuu Bed}} \times 60\ \text{kg} = \text{1-year conditional quota for gold coral}$$

$$\text{(iii)}\quad \frac{\text{Area of C–B–1–4 Beds}}{\text{Area of Makapuu Bed}} \times 50\ \text{kg} = \text{1-year conditional quota for bamboo coral}$$

Permit Areas C–B–1–4 shall be closed to further non-selective harvesting of all species of coral whenever the OY of one species has been attained. This measure is to prevent overharvesting of the first species that could occur by way of non-selective harvest of other species.

(4) *Closing date Exploratory Permit (XP) Areas.* Exploratory Permit (XP) Area season shall be a one-year period extending from July 1 through June 30. Announcement of closing dates by the Regional Director in each permit area will be made not less than forty-eight (48) hours in advance of a closing date, except that if the closing date is to be June 30 there need be no announcement. Each Exploratory Permit Area will be closed to domestic fishing when the *total* harvest of pink, gold and bamboo coral in the Area reaches 1,000 kg and to foreign fishing when

*The selection of July 1 date for the beginning of the term for permits was made in order that the terms for Federal permits coincide with State permits.

the *total* foreign harvest of the three species reaches the TALFF.

Gear Limitations

The use of selective harvesting methods shall be encouraged in all permit areas.

(1) In all permit areas where selective harvesting is current practice and an optimum yield has been determined, non-selective harvesting techniques are prohibited.

(2) Non-selective coral harvesting is prohibited in all portions of the FCZ seaward of the main Hawaiian Islands, i.e. south and east of a line midway between Niihau and Nichoa Islands.

(3) Non-selective coral harvesting will be allowed in all other permit areas under specified conditions. If coral tangle dredges are to be employed, on Established and Conditional Beds, the weight quota is to be 20 percent of that allowed using selective methods.

Identification of Vessel

Each vessel operating under the provisions of this plan shall carry on an exposed part of the superstructure of the vessel the number of the owner's permit in fourteen-inch (14-in.) black numbers on a white background. The permittee shall keep the number clearly legible in good repair, and insure that no part of the vessel, its rigging or its fishing gear obstructs the view of the number from an enforcement vessel or aircraft.

Records

Each permittee shall keep an accurate record of his coral harvesting operations in a log book furnished by NMFS. All information requested shall be given completely and accurately.

The permittee shall within 72 hours of landing-mail to Regional Director, NMFS, a copy of the NMFS log with complete harvest information for the corals including:

(1) area fished

(2) depth of water

(3) weight or coral harvested by species (landed weight, air dried for at least 24 hours)

(4) fishing effort (days or hours) and dates of harvest

(5) method of harvest

(6) observations about the habitat (current, bottom type, bottom topography, bottom slope, proximity to land, etc.)

(7) sales of precious coral including the amount by species, value, date of sale and name(s) of buyer(s), and

(8) other data as specified in the permit or regulations.

Size Limitation

Makapuu Bed (E–B–1), Ke-ahole Point (C–B–1) and Kaena Point (C–B–2) Permit Areas. Any pink coral harvested from these Beds shall be from colonies of at least 10 inches in height.

All other Permit Areas. There are no size limits established.

Incidental Harvest

All domestic and foreign fishermen shall keep accurate records of all precious coral harvested incidentally. Records shall include but not be limited to: gear type and size, species harvested, weight, location and depth. Records shall be submitted to the NMFS on a basis specified by NMFS. Non-retention (that is, all precious coral harvested incidentally must be immediately returned to the sea) will apply for both domestic and foreign fishermen.

Observers

A permittee may be required to carry a NMFS observer, particularly for fishing in exploratory areas.

Permit Cancellation

Permits shall be subject to suspension or revocation as specified by regulation.

G. Enforcement

Enforcement activities will include aircraft and surface patrols and dockside inspections, and observers may be placed on foreign and domestic vessels. The NMFS estimate of requirements to achieve 95 percent compliance and 100 percent off-load inspection levels include over 1100 hours per year of aerial patrols (multi-purpose, including seamount fishery and billfish fishery) and 200 days per year of surface patrols (also multi-purpose) for the FCZ seaward of the Hawaiian Islands; 168 hours of aerial and 96 days of surface patrols off Guam and the Northern Mariana Islands; 144 hours of aerial and 48 days of surface patrols around American Samoa; and aerial and surface patrols as resources permit off U.S. Possessions. Total fishery enforcement requirements, of which an unspecified percentage would be attributable to corals, are estimated at ten (10) agents and $275,000 for NMFS. To the extent possible, NMFS and the Coast Guard will corrdinate with State enforcement authorities to prevent duplication of effort.

H. Administrative Costs

It is not possible to predict with any certainty the cost of observer coverage. Foreign vessels pay the cost of U.S. observer placements, thus, there is no net cost to the U.S. Government, although NMFS would pay the immediate costs. There has been no expression of foreign interest in fishing for corals in the FCZ; however, for the purposes of considering management costs, it is estimated that observer placement entails an estimated $2,000 per observer per month, whether on a domestic or foreign vessel.

Data collection would involve little cost, given the low level of participation in the fishery. Preparation and distribution of logbooks would cost not more than $1000, and compilation and analysis of the data probably would not cost more than $1000, per year, per area. The "cost" of recording and submitting data would be negligible. The permit system also would be easy to administer since participation is so limited. The cost would not be large enough to warrant an administrative fee. Total administrative costs are estimated to be not more than $25,000 per year as the fishery is now constituted.

I. Relationship To Existing Laws

Implementation of this FMP replaces the Department of Interior's (Bureau of Land Management) regulations regarding the areas covered in this FMP, to the extent that they were, in fact, applicable.

The State of Hawaii has promulgated regulations for the management of pink and gold coral, which are given in Appendix II. As written, the regulations apply generally to "waters subject to the jurisdiction of the State," but they include provisions, including a catch quota for pink coral, specifically applying to the Makapuu Bed. Questions relating to State jurisdiction over that bed are beyond the scope of this Fishery Management Plan. The pink coral quota for the Makapuu Bed in the State regulations, 4,400 pounds for 2 years, is consistent with the quota defined in this Plan, except that the State specifies that this is to be wet weight of live and dead coral. The State's minimum size limit of 10 inches in colony height is also consistent with that of this FMP, except that observance of the State's limit is made voluntary. Potential conflicts between the State's regulations and the measures prescribed in this Plan will depend largely on how the extent of the State's jurisdiction may be interpreted in the future.

Local jurisdictions in the other areas covered by this Plan do not have any laws or regulations specifically for the management of coral resources or coral fisheries of the species covered by this Plan.

A determination of consistency of this plan with the CZM plan for the State of Hawaii is given in Section V.B.

There are no known Indian treaty, native Hawaiian or other indigenous traditional uses, claims or rights associated with the precious coral resources that will be managed in accordance with this FMP.

J. Council Review and Amendment of the Plan

A review by the Council is to be conducted annually or more frequently if information is brought to the attention of the Council which indicates that emergency actions are needed to protect the resource.

As additional information on number, location, and sizes of coral beds becomes available, and as data on other species of precious coral becomes available, the Council will amend the plan as necessary.

K. Future Research Needs

The Council recognizes, and this plan emphasizes, the critical need for research. The most important needs for future research on precious corals in the Pacific Ocean are stock assessment and the collection of economic data. Until the extent and magnitude of the resource are defined, the development of U.S. precious coral fisheries will be hampered. Moreover, stock assessment is the first step in defining Conditional Beds and developing a strategy of management. More specifically, better information on the size of Conditional Beds and rates of growth and mortality of their precious coral populations are needed in order to make more accurate and precise estimates of MSY so that the beds can be upgraded to Established Beds.

Other important biological research is needed to assess the impact of management decisions on the status of the resources. For example, it will be important to know the

impact of harvesting precious coral on recruitment as well as on adult stocks. Records of catch and effort can be used in part to determine if overfishing has occurred. Research is also needed before the impacts of fishing resulting in incidental catches by domestic and foreign fishermen can be assessed. Records of incidental catch coupled with television or submersible surveys would be necessary for this. Another important subject for biological research is the impact of harvesting precious corals on other benthic species which occupy the same habitat.

In terms of gear, further research is needed in two areas. First, to better evaluate the efficiency of dredges and secondly to improve methods of selective harvest using submersibles and remote vehicles. For dredges, it is important to know their efficiency so improvements in design can be made and to attain a better idea of the degree to which precious coral is knocked down but not retrieved.

In the area of economics, better data are needed in Hawaii on cost of harvest, ex-vessel value of precious coral, costs of imported corals, costs of production, total sales of precious coral jewelry produced from local production, and total sales of precious coral jewelry produced from imported coral. In regions of the FCZ other than Hawaii, market studies are needed to assess the potential of precious coral industry considering both local sources of supply and imports.

V. Environmental Impacts

A. Relation to National Standards

The management measures proposed herein are fully consistent with the national standards as outlined in P.L. 94–265. In brief, the management plan is designed to achieve optimum yields from each fishery; the plan is based on the best scientific information available; stocks are managed on the basis of a unit (individual beds); the plan does not discriminate between residents of different States; the plan promotes efficient utilization of the resource; the plan accounts for variation in the resource; and it is designed to minimize management costs.

B. Relationship of the Proposed Action to OCS and CZM

With regard to the OCS, manganese crusts and precious corals are known to co-occur at depths of 1,200 to 2,000 feet in some areas in the Hawaiian Archipelago such as the Wahoo Shelf off Oahu and the bank immediately to the southeast of French Frigate Shoals. Mining of manganese crusts could directly damage precious corals by the effects of silt and sediments. The potential of such specific impacts have not been determined, although an assessment of the environmental impact of mining for manganese nodules in the Pacific, in general, has been completed by the Environmental Research Laboratory of NOAA (Hirota, unpublished manuscript).

The Coastal Zone Management Act (CZMA) of 1972 encourages states to establish policies and programs for the conservation of coastal resources balanced by the needs of economic development. Conservation and the rational use of living resources in the offshore coastal zone (territorial sea) are among the objectives of the National CZMA. Promotion of domestic fisheries, the development of unutilized or underutilized fishery stocks, and fisheries management according to sound conservation principles are the major objectives of the FCMA. While the geographic area of management authority and application differs under each statute, the CZMA and the FCMA embody unanimity of objectives with regard to transboundary fishery resources.

An approved CZM program has been in effect in Hawaii since 1978. State CZM policies directly relating and pertaining to the proposed action are contained in the coastal ecosystems and economic use resources categories of the Hawaii CZM statute (Act 188 of 1977, Chapter 205A, HRS, as amended). They are as follows: (1) improve the technical basis for natural resource management, (2) preserve valuable coastal (offshore) ecosystems of significant biological or economic importance, and (3) minimize adverse environmental effects from economic uses of coastal zone resources. These CZM policies are fully consistent with the objectives of this Plan and with the selected management measures for precious corals which are: (1) to allow harvesting of precious corals in known beds and to encourage the exploration and discovery of new beds, but subject to limitations to prevent overfishing; (2) to encourage the use of selective harvesting methods, but also to prevent the wastage of resources by allowing dredging in those areas where large distances would make selective harvesting economically infeasible, (3) to minimize the harvest of immature colonies that have not reached their full potential for growth, (4) to provide for the establishment of Refugia, and (5) to encourage the development of new information on the distribution, abundance, and ecology of precious corals so as to improve the technical basis for management. As with the Hawaii CZM program which has been established to balance the needs of economic development with the long-term conservation of coastal resources, the proposed action provides a combination of measures designed to maximize opportunities from the harvest of precious corals while minimizing the biological risks involved. The relationship of the proposed action to coastal zone management planning in Guam, American Samoa, and the Northern Mariana Islands cannot be determined at this time because CZM plans have not been completed and approved for these areas.

The Hawaii offshore CZM Program area extends from the shoreline to the seaward limit of the State's jurisdiction. While the offshore coastal zone is defined for National CZM Program purposes as not extending beyond the territorial sea of the United States, the State of Hawaii does not relinquish or in any way waive its rights, authority, or claims, present and future, over those waters within the State's jurisdiction that exist outside the conventional 3-mile seaward boundary of the territorial sea.*

*U.S. DOC, Office of Coastal Zone Management, *State of Hawaii Coastal Zone Management Program and Final Environmental Impact State*, 1978.

Section 6 of Article IX of the State of Hawaii Constitution expressly provides: "The State shall have the power to manage and control the marine, seabed and other resources located within the boundaries of the State, *including the archipelagic waters* of the State, and reserves to itself all such rights outside state boundaries not specifically limited by federal or international law" (emphasis supplied). As such, the degree of State sovereignty over the management of precious corals of the Hawaiian Archipelago is dependent on a legal determination on the actual geographic extent of the State's offshore boundaries including archipelagic waters. Jurisdiction over the interisland waters and resources remains an unsettled question between the State of Hawaii and the Federal Government. The resolution of this issue is beyond the scope of this Fishery Management Plan.

Other coastal zone plans for other areas covered by this plan have not been completed at this date (July 1979).

C. Biological Impacts of Domestic Fishing

The management plan is based on the national standards and should not result in unacceptable biological impacts to populations of precious coral. The recommended management measures result in only about 2 percent removal of precious coral populations in any harvesting period. However, the proposed regulations are based on an analysis in which natural mortality, recruitment and growth are assumed to be constant. To the extent that these parameters vary from year to year, it may be necessary to revise management measures. Also caution should be exercised because of the sampling errors inherent in the data on which the analysis is based. If significant changes in the population dynamics of any species of precious coral considered here were to occur in the future, management plans should be revised accordingly.

Biological impacts of harvesting precious corals on *other* species which occupy the same habitat can be expected to be similar to or less than the biological impacts of harvesting precious corals themselves. Even if a two year quota of pink coral were taken in one year, only about 4 percent of the standing crop of pink coral would be affected. For species which live on, in or around pink corals a similar impact would be expected. Similarly, other benthic species that may be damaged by non-selective methods should not suffer a proportionately greater impact than target species of precious coral. Indeed, many species of gorgonian corals have flexible skeletons and do not break as easily as pink or bamboo coral (both have calcareous skeletons) and therefore should be impacted proportionately less than calcareous precious corals. While many species of fish occur on or near the bottom in the depth zone of precious corals, none are known to depend directly or indirectly on precious corals for food or habitat space.

It is noted that there is risk in extrapolating pink coral characteristics to other species, but this appears to be minimal and the error can be in either direction. There also is a risk of overfishing by allowing non-selective harvesting. The quotas however appear to be sufficiently low that this risk is low.

Consideration has been given to the possibility of any impact of the precious coral fisheries covered by this Plan and the recommended management measures on marine mammals or endangered species. It is concluded that because of the characteristics of the precious coral habitat and the fishing techniques used to harvest precious corals there is little or no possibility of any such impact. A biological opinion from NMFS confirms this conclusion (Appendix 4). Access to the Hawaiian Islands National Wildlife Refuge is restricted and this plan should have minimal effect on those islands.

D. Impacts to Industry

If the Hawaii precious coral industry is to survive and prosper, it should have access to a reliable and controllable supply of raw material. The Makapuu Bed is a small fraction of the total area thought to be potentially commercially productive in the Hawaiian Archipelago. Thus an increased supply appears to be locally available which may decrease the need for some imports. With rising tourist expenditures and growth in personal income of the residents of Hawaii, expansion in the local market can be expected (Poh, 1971). In addition there is the potential of developing a larger mainland market. The potential for growth in these markets may not be realized unless imports combined with local supplies keep pace with demand. Hence, it is important for the industry to establish new sources of supply in U.S. waters to ensure a steady and reliable domestic supply of raw material.

The proposed action may slightly reduce the past annual harvesting rates for pink and gold coral. This is an unavoidable constraint imposed by the limited nature of the resource. Management measures have been proposed which take into account the economics of the industry and are designed to increase benefits to the nation. The proposed action should cause no loss in jobs, and while total production may be slightly reduced, this is considered to be favorable to the long term interest of producers and consumers.

E. Alternatives to the Proposed Plan

For each management measure recommended, several options were considered. These have been thoroughly discussed in Sections IV.F.1 and IV.F.2.

Other conceivable alternatives listed below were not given serious consideration for the following reasons:

1. To rely on the Preliminary Management Plan indefinitely—As noted earlier, the draft PMP for precious corals has not been implemented. Even if it were, it would provide no control over domestic fishing, nor would it provide any opportunity for foreign fishermen to develop new exploratory beds and thereby furnish much needed information on coral resources of the FCZ, as it would establish a zero TALFF. Also, failure to implement an FMP would be contrary to the intent of the FCMA.

2. To leave management of precious coral resources in the region to the State of Hawaii, which has a management regulation in place, and the Territorial Governments—The legal basis for the local governments to regulate coral fisheries which are carried on in the FCZ, if the coral is not landed in the State, is questionable, especially with regard to foreign fishermen, and the states appear to lack the capability to enforce any regulations with respect to coral beds at any distance from their shores.

3. To allow the Bureau of Land Management to continue to regulate coral fishing on the Outer Continental Shelf—The BLM regulations (see Appendix III) do not constitute a fishery management regime which would meet the requirements of the FCMA, which gives priority to the Department of Commerce in this field, if, in fact, the BLM regulations are valid in the present context.

F. Impacts on Foreign Fishing

The proposed action may partially displace foreign precious coral harvesters from areas near Midway, Wake, Guam and the Commonwealth of the Northern Mariana Islands. The proposed plan allows foreign vessels to harvest under permit up to 1,000 kg of pink, gold, bamboo and other precious corals combined per exploratory area in Hawaii, American Samoa, Guam, the Northern Marianas and U.S. possessions depending upon the amount of domestic catch and to incidentally harvest but not to retain precious corals incidentally harvested in other fishery operations in the United States FCZ. It therefore provides for reasonable foreign use of U.S. fish stocks having a harvestable surplus as long as such use does not conflict unduly with the development of the U.S. precious coral industry and with long-term conservation requirements.

G. Adverse Impacts of Foreign Fishing

Certain kinds of foreign fishing, such as bottom trawling, will kill or harvest precious corals incidentally in certain areas. To the extent that such fishing operations are permitted and take place, a small reduction in the amount of precious coral available to U.S. harvesters will occur. Further, because most trawling operations are not efficient in capturing or recovering colonies dislodged from the bottom, there will be some wastage of the resource. Recovery of previously damaged beds may be delayed. However, the policies set by the PMP for the Seamount Groundfish Fisheries limit trawling by foreign vessels to only a small portion of the FCZ where precious corals may occur, and damage (if any) would be restricted to a very small area.

H. Relationship Between Local Short-Term Use of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity

The proposed action provides for full commercial harvest of precious coral stocks only after they have been assessed and optimum yields have been estimated. Limited harvest is allowed so new beds may be located, and once located, may be studied to determine area of bed, abundance of corals and other critical factors. Thus precious corals are protected from negligent, wasteful over-exploitation which might lead to short-term economic gains for domestic fishermen but to long-term shortages and economic losses for U.S. industry.

I. Irreversible and Irretrievable Commitments of Resources Involved in the Proposed Action Should It Be Implemented

If the resource is inadvertently overexploited, commercial harvest would almost certainly cease for economic reasons before any coral species approached biological extinction. The major change in the population dynamics of precious corals that can be expected to occur as a result of harvesting is a non-irreversible shift in age structure toward younger age classes. Mean age would be somewhat reduced, but natural mortality might decrease as a consequence of pre-emption by fishing mortality, and growth and recruitment might increase in response to reduced competition.

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VII Glossary

BLM–DOI—Bureau of Land Management, U.S. Department of Interior
DAH—An estimate of the amount of coral that will be taken on an annual basis by domestic harvesters
Cohort—All the individual organisms of the same species produced (spawned) within the same year
CZM—Coastal Zone Management
DFG—Division of Fish and Game, State of Hawaii
DOC—U.S. Department of Commerce
Domestic Fishing Capacity—Annual production capacity of domestic fishing firms
Domestic Processing Capacity—Annual production capacity of domestic processing firms
EIS—Environmental Impact Statement
Expected Harvest level—Anticipated annual harvest by domestic fishing firms
Expected Processing Level—Anticipated annual production of domestic harvesting firms
FCMA—Fishery Conservation and Management Act
FCZ—Fishery Conservation Zone
Fixed capital costs—Cost of depreciable equipment
FMP—Fishery management plan
MSY—Maximum sustained yield
Net present value—Future net income stream discounted to the present
NMFS—National Marine Fishery Service
OCS—Outer continental shelf
OY—Optimum yield
PMP—Preliminary fishery management plan
TALFF—Total allowable level of foreign fishing
WPRFMC—Western Pacific Regional Fisheries Management Council

Appendix I—Economic Analysis of Harvest Quotas and Optimum Yield

Bioeconomic models are developed to evaluate the economic efficiency of several harvest quotas under different assumptions of price changes and alternative uses for fixed factors of production. The net value[1] under each quota is estimated for four different models. The results indicate that the net present value of pink and gold coral in the Makapuu Bed is greatest when pulse-fished, if there exist alternative uses for the fixed factors of production. If, during the "off-years", the fixed factors cannot be used in other operations, then it makes little difference if the bed is fished continuously or periodically. Different assumptions about price changes alter the results slightly.

The important assumptions of the models are: prices are determined exogenously (due to import supplies); marginal cost is constant for different levels of production; the change in average variable cost is inversely proportional to the change in the exploitable biomass from one year to the next, i.e. if the exploitable biomass declines so does catch/effort; pink and gold coral are multiple products harvested in fixed proportions; and the full quota is harvested during the year (the first year in the case of the multiple-year quotas) unless the exploitable biomass falls below the quota.

Four models are evaluated over a 37-year time horizon begininng with 1978. (Shorter time horizons were considered by the qualitative results are almost identical). In the first model, the imputed values, or estimated prices of pink and gold raw coral, are a constant over the 37-year production period and the firms incur fixed costs during periods of zero production. In the second model, prices increase at a constant rate. In the third and fourth models, prices are constant and increase, respectively, but the firms do not incur fixed costs during years of zero production In the last two models, it is assumed that there are alternative uses for the fixed factors of production. The alternative used may include exploration and harvest of other coral beds or activities unrelated to a coral fishery.

In each model, five alternative harvest quotas for pink coral are evaluated: (1) 1,000 kg/year, (2) 2,000 kg/year, (3) 3,000 kg/year, (4) 2,000 kg/2 years, (5) 3,000 kg/3 years. Due to the assumption of fixed proportions output, a quota on pink coral implies a quota for gold coral. The quotas for gold coral are: (1) 370 kg/year, (2) 740 kg/year, (3) 1,100 kg/year, (4) 740 kg/ 2 years, , (5) 1,100 kg/ 3 years.[2] The first values tested for both pink and gold coral (1,000 kg/year and 370 kg/year) correspond to estimates of MSY for each. Subsequent values are various multiples of these values.

The differentials of the discounted revenues and discounted costs (net revenue) are summed over all production years to obtain the net present value of the quota alternatives for each model. The absolute amount of the net present values is not the prime concern in this analysis. Rather, the relative outcome of the values allows some conclusions to be drawn about the economic efficiency of different quota proposals—the economic efficiency of a quota proposal being greater if the new present value is greater.

In all the models in which the quotas exceed a mean annual harvest of 1,000 kg, for pink coral the outcome is economically inefficient. This results in the long run because the harvest is not sustainable. In the short run, when the harvest is sustainable, the above outcome is due primarily to accelerating costs caused by a rapid decline in the exploitable biomass.

For the other pink coral quota alternatives (1,000 kg/year, 2,000 kg/2 years, 3,000 kg/3 years) economic efficiency varies due to changes in price and the ability to defray fixed costs. When price inceases 6 percent annually relative to costs, a quota of 3,000 kg/3 years is more efficient whether fixed costs can be defrayed or not. In the case of incurring fixed costs during zero-harvest years, the annual rate increase in prices shifts the most efficient quota from 1,000 kg/year to 3,000 kg/3 years. When costs can be defrayed, the most efficient quota shifts from 2,000 kg/2 years to 3,000 kg/3 years due to the price increases. These shifts can be explained by the exponential increase in the prices and the assumption that a 2,000 kg or 3,000 kg quota is harvested in the first year of the 2 or 3 year quota period. When the harvest in some years can be taken one or two years earlier the entire flow of net revenues is shifted closer to the present and, therefore becomes more valuable due to a positive rate of time preference. This impact of pulse fishing only results in the models when prices increase each year.

The impact of defraying the fixed cost when pulse fishing is negligible for the two models with increasing prices. The most efficient allocation is 3,000 kg/3 years whether or not there exist alternative uses for the fixed factors of production. When prices are held constant, the ability of firms to explore and harvest other coral beds shifts the most efficient quota from 1,000 kg/year to

[1] Net present value (NPV) = $\sum_{i=0}^{n} \frac{(R_i - C_i)}{(1+D)^i}$

where: R_i = total revenue during i^{th} period

C_i = total cost during i^{th} period

D = discount rate

[2] These values do not correspond exactly to MSY or multiples of MSY for gold coral because in this analysis figures were rounded upward instead of downward as was done for MSY.

2,000 kg/2 years. This results in the models when the average total cost of harvesting coral at the Makapuu Bed decreases by employing the fixed factors of production elsewhere and defraying the cost of those factors.

Considering the characteristics of the coral harvesting firms in Hawaii and the history of the world coral market, pulse fishing the Makapuu Bed is more efficient for the existing firms. Whether or not pulse fishing at 3,000 kg/3 years is overall more efficient than 2,000 kg/2 years, as indicated in the models, must depend on the existence of other firms wanting to enter the fishery.

Appendix II—State of Hawaii, Department of Land and Natural Resources, Honolulu, Division of Fish and Game

The Board of Land and Natural Resources in conformity with Chapters 187 through 190, Hawaii Revised Statutes and every other law hereunto enabling does hereby adopt the following regulation relating to the management of pink coral and gold coral.

Regulation 41. Relating to the Management of Pink Coral and Gold Coral

Section 1. *Definitions* (as used herein).

a. *Pink coral* means all species of coral belonging to the genus *Corallium* in their raw state.

b. *Gold coral* means all species of coral belonging to the genus *Parazoanthus* in their raw state (=*Gerardia*).

Section 2. *Prohibition.* It shall be unlawful to take or destroy pink coral or gold coral in waters subject to the jurisdiction of the State of Hawaii, or to possess, sell or offer to sell such corals within the State of Hawaii, except as provided in this regulation.

Section 3. *Permits.* It shall be lawful with a permit issued by the Board of Land and Natural Resources under such terms and conditions as it deems necessary to:

a. take or possess pink coral or gold coral for scientific or educational purposes.

b. take or possess pink coral or gold coral for commercial or domestic purposes from the Makapuu Bed provided that the taking of pink coral (*Corallium secundum*) shall be subject to the provisions stipulated in Section 5, relating to the management of the Makapuu Bed pink coral resources, and provided further that such taking for commercial purposes shall be subject to the commercial fishing license requirement of Section 189-2, Hawaii Revised Statutes.

Section 4. *Cancellation of Permits.* The Board of Land and Natural Resources may cancel any permit issued pursuant to this regulation for any infraction of the terms and conditions of the permit as determined by the Board.

Section 5. *Management of the Makapuu Bed (located approximately 6 miles East of Makapuu Point, Oahu) Pink Coral (Corallium secudum) resources.* A two-year quota of 4,400 pounds dry weight is hereby established for the taking of live and dead *Corallium secundum* at the Makapuu Bed beginning July 1, 1977, provided that the quota shall be for the combined harvest of all permittees, and provided further that harvesters shall make every effort to collect only mature colonies ten (10) inches or larger in height.

Section 6. *Prohibited Methods of Coral Harvesting.* It shall be unlawful to use nets, dredges, trawls, mops, explosives or any other destructive or non-selective means to take pink coral or gold coral within waters subject to the jurisdiction of the State of Hawaii.

Section 7. *Landing of Pink Coral and Gold Coral.* All pink coral and gold coral taken:

a. in waters subject to the jurisdiction of the State of Hawaii for any purpose shall be landed in the State.

b. in waters outside of the jurisdiction of the State of Hawaii and landed in the State shall be subject to this regulation and all other applicable State laws and regulations.

Section 8. *Possession and Sale of Pink Coral and Gold Coral Legally Obtained.* Nothing in this regulation shall be construed as making it unlawful for any person to possess or sell pink coral or gold coral obtained prior to the effective date of this regulation.

Section 9. *Authority to Suspend the Taking of Pink Coral and/or Gold Coral.* The Division of Fish and Game shall have the authority to order an immediate suspension on the taking of all pink coral and/or gold coral from the Makapuu Bed when deemed necessary for the management of these coral resources on a sustainable yield basis.

Section 10. *Penalty.* Any person who violates any of the provisions of this regulation or whoever violates the terms and conditions of any permit issued as provided for in this regulation shall be fined not more than $500.00.

Section 11. *Severability.* Should any section, subsection, sentence, clause, or phrase of this regulation be for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this regulation.

Adopted this *27th* day of *May*, 1977 by the Board of Land and Natural Resources.

Moses W. Kealoha,

Member, Board of Land and Natural Resources.

Shinichi Nakagawa,

Member, Board of Land and Natural Resources.

Approved this 13th day of September, 1977.

George R. Ariyoshi,

Governor of Hawaii.

Approved as to form:

Susan Y. M. Chock,

Deputy Attorney General.

Date: June 23, 1977.

Publication of Notice of Public Hearing—Honolulu Star Bulletin/Advertiser—January 16, 1977

Certificate

I hereby certify that the foregoing copy of Regulation 41, Division of Fish and Game, Department of Land and Natural Resources, is a full, true, and correct copy of the original which is on file in the office of the Division of Fish and Game of the Department of Land and Natural Resources.

William Y. Thompson,

Chairman and Member, Board of Land and Natural Resources.

Appendix III—Regulations of the Department of Interior for the Taking of Precious Coral in Federal Waters

Permits: Requirement for a permit

No person shall engage in any operation which directly causes damage or injury to a viable coral community that is located on the Outer Continental Shelf without having obtained a permit for said operations.

Application for a Permit

(a) Application for a permit shall be filed in the proper office of the Bureau.

(b) No specific form is required.

(c) Each application shall include:

1. The name, legal mailing address and telephone number of each person intending to participate in the operations covered by the application.

2. A description of the proposed area of the operations.

3. A map or maps, such as a National Ocean Survey Map, with a scale of not less than 1:30,000 delineating the proposed area of operations.

4. Information in detail describing the nature of the proposed operations and how the operation will be conducted.

5. If coral specimens are to be taken, the purpose of such taking, the method of taking, the currents and their velocity in the area of taking, the depth of taking, the size, estimated dry weight, and type of coral to be taken, and the estimated fair market value of the coral to be taken.

6. The approximate dates of commencement and termination of the operation.

7. An affirmative statement that the operation will use methods that are designed to do minimum harm and disturbance to the viable coral community covered by a permit and those viable coral communities adjacent thereto. Also, an explanation of the procedures that will be taken to assure protection of said viable coral communities during said operation.

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Appendix IV

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
Western Pacific Program Office
P. O. Box 3830
Honolulu, Hawaii 96812

October 4, 1978 FSW1/JJN

TO: Wilvan G. Van Campen, Executive Director, Western Pacific Regional Fishery Management Council

FROM: Doyle E. Gates, Administrator, WPPO, NMFS

SUBJECT: Endangered species consultation concerning the fishery management plan for precious corals in the Western Pacific

This is in reference to your memorandum of September 12. 1978 concerning formal consultation between the Council and NMFS during development of FMP's. If a Federal Agency (in this case the Council) determines that an action may affect endangered or threatened marine species, it should request consultation with NMFS providing the species in question fall under the responsibility of NMFS. Upon receipt of a request for consultation, NMFS will conduct a threshold examination which usually results in a biological opinion as to whether the proposed action is likely to jeopardize the species or destroy or adversely modify its critical habitat.

We realize that you are in the process of finalizing the FMP for precious corals in the Western Pacific. Therefore, utilizing your memorandum of September 12, 1978 as a request for consultation, we offer the following biological opinion on the implication of the precious coral fishery on endangered and threatened marine species.

Endangered marine mammals (humpback whale, sperm whale, and the Hawaiian monk seal) and endangered and threatened sea turtles (leatherback and green turtle) are known for, or suspected of, inhabiting waters overlaying precious coral beds in the central and western Pacific. However, considering the methods utilized for harvesting precious corals, it is our opinion that this fishery does not constitute a threat to these endangered and threatened species or will it destroy or adversely modify their critical habitat.

cc: G. V. Howard

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Washington, D.C. 20235

JAN 16 1979 F6/TRL

Mr. Edwin K. Lee
Administrative Officer
Western Pacific Regional
Fishery Management Council
1164 Bishop Street
Room 1506
Honolulu, Hawaii 96813

Dear Mr. Lee:

This letter is to inform you that I concur with the October 4, 1978, memo (enclosure) to Mr. Wilvan G. Van Campen, Executive Director, from Mr. Doyle Gates, Administrator, Western Pacific Program Office, National Marine Fisheries Service, transmitting the Section 7 consultation regarding the fishery management plan for precious corals in the Western Pacific. The consultation concluded that the coral fishery does not constitute a threat to endangered or threatened species or their habitat.

Please contact my office if you require further clarification.

Sincerely,

for Terry L. Leitzell
Assistant Administrator
for Fisheries

Enclosure

BILLING CODE 3510-22-C

Figure 1. The southeastern half of the Hawaiian Archipelago showing the extent of the fishery conservation zone and the location of major known beds of precious coral.
Figure 2. The northwestern half of the Hawaiian Archipelago showing the extent of the fishery conservation zone and the location of precious coral beds.
Figure 3. The fishery conservation zone for Guam.
Figure 4. The fishery conservation zone for the islands of American Samoa.
Figure 5. The precious coral bed off Makapuu, Oahu.
Figure 6. Catch of precious coral at Taiwan, 1924–1940 (Anon, 1956).
Figure 7. Effort of coral fishing in Taiwan, 1924–1940 (Anon, 1956).
Figure 8. Photo of a coral dredge.
Figure 9. The coral harvesting system on the submersible Star II consists of a wire basket, cutter and hydraulic claw (manipulator).
Figure 10. Size-frequency distribution of precious coral collected with tangle nets (A) and the submersible (B).
Figure 11. Biomass per recruit curves of *C. Secundum* using a constant rate of natural mortality (M=0.066) and progressively increasing rates of fishing mortality (F) applied over all year classes. The age of entry into the fishery is zero, i.e. no age limit is applied.
Figure 12. Biomass per recruit curves for a cohort of *C. secundum* using a constant rate of natural mortality (M=0.066) and progressively increasing rates of fishing mortality (F) applied after a minimum age of 25 years.
Figure 13. Yield per recruit isopleths for *C. secundum* in the Makapuu Bed, given a constant rate of natural mortality of 0.066. Contour units are in grams per recruit.
Figure 14. Various spawning stock recruitment functions. S_{max} = original spawning stock S = spawning stock after fishing R_{max} = original recruitment R = recruitment after fishing
Figure 15. MSY of pink coral as a function of recruitment and age at first capture under various stock-recruitment models.
Figure 16. Population biomass of *C. secundum* in the Makapuu Bed between 1964 and 1977 and after 1977 given six different exploitation rates in 1978 followed by a complete closure of the bed.
Figure 17. Spawning biomass of *C. secundum* in the Makapuu Bed between 1964 and 1977 and after 1977 given six different exploitation rates in 1978 followed by a complete closure of the bed.
Figure 18. Population biomass of *C. secundum* in the Makapuu Bed between 1964 and 1977 and after 1977 given different rates of exploitation.
Figure 19. Yields of *C. secundum* in the Makapuu Bed between 1964 and 1977 after which different rates of harvest are simulated.

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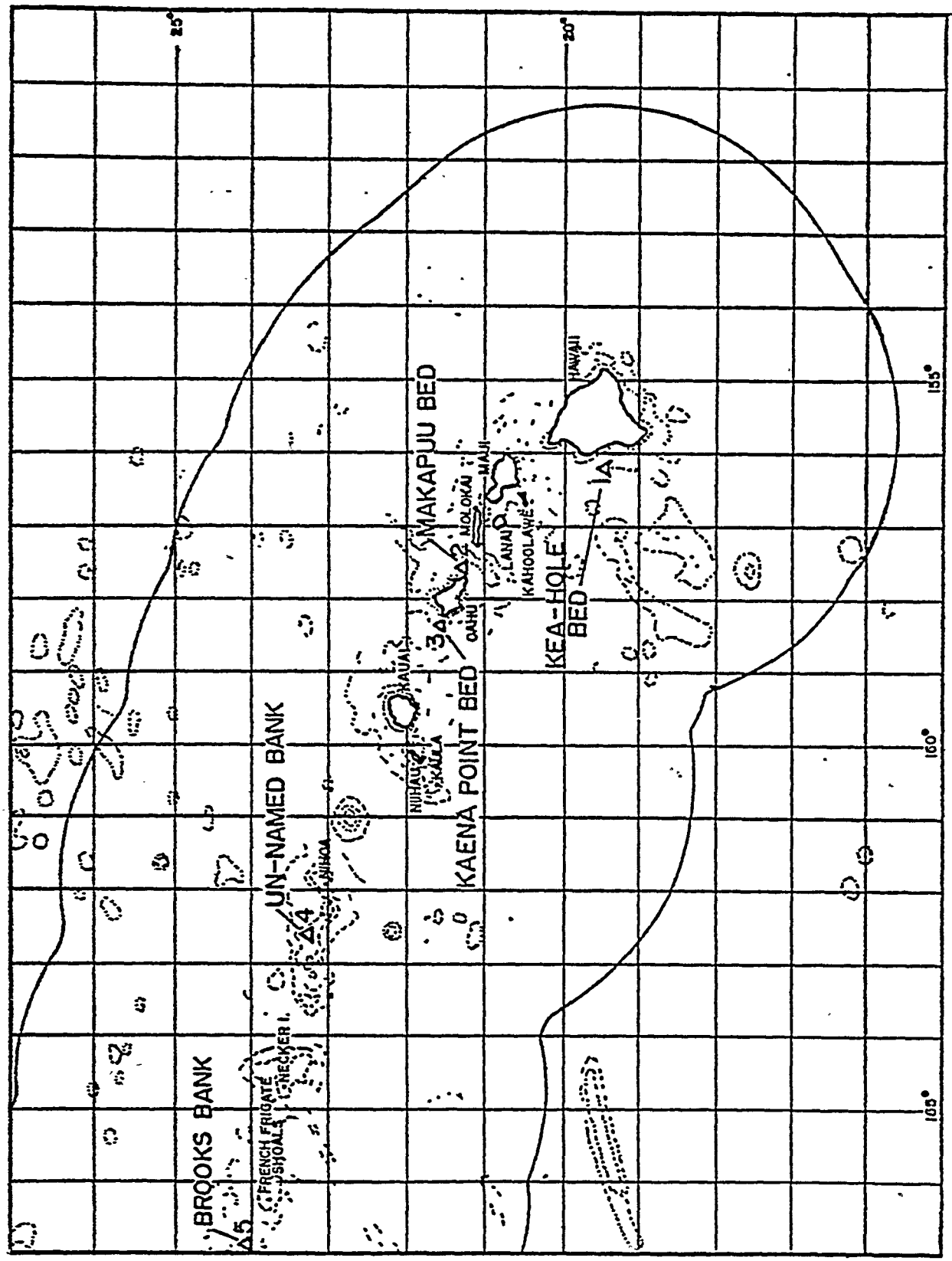

Figure 1. The southeastern half of the Hawaiian Archipelago showing the extent of the fishery conservation zone and the location of major known beds of precious coral.

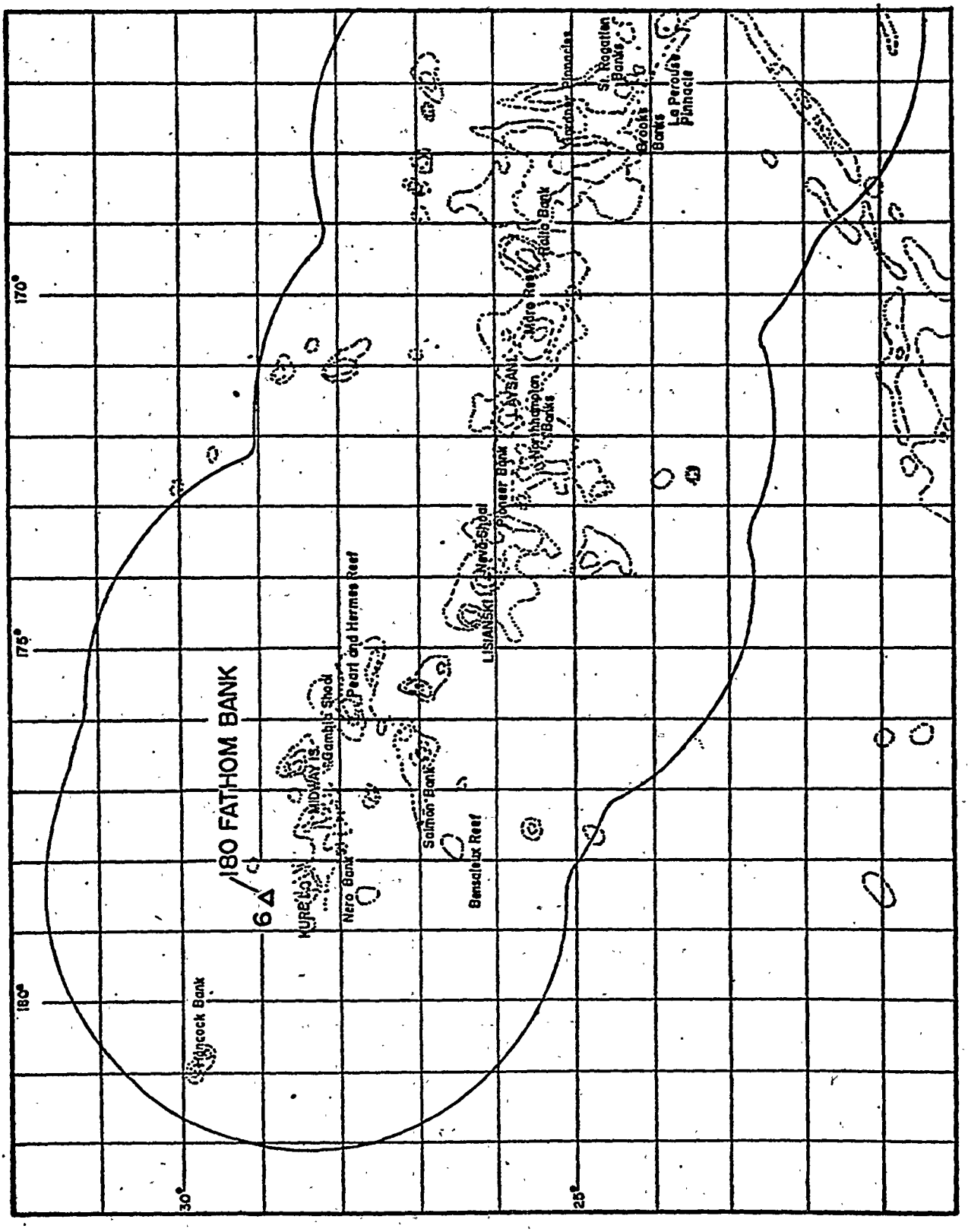

Figure 2. The northwestern half of the Hawaiian Archipelago showing the extent of the fishery conservation zone and the location of precious coral beds.

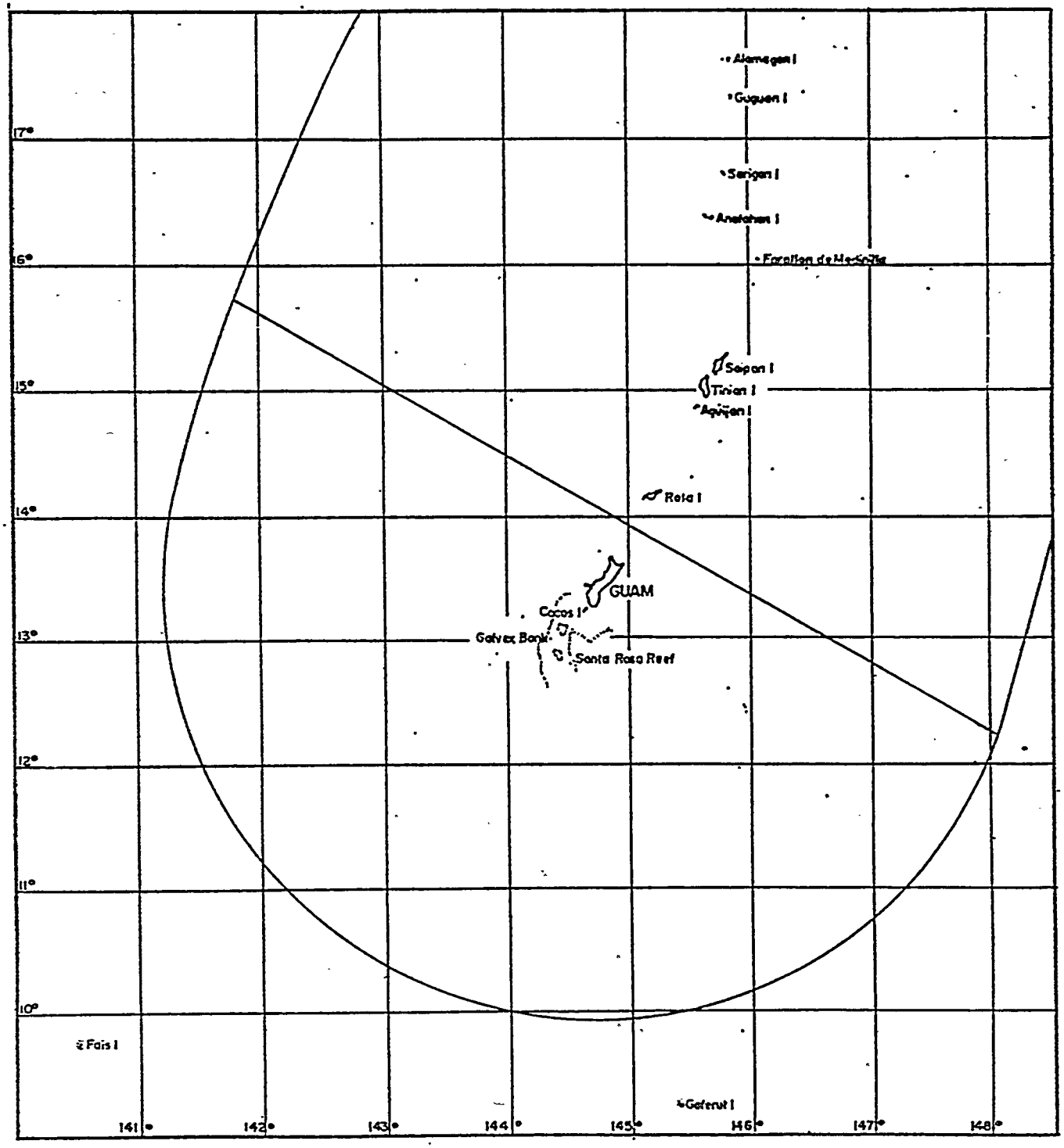

Figure 3. The fishery conservation zone for Guam.

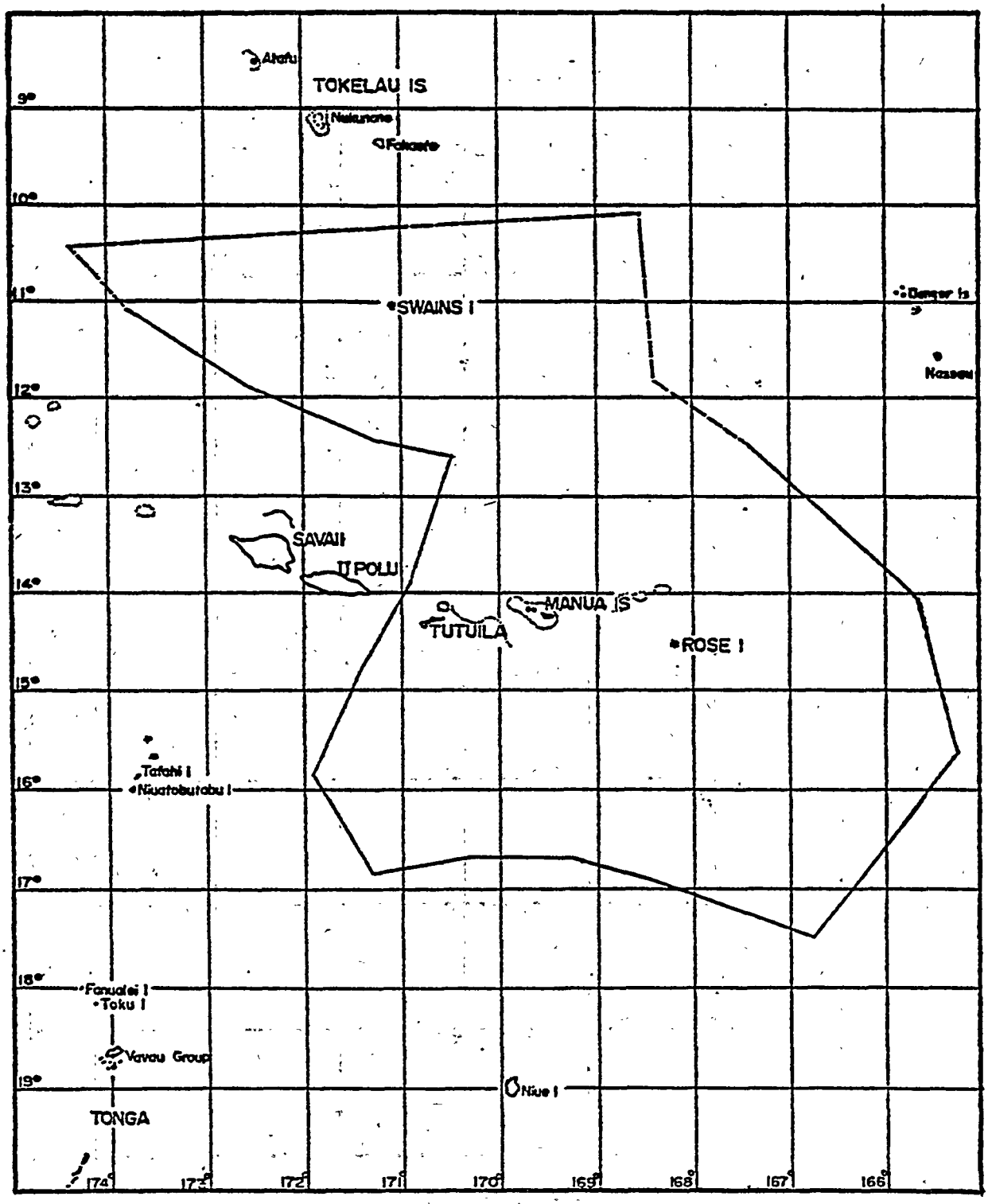

Figure 4. The fishery conservation zone for the islands of American Samoa. (U.S. fishery enforcement line around Swains Island is not yet defined pending negotiations.)

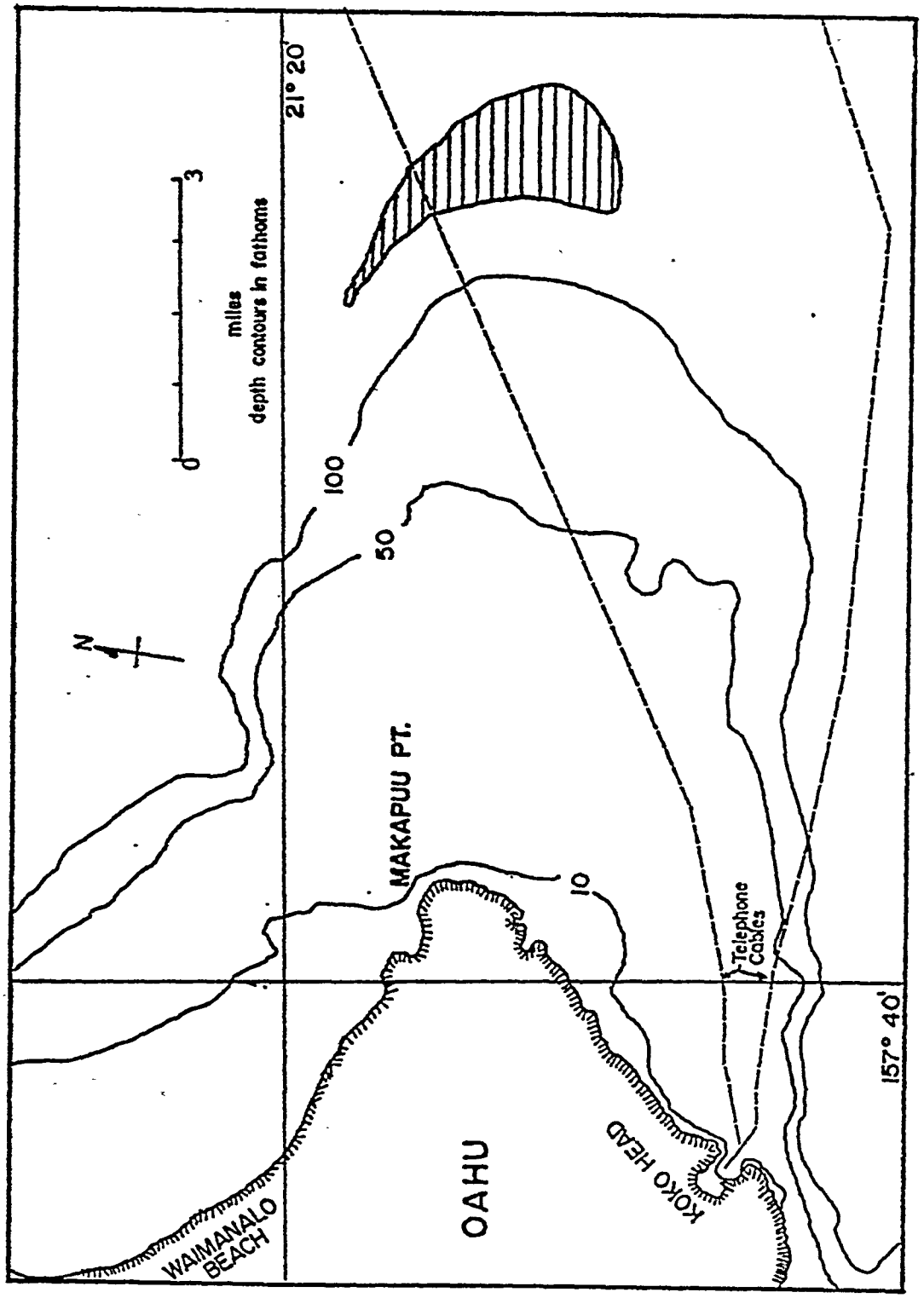

Figure 5. The precious coral bed off Makapuu, Oahu.

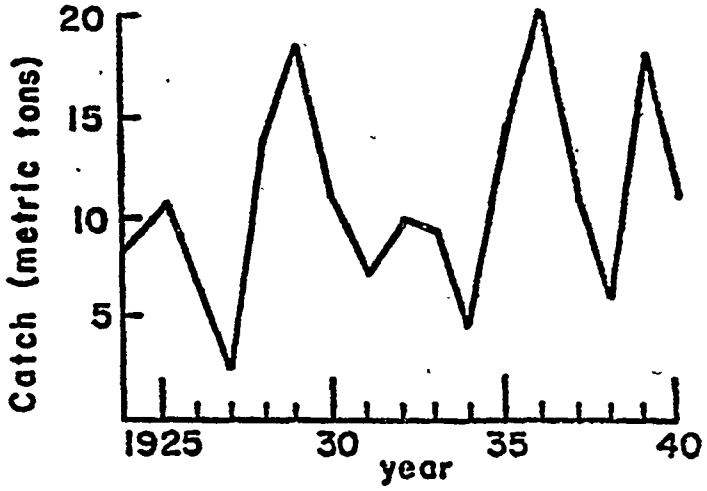

Figure 6. Catch of precious coral at Taiwan, 1924-1940 (Anon, 1956).

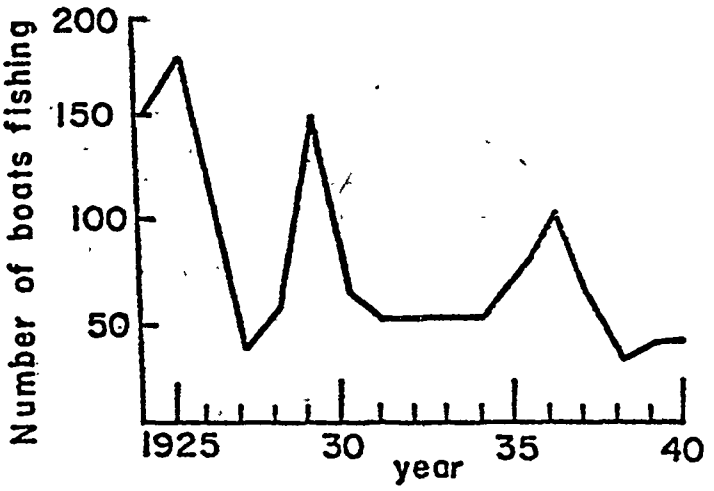

Figure 7. Effort of coral fishing in Taiwan, 1924-1940 (Anon, 1956).

Figure 8 (photo by Mike Palmgren)
Photo of a coral dredge

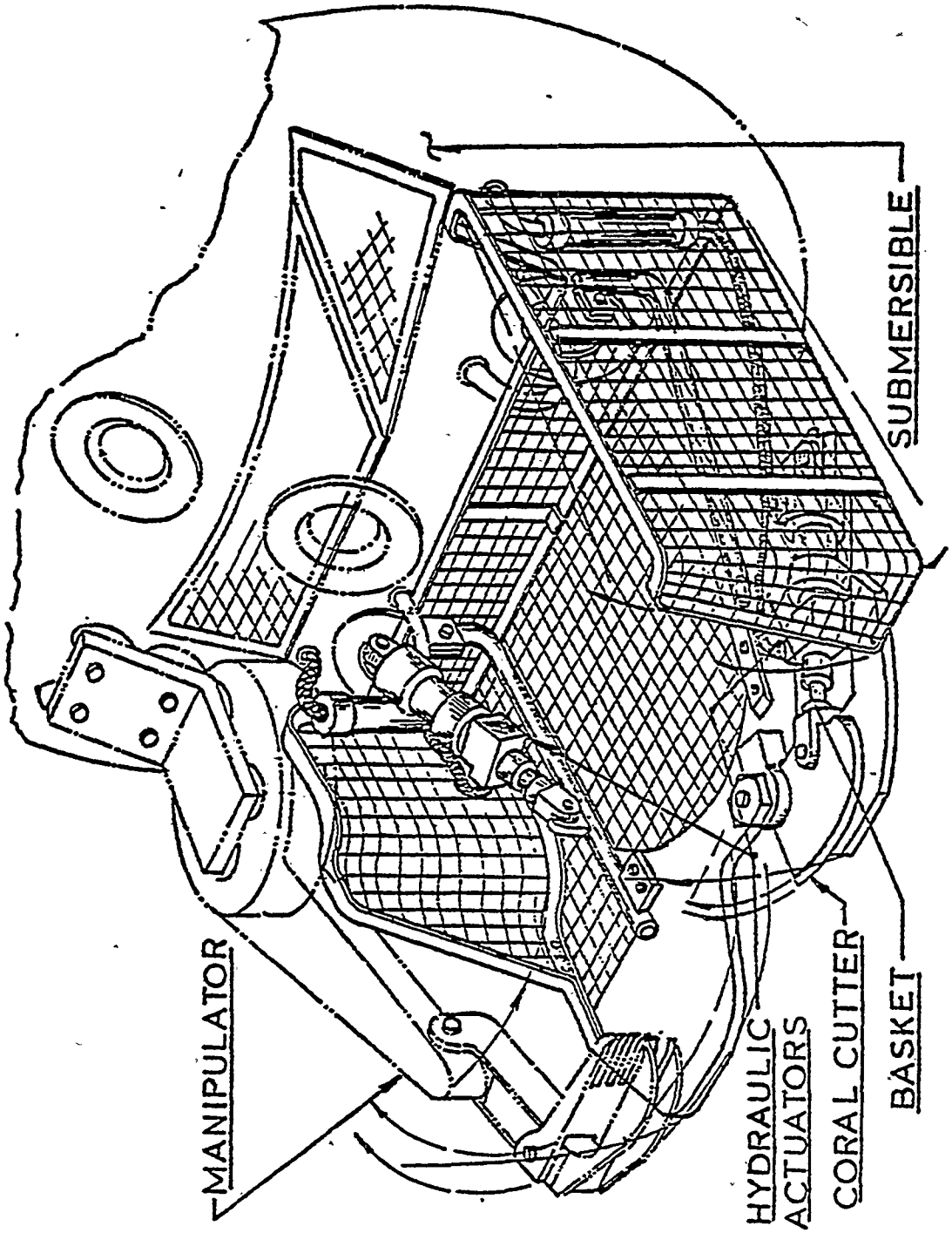

Figure 9. The coral harvesting system on the submersible Star II consists of a wire basket, cutter and hydraulic claw (manipulator).

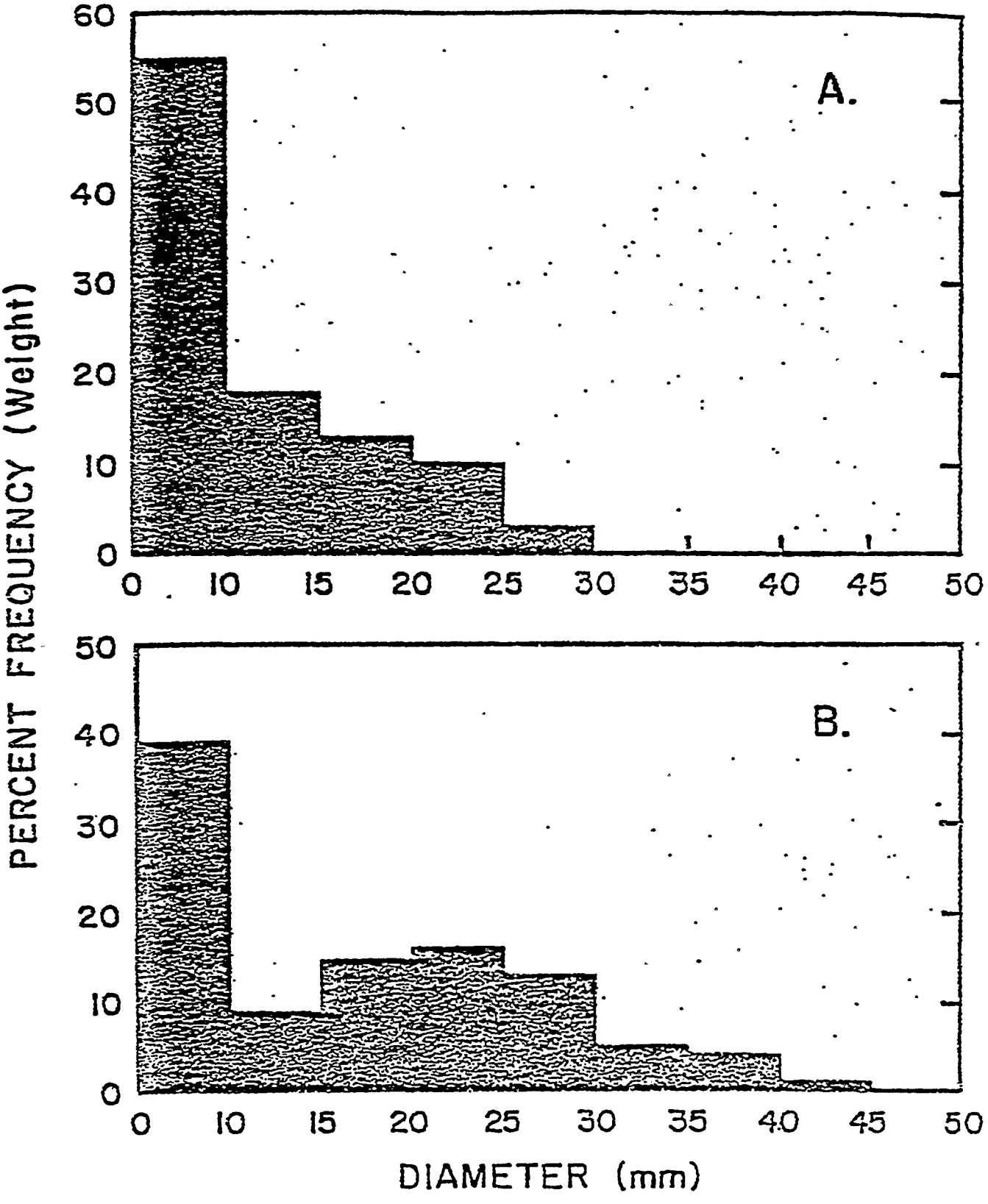

Figure 10. Size-frequency distribution of precious coral collected with tangle nets (A) and the submersible (B).

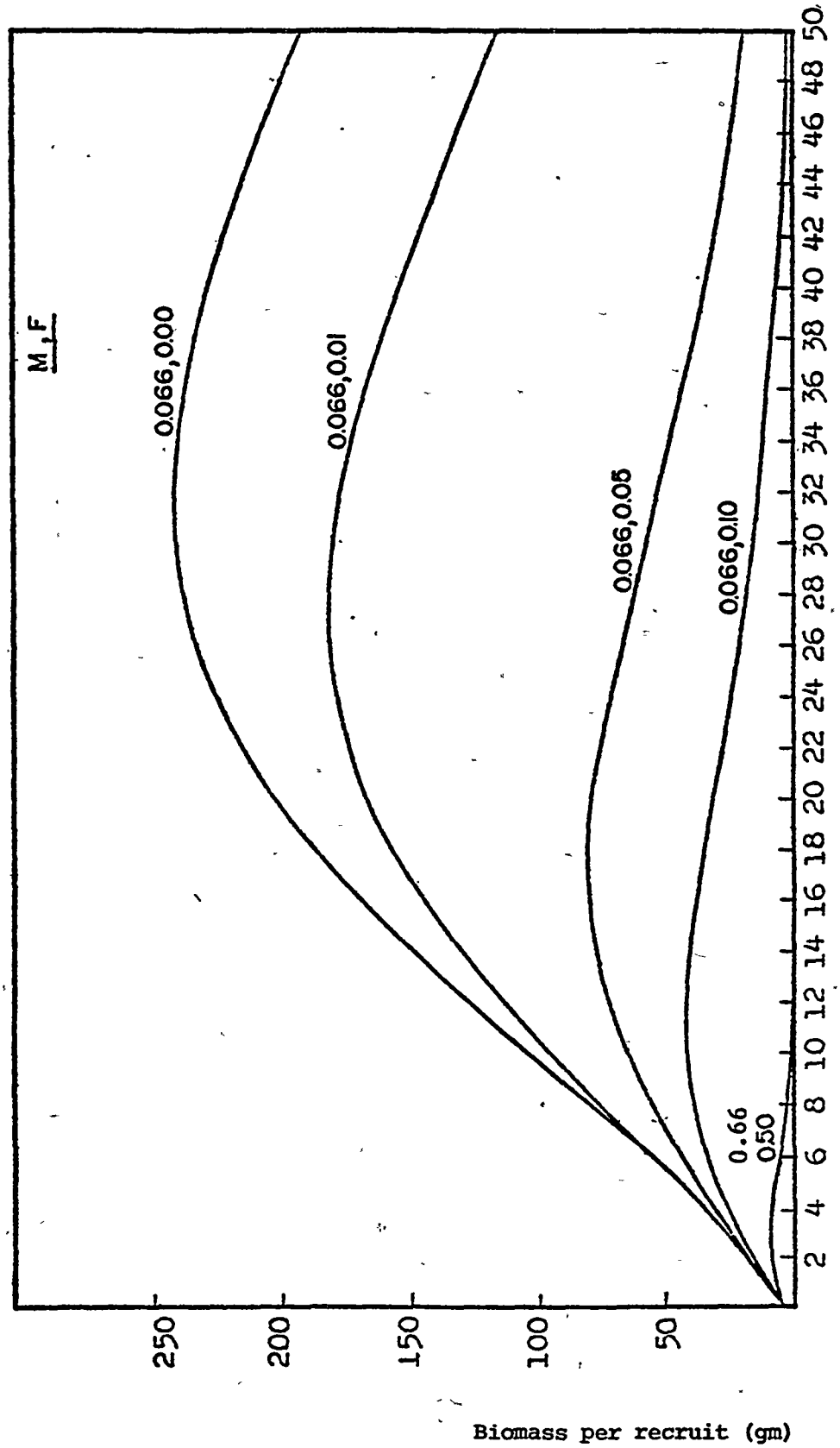

Figure 11. Biomass per recruit curves of *C. secundum* using a constant rate of natural mortality (M=0.066) and progressively increasing rates of fishing mortality (F) applied over all year classes. The age of entry into the fishery is zero, i.e. no age limit is applied.

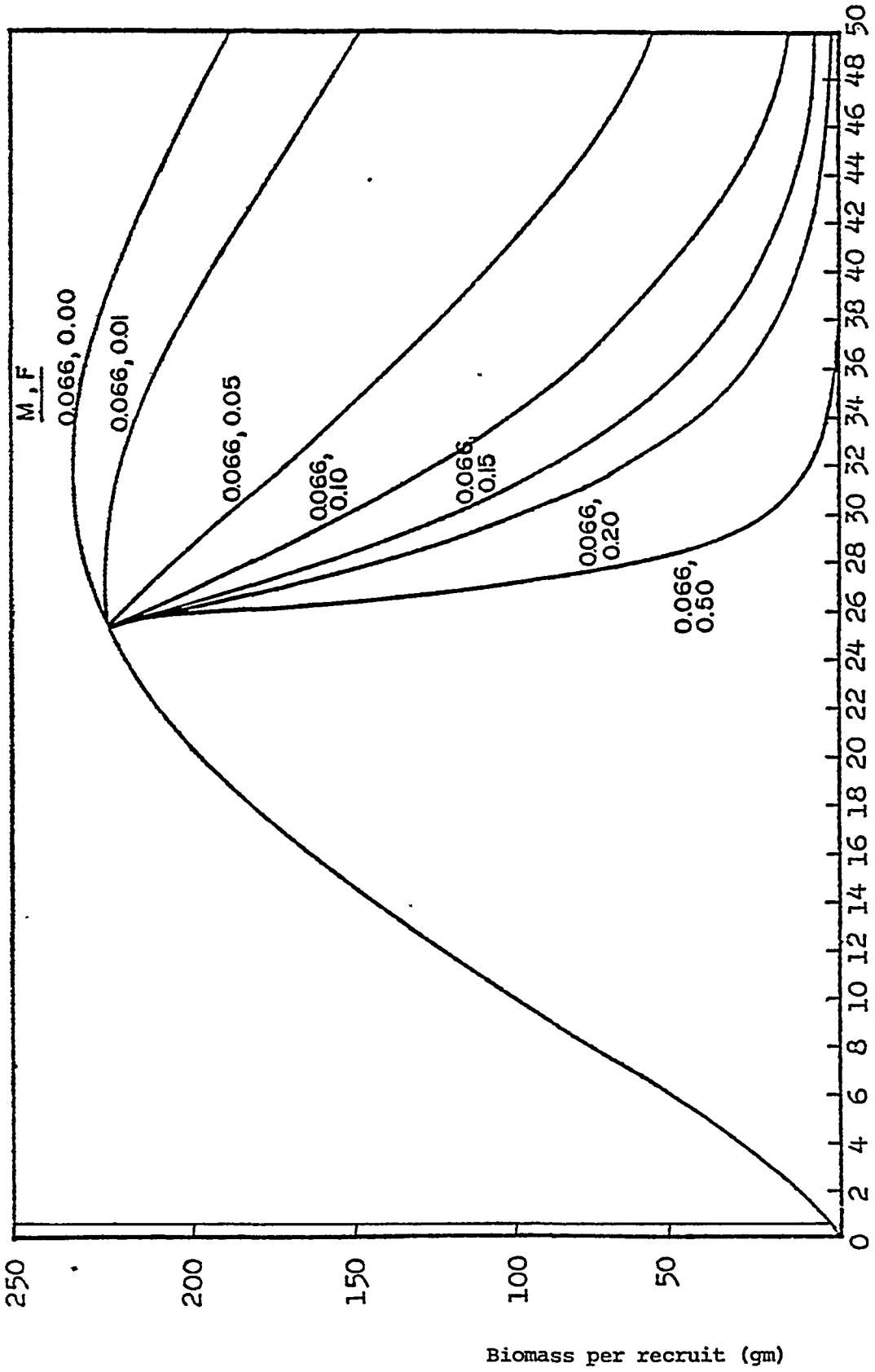

Figure 12. Biomass per recruit curves for a cohort of *C. soundum* using a constant rate of natural mortality (M=0.066) and progressively increasing rates of fishing mortality (F) applied after a minimum age of 25 years.

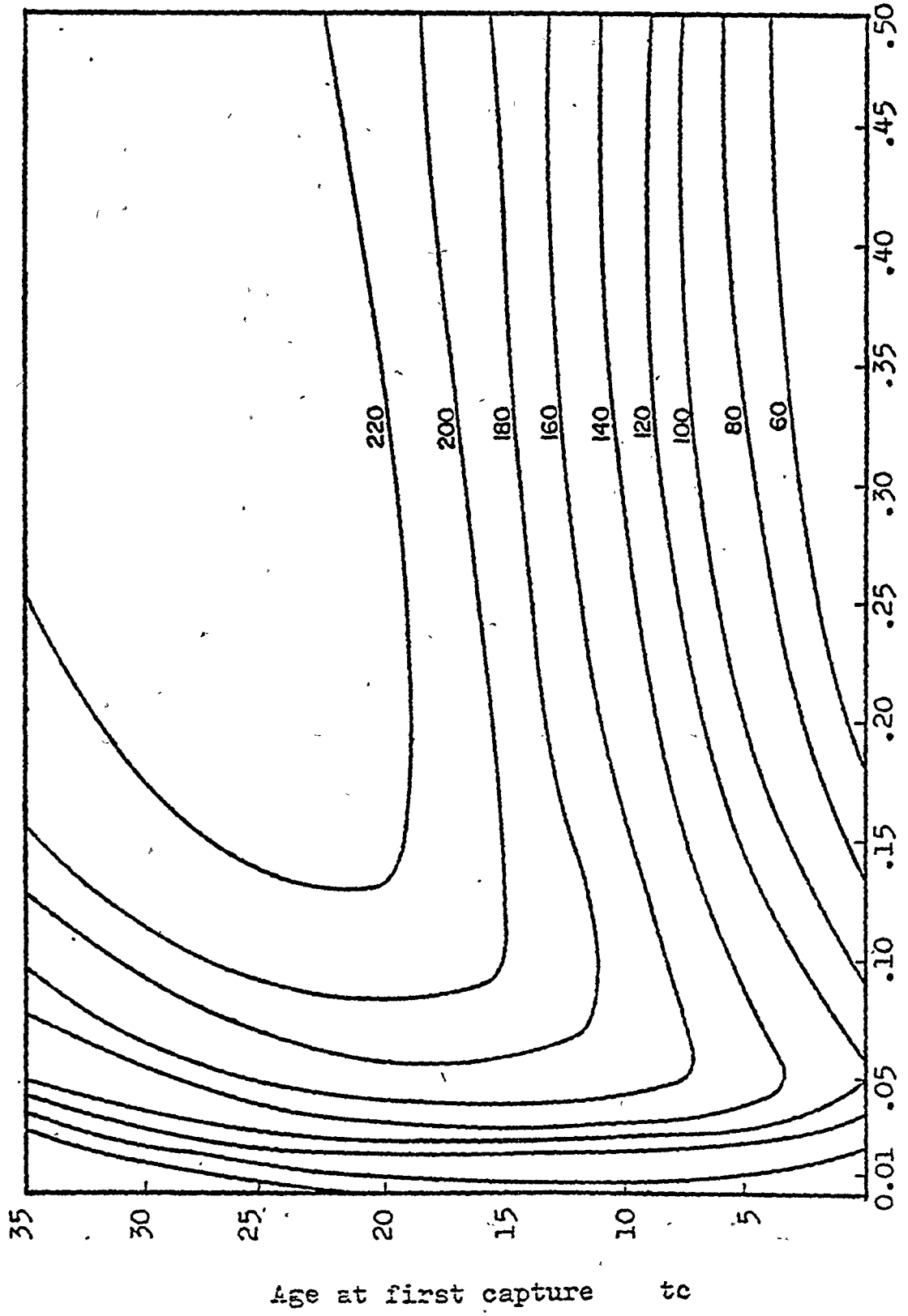

Figure 13. Yield per recruit isopleths for *C. seoudam* in the Makapuu Bed, given a constant rate of natural mortality of 0.066. Contour units are in grams per recruit.

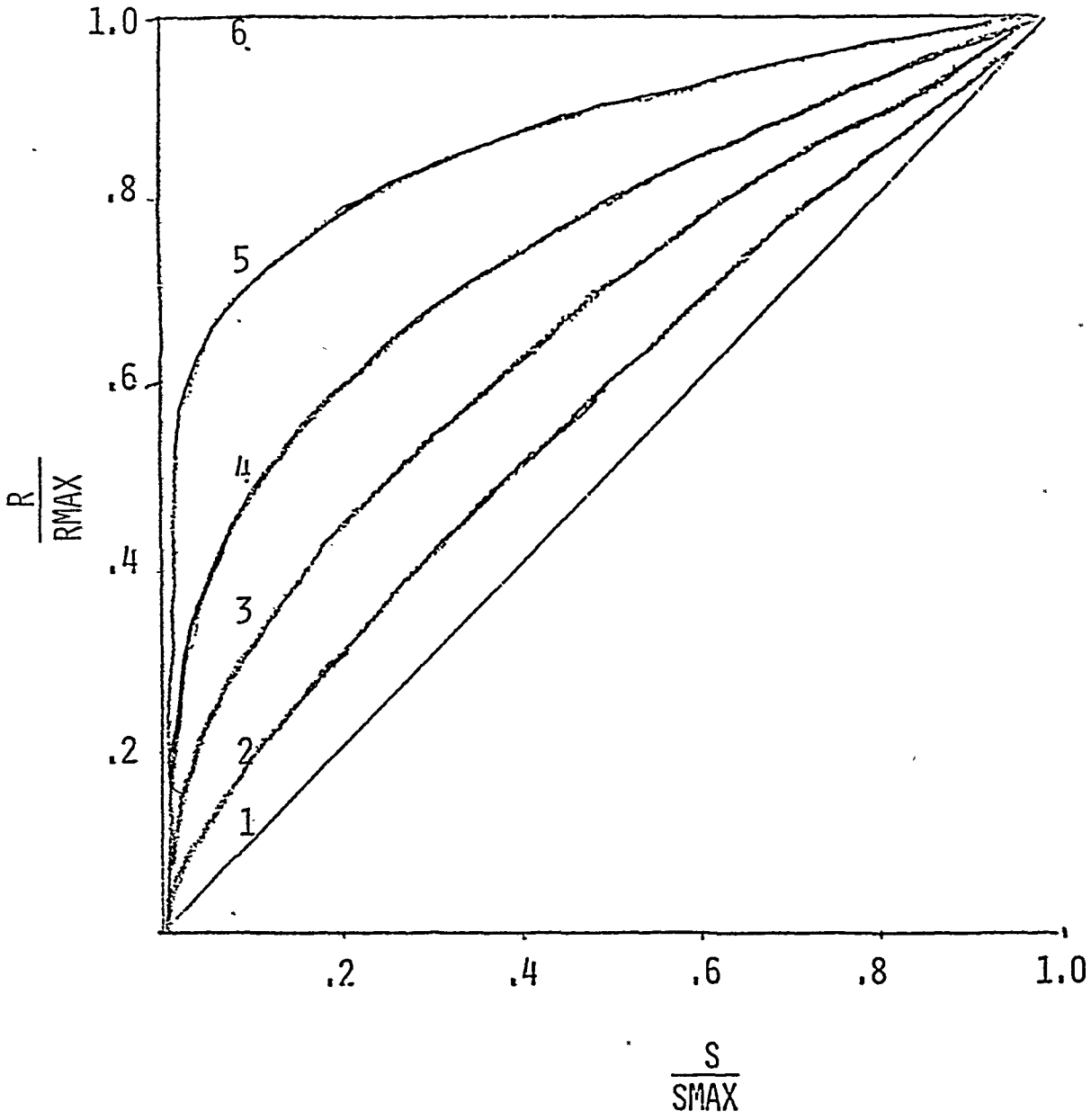

Figure 14. Various spawning stock recruitment functions.
Smax = original spawning stock
S = spawning stock after fishing
Rmax = original recruitment
R = recruitment after fishing

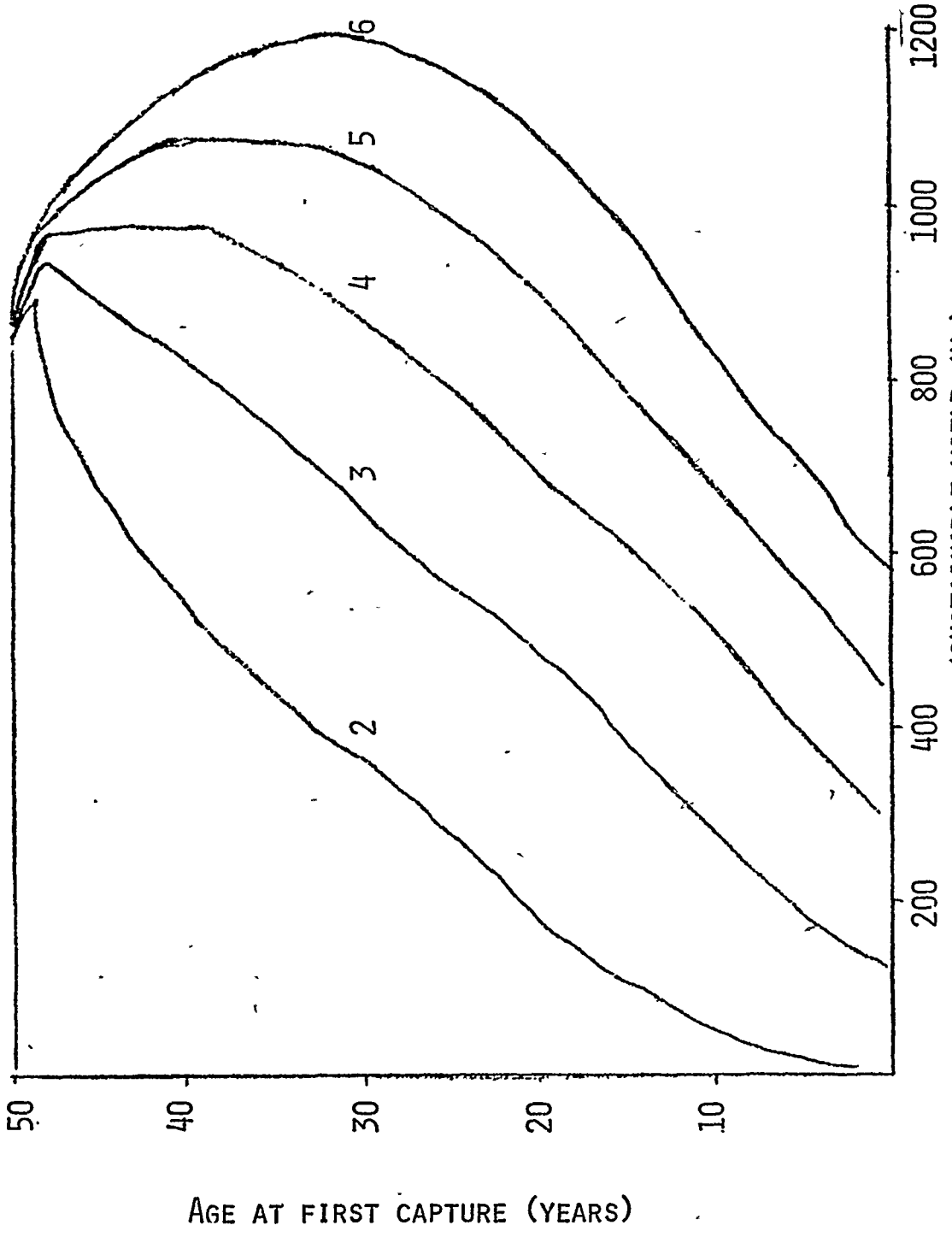

Figure 15. MSY of pink coral as a function of recruitment and age at first capture under various stock-recruitment models. Areas to the left of each curve show biologically feasible combinations of age at first capture and sustainable yield. The MSY curves (2 through 6) correspond to stock-recruitment options shown in Fig. 14.

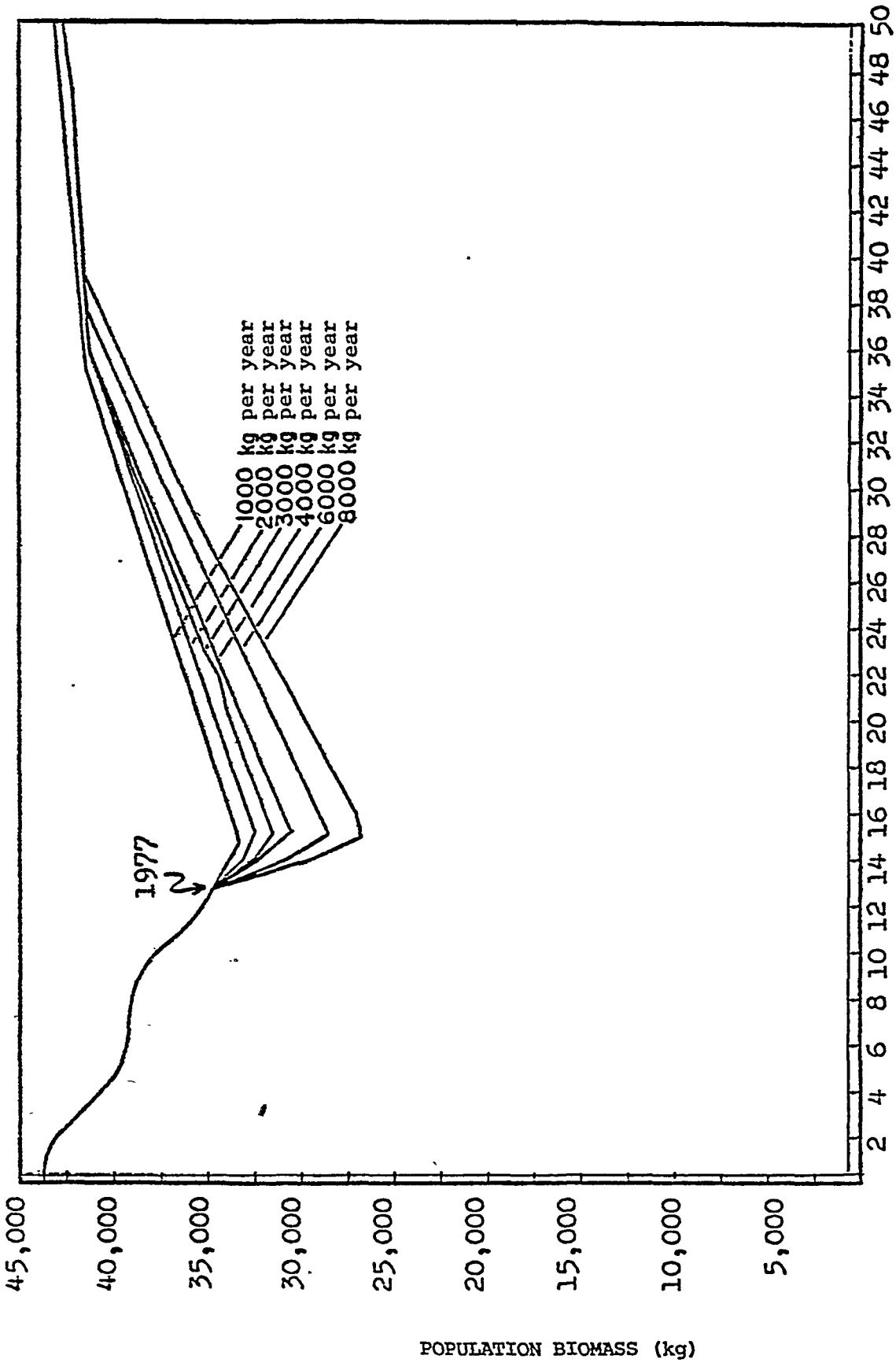

Figure 16. Population biomass of *C. secundum* in the Makapuu Bed between 1964 and 1977 and after 1977 given six different exploitation rates in 1978 followed by a complete closure of the bed.

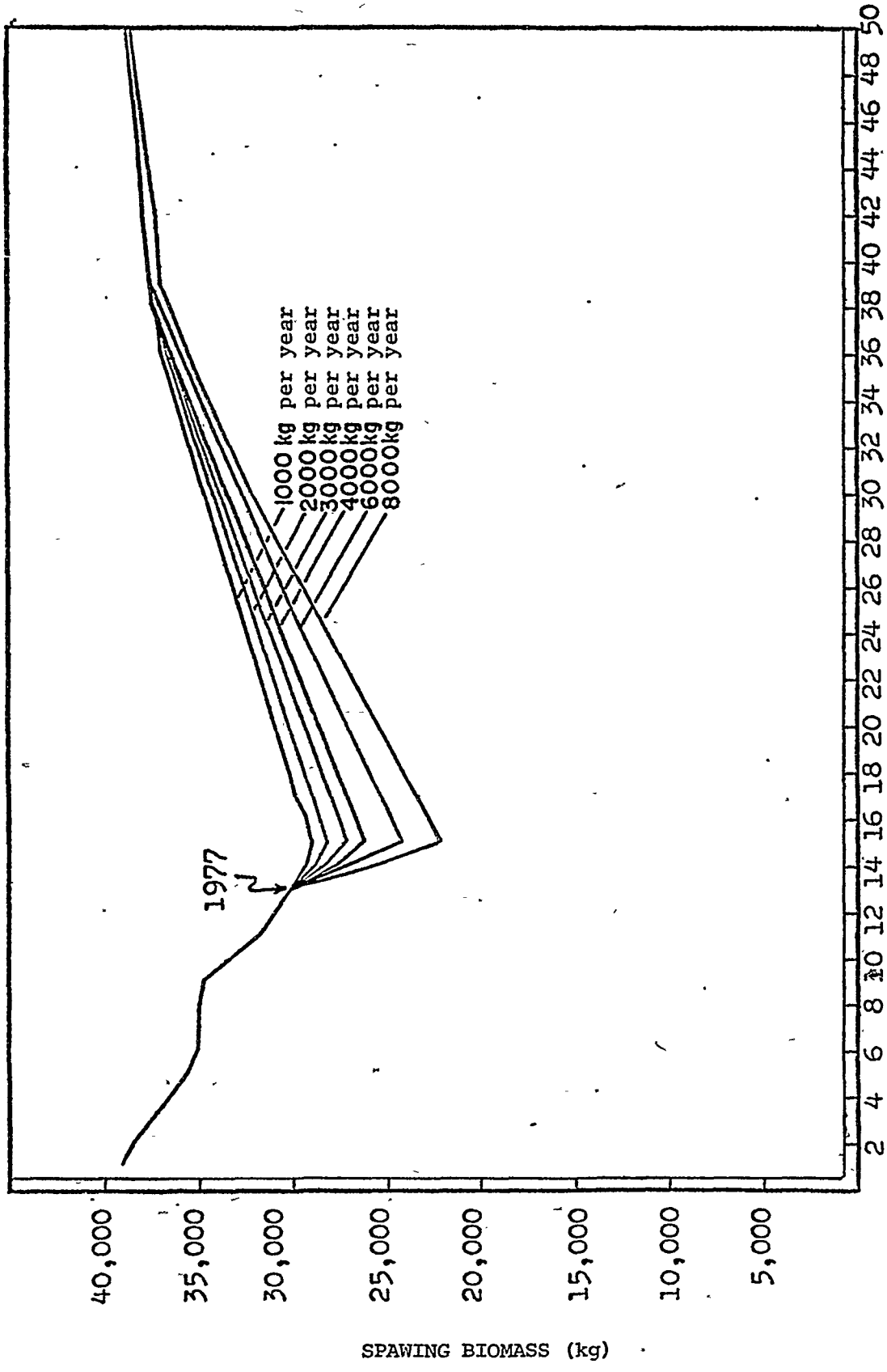

Figure 17. Spawning biomass of *C. secundum* in the Makapuu Bed between 1964 and 1977 and after 1977 given six different exploitation rates in 1978 followed by a complete closure of the bed.

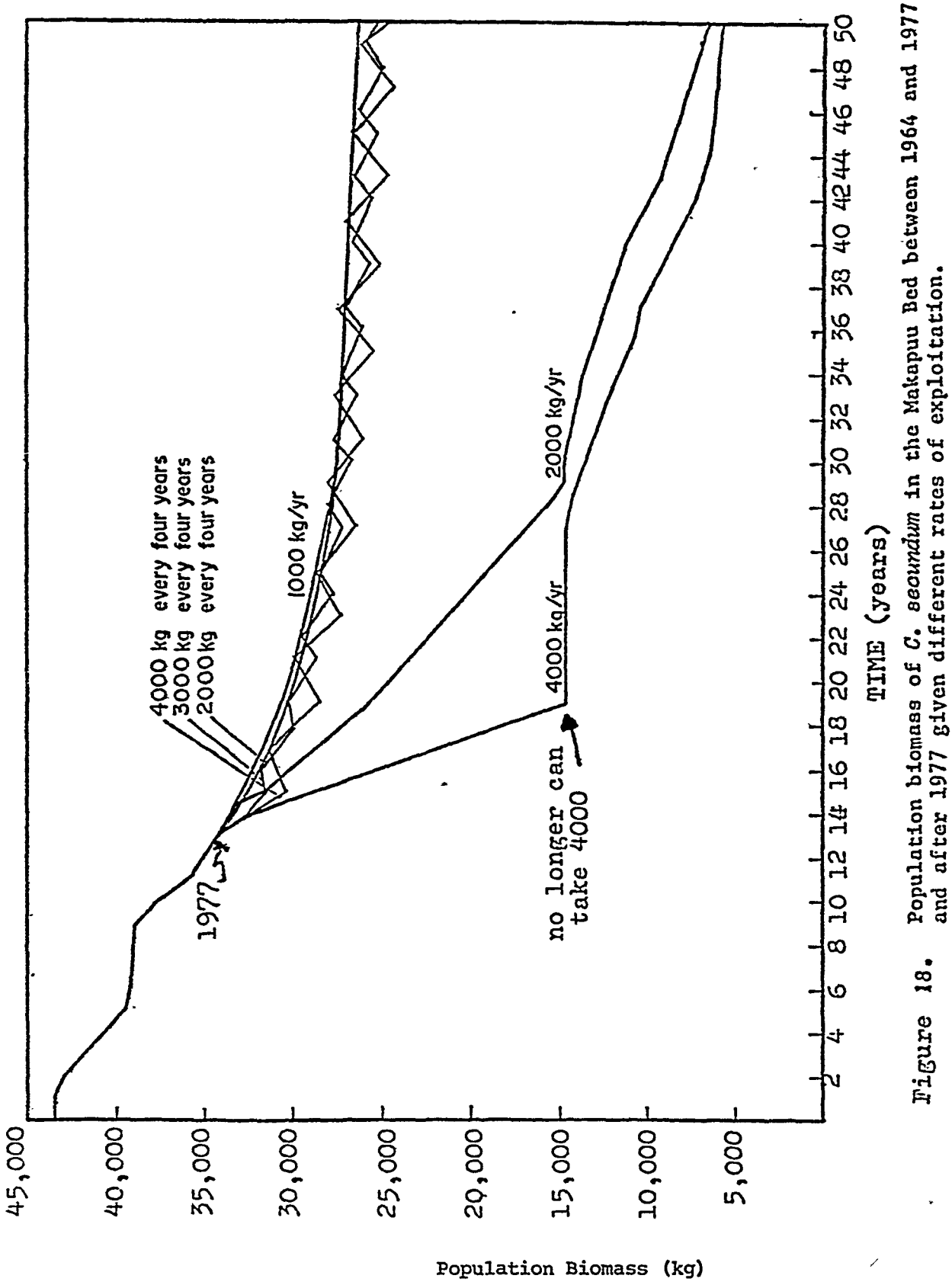

Figure 18. Population biomass of *C. secundum* in the Makapuu Bed between 1964 and 1977 and after 1977 given different rates of exploitation.

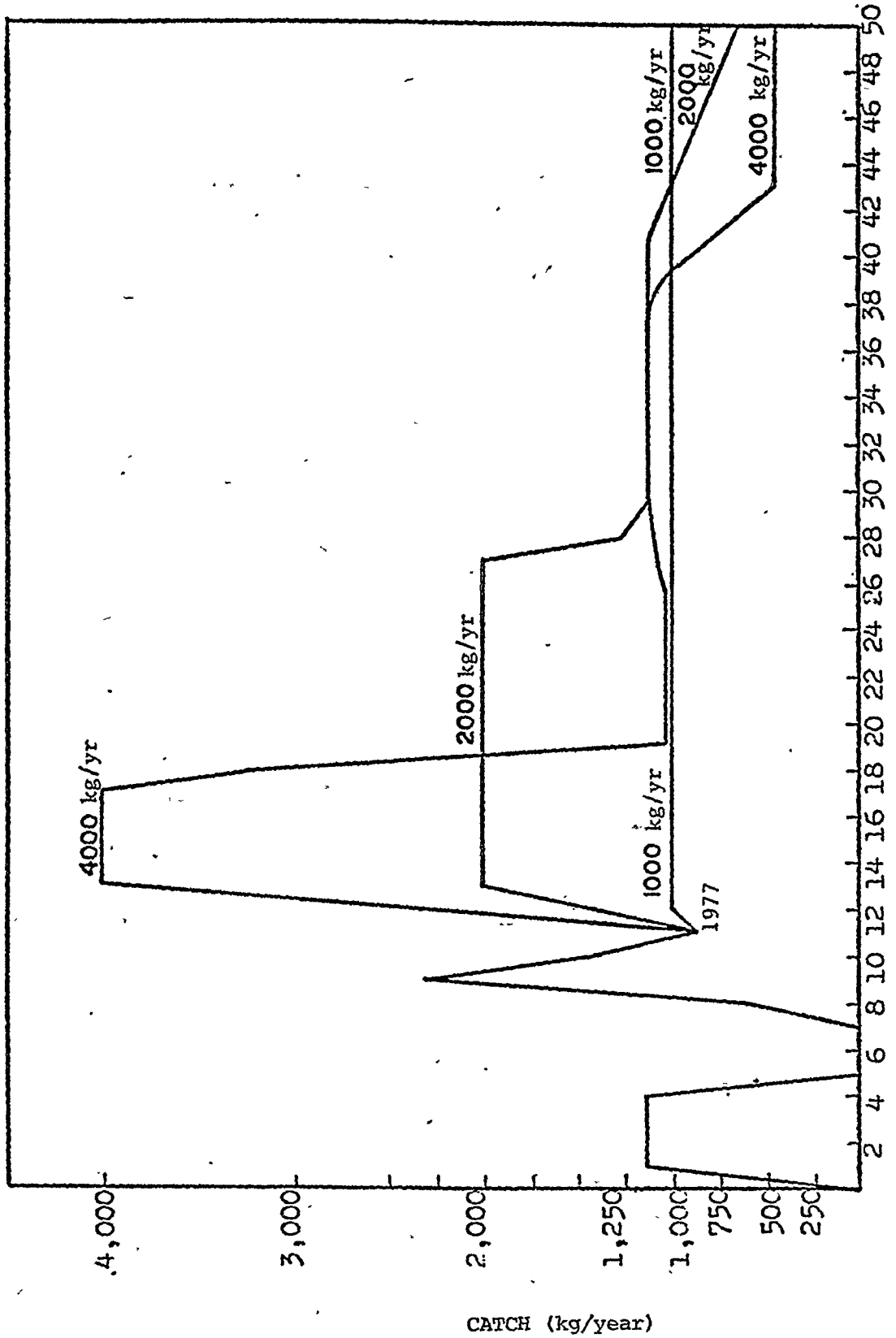

Figure 19. Yields of *C. secundum* in the Makapuu Bed between 1964 and 1977 after which different rates of harvest are simulated. See text for further explanation.

[FR Doc. 80-27801 Filed 9-12-80; 8:45 am]
BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 45, No. 180
Monday, September 15, 1980

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.

ARMS CONTROL AND DISARMAMENT AGENCY

Privacy Act of 1974; New System of Records

AGENCY: U.S. Arms Control and Disarmament Agency.

ACTION: Notification of the existence and character of a new system of records.

SUMMARY: The U.S. Arms Control and Disarmament Agency (ACDA) creates a new system of records identified as ACDA-16, Grievance Records—ACDA. The system of records will contain records relating to grievances filed by ACDA employees with ACDA.

EFFECTIVE DATE: This system shall become effective September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Oleszycki, Office of the General Counsel, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, 202-632-0760.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is deleting a government-wide system of records which formerly covered grievance records maintained by all agencies.

By memorandum of July 10, 1980 to all agencies the Office of Management and Budget (OMB) instructed each agency to establish a system of records to insure that grievance records will have continued coverage. ACDA is therefore establishing this system of records.

As this system of records merely duplicates OPM's system, except for changes necessary to incorporate the system into ACDA's systems of records, no report on a new system of records was provided to OMB, as permitted by the OMB Memorandum of July 10, 1980.

In order to save space and avoid duplication, ACDA designates routine uses which apply to more than one system of records in a "Prefatory Statement of Routine Uses" which is published as a preface to and part of the Agency's systems of records when those systems are published in their entirety. The systems of records to which each of these routine uses applies are indicated after that routine use, and by reference, in the description of routine uses which appears in the description of each system of records. The full text of the "Prefatory Statement of Routine Uses", as amended to reflect this new system of records, is set forth at the end of this document.

Accordingly, as required by 5 U.S.C. 552a(e)(4), the U.S. Arms Control and Disarmament Agency hereby gives notice of the existence and character of a new system of records: ACDA-16, Grievance Records—ACDA, as set forth below.

Dated: September 8, 1980.

James T. Hackett,
Administrative Director.

ACDA-16

SYSTEM NAME:

Grievance Records—ACDA

SYSTEM LOCATION:

Agency Headquarters, Department of State Building, 320 21st Street NW., Washington, D.C. 20451

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former ACDA employees who have submitted grievances with ACDA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to grievances filed by current or former ACDA employees with ACDA. The system contains all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2581.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Available to ACDA officials in the course of processing a grievance.

Additionally these records may be used:

To disclose information to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested;

To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court;

To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding;

To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

Also see the Prefatory Statement of Routine Uses; the routine uses numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9 apply to, and are incorporated by reference into, this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in standard file folders.

RETRIEVABILITY:

Filed by last name.

SAFEGUARDS:

Maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of three years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Officer, Room 5720.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, they may contact the Privacy Act Officer, Room 5534, regarding the existence of such records on them.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a

copy of the record under the grievance process. However, after the action has been closed, an individual may contact the Privacy Act Officer, Room 5534, for access to the official copy of the file.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the Privacy Act Officer, Room 5534.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related correspondence from organizations or persons.

Prefatory Statement of Route Uses

The following uses apply to, and are incorporated by reference into, each system of records as indicated in the parenthesis which follows each routine use:

1. Disclosure may be made to a congressional office as a routine use from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. (All ACDA systems of records)

2. A record from this system of records may be disclosed to officers and employees of a Federal agency for purposes of audit. (All ACDA systems of records)

3. A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA. (All ACDA systems of records)

4. In the event that these records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto. (ACDA systems of records—numbers 1, 2, 3, 5, 6, 8, 9, 13, 14, 15, 16)

5. A record from this system of records may be disclosed as a routine use to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit. (ACDA systems of records—numbers 1, 2, 3, 5, 6, 8, 9, 13, 14, 15, 16)

6. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. (ACDA systems of records—numbers 1, 2, 3, 5, 6, 8, 9, 13, 14, 15, 16)

7. A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. (ACDA systems of records—numbers 1, 3, 5, 6, 8, 13. 14. 16)

8. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with that agency's responsibility for evaluation and oversight of Federal personnel management. (ACDA systems of records—numbers 1, 2, 3, 8, 13, 14, 16)

9. The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that circular. (ACDA systems of records—numbers 1, 3, 8, 13, 14, 15, 16)

[FR Doc. 80-28339 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-32-M

Senior Executive Service Performance Awards

AGENCY: U.S. Arms Control and Disarmament Agency.

ACTION: Notice of schedule for paying Senior Executive Service performance awards.

SUMMARY: The Agency plans to pay Senior Executive Service performance awards on approximately September 30, 1980.

FOR FURTHER INFORMATION CONTACT: James T. Hackett, Administrative Director, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, (202) 632-3708.

Pursuant to paragraph 3.(b) of Office of Personnel Management memorandum to heads of departments and agencies dated July 21, 1980, the U.S. Arms Control and Disarmament Agency hereby gives notices that it has scheduled payment of Senior Executive Service performance awards for September 30, 1980, or as soon thereafter as practicable.

Dated: September 9, 1980.

James T. Hackett,

Administrative Director.

[FR Doc. 80-28279 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-32-M

CIVIL AERONAUTICS BOARD

[Docket 37497; Order 80-9-32]

Alaska Airlines, Inc.; Order Fixing Final Service Mail Rates

September 8, 1980.

By Order 80-8-75, served August 18, 1980, we directed all interested persons, particularly Alaska Airlines, Inc. and the Postmaster General, to show cause why the Board should not adopt the proposed findings and conclusions and fix, determine and publish the final rates proposed therein.

The time designated for filing notice of objection has elapsed and no person has filed a notice of objection or answer to the order. All persons have therefore waived the right to a hearing and all other procedural steps short of fixing a final rate.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, the Board's Procedural Regulations promulgated in 14 CFR, Part 302, and the authority delegated by the Board in its Organization Regulations, 14 CFR 385.16(g).

1. We make final the tentative findings and conclusions set forth in Order 80-8-75.

2. The fair and reasonable final rates of compensation to be paid in their entirety by the Postmaster General pursuant to the provisions of Section 406 of the Federal Aviation Act of 1958, as amended, for the period from January 26, 1980, through December 31, 1980, to Alaska Airlines, Inc. for the transportation of mail by aircraft over its intra-Alaska routes, the facilities used and useful therefor, and the services connected therewith, shall be $2.2835 per great-circle ton-mile for priority mail and $2.0999 per great-circle ton-mile for nonpriority mail.

3. Alaska, by notice, may elect to transport mail between points for which rates here established are applicable at a reduced rate equal to the rate then in effect for such service between such points by any other carrier or carriers.

(a) An original and three copies of each notice of election and agreement shall be filed with the Board and a copy thereof shall be served upon the Postmaster General and each carrier providing service between the stated points. Such notice shall contain a complete description of the reduced charge being established, the routing over which it applies, how it is constructed and shall similarly describe the charge with which it is being equalized.

(b) Any rate established shall be effective for the electing carrier or carriers on the date of filing of the notice, or such later date as may be specified in the notice, until such election is terminated. Elections may be terminated by any electing carrier upon ten days notice filed with the Board and served upon the Postmaster General and each carrier providing service between the stated points.

4. The fair and reasonable temporary rates of compensation to be paid in their entirety by the Postmaster General to Alaska Airlines, Inc. for the transportation of mail by aircraft in intra-Alaska service on and after January 1, 1981, until further Board order are the final rates established for the period January 26, 1980, through December 31, 1980.

5. We shall serve a copy of this order upon the Postmaster General and Alaska Airlines, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten (10) days after the service date of this order.

We shall make this order effective and an action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

We shall publish this order in the Federal Register.

By Julien R. Schrenk, Chief, Domestic Fares and Rates Division, Bureau of Domestic Aviation.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-28404 Filed 9-12-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 20244]

Aloha Airlines, Inc., Subsidy Mail Rates; Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on October 6, 1980, at 10:00 a.m. (local time), in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C. 20428.

Dated at Washington, D.C., September 9, 1980.

William A. Pope II,

Administrative Law Judge.

[FR Doc. 80-28405 Filed 9-12-80; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended September 5, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed, docket No., and description

9-3-80 38671 Air Midwest, Inc., c/o Nathaniel P. Breed, Jr., Shaw, Pittman, Potts, & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036. Application of Air Midwest, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its certificate for Route 175 so as to modify Condition (3) of that certificate to eliminate the existing mandatory one-stop restriction on operations between Wichita and Kansas City. Conforming Applications and Answers may be filed September 17, 1980.

9-4-80 38673 Capitol International Airways, Inc., c/o Lawrence D. Wasko, Seamon, Wasko, & Ozment, 1211 Connecticut Avenue, N.W., Suite 300, Washington, D. C. 20036.

Application of Capitol International Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its certificate of public convenience and necessity to engage in air transportation of persons, property and mail between any point or points in the United States, on the one hand, and any point or points in France, including specifically authority to operate between the coterminal points Chicago, Illinois and New York, N.Y./Newark, N.J. and the terminal point Paris, France.

Conforming Applications and Answers are due October 2, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-28407 Filed 9-12-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38690; Order 80-9-39]

Denver-Sioux Falls Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order To Show Cause (80-9-39) Docket 38690.

SUMMARY: The Board is proposing to award nonstop air route authority between Denver and Sioux Falls to Ozark Air Lines, Continental Air Lines and Frontier Airlines under expedited show-cause procedures. Ozark's application involves the removal of a one-stop restriction; the conforming applications filed by Continental and Frontier involved award of a new segment. The tentative findings and conclusions will become final if no objections are filed.

The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by October 10, 1980, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings should be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 38690, which we have entitled the *Denver-Sioux Falls Show-Cause Proceeding.* They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on all certificated carriers; Air U.S.; Colorado Airlines; Fort Collins Flying Service; Pioneer Airways; Rocky Mountain Airways; Shawnee Air; Star Airways; Sterling Air Service; South Dakota Department of Transportation, Division of Aeronautics; Governor of Colorado; Mayor of Denver; Mayor of Sioux Falls; Airport Manager, Stapleton International Airport; and Airport Manager, Sioux Falls Municipal Airport.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5198.

SUPPLEMENTARY INFORMATION: The complete text of Order 80-9-39 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 80-9-39 to that address.

By the Bureau of Domestic Aviation:
September 8, 1980.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-28406 Filed 9-12-80; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antelope Valley Medical Center; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket number: 80-00098. Applicant: Antelope Valley Medical Center, 1600 West Avenue J., Lancaster, California 93534. Article: Diagnostic Ultrasound Instrument. Manufacturer: Ausonics, Ltd., Australia. Intended use of article: The article is intended to be used for the study of the reflection characteristics of a variety of tissues within the body by computer analysis of the amplitude, scattering characteristics and frequency content of signals emanating from specific targets. In addition, the article will permit large image reconstruction of the heart at selected phases of the cardiac cycle to provide static images of structure position or in a motion format which will provide dynamic information concerning the movement of structures. The unique features of the article will permit rapid and accurate calculation of the volume of organs as well as the display of structures in 3-dimension using a computerized facility. Resident physicians will have continuous exposure to the results obtained from the above research.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a wide field of view using eight transducers, resolution of at least 500 lines, and better spatial precision of the automated scan. The Department of Health, Education and Welfare advises in its memorandum dated May 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,
Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-28337 Filed 9-12-80; 8:45 am]
BILLING CODE 3510-25-M

Medical University of South Carolina; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket number: 80-00097. Applicant: Medical University of South Carolina, 171 Ashley Avenue, Charleston, South Carolina 29403. Article: LeVeen Thermotherapy Unit. Manufacturer: Industrial Development Group, University of North Wales, United Kingdom. Intended use of article: The article is intended to be used for the purpose of heating tumors (malignant) which are inoperable and cannot be treated by any other method.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides uniform RF heating of an entire body region with good control and safety features. The Department of Health, Education and Welfare advises in its memorandum dated May 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-28336 Filed 9-12-80; 8:45 am]

BILLING CODE 3510-25-M

Pennsylvania State University; Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket number 80-00051. Applicant: The Pennsylvania State University, Department of Chemistry, Whitmore Laboratory, University Park, PA 16802. Article: Laser, TEA-103-2 CO_2. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: The article is intended to be used for investigations of the infrared multiphoton decomposition of monosilane, disilane and halogenated derivatives thereof.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 79-00207 which was denied without prejudice to resubmission on August 24, 1979 for informational deficiencies. The foreign article provides a pulse energy of 15 joules per pulse. The National Bureau of Standards advises in its memorandum dated April 29, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Programs No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-28333 Filed 9-12-80; 8:45 am]

BILLING CODE 3510-25-M

State University of New York/ Binghamton; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket number: 80-00063. Applicant: State University of New York at Binghamton, Department of Chemistry, Vestal Parkway East, Binghamton, New York 13901. Article: K-261-2 Breadboard Model Rare Gas Halide Laser. Manufacturer: Lumonics Research Limited, Canada. Intended use of article: The article is intended to be used in connection with the development of a power supply and gas handling system in a laser lab to complete the laser which will serve to study materials known to photo-dissociate. Materials such as hemoglobin, dioxetane and diazomethane derivatives will be studied with the laser either as a nitrogen laser or as an excimer laser. The experiments to be conducted will consist of photolyzing crystals containing the chemicals above at low temperatures with the laser and examining the changes in magnetic properties that accompany the photochemical dissociation. In addition, the article will be used in the undergraduate courses: Independent Study and graduate courses called Thesis Research, Predissertation Research or Dissertation Research.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 79-00196 which was denied without prejudice to resubmission on August 24, 1979 for informational deficiencies. The foreign article is a rare gas halide laser mounted on an open metal base and requiring the user's development of a power supply and gas handling system. The breadboard specification affords students research experience in the development of lasing system. The National Bureau of Standards advises in its memorandum dated May 6, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-28334 Filed 9-12-80; 8:45 am]

BILLING CODE 3510-25-M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket number: 80-00090. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 S. Cass Avenue, Argonne, Illinois 60439. Article: System Teknik High Precision Digital Temperature Meter. Manufacturer: Automatic Systems Laboratories, United Kingdom. Intended use of article: The article is intended to be used to provide accurate temperature compensation for a very minute plastic deformation measurement to obtain necessary engineering data on the plastic deformation of 20% cold-worked Type 316 stainless steel for designing

safe reliable and economical liquid-metal-fast-breeder-reactors.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article resolves temperature fluctuations as small as 0.001° Centigrade and is equipped with TTL (transistor-transistor-logic) inputs and outputs. The National Bureau of Standards advises in its memorandum dated May 5, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-28338 Filed 9-12-80, 8:45 am]

BILLING CODE 3510-25-M

University of Southern California; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket number: 80-00040. Applicant: University of Southern California, Department of Chemistry, University Park, Los Angeles, CA 90007. Article: High Intensity Light Source Equipment. Manufacturer: Photochemical Research Assoc., Canada. Intended use of article: The article is intended to be used for research in inorganic photochemistry. More specifically, for measurements of the heat of photochemical reactions.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article regulates current variation to less than 0.1 percent (%) for as much as 10% voltage change and controls optical ripple to 0.1% peak to peak for short term use and 2% for long term use (defined as four to eight hours). The National Bureau of Standards advises in its memorandum dated May 2, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-28335 Filed 9-12-80; 8:45 am]

BILLING CODE 3510-25-M

Office of the Secretary

Cooperative Generic Technology Program

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Invitation for proposals.

SUMMARY: The Secretary of Commerce announces proposed availability of fiscal year 1981 funds for the establishment of Cooperative Generic Technology Centers, pursuant to 15 CFR 17a.6. Proposals will be considered in the following areas:

—Computer Integrated Manufacturing (CIM)—focusing on Near Net Shape Processing

—Computer Integrated Manufacturing—focusing on Artificial Intelligence.

Projects will be funded through grants. The Department of Commerce has received several unsolicited proposals for the establishment of Centers; the authors of those proposals are invited to resubmit their proposals under this invitation.

EFFECTIVE DATE: The deadline for proposals is October 10, 1980.

ADDRESS AND KEY CONTACT: For further information, contact Mr. Frederick L. Haynes, Department of Commerce, 14th & Constitution Avenue NW, Room 3520 Washington, D.C. 20230. Telephone (202) 377-5905.

SUPPLEMENTARY INFORMATION: A. *Procedures and Proposal Requests:* The Cooperative Generic Technology Program procedures are set forth at 15 CFR Part 17a (45 FR 54028, August 14, 1980). That portion which addresses the requirements for the contents of proposals is set forth at 15 CFR 17a.8 and is reproduced below:

§ *17a.8 Content of Proposals.*

Each proposal for the establishment of a Center shall contain the following:

(a) A completed *cover sheet* applying for Federal Assistance, SF-424, as described in OMB Circular A-110, Attachment M.

(b) *Corporate Charter and By-laws,* showing that the organization has been established, or will be established, as a nonprofit corporation, and listing the sponsoring individuals.

(1) Each Center's by-laws shall state that the governing board of the Center will ensure fair representation of the interests of all members. No Federal employees will be eligible to serve on a governing board in any capacity.

(2) The Center's by-laws shall also provide that:

(i) Membership in a Center shall be open to all interested domestic persons.

(ii) Dues will be assessed by a formula which considers such factors as:

(A) Overall size of each member;

(B) Volume of activity relevant to the Center's technology;

(C) The member's directness of interest;

(D) A prorated share of the cost of research previously conducted by the Center.

(iii) Membership in a Center may not be conditioned upon adherence to agreements which unreasonably restrain trade. Prohibited agreements shall include:

(A) Restrictions upon members' operational use of technical information or patents developed by the Center;

(B) Restrictions upon independent research conducted by individual members; and

(C) Restrictions upon the use, by individual members, of technology developed outside the Center.

(iv) A Center will not serve as a means for sharing confidential business data among members. Should research or development require the use of such data, it shall be collected either by employees of the Center, or by some independent entity. In no event will such

information be shared with the source's competitors in a form which would allow identification of individual firms.

(v) The Center shall make technical information, resulting from the Center's research activities available to all members at a reasonable cost without discrimination. Terms and conditions of dissemination to nonmembers of the Center shall be at the discretion of the Board; however, the Board shall be governed by the consideration that no significant anticompetitive result ensue from such decisions.

(c) *The Site and Organizational Affiliations* of the proposed Center.

(d) *A Center Organization Plan,* which will describe the Center's activities in these major areas:

(1) In-house R&D;

(2) Technical Services, including:

(i) Consulting and technical services;

(ii) Information system services;

(iii) Training;

(iv) Technology evaluation;

(3) Strategic planning.

(4) The Organizational Plan will include the following for each Center function listed above:

(i) Budget;

(ii) Equipment requirements;

(iii) Personnel requirements;

(iv) Facility requirements;

(v) Major milestones;

(vi) Expected outputs.

(e) *Overall Center Budget and Funding Plan,* covering the first five years of Center operation. This plan should indentify the funding sources and indicate how these funds will be spent. Institutional support for the Center operations will be funded by membership dues, sales of technical services, and government supplements that will decline over a number of years.

B. *Criteria for Selection of Proposals*: Criteria for the selection of proposals are set forth at 15 CFR 17a.10:

§ 17a.10 Criteria for Selection of Center Proposals

(a) The Secretary may select one or more proposals for funding which best meet the following criteria:

(1) The breadth and extent of the base of sponsors committed to collaborate in the work of a center, including the likelihood of operation of the center independent of government support after a reasonable period of time.

(2) The degree of center operation's enhancement of industry structure and competition.

(3) The comprehensiveness of coverage of the requirements in Section 17a.8.

(4) Availability of funds, and program priorities.

C. *Proposals for the Establishment of Centers Within Existing Nonprofit Organizations*: 15 CFR 17a.9 provides that:

(a) The Secretary may waive the requirement of Section 17a.8(b) that a center be established as an independent nonprofit organization under the following circumstances:

(1) If the organization is an independent entity within an existing nonprofit organization, and

(2) If the management and direction of the Center is controlled by the sponsoring firms.

(b) Organizations qualified under this section must meet all the requirements of Section 17a.8(b) paragraphs (1) and (2).

D. *Limitation*: The Department of Commerce reserves the right to fund none, one or several center proposals under this invitation, depending upon availability of funds and evaluation of proposals. In addition, approval of any proposal for funding is contingent upon review by the Antitrust Division, Department of Justice.

Issued: September 10, 1980.

Jordan J. Baruch,

Assistant Secretary, Productivity Technology and Innovation.

[FR Doc. 80-28297 Filed 9-12-80; 8:45 am]

BILLING CODE 3510-18-M

Patent and Trademark Office

Designation of International Depository Authorities Under the Budapest Treaty

The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure came into force on August 19, 1980 with respect to the United States, Bulgaria, France, Hungary, and Japan. A copy of the Treaty was published in the Official Gazette on August 23, 1977 (961 O.G 21–26).

This Treaty authorizes each State for which the Treaty is in effect to designate a depository on its territory to serve as an international depository authority. More than one depository may be designated. Each such depository will be authorized to receive and store deposits, and dispense samples thereof, in compliance with the Treaty and the patent laws of each State adhering thereto. The Treaty is open for adherence by any member State of the Paris Union for the Protection of Industrial Property.

The Commissioner of Patents and Trademarks hereby solicits requests from private and public depositories located in the United States to serve as international depository authorities. Requests should be addressed to: Sidney A. Diamond, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Each request must explain and, to the extent practicable, provide evidence of the depository's capacity to meet the obligations of the Treaty. Such request must also include an offer by the depository to assume the cost of transferring deposits made under the Treaty to another international depository authority in the event of default of any of its Treaty obligations. The availability of funds for such transfer, if needed, must be available through a bond, special reserve fund, escrow or other means judged suitable by the Commissioner.

Requests will be promptly evaluated by the Commissioner of Patents and Trademarks, and each requesting depository promptly notified of the decision reached. Questions or inquiries concerning this notice may be addressed to the Office of Legislation and International Affairs, at the following address: Box 4, Commissioner of Patents and Trademarks, Washington, D.C. 20231. The telephone number of the Office of Legislation and International Affairs is (703) 557–3065.

The World Intellectual Property Organization, in Geneva, Switzerland, the Secretariat for the Paris Union, has provided a memorandum explaining the role and obligations of international depository authorities. This memorandum is reproduced below for the guidance of depositories in requesting recognition as an international depository authority.

Memorandum.—For the Purposes of Prospective International Depositary Authorities Under the Budapest Treaty

Introduction

1. This memorandum contains information for the benefit of any depositary institutions (culture collections) that may wish to become "international depositary authorities" under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (done at Budapest on April 28, 1977). Its brevity is such that it cannot be exhaustive. Any interested person requiring full information should refer to the relevant provisions of the Budapest Treaty and the Regulations under it (any reference hereinafter to an "Article" or to a "Rule" is a reference to an Article of the Budapest Treaty or to a Rule of the Regulations under it).

Objectives of the Budapest Treaty

2. Disclosure of the invention is a generally recognized requirement for the grant of patents (for the purposes of this memorandum, the word "patent" also covers other titles of protection, such as inventors' certificates). Normally, an invention is disclosed by means of a written description. Where an invention involves the use of a microorganism that is not available to the public, such a description is not sufficient for disclosure, since the invention could not be used by a person skilled in the art. That is why in the patent procedure of an increasing number of countries it is necessary not only to file a written description but also to deposit, with a depositary institution, a sample of the microorganism. When protection for the invention is sought in several countries, the complex and costly procedures of the deposit of the microorganism might have to be repeated in each of those countries. The objective of the Budapest Treaty is precisely to obviate such multiple deposits: under the Treaty a single deposit with one "international depositary authority" is sufficient for the purposes of patent procedure before the industrial property offices of all Contracting States, and of intergovernmental organizations granting regional patents which have declared that they recognize the effects of the Treaty (Articles 3(1)(a) and 9(1)(a)).

General Remarks on International Depositary Authorities

3. "International depositary authorities" are depositary institutions that have acquired the status of international depositary authorities. To obtain this status, a depositary institution has to be located on the territory of a Contracting State or of a member State of one of the organizations referred to in the preceding paragraph, and has to benefit from "assurances" furnished by that Contracting State or organization to the effect that the institution complies and will continue to comply with the requirements referred to in paragraph 5 below (Article 6(1)). The action for acquiring this status is taken by the State or organization concerned (Article 7 and Rule 3). There is nothing to prevent it from making more than one depositary institution acquire such status: It is therefore possible for there to be several international depositary authorities located on the territory of one and the same State.

4. An international depositary authority can lose its status either entirely (in which case "termination of status" is spoken of) or partly, in other words in respect of certain types of microorganisms only (in which case "limitation of status" is spoken of). Loss of the status occurs if the State or organization whose action brought about the acquisition of the status denounces the Treaty or withdraws the declaration of recognition of the effects of the Treaty (in which case the loss of status can only be total), or if the State or organization withdraws its assurances regarding the international depositary authority, or again by virtue of a decision of the Assembly of Contracting States taken at the request of another Contracting State or another organization (Articles 8, 9(4) and 17(4); Rule 4).

Requirments Which Have To Be Met by International Depositary Authorities

5. The requirements referred to in paragraph 3 above which a depositary institution has to meet in order to become a depositary authority are the following (Article 6(2) and Rule 2):

(a) The institution has to have a continuous existence, it has to be impartial and objective—which means among other things that it has to be free of any dependence on interests that are liable to prejudice the disinterested performance of its functions—and it has to be available, for the deposit of microorganisms, to any depositor under the same conditions. These requirements, which in fact seem self-evident, are designed to give the public in general and depositors in particular fundamental guarantees of reliability as to the smooth operation of the system. On the other hand, the legal status of the institution is irrelevant: it may be either public or private.

(b) The institution has to have the necessary staff and facilities to perform its scientific and administrative tasks, which consist among other things in:

(i) Accepting for deposit any or certain kinds of microorganisms;

(ii) Examining the viability of the microorganisms deposited with it and issuing a receipt to the depositor and any required viability statement (see paragraphs 7 and 8 below);

(iii) Storing the deposited microorganisms for at least 30 years (Rule 9(1)) in such a way as to keep them viable and uncontaminated;

(iv) Providing for sufficient safety measures to minimize the risk of losing the deposited microorganisms;

(v) Complying, with respect to the microorganisms deposited under the Treaty, with the requirement of secrecy, which means giving no information to anyone on the question whether a microorganism has been thus deposited and giving no information to anyone (except to a person who is entitled to a sample—see paragraph 10 below) on any microorganism thus deposited (Rule 9(2));

(vi) Furnishing, rapidly and in an appropriate manner, samples of the deposited microorganisms to all those who are entitled to such samples (see paragraph 10 below).

Handling of Micro-Organism Deposits by the International Depositary Authority

6. *Reception of the microorganism.* The international depositary authority may require that the microorganism be deposited in an appropriate form and quantity, and that it be accompanied by a form established by that authority. In such a case, the said authority has to communicate its requirements (and any amendments to them) to the International Bureau in order that the latter may communicate them to all the depositors concerned (Rules 6.3 and 13.2(b)(v)). When it receives the microorganism, the international depositary authority notes the date of receipt of the deposit and gives it an accession number (Rule 7.3(iii) and (v)). It issues a receipt to the depositor attesting the receipt and acceptance of the deposit (Rule 7). The model of the international form for the receipt, the use of which will be mandatory, will be established by the Director General of WIPO and communicated to all international depositary authorities.

7. *Viability test.* The international depositary authority promptly tests the viability of the microorganism; it also undertakes viability tests at reasonable intervals, depending on the kind of microorganism and its possible storage conditions, or at any time, if necessary for technical reasons or at the request of the depositor (Rule 10.1).

8. *Viability statement.* The international depositary authority issues a statement concerning the viability of the microoganism to the depositor or to any person receiving a sample of the microorganism (see paragraph 10 below) (Rule 10.2). The model of the international form for the viability statement, the use of which is mandatory, will be established by the Director General of WIPO and communicated to all international depositary authorities.

9. *Storage of the micoorganism.* The international depositary authority stores the microorganism for a period of at least 30 years after the date of its deposit, or until five years have elapsed without its having received a request for a sample, the period expiring later being applicable (Rule 9.1). It complies with the requirement of secrecy at all times

(see paragraph 5(v) above). Where it cannot furnish samples of the deposited microoganism for any reason, it notifies the depositor of the fact, indicating the reason and informing him that he is entitled to make a new deposit (Article 4).

10. *Furnishing of samples.* The Regulations contain detailed provisions specifying who is entitled to receive samples of the microoganism, and when (Rule 11). The depositor himself is entitled to receive a sample at any time. He may authorize third parties to have samples furnished to them, whereupon the third parties receive a sample on presentation of their authorizations. Any industrial property office to which the Treaty applies may receive a sample on request if it needs the microorganism for the purposes of a patent procedure. Any other person may obtain a sample on request if an industrial property office to which the Treaty applies certifies that, under the applicable law, that person has a right to a sample of the microorganism concerned; the Regulations specify in detail the certification procedure. The use of a form (whose contents will be established by the Assembly and communicated by the International Bureau to all international depositary authorities) is mandatory for the request and certification. There is an alternative procedure whereby the industrial property office from time to time communicates to international depositary authorities lists of the accession numbers given to the deposit of the microorganisms referred to in the patents granted and published by it; the effect of this communication is to authorize those authorities to furnish samples of the microorganisms to anyone. It should be stressed that it follows from the foregoing that the international depositary never has to decide itself whether it has the right to furnish a sample since it only does so if it has the authorization of the depositor or of an industrial property office. The international depositary authority furnishes the sample in a container marked with the accession number given to the deposit and accompanied by a copy of the receipt for the deposit. It notifies the depositor of the furnishing of the sample.

11. *Communication of the scientific description and/or proposed taxonomic designation.* If the depositor has indicated a scientific description and/or proposed a taxonomic designation of the deposited microorganism, the international depositary authority must communicate it, on request, to any person entitled to receive a sample of the said microorganism (Rule 7.6

12. *Fees.* For the procedure under the Treaty and the Regulations, the international depositary authority has the right to charge a fee in certain cases (specified in Rule 12.1). The two main fees are the fee for the storage of the microorganism (which is a single fee for the entire period of storage) and the fee for the furnishing of a sample (the furnishing of samples to industrial property offices in free of charge, however). The international depositary authority fixes the amounts of fees at its discretion, but they must not vary on account of the nationality or residence of the persons who have to pay them.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

July 14, 1978.

[FR Doc. 80-28332 Filed 9-12-80; 8:45 am]
BILLING CODE 3510-16-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Basic Skills and Educational Proficiency; State Formula Grant Program and State Leadership Program

AGENCY: Department of Education.

ACTION: Notice of closing date for submission of requests for continuation funding.

States are invited to submit requests for continuation funding under the State Formula Grant Program and the State Leadership Program in Basic Skills to the U.S. Department of Education.

Authority for these programs is contained in Part B of Title II of the Elementary and Secondary Education Act as amended by the Education Amendments of 1978, Pub. L. No. 95-561. (20 U.S.C. 2901-2904)

These programs award grants to State education agencies. The purpose of the Formula Grant Program is to help States plan and implement basic skills improvement projects, primarily through subgrants to eligible agencies and institutions in the State. The purpose of the State Leadership Program is to support a State in carrying out leadership and training in the area of basic skills and developing and implementing Statewide plans for improving the basic skills achievement of children, youth and adults. This closing date is authorized by 45 CFR 162.5(a)(1).

Closing date for requests for continuation funding: To be assured of consideration for funding, a request for continuation funding must be mailed or hand delivered by October 3, 1980.

Sections 162b.20 and 162b.21 of the regulations provide that funds apportioned to States that do not apply for them are redistributed among the participating States according to their number of school age (5 through 17 years) children. The date established for redistribution of such excess fiscal year 1981 funds is October 31, 1980.

Requests for continuation funding delivered by mail: A request sent by mail must be addressed to the U.S. Department of Education, Basic Skills Office, (Donohoe Building, Room 1167), 400 Maryland Avenue, SW., Attention: 13.599, Washington, D.C. 20202.

Request for continuation funding delivered by hand: A request that is hand delivered must be taken to the U.S. Department of Education, Basic Skills Office (Donohoe Building, Room 1167), 400 6th Street, SW., Washington, D.C.

Available funds: It is expected that approximately $13,250,000 will be available for these programs in fiscal year 1981 and the funds will be divided equally between the two programs.

Applicable regulations: Regulations applicable to these programs include the following:

(a) Regulations governing the Basic Skills and Educational Proficiency Programs (45 CFR Parts 162 and 162b).

(b) The Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100b and 100c).

For further information contact: Ms. Joyce R. Broome, Chief, State Coordination Branch, Basic Skills Office, U.S. Department of Education, (Donohoe Building, Room 1149), 400 Maryland Avenue, SW., Washington, D.C. 20202, Telephone: (202) 245-8008.

(20 U.S.C. 2901-2904)

(Catalog of Federal Domestic Assistance No. 13.599, Basic Skills Improvement Program. Part I of OMB Circular A-95 does not apply to this program.)

Dated: September 9, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-28303 Filed 9-12-80; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United

States of America and the Government of Norway Concerning Civil 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.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the retransfer from Norway to Sweden of 4,000 grams of Uranium, containing 140 grams of U-235 (3.5% enrichment) for post-irradiation examination.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this retransfer, designated RTD/SW(NO)-16 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 9, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-28388 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket Number PP-73]

Application for Presidential Permit Manuel Diego Ainslie—Coahuila, Mexico

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application from Manuel Diego Ainslie for Presidential Permit for a 7.2-kV International Transmission Line.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received an application from Manual Diego Ainslie of Monterrey 200, Colonia Roma, Piedras Negras, Coahuila, Mexico to construct a 7.2 kilovolt distribution line from the United States to Mexico across the Rio Grande River near Comstock, Texas. This facility will be used to deliver a maximum of 150 kilowatts to Mr. Diego's ranch located in Mexico on the United States-Mexico border.

FOR FURTHER INFORMATION CONTACT:

James M. Brown, Jr., System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3825.

Lise Courtney Howe, Office of General Counsel, Department of Energy, Room 5E-064, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION: On August 25, 1980, ERA received an application from Manuel Diego Ainslie for authority to construct a 7.2 kV transmission line across the Rio Grande River near Comstock, Texas. The transmission line will be used to deliver a maximum of 150 kilowatts from the Rio Grande Electric Cooperative to Mr. Diego's ranch located in Piedras Negras, Coahuila, Mexico at the United States-Mexico border.

According to the applicant, there is no other source from which he can purchase or acquire electric energy. The proposed facility will be for distribution only and will have no impact on the adequacy of the bulk power system in the United States. The maximum amount of power exported will be less than 1,300,000 kilowatt hours per year.

Although Mr. Diego is a Mexican resident, he states in his application that he will build the transmission line at his own cost and expense without the participation of the Government of Mexico.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the System Reliability and Emergency Response Branch, Economic Regulatory Administration, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protest should be filed on or before October 20, 1980. Protests will be considered by ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with ERA and will, upon request, be made available for public inspection and copying at the ERA Docket Room, Room B-210, 2000 M Street, N.W., Washington, D.C., and at the System Reliability and Emergency Response Branch, Room 4110, 2000 M Street, N.W., Washington, D.C.

Dated: September 9, 1980.

Jerry L. Pfeffer,

Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 80-28390 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

American Statistical Association Ad Hoc Committee on Energy Statistics; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770), notice is hereby given that the American Statistical Association's Ad Hoc Committee on Energy Statistics will meet with representatives of the Energy Information Administration (EIA) at the Quality Inn, Pentagon City, 300 Army Navy Drive, Arlington, Virginia, on Thursday, October 2, 1980, from 2:00 p.m. to 5:00 p.m., and Friday, October 3, 1980, from 10:15 a.m. to 4:30 p.m.

The purpose of the meeting is to enable the EIA to utilize the American Statistical Association's Ad Hoc Committee on Energy Statistics to obtain advice on EIA programs and to benefit from the Ad Hoc Committee's expertise concerning other energy statistical matters.

The tentative agenda is as follows:

October 2, 1980—2:00 PM-5:00 PM

A. Introductory Remarks
B. Major Topics
1. What is EIA doing about gasohol?
2. EIA long-range planning
3. Estimation of energy demand elasticities

October 3, 1980—10:15 AM-4:30 PM

B. Major Topics (continued)
4. Implications for EIA of a possible coal strike in March 1981.
5. Plans for data collection on industrial energy consumption
6. Data validation
7. Review of EIA publications distribution data
C. Other
1. Topics for future meetings
2. Public Comments

The meeting is open to the public. Any member of the public may file a written statement with EIA for forwarding to the committee, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Mr. John H. Weiner, Acting Director, Office of Planning and Evaluation, EIA, (202) 633-8696, or Dr. Fred C. Leone, Executive Director of the American Statistical Association, (202) 393-3253, at least five days prior to the meeting and reasonable provision will be made to include their presentations on the agenda. Subsequent to approval by the Committee, minutes and an executive summary of the meeting will be available for public review and copying at the Office of Planning and Evaluation, EIA, 12th and Pennsylvania Avenue,

N.W., Room 6149, Mail Stop 4311, Washington, D.C. 20461, (202) 633-8696, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Issued at Washington, D.C. on September 10, 1980.

Albert H. Linden, Jr.,

Acting Administrator, Energy Information Administration.

[FR Doc. 80-28389 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RA80-91]

Arvin-Edison Water Storage District; Filing of Petition for Review Under 42 U.S.C. 7194

September 8, 1980.

Take notice that Arvin-Edison Water Storage District on August 1, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 22, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 22, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28381 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-40]

Commodities Exchange Center; Filing of Petition for Review Under 42 U.S.C. 7194

September 8, 1980.

Take notice that Commodities Exchange Center on June 5, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 22, 1980 with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 22, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28378 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-100]

Food etc.; Filing of Petition for Review Under 42 U.S.C. 7194

September 8, 1980.

Take notice that Food Etc. on August 19, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 22, 1980 with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 22, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28379 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-97]

Geneva Grain & Lumber Inc.; Filing of Petition for Review Under 42 U.S.C. 7194

September 8, 1980.

Take notice that Geneva Grain & Lumber, Inc. on August 18, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 22, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 22, 1980, in accordance with the Commission's Rules of Practice and Proceedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28375 Filed 9-12-80 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3247]

Henwood Associates, Inc.; Application for Short-Form License (Minor)

September 8, 1980.

Take notice that Henwood Associates, Inc. (Applicant) filed on July 9, 1980, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for construction and operation of a water power project to be known as Graeagle Project No. 3247. The project would be located on Gray Eagle Creek in Plumas County, California. The project would affect U.S. lands within Plumas National Forest. Correspondence with the Applicant should be directed to: Dr. Kenneth Henwood, Vice President, Henwood Associates, Inc., P.O. Box 7, Smartville, California 95977.

Project Description—The proposed project would consist of: (1) a 4-foot high rock-filled, timber-crib diversion dam; (2) a 3,800-foot long, 20-inch diameter pipeline; (3) a 1,470-foot long, 20-inch diameter steel penstock; (4) a wood powerhouse containing one generating unit rated at 300 kW; and (5) a 3,800-foot long 7.2-kV transmission line. The project would be operated on a run of the river basis. Natural flows to the creek are augmented during low flow conditions by Graeagle Water Company releases from Long Lake for irrigation and domestic uses. The average annual energy generation is estimated to be 2.8 million kWh.

Purpose of Project—The power and energy generated by the project would be used as marginal power within the California power grid.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 10, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), *as amended,* 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), *as amended,* 44 FR 61328, (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28371 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3172]

J&B Associates; Application for Preliminary Permit

September 8, 1980.

Take notice that J&B Associates (Applicant) filed on May 7, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed Project No. 3172 to be known as Conestee Dam Project located on the Reedy River in Greenville County, South Carolina near the town of Conestee. Correspondence with the Applicant should be directed to: H. J. Brand, J&B Associates, P.O. Box 66, Conestee, South Carolina 29636.

Project Description—The proposed project would consist of: (1) an existing stone masonry dam, approximately 500 feet long and 26 feet high; (2) an existing 8-foot diameter penstock approximately 375 feet long; (3) an existing powerhouse with a proposed capacity of 400 kW; (4) an existing reservoir with a surface area of 23 acres with negligible storage capacity; and (5) appurtenant facilities. The estimated annual output of the proposed project would be 2,000,000 kWh.

Purpose of Project—J&B Associates would sell the energy produced at the project to Duke Power Company, Western Carolina Regional Sewer Authority, and tenants of J&B Associates.

Proposed Scope and Cost of Studies under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it proposes to conduct hydraulic, power

production, economic and environmental studies, along with an assessment of dam integrity, power marketing analysis and final project designs. The Applicant estimates the cost of the proposed studies would be $53,700.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 10, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 9, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended* 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended,* 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28372 Filed 9-12-80; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3252]

Joseph M. Keating; Application for Preliminary Permit

September 8, 1980.

Take notice that Joseph M. Keating (Applicant) files on July 11, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3252 to be known as Dynamo Pond Project located on Green Creek in Mono County, California. The proposed project would affect U.S. lands under the administration of the Bureau of Land Management. Correspondence with the Applicant should be directed to: Mr. Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

Project Description—The proposed project would consist of: 1) the reconstruction of the existing 30-foot high timber crib dam, impounding a 10-acre reservoir; 2) an intake structure; 3) a 9,000-foot long buried pipeline; 4) a powerhouse containing one generating unit rated at 700 kW; 5) a one-mile long 55-kV transmission line; and appurtenant facilities. The average annual energy production is estimated to be 4,000 MWh.

Purpose of Project—The power output of the project would be sold to either the Southern California Edison Company or to the Sierra Pacific Power Company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would conduct engineering studies and surveys, perform preliminary designs make a feasibility analysis, conduct environmental studies and prepare an environmental report, consult with appropriate agencies, make an historical review, and prepare an FERC license application. No new roads would be necessary to conduct the studies.

The estimated cost of the work to be performed under the preliminary permit is $52,500.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 17, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than Jan. 16, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33(b) and (c), *as amended* 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), *as amended,* 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a

person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 17, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28370 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-102]

Pennant Petroleum Co.; Filing of Petition for Review Under 42 U.S.C. 7194

September 8, 1980.

Take notice that Pennant Petroleum Company on August 27, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 22, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 22, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28382 Filed 9-12-80 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-86]

Rainbow Standard Service; Filing of Petition for Review Under 42 U.S.C. 7194

September 8, 1980.

Take notice that Rainbow Standard Service on July 22, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 22, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be participant in the Commission proceeding, must file a petition to intervene on or before September 22, 1980, in accordance with a the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue SW, Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St. NE, Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28380 Filed 9-12-80, 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-80]

Staatsburg Auto; Filing of Petition for Review Under 42 U.S.C. 7194

September 8, 1980.

Take notice that Staatsburg Auto on July 22, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 22, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 22, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.W., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28373 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. TA80-2-18 (PGA80-3, IP80-3 DCA80-2, LFUT80-2, and AP80-1)]

Texas Gas Transmission Corp.; Suspension of Procedural Dates

September 8, 1980.

On August 25, 1980, Texas Gas Transmission Corporation (Texas Gas) filed a request for a suspension of procedural dates in the above-docketed proceeding. Texas Gas requests that procedural dates in this proceeding be

suspended pending Commission action on the company's Application for Rehearing of Commission Order Accepting for Filing and Suspending Rate Increase, filed August 11, 1980.

Upon consideration, notice is hereby given that procedural dates in the above-proceeding are suspended pending Commission action on Texas Gas' application for rehearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28374 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-90]

Vern's Service Station; Filing of Petition for Review Under 42 U.S.C. 7194

September 8, 1980.

Take notice that Vern's Service Station on July 30, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 22, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 22, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28376 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-78]

Westwood Car Wash; Filing of Petition for Review Under 42 U.S.C. 7194

September 8, 1980.

Take notice that Westwood Car Wash on July 17, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 22, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a particpant in the Commission proceeding, must file a petition to intervene on or before September 22, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-28377 Filed 9-12-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1590-8; PP5G1623/T263]

Amitraz; Renewal of Temporary Tolerances

Correction

In FR Doc. 80-26435 appearing on page 57539 in the issue of Thursday, August 28, 1980, second column, first paragraph of SUPPLEMENTARY INFORMATION, thirteenth line should read "metabolites N'-(2,4-dimethylphenyl)-N-".

BILLING CODE 1505-01-M

[FRL 1586-8; PP 6G2330/T250]

Mobay Chemical Corp.; Establishment of a Temporary Tolerance

Correction

In FR Doc. 80-25806 appearing on page 56433 in the issue of Monday, August 25, 1980, first column, fifth line of the SUMMARY, "methlethyl" should read "methylethyl".

BILLING CODE 1505-01-M

[FRL 1543-5; OPP-180460]

Tennessee Department of Agriculture; Issuance of Specific Exemption for Use of Ethylene Dibromide

Corrections

In FR Doc. 80-21780 appearing on page 48709 in the issue of Monday, July 21, 1980, second column, make the following changes: Under SUPPLEMENTARY INFORMATION, first paragraph: (1) Fifth line, "Nemoticide" should read "nematicide"; (2) Seventeenth line, "contol" should read "control"; and (3) Eighteenth line, "Namacur 15G" should read "Nemacur 15G".

BILLING CODE 1505-01-M

[FRL 1604-8]

Barrier Islands of North Carolina; Intent to Prepare an Environmental Impact Statement

AGENCY: Environmental Protection Agency (EPA), Region IV, Atlanta, EIS Branch.

ACTION: Notice of intent to prepare a draft environmental impact statement (EIS).

PURPOSE: In accordance with Section 102(2)(c) of the National Environmental Policy Act, the EPA has identified a need to prepare an EIS and therefore

publishes this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: W. Bowman Crum, Jr., EIS Project Officer, EIS Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia 30365, Telephone: (Commercial) 404-881-7458 (FTS) 8-257-7458.

SUMMARY:

1. Description of Proposed Action

The Environmental Protection Agency (EPA), Region IV, will prepare an Environmental Impact Statement (EIS) on several proposed 201 plans which would allow the provision of federal funds for the design and construction of municipal wastewater facilities on the Barrier Islands of North Carolina. EPA action on these plans has been determined to be a major Federal Action significantly affecting the quality of the human environment and therefore an EIS will be prepared.

Since several separate EPA actions will impact the Barrier Islands of North Carolina, Region IV EPA has determined that the preparation of a generic impact statement addressing procedures for decision making is appropriate. This generic EIS for the North Carolina Barrier Islands will result in the development of a consistent Regional approach for administration of the 201 construction grants program on North Carolina Barrier Islands. This EIS will develop criteria and guidance for implementing the selected approach in North Carolina. Site specific EIS's may follow which will apply the generic criteria and guidelines to the Agency's decisions on the following six (6) 201 facilities plans in North Carolina:

- Dare County, Dare Beaches Complex—C370416-01
- Dare County, Hatteras Island—C370528-01
- Carteret County Complex—C370388-01
- Onslow County, Topsail/Surf City—C370448-01
- Southeastern Brunswick County—C370599-02
- Southwestern Brunswick County—C370492-01

2. Description of Known Alternatives

Many alternative procedures for administration of the 201 program on Barrier Islands will be evaluated in this generic EIS. These procedures will be combined into the following general alternative strategies:

- Existing Procedure—this alternative is the current program for review and approval of facilities plans. It would rely on existing criteria and guidance for approval of wastewater facilities on Barrier Islands. This alternative of continuing with existing procedures represents the no federal action alternative.
- Moderate Level of Protection—this alternative may include several options for utilizing existing programs, policies, and regulations more effectively in protecting Barrier Islands. These options involve alternative criteria and guidance which EPA would consider in its decision-making on wastewater facilities on Barrier Islands.
- High level of Protection—this alternative would require stringent criteria and guidance be used for EPA decision-making on wastewater facilities on Barrier Islands to minimize actual and potential adverse impacts.

3. Issues

Barrier Islands have been recognized by EPA, Region IV as unique components of the coastal zone warranting special consideration. Issues identified at this time include concern that the construction of wastewater collection, transmission, and treatment facilities for major portions of the Barrier Islands may result in adverse environmental impacts on sensitive natural areas such as wetlands, floodplains and dunes. A further concern involves the cost effectiveness of providing federal funds to serve developments on Barrier Islands which may be subject to major damage or loss due to storm activity. An evaluation of appropriate technologies for wastewater disposal on the North Carolina Barrier Islands will also be addressed in this generic EIS.

4. Public and Private Participation in the EIS Process

Full participation by interested Federal, State and local agencies as well as other interested private organizations and parties is invited. The public is encouraged to participate in the EIS process to the maximum extent possible. This EIS will involve the participation of a regional review committee made up of representatives from all levels of government, environment groups, developers, and other interested parties.

5. Scoping

The EPA, Region IV will hold public scoping meetings at 2:00 p.m. and again at 7:00 p.m. on Tuesday, September 30, 1980, in the Conference Room, First Floor of the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina. Input to the plan of study may also be given by writing the Regional Office. For additional information, contact the person indicated above.

6. Timing

EPA estimates that the draft EIS will be available for public review and comment in mid 1981.

7. Requests for Copies of the Draft EIS

All interested parties are encouraged to submit their name and address to the person indicated above for inclusion on the distribution list for the draft EIS and related public notices and information mailings.

Dated: September 9, 1980.

Thomas R. Sheckells,

Acting Director, Office of Environmental Review (A-104).

[FR Doc. 80-28272 Filed 9-12-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1605-5; OPTS-51065 B]

Certain Chemical Premanufacture Notice Extension Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending to October 21, 1980 the review period for premanufacture notice (PMN) 80-35 under section 5 of the Toxic Substances Control Act (TSCA). The review period, which commenced on April 24, 1980, now extends for 180 days, the maximum review period under section 5(c) of TSCA. The generic identity for the substance covered by the PMN is "substituted phenol, reaction products with C_{22}-C_{30} alkenes". The PMN described a chemical substance that would be manufactured for use as an additive for lubricant formulations. The submitter of the PMN claimed his identity to be confidential along with the specific chemical identify of the substance.

FOR FURTHER INFORMATION CONTACT: An Radosevich, Premanufacturing Review Division (TS-794), Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of TSCA any person 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 prior to commencement of manufacture or import. In general, section 5 provides that EPA must complete its review of a PMN within 90

days of its receipt by the Agency. However, 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 of the PMN.

EPA issued proposed rules to implement the premanufacture notification program published in the Federal Register of January 10, 1979 (44 FR 2263). Section 720.25 of the proposed regulations addressed the section 5(c) extension authority and provided examples of situations in which the Agency believed there would be good cause to extend the notice period. In this case EPA believes that the PMN chemical will be regulated under section 5 but the Agency is unable to assess and issue such regulation within the initial 90-day period and the 45-day extension.

Review to Date

EPA's initial evaluation of the subject PMN substance entailed review of information that the manufacturer supplied in the PMN and subsequent submissions to EPA, and in meetings between EPA staff and the manufacturer's representatives. EPA also conducted literature searches on the PMN substance and on structurally similar substances, i.e., structural analogues.

Using this information, EPA assessed seven major areas of potential concern: process chemistry, uses, worker and consumer exposures, environmental releases, health effects, environmental fate, and ecological effects. The Agency also considered other factors, such as economics and impacts on technological innovation, that are not directly associated with the assessment of the risk that the PMN substance may present to human health and the environment. When EPA completed this initial screening of the substance, the Agency concluded that it needed to conduct a more through review of certain aspects to focus on specific areas of concern. Therefore EPA entered the PMN into another series of analyses, the Detailed Review Process. During the Detailed Review, Agency staff conducted further evaluations and assessments of the following: (1) the degree to which structural and use analogues of the PMN substance can be relied upon to assess the risks that the PMN substance may present to human health or the environment; (2) the nature and extent of those risks; and (3) the exposure associated with the manufacture, processing, use, and disposal of the PMN substance.

The results of these assessments are summarized below:

(1) EPA is concerned about pontential risks that this substance may present to humans. Because the manufacturer did not provide any data on the potential skin sensitizing or eliciting effects of the substance, EPA's review relied heavily on data on structurally analogous substances. On the basis of that review, EPA believes the PMN substance is structurally related to other substances which have demonstrated skin sensitizing and irritating effects, and therefore the Agency believes the PMN substances may have sensitization potential and/or may elicit dermal responses from those previously sensitized by the analogues.

(2) EPA can predict some potential for dermal exposure of workers and significant potential for dermal exposure of consumers to the substance during use of the final products containing the substances. The manufacturer provided no information on worker exposure during processing and no estimates of consumer exposure to the PMN substance.

(3) EPA's exposure estimates and concern regarding potential skin sensitization, coupled with the lack of data on toxicity, give rise to a significant possibility that this chemical will be regulated under section 5 of the Act.

An additional 45-day review period will enable EPA to develop and issue an appropriate regulatory action under section 5 of TSCA.

Extension of the Review Period

On the basis of the cited concerns raised during EPA's evaluation of the PMN substance, the significant possibility of further regulation under section 5, and because of the limited time before the end of the extended review period for the substance (which closes on September 6, 1980), EPA has determined that good cause exists to extend the notice period for an additional 45 days, until October 21, 1980.

The first extension of the review period, was based on EPA's need to: (1) determine the need for regulatory data on the PMN substance, (2) determine the need for regulatory control in light of EPA's concerns about the PMN substance, and (3) examine possible control options. The final 45-day extension period will be used to complete this process. Extension of the notice period preserves EPA's authority to initiate a regulatory action under section 5 of TSCA if the Agency concludes that such an action is appropriate.

The PMN summaries of communications between the submitter and EPA, and other written material, are available for public inspection in Room 447, East Tower, at the EPA Headquarters address given above. The public record is available from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. All information that the manufacturer has claimed to be confidential has been deleted from the documents in the public record.

Dated: September 4, 1980.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80-28320 Filed 9-12-80; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1605-7; OPTS-51132]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATES: Written comments by October 25, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Rick Green, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-426-2601.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the Federal Register of May 15, 1979 (44 FR 28558), and the notice of availability of the

Revised Inventory was published on July 29, 1980 (45 FR 50544). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufactured notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) fo TSCA: Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before October 25, 1980, submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51132]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 8, 1980.

Warren R. Muir,

Deputy Assistance Administrator for Toxic Substances.

PMN 80-224.

Close of Review Period. November 24, 1980.

Manufacturer's Identity. Claimed confidential business information.

Generic information provided:

Annual sales—Between $10 million and $99,999,999.

Manufacturer's site—West-north central region, U.S.

Standard Industrial Identification Code—285.

Specific Chemical Identity. Isophthalic acid, tall oil fatty acid, trimelletic anhydride, terephthalic acid, neopentyl glycol, and trimethylol propane.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Air dry and baking enamels.

Production Estimates.

	Kilograms per year	
	Minimum	Maximum
1st year	900,000	1,500,000
2d year	1,000,000	2,000,000
3d year	1,000,000	2,000,000

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted.

Occupational Exposure.

Activity	Exposure route	Number exposed	Maximum duration		Concentration (pp)	
			Hours/day	Days/year	Average	Peak
Manufacturing	Inhalation			251		1-10
Processing	Inhalation			251		1-10
Use	Inhalation			251		1-10
Disposal	Inhalation			251		1-10

Environmental Release/Disposal. The Manufacturer states that:

1. Closed equipment is used in the manufacture of this resin;

2. The filter operation is vented to the atmosphere but that the resin is non-volatile;

3. Some solvent may be lost in the filter operation;

4. Water of esterification is released to a sanitary sewer after passing through a settling tank; and

5. No component of the resin will be released with esterification water.

PMN 80-223.

Close of Review Period. November 24, 1980.

Manufacturer's Identity. Claimed confidential business information.

Generic information provided:

Annual sales—Between $10 million and $99,999,999.

Manufacturing site—East-north central region, U.S.

Standard Industrial Identification Code—285.

Specific Chemical Identity. 1,6-Hexanediol, terephthalic acid, neopentyl glycol, trimelletic anhydride, adipic acid, and isophthalic acid.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Baking enamels.

Production Estimates.

	Kilograms per hour	
	Minimum	Maximum
1st year	900,000	1,500,000
2d year	1,000,000	2,000,000
3d year	1,000,000	2,000,000

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted.

Occupational Exposure.

Activity	Exposure route	Number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacturing	Inhalation	2	1	251		1-10
Processing	Inhalation	30	4	251		1-10
Use	Inhalation		8	251		1-10
Disposal	Inhalation	8	3	251		1-10

Environmental Release/Disposal. The manufacturer states that the only release point is to the sanitary sewer via a settling basin and that the only material released is water esterification from the reaction of the component materials.

[FR Doc. 80-28322 Filed 9-12-80, 8:45 am]

BILLING CODE 6560-01-M

[FRL 1605-8; OPTS-51127]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of three PMN's and provides a summary of each.

DATES: Written comments by: PMN 80-216—October 18, 1980; PMN 80-217—October 19, 1980; PMN 80-218—October 19, 1980;

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Robert Smith, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-426-8815.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the Federal Register of May 15, 1979 (44 FR 28558), and the notice of availability of the Revised Inventory was published on July 29, 1980 (45 FR 50544). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the

substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "DATES," submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51127]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 8, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80-216

Close of Review Period. November 17, 1980.

Manufacturer's Identity. Claimed confidential. Generic name provided: Annual sales—Between $10 million and $99,999,999. Manufacturing site—East-south central region, U.S. Standard Industrial Classification Code-286 (Industrial Inorganic Chemicals).

Specific Chemical Identity. Claimed confidential. Generic name provided: Methyl fatty acid ester.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Industrial lubricants additive.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Light straw colored oily liquid above 10°C.

Toxicity Data

Acute oral toxicity (rat)—> 5.0 g/kg.

Primary dermal irritation (rabbit)—Irritation Index—1.5; non-irritant.

Exposure. The manufacturer claims that exposure to employees in the preparation and use of the product will be low; estimates that four workers may be exposed for 64 hours per year each.

Environmental Release/Disposal. Claimed confidential business information.

PMN 80-217

Close of Review Period. November 18, 1980.

Manufacturer's Identity. General Electric Co., Aerospace Instruments and Electrical Systems Dept., 50 Fordham Road, Wilmington, MA 01845.

Specific Chemical Identity. Claimed confidential. Generic name provided: Aromatic trisazo dye.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Filler for liquid crystal display device used in commercial and military aircrafts cockpit instruments.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Non-soluble in water; non-corrosive, and non-flammable.

Toxicity Data

Ames Test (rat), 0.5-5,000 mg/plate dose range—Mutagenically inactive.

Exposure. The manufacturer states that five workers may be exposed to the PMN substance during the manufacturing process, 8 hours/day, 104 days/year but expects no exposure to users, except by accident.

Disposal. Disposal of waste products will be by incineration.

PMN 80-218

Close of Review Period. November 18, 1980.

Manufacturer's Identity. General Electric Co., Aerospace Instruments and Electrical System Dept., 50 Fordham Road, Wilmington, MA 01845.

Specific Chemical Identity. Claimed confidential. Generic name provided: Aromatic Trisazo diester dye.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Filler for liquid crystal display device used in commercial and military aricraft cockpit instruments.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Non-soluble in water; non-corrosive; and non-flammable.

Toxicity Data. No data was submitted.

Exposure. The manufacturer states that five workers may be exposed to the PMN substance during the manufacturing process, 8 hours/day, 104 days/years but expects no exposure to users, except by accident.

Disposal. Disposal of waste products will be by incineration.

[FR Doc. 80-28323 Filed 9-12-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1606-1; OPTS-51129]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATES: Written comments by: PMN 80-226—October 20, 1980; PMN 80-227—October 25, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Carolyn Brown, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-426-3980.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the Federal Register of May 15, 1979 (44 FR 28558), and the notice of availability of the Revised Inventory was published on July 29, 1980 (45 FR 50544). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242), and October 16, 1979 (44 FR 56764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564)

for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the Section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "DATES" submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51129]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 8, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80-226

Close of Review Period. November 19, 1980.

Manufacturer's Identity. Inmont Corp., 5935 Milford Ave., Detroit, MI 48210.

Specific Chemical Identity. Dimethyl 1,4-cyclohexanedicarboxylate, maleic anhydride, neopentyl glycol, phthalic anhydride, trimethylol ethane polymer.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Automotive primer.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
First year	120,000	150,000
Second year	240,000	300,000
Third year	360,000	450,000
Physical/Chemical Properties		
Average molecular weight	1600	
Acid number	8-12	
Hydroxyl number	130-140	
Weight/gallon	[1] 9.70	

[1] Pounds.

Toxicity Data. No data were submitted.

Exposure. Inmont Corp. states that no exposure to the new substance is anticipated during manufacture, processing, or use.

Environmental Release/Disposal. The manufacturer states that the methanol and water from the condenser are collected and shipped to a disposal firm for incineration and that there is nothing released to air or water.

PMN 80-227

Close of Review Period. November 24, 1980.

Manufacturer's Chemical Identity. Inmont Corp., 5935 Milford Ave., Detroit, MI 48210.

Specific Chemical Identity. Benzoic acid, fatty acids C14-18 unsaturated, maleic anhydride, and pentaerythritol polymer.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Automotive primer.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
First year	120,000	150,000
Second year	240,000	300,000
Third year	360,000	450,000
Physical/Chemical Properties		
Molecular weight	1,375	
Acid number	200-240	
Hydroxyl number	10-14	
Weight/gallon	[1] 9.0	

[1] Pounds.

Toxicity Data. No data were submitted.

Exposure. Inmont Corp. states that no exposure to the new substance is anticipated during manufacture, processing, or use.

Disposal. The manufacturer states that water from the condenser will be collected and sent to a disposal firm for incineration.

[FR Doc. 80-28324 Filed 9-12-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1605-6; OPTS-51126]

Styrene-Acrylate Copolymer; Premanufacture Notice

AGENCY: Environmental protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substances to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or important commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by October 18, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202–755–8050.

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202/426–3936.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substances to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substances is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the Federal Register of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA had proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any informations submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or uses(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposure from use, and a generic name for the chemical. EPA will publish the generic name, the generic and use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the Submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substance Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before October 18, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51126]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 8, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80–215.

Close of Review Period. November 17, 1980.

Manufacturer's Identity. Claimed confidential. Generic name provided: Annual sales—In excess of $500 million. Manufacturing site—Northeast region. U.S. Standard Industrial Classification Code—282.

Specific Chemical Identity. Claimed confidential. Generic name provided: Styrene-acrylate copolymer.

The following is taken from data submitted by the manufacturer in the PMN.

Use. Thermoset baking enamel.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	10,000	50,000
2d year	25,000	150,000
3d year	75,000	250,000

Physical/Chemical Properties

Solids	40 pct.
Viscosity	25 cps.
Vehicle	Water.

Toxicity Data. No data were submitted.

Environmental Release/Exposure

The submitter states that residual monomer fumes could escape into the atmosphere during drum packaging of finished polymer and the discharge of the finished product to land or water would only result from an accidental spill. He also states that potential skin contact by latex to workers exists if gloves are not worn as required.

Disposal. The manufacturer states that residual monomer vapors in the reactor are disposed by incineration.

[FR Doc. 80–26321 Filed 9–12–80; 8:45 am]
BILLING CODE 6560–01–M

[FRL 1605–3]

Grants for Construction of Treatment Works; Industrial Cost Recovery Provisions

Under authority of 40 CFR 30.1000, the Environmental Protection Agency (EPA)

issued a class deviation from certain provisions of 40 CFR Part 35, Subpart E, Grants for Construction of Treatment Works, funded under Section 201 of the Clean Water Act and issued a clarification of certain provisions of this subpart pertaining to Industrial Cost Recovery (ICR).

Under our policy to publish in the Federal Register information which affects a significant number of grantees, EPA is publishing this notice to insure maximum public awareness of the current requirements for ICR.

The following provisions of the July 14, 1980 Class Deviation from 35.935–15, submission of Industrial Cost Recovery Systems is published herein to insure maximum circulation to affected grantees:

•40 CFR 35.935–15(a)(2)

Grantees awarded Step 3 grant assistance under regulations promulgated on February 11, 1974, *and* who have had grant payments released under 40 CFR 35.935–15(a)(2), are required to obtain approval of ICR systems by September 30, 1980.

•40 CFR 35.935–15(b)

Grantees awarded Step 3 grant assistance after April 24, 1978, but before October 1, 1980, are required to obtain approval of ICR systems, except for ordinances and rates, by September 30, 1980.

•40 CFR 35–935–15(c)

Grantees awarded Step 3 assistance after September 30, 1980, are required to have approved ICR systems, except for ordinances and rates, before grant award.

The requirement to develop an ICR system remains a condition of all Step 3 grants awarded after March 1, 1973. After September 30, 1980, no further Step 3 grant awards or grant payments will be made in any of the above cases until the ICR system is approved.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold P. Cahill, Jr., Director, Municipal Construction Division (WH–547), Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460 (Telephone Number 202–426–8986).

Dated: September 9, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management (WH–556).

[FR Doc. 80–28319 Filed 9–12–80, 8:45 am]

BILLING CODE 6560–01–M

[OPP–30000/10C; FRL 1531–8]

Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of Pesticide Products Containing Lindane; Availability of Position Document 2/3

Correction

In FR Doc. 80–20008, at page 45362, in the issue of Thursday, July 3, 1980, make the following corrections:

(1) On page 45365, in the last column, first paragraph, the eighth line down, correct "powerpost" to read "powderpost" and in the twenty-first line between the the words "million" and "industry" insert the words "impact on the hardwood lumber".

(2) On page 45366, in the middle column under "4. Ornamentals", the twelfth line, correct "species or" to read "species of"; in the last column under "7. Pecans" the tenth line, correct "malathon" to read "malathion"; and in the eleventh line correct "Endsulfar" to read "Endosulfar".

(3) On page 45368, the first column under *D. Initiation of Regulatory Action,* the ninth line down, correct "cucrbits" to read "cucurbits".

BILLING CODE 1505–01

FEDERAL COMMUNICATIONS COMMISSION

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92–463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 73
"MPS—Marine Omega Receiving Equipment"
Notice of 12th Meeting
Thursday, October 2, 1980—9:30 a.m.
Conference Room 8438
Nassif (DOT) Building
400 Seventh Street, S.W. (at D Street)
Washington, D.C.

Agenda

1. Call to Order.
2. Administrative matters.
3. Restructuring of Minimum Performance Standards for Marine Omega Receiving Equipment.
4. New business.
5. Adjournment.

M.H. Carpenter, Co-Chairman, Thomas P. Nolan, Co-Chairman, Maritime Institute of Technology & Graduate Studies, 5700 Hammonds Ferry Road, Linthicum Heights, MD 21090, Phone: (301) 636–5700.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632–6490).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80–28292 Filed 9–12–80; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications, Legal Fees, and Other Expenses; Statement of Policy

On October 25, 1977 the Board of Directors of the Federal Deposit Insurance Corporation adopted a revised statement of policy on Legal Fees and Other Expenses Incident to Applications for Insurance and Consent to Establish Branches. The statement was published on October 31, 1977 (42 FR 56979). That statement of policy is hereby amended and superseded by the following statement of policy.

In passing upon applications for deposit insurance, for consent to establish branches or consent to relocate main or branch offices, the Board of Directors of the Federal Deposit Insurance Corporation is required by law to consider among other factors the "general character of (the applicant's) management." In passing upon applications for mergers, the Board must consider the managerial resources of the existing and proposed institutions. Since prudent management will not commit a bank to excessive expenses and extensive reliance on outside attorneys may be indicative of a deficiency in management, the payment of unreasonable or excessive fees incident to such applications has long been considered by the FDIC to reflect adversely upon the management of the applicant bank, irrespective of whether the payments have been ratified or otherwise approved by formal action of the bank's incorporate stockholders.

With respect to legal fees, applicants should be aware that the preparation, filing and processing of applications with the FDIC ordinarily do not require significant amount of a lawyer's time. However, hearing procedures of the State or FDIC, and various legal

questions such as securities or real estate problems in connection with the transaction may require numerous hours of legal service. Since bank counsel do not usually segregate for billing purposes the work done in connection with FDIC applications from that done in connection with State applications or with the transaction generally, the FDIC has been required to examine the total fees for services arising from the transaction, including State and FDIC applications for approval in attempting to assess the reasonableness of such expenses and their relationship to applicant's management.

In its consideration of applications, the Federal Deposit Insurance Corporation will not question fees for legal services or other organizational expenses solely because of amount but will consider the reasonableness of fees in relation to the services performed. In connection with such applications, applicants will furnish the amounts of fees for such services which have been incurred and estimates of additional fees to be incurred in connection with the proposed transaction. All fees for legal, organizational or similar services should be disclosed, whether directly or indirectly related to the application pending before the Federal Deposit Insurance Corporation. By way of illustration, with respect to an application for insurance, fees for legal services in connection with obtaining a State charter, negotiating a lease of premises, counselling with organizers or directors as to directors and officers liability insurance, and drafting corporate bylaws should be included. Likewise, fees paid for economic or feasibility studies, data processing or other systems development services, executive officer recruitment and similar services relating to the organization of the bank should be stated.

If legal or other organizational fees appear to be excessive in relation to fees for comparable services, or if the volume of services performed exceeds that usually incurred with respect to comparable applications, supportive documentation will be required. In the case of legal fees, such documentation may consist of material such as itemized time sheets showing the time actually expended by counsel on the applications concerned, the hourly rate charged, and the specific circumstances, including unusual complexities, the necessity for agency or court appearances, and the like, necessitating the time expended.

In reviewing legal fees for reasonableness, the following factors will ordinarily serve as guides:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services obtained.

2. The fee customarily charged in the locality for similar legal services.

3. The time limitations imposed by the client or by the circumstances.

4. The experience and ability of the lawyer or lawyers performing the services.

This Board of Directors in adopting this revised statement of policy has concluded that fee limitations based upon presumptive dollar amounts are unrealistic because of variable factors influencing the amount of legal fees charged; *e.g.*, variations in cost of living from one geographic area to the next which reflect themselves in costs of legal and other professional services and additional work expended in connection with unusually complex organizations.

Even though a fee may, in a given instance, be wholly or partially absorbed by another entity such as a holding company, that fee or organizational expense will nonetheless be reviewed by the Corporation under the terms of this policy statement in view of the fact that the commitment for the fee or other organizational expense is a commitment of management of the proposed or existing institution.

Expenses for legal or other services rendered by organizers, present or prospective board members or major shareholders will receive special scrutiny in this regard for any evidence of self-dealing to the detriment of the bank and its other shareholders. As a matter of practice, the FDIC requires full disclosure to all directors and shareholders of any fee in excess of $5,000 paid to insiders or their interests.

In no case will an FDIC application be approved where the payment of a fee, in whole or in part, is contingent upon any act or forebearance by the Corporation or by any other Federal or State agency or official. Such contingent arrangements, while permissible in some States in adversary civil litigation, are totally inappropriate in matters relating to Federal deposit insurance or FDIC branch applications. The prohibition on contingent fees is not applicable to broker-dealer arrangements whereby the functions to be performed consist of seeking out and brings together parties to a bank consolidation or merger, or finding a seller or purchaser of a bank or its assets. such functions, which do not normally involve appearances or representation before an agency, commonly involve contracts calling for compensation in finding a seller, purchaser or merger partner.

This statement of policy is provided with all application forms for Federal deposit insurance or for the consent of the Corporation to merge, establish branches, or relocate main or branch offices and will be sent to each organizer and director of a proposed new bank by the appropriate FDIC Regional Director.

By order of the Board of Directors, September 8, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 80-26385 Filed 9-12-80; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Senior Executive Service Performance Review Board; List of Members

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing of personnel serving as members of this agency's Senior Executive Service Performance Review Board.

SUMMARY: Pub. L. 95-454 dated October 13, 1978 (Civil Service Reform Act of 1978) requires that Federal agencies publish notification of the appointment of individuals who serve as members of that agency's Performance Review Board (PRB). The following change is made in the list published by FEMA at 45 FR 45371: Delete William Chipman, Deputy Assistant Director for Plans and insert John W. McConnell, Assistant Associate Director, Population Preparedness.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Oertel, Office of Personnel, (703) 235-2464.

Dated: September 9, 1980.

John W. Macy, Jr.,

Director.

[FR Doc. 80-26281 Filed 9-12-80; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have bene 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, N.W., Room 10218; 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 October 6, 1980, 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-3924.

Filing party: William E. Emick, Jr., Deputy City Attorney, 333 West Ocean Boulevard, Long Beach, California 90802.

Summary: Agreement No. T-3924, between the City of Long Beach (City) and Ocean Salt Co., Inc. (Ocean), provides for the 10-year renewal of Ocean's lease of the premises for the receiving, storage, processing, packaging, sale, and other disposition of Ocean's salt. Ocean further agrees that it shall not furnish wharfage, dock, warehouse, or other terminal facilities therein, in connection with common carriers. As compensation, Ocean agrees to pay Port $10,700 per month, plus all applicable port tariff charges.

Agreement No. 5680-31.

Filing party: H. R. Rollins, Chairman, Pacific-Straits Conference, Post Office Box 7411, San Francisco, California 94120.

Summary: Agreement No. 5680-31, would amend Article 13 of the Appendix to the basic agreement of the Pacific-Straits Conference to provide that the Conference may authorize its agents to collect freight and other charges at destination ports. Said agents are presently authorized to collect demurrage charges, only.

Agreement No. 8054-19.

Filing party: Charles F. Fischer, Chairman, South and East Africa/U.S.A. Conference, 25 Broadway, New York, New York 10004.

Summary: Agreement No. 8054-19, modifies the basic agreement of the South and East Africa/U.S.A. Conference by adding a new Article 1(d) to provide for a right of independent action by the member lines to amend its rates and related tariff matter at its discretion after giving a minimum of 48 hours notice to the Conference office and to the other members.

Agreement No. 10261-8.

Filing party: Leo S. Fisher, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 10261-8 adds a new Article 18 to the U.S. South Atlantic/Spanish, Portuguese, Moroccan and Mediterranean Rate Agreement which would authorize the collection and distribution of cargo statistics.

By Order of the Federal Maritime Commission.

Dated: September 10, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-28291 Filed 9-12-80; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1779]

Shahin Forwarding Service, Inc.; Order of Revocation

On August 20, 1980, Shahin Forwarding Service, Inc., 565 Fifth Avenue, New York, NY 10017, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 1779 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. 201.1 (Revised), § 5.01(c), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1779 issued to Shahin Forwarding Service, Inc., be and is hereby revoked effective August 20, 1980, without prejudice to reapplication at a later date.

It is further ordered, That a copy of this Order be published in the Federal Register and served upon Shahin Forwarding Service, Inc.

Robert G. Drew,

Director, Bureau of Certification and Licensing.

[FR Doc. 80-28290 Filed 9-12-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-60]

Far Eastern Shipping Co., Possible Violations of Sections 16, Second Paragraph, 18(b)(3), and 18(c), Shipping Act, 1916; Order of Investigation and Hearing

Based on information obtained by the Commission's Bureau of Enforcement, the Commission believes that certain rating practices of the Far Eastern Shipping Company (FESCO) should be investigated to determine whether it has violated provisions of the Shipping Act, 1916.

Investigation conducted thus far has indicated a variety of apparent misrating practices by FESCO in 1979 and 1980. Examples of these involve:

1. Nonadherence to its minimum container utilization rule;
2. Misapplication of its rule governing minimum container rates;
3. Deletion of bunker surcharges on one entire voyage;
4. Misrating of bunker surcharges on mini-landbridge shipments;
5. Improper calculation of ocean freight charges on mixed container shipments.

In addition, there is a possibility that FESCO has assessed rates in the inbound Philippines trade whose use had been suspended by the Commission.

Accordingly, an investigation and hearing will be instituted to determine whether FESCO has violated sections 16, second paragraph, 18(b)(3) and 18(c) of the Act, and, if so, whether penalties should be assessed for such violations. Because of the broad scope of this proceeding, the Commission believes that at this time, a thorough examination of FESCO's operations for a limited period of time would be more useful than a more general examination of its activities over the entire two year period. Therefore, the investigation will be limited to those shipments for which the bills of lading are dated between May 1, 1979, and March 31, 1980. This time period has been chosen because it will include the period when FESCO rates were suspended in Docket No. 79-10, *Rates of Far Eastern Shipping Company,* and will include a reasonable period of time in 1980.

Therefore, it is ordered, That pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. 821), this proceeding is hereby instituted to determine:

(1) Whether FESCO violated section 16, second paragraph, by permitting any person to obtain transportation for property at less than the rates and charges then established in its tariffs on file with the Commission by any unjust or unfair device or means between May 1, 1979 and March 31, 1980, inclusive;

(2) Whether FESCO violated section 18(b)(3) by charging, demanding, collecting or receiving a greater or less compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time, or by rebating, refunding or remitting in any manner or by any device any portion of the rates or charges specified in its tariffs on file with the Commission between May 1, 1979 and March 31, 1980, inclusive;

(3) Whether FESCO violated section 18(c)(1) by charging rates which have been suspended by the Commission

between May 1, 1979 and March 31, 1980, inclusive; and

(4) Whether penalties should be assessed against FESCO if it is found to have violated section 16, second paragraph, section 18(b)(3), or section 18(c), and, if so, the amount of such penalties.

It is further ordered, That Far Eastern Shipping Company is hereby made Respondent in this proceeding and that the matter be assigned for public hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be determined by the Administrative Law Judge presiding, but in any event within the time restrictions set forth in Rule 61 (46 CFR 502.61).

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), the Commission's Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy served upon all parties of record;

It is further ordered, That any person other than Respondent and the Bureau of Hearing Counsel having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 (46 CFR 502.72) of the Commission's Rules of Practice and Procedure;

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80-28403 Filed 9-12-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Bank Corp.; Acquisition of Bank

First Bank Corporation, Midland, Michigan, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of First Community Bank, N.A., West Branch, Michigan (in organization). The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than October 8, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 8, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-28399 Filed 9-12-80; 8:45 am]

BILLING CODE 6210-01-M

Hospital Trust Corp.; Proposed Acquisition of Hospital Trust Co. of Florida

Hospital Trust Corporation, Providence, Rhode Island, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Hospital Trust Company of Florida, Palm Beach, Florida.

Applicant states that the proposed subsidiary would engage in activities that may be carried on by a trust company, organized under Florida law including activities of a fiduciary, investment advisory, agency, or custodian nature. These activities would be performed from offices of Applicant's subsidiary in Palm Beach, Florida, and the geographic area to be served is Palm Beach County, Florida. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 8, 1980.

Board of Governors of the Federal Reserve System, September 8, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-28400 Filed 9-12-80; 8:45 am]

BILLING CODE 6210-01-M

Federal Reserve System Richey Bancorporation; Proposed Continuation of General Insurance Agency Activities

Richey Bancorporation, Richey, Montana, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in the activity of operating a general insurance agency in a town of under 5,000 population. This activity would be performed from an office of Applicant in Richey, Montana, and the geopraphic area to be served is a 20 mile radius. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their veiws on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in effeciency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 8, 1980.

Board of Governors of the Federal Reserve System, September 8, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-28402 Filed 9-12-80; 8:45]

BILLING CODE 6210-01-M

Valley State Investments, Inc.; Proposed Continuation of Insurance Agency Activities; Correction

This notice corrects a previous Federal Register document (FR Doc. 80-25136) appearing at page 55280 of the issue for Tuesday, August 19, 1980.

Valley State Investments, Inc., Lamar, Colorado, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)) for permission to continue to engage in the sale of credit life insurance and credit accident and health insurance directly related to extensions of credit by its banking subsidiary, Valley State Bank, Lamar, Colorado. These activities would be performed from offices of Applicant's subsidiary in Lamar, Colorado, and the geographic area to be served is the area within a 50 mile radius of Lamar, Colorado. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 26, 1980.

Board of Governors of the Federal Reserve System, September 8, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-28401 Filed 9-12-80; 8:45 am]

BILLING CODE 6210-01-M

American National Bancorp, Inc.; Formation of Bank Holding Company

American National Bancorp, Inc., Lawton, Oklahoma, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more (less directors' qualifying shares) of the voting shares of the American National Bank of Lawton, Lawton, Oklahoma. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 8, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 8, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board

[FR Doc. 80-28408 Filed 9-12-80; 8:45 am]

BILLING CODE 6210-01-M

Exchange State Bancorporation, Inc.; Formation of a Bank Holding Company

Exchange State Bancorporation, Inc., Hills, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 97 percent of the voting shares of Exchange State Bank of Hills, Hills, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Exchange State Bancorporation, Inc., Hills, Minnesota, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Exchange State Agency, Inc., Hills, Minnesota.

Applicant states that the proposed subsidiary would engage in general insurance activities in a community with a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Hills, Minnesota, and the geographic areas to be served are Rock County and the southern one-eighth of Pipestone County, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether the consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 23, 1980.

Board of Governors of the Federal Reserve System, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-28409 Filed 9-12-80; 8:45 am]

BILLING CODE 6210-01-M

Florida Coast Banks, Inc.; Acquisition of Bank

Florida Coast Banks, Inc., Pompano Beach, Florida, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire at least 51 percent of the voting shares of First Bank and Trust of Palm Beach County, Boynton Beach, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than October 8, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 8, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-28422 Filed 9-12-80; 8:45 am]

BILLING CODE 6210-01-M

Guarantee Bancorp. Inc.; Formation of Bank Holding Company

Guarantee Bancorp, Inc., Atlantic City, New Jersey, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Guarantee Bank, Atlantic City, New Jersey. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 6, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-28410 Filed 9-12-80 8:45 am]

BILLING CODE 6210-01-M

Hambac, Inc.; Formation of Bank Holding Company

Hambac, Inc., Hodgenville, Kentucky, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80.7 percent or more of the voting shares of The Lincoln National Bank, Hodgenville, Kentucky. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 2, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 8, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-28411 Filed 9-12-80; 8:45 am]

BILLING CODE 6210-01-M

Security State Bank Holding Co.; Acquisition of Bank

Security State Bank Holding Company, Hannaford, North Dakota, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire an additional 95.2 per cent of the voting shares of Farmers and Merchants Bank, Wimbleton, North Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than October 8, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 8, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-28123 Filed 9-12-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 126]

Kansas City Power & Light Co., the Missouri Public Service Commission; Proposed Intervention in Electric Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the Missouri Public Service Commission concerning the application of the Kansas City Power and Light Company for an increase in its electric rates. GSA represents the interest of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Leonard A. Salters, Acting Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets, NW., Washington, D.C. (mailing address: General Services Administration (LT), Washington, D.C. 20405), on or before October 15, 1980, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry

shall not serve to make any persons parties of record in the proceeding.

(Sec. 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: September 4, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 80-28343 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Residency Training in General Internal Medicine or General Pediatrics

The Bureau of Health Professions, Health Resources Administration, announces that applications for Grants for Residency Training in General Internal Medicine or General Pediatrics, listed under Catalog of Federal Domestic Assistance No. 13.884, are now being accepted under the authority of section 784 of the Public Health Service Act, as amended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484).

Section 784 authorizes the award of grants to assist in meeting the costs of planning, developing, and operating approved residency training programs in internal medicine or pediatrics which emphasize training of residents for the practice of general internal medicine or general pediatrics and provides financial assistance in the form of traineeships and fellowships to residents who are participants in this type of program, who plan to practice general internal medicine or general pediatrics.

To receive support, programs must meet the requirements of the final regulations published in the Federal Register on August 1, 1980, Vol. 45, No. 150. Eligible applicants are public or private nonprofit schools of medicine or osteopathy.

In the funding of approved applications, preference will be given to projects in which:

1. Substantial training experience in settings where physician assistants or nurse practitioners, or both are used as part of a health care team.

2. Coordination of administrative and educational resources to be used by a program of general internal medicine and a program of general pediatrics which are both to be conducted within a single project.

3. Substantial portions of a project are conducted in a primary medical care manpower shortage area(s) and, in particular, in a health manpower shortage area(s) which is located in a Standard Metropolitan Statistical Area, as defined by the Office of Federal Statistical Policy and Standards, Department of Commerce; or in an Area Health Education Center funded, at least in part, under Section 781 of the Act.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-28), Bureau of Health Professions, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone: (301) 436-6564.

Should additional programmatic information be requested, please contact: Primary Care Graduate, Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources Administration, Center Building, Room 3-44, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone: (301) 436-8581.

The deadline date for receipt of applications is October 13, 1980.

Approximately $6 million is expected to be available in fiscal year 1981 for competitive awards.

Applications submitted in response to this announcement are not subject to review by State and areawide clearinghouses under the procedures in the Office of Management and Budget circular No. A-95.

Dated: September 8, 1980.

Henry A. Foley,

Administrator.

[FR Doc. 80-28283 Filed 9-12-80; 8:45 am]

BILLING CODE 4110-83-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[INT DEIS 80-58]

Grazing Management for the Mount Dome Planning Unit, Siskiyou Resource Area, Redding District, California; Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental impact statement concerning a proposed intensive grazing management program for the Mount Dome Planning Unit in Siskiyou and Modoc Counties, California. Management proposals are presented and analyzed for each of twenty-seven (27) grazing allotments. Intensive management will occur on seven of the allotments and less intensive management will occur on twenty allotments. The planning unit covers 581,048 acres, of which six percent is Federal land.

Comments on the draft environmental impact statement are being solicited from public agencies and interest individuals and entities. The Bureau of Land Management invites written comments on the statement to be submitted by November 3, 1980 to the District Manager, Redding District, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96001. The comments will be incorporated in the final environmental impact statement.

A limited number of copies of the draft evironmental impact statement are available upon request at the following offices:

California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484-4541

Redding District Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96001, Telephone (916) 246-5325

Copies of the draft environmental impact statement will be available of public reading and review at the following locations:

Division of Rangeland Management, Bureau of Land Management, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240

California State Office (911), Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484-4541

Redding District Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96001, Telephone (916) 246-5325

Dated: September 4, 1980.

John E. Birch,

Acting State Director.

[FR Doc. 80-28304 Filed 9-12-80; 8:45 am]

BILLING CODE 4310-84-M

California; Cal-Neva Grazing Management Plan; Intent To Prepare an Environmental Impact Statement and Conduct Scoping Meeting

Department of the Interior, Bureau of Land Management, Susanville District, California, will prepare an Envionmental Impact Statement on alternative grazing management plans for the 659,568 acre Cal-Neva Planning Unit in Lassen County, California, and Washoe County, Nevada. The statement will analyze anticipated environmental consequences which would result from the implementation of the alternative

grazing plans proposed by the Eagle Lake Area Manager. These alternative plans will incorporate variation in location, seasonal use, and intensity of livestock grazing and amount of range improvements. The final statement is scheduled for completion by September 30, 1981.

A pubic meeting will be held to review the alternative grazing plans and the manner in which they were developed and to scope resulting anticipated environmental consequences and related public concerns: Tuesday, September 30, 7:30 p.m., U.S. Forest Service Engineering, Services Building, 1800 Main Street, Susanville, California.

Further information on the Cal-Neva Grazing Environmental Impact Statement may be obtained from: Mark Morse, Eagle Lake Area Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130.

Dated: September 4, 1980.

John E. Birch,

Acting State Director.

[FR Doc. 80-28305 Filed 9-12-80; 8:45 am]

BILLING CODE 4310-84-M

[I-3379]

Idaho; Order Providing for Opening of Public Land

Correction

In FR Doc. 80-21640 appearing on page 48266 in the issue of Friday, July 18, 1980, third column, in the legal description, Section 34 should read as follows:

"Sec. 34, NW¼NE¼, S½NE¼, NW¼SE¼, E½SE¼."

BILLING CODE 1505-01-M

Nevada Elko District, Multiple Use Advisory Council; Meeting

Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Elko District Multiple Use Advisory Council will be held on October 29, 1980, at 8:30 a.m. at the Holiday Inn, 3105 Idaho Street, Elko, Nevada 89801. Agenda items will include:

1. Introduction and biographical sketch of members;
2. Discussion of Council's functions;
3. Briefing on BLM in general and Elko District programs in particular, including Wilderness Study Areas, Wells Resource Management Plan, Desert Land Entry program, and Wells Resource Area inventories;
4. Election of officers;
5. Appointment of committees; and
6. Arrangements for next meeting.

The meeting is open to the public. Written comments may be filed with the District Manager for the Council's consideration, and oral statements will be heard between 11:30 a.m. and 12:00 p.m. Anyone wishing to make an oral statement should notify the District Manager at the above address by October 22, 1980. Depending on the number of persons wishing to present oral comments, a per person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office, and will be available for public inspection and reproduction (from 7:00 a.m. to 5:00 p.m., Monday-Friday) within 30 days after the meeting.

Clarence Pearson,

Acting District Manager.

September 4, 1980.

[FR Doc. 80-28108 Filed 9-12-80; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Chattahoochee River National Recreation Area Boundary Revision

In accordance with Section 101 of Pub. L. 95-344, which authorized the Chattahoochee River National Recreation Area in the State of Georgia, notice of boundary revisions is to be published. Notice is hereby given that boundary revisions have been made in the Palisades, Island Ford and Holcomb Bridge segments of the national recreation area.

Copies of the maps depicting the boundary revisions are on file and available for inspection at the following addresses:

Director, National Park Service, Department of the Interior, Washington, D.C. 20240.

Regional Director, Southeast Region, National Park Service, 75 Spring Street, S.W., Atlanta, Georgia 30303.

Superintendent, Chattahoochee River, National Recreation Area, P.O. Box 1396, Smyrna, Georgia 30080.

Dated: May 16, 1980.

Joe Brown,

Regional Director, Southeast Region.

[FR Doc. 80-28415 Filed 9-12-80; 8:45 am]

BILLING CODE 4310-70-M

Gateway National Recreation Area, Gateway Advisory Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, that a meeting of the Gateway National Recreation Area Advisory Commission will be held commencing at 3 p.m., Tuesday, October 7, 1980, at State of New Jersey, Room 207, Department of Public Utilities, 1100 Raymond Boulevard, Newark, New Jersey.

The Commission was established by Pub. L. 92-592 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area.

The members of the Commission are:

1. Marian Heiskell, Chairman, New York, New York.
2. Alexander J. D. Greeley, New York, New York.
3. Paul Larson, Lakewood, New Jersey.
4. Robert C. Holmes, Newark, New Jersey.
5. Orin Lehman, Albany, New York.
6. Gordon Litwin, Newark, New Jersey.
7. Sheldon Pollack, New York, New York.
8. Jose A. Sanchez, Jersey City, New Jersey.
9. Peter M. Rivera, Bronx, New York.
10. Ross Sandler, New York, New York.

The matters to be discussed at this meeting include:

1. Adoption of Land Acquisition Plan.
2. Transportation Sub-committee on Public Access.
3. Any other matters that may come before the Commission.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first served basis. Any member of the public may file with the Commission, a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Herbert S. Cables, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building 69, Floyd Bennett Field, Brooklyn, New York 11234, Area Code (212) 630-0353.

Minutes of the meeting will be available for inspection four weeks after the meeting at the Gateway National Recreation Area Headquarters Building.

Richard L. Stanton,

Regional Director, North Atlantic Region.

[FR Doc. 80-28413 Filed 9-12-80; 8:45 am]

BILLING CODE 4310-70-M

Management of General Grant National Memorial; Availability of Analysis of Alternatives (including Environmental Assessment) and Public Meeting

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior, National Park Service has prepared an Analysis of Management Alternatives (including Environmental Assessment) as an initial step in General Management Planning for General Grant National Memorial, Borough of Manhattan, City of New York. This Analysis will lead to the selection of a management and development alternative concerning interpretive themes and site expansion for better visitor experience and cultural resource preservation. The environmental Assessment portion of the Analysis deals with physical and aesthetic impacts of alternatives considered.

A public meeting on this matter will be held on September 30, 1980 at 7:30 p.m. at the Riverside Church, 490 Riverside Drive (at 122nd Street), New York, New York.

Written comments on the Analysis are invited and will be accepted until October 30. Written comments should be submitted to the Superintendent, Manhattan Sites, Federal Hall, 26 Wall Street, New York, New York 10005.

Copies of the Analysis of Alternatives are available upon request from the Superintendent, Manhattan Sites, Federal Hall, 26 Wall Street, New York, New York 10005, and Chief, Environmental Compliance, National Park Service, North Atlantic Region, 15 State Street, Boston, Massachusetts.

Dated: August 29, 1980.

Richard L. Stanton,

Regional Director North Atlantic Region.

[FR Doc. 28414 Filed 9-12-80; 8:45 am]

BILLING CODE 4310-70-M

Water and Power Resources Service

Supplement No. 2, O'Neill Unit, Nebraska; Intent To Prepare Environmental Statement

Water and Power Resources Service (Water and Power), Department of the Interior, intends to prepare a second supplement to the O'Neill Unit Environmental Statement (ES). The supplement is in response to an April 16, 1979, court order issued by the United States District Court of Nebraska, in Civil Action 75-L-96. The order specifically directed Water and Power to analyze two components which were found to be inadequately addressed in the ES. The components are geologic stability and an agricultural research alternative.

The geologic stability study will: (1) Describe subsurface geologic conditions at the site, (2) evaluate any risk associated with these conditions, and (3) evaluate how these risks and/or conditions can reasonably be dealt with.

The research alternative will consist of:

1. Review of literature to determine presently available technology to improve livestock and crop production with and without irrigation.

2. Existing use and extent of agricultural technology in 5-county area and the results of that technology on livestock and crop production and ground-water consumption.

3. The impact on livestock and crop production and ground-water consumption within the 5-county area by application of present and foreseeable future technologies in place of the proposed project.

4. A comparison between 2 and 3.

5. A comparison of 3 to the probable impact of the project without the research alternative.

Water and Power will also address the impacts of the placement of fill materials during the construction of the O'Neill Unit. These impacts will be contained in an attached Section 404(b) Evaluation Report to provide compliance with the Federal Water Pollution Control Act, as amended. By including this information and submitting the final environmental statement and the supplements thereto to the Congress prior to an appropriation of funds for construction requiring a permit, the Service will qualify for an exemption from the 404 permit process pursuant to Section 404(r) of the Clean Water Act (Pub. L. 95-217).

Upon completion of the supplement, it will be distributed for public review and comment. A public hearing will be held 30 days after distribution.

Inquiries concerning this proposal should be directed to Mr. Richard B. Eggen, Regional Environmental Officer, Lower Missouri Region, Water and Power Resources Service, P.O. Box 25247, Denver, Colorado 80225.

Dated: September 5, 1980.

R. Keith Higginson,

Commissioner of Water and Power Resources Service.

[FR Doc. 80-28247 Filed 9-12-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 80-22811, appearing at page 50957 in the issue of Thursday, July 31, 1980, "NY" should be inserted between "NJ" and "RI" in the thirteenth line of the first complete paragraph [MC 145300 (Sub-5F)] of the second column on page 50976.

BILLING CODE 1505-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-56

The following applications were filed in Region 1. Send protests to: Interstate

Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 128798 (Sub-1–2TA), filed September 5, 1980. Applicant: GALASSO TRUCKING, INC., 8 Kilmer Road, Larchmont, NY 10538. Representative: Larsh B. Mewhinney, Esq., Moore, Berson, Lifflander & Mewhinney, 555 Madison Avenue, New York, NY 10022. *Contract carrier:* irregular routes: *Canned foodstuffs, bakery goods, pickles and relishes,* from Camden, NJ to New York, NY under contract with Campbell Soup Company. Supporting shipper: Campbell Soup, 100 Market Street, Camden, NJ 08101.

MC 147524 (Sub-1–2TA), filed September 3, 1980. Applicant: SINED LEASING, INC., 108 High Street, Mt. Holly, NJ 08060. Representative: Frank L. Newburger III, Esq., White and Williams, 1234 Market Street, 17th Floor, Philadelphia, PA 19107. *Contract carrier;* irregular routes: *Flour (dry) in bulk,* from Baldwinsville, NY, Buffalo, NY and Columbus, OH, to points in CT, MA, MD, NH, NJ, NY, OH and PA. Supporting shipper: International Multifoods Corp., 8th & Market, Minneapolis, MN 55402.

MC 151433 (Sub-1–2TA), filed September 4, 1980. Applicant: ZILA'S TRANSPORTATION CO., INC., 55 Caven Point Road, Jersey City, NJ 07305. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Lube oil, additives and petroleum in bulk, in tank vehicles,* from Philadelphia, PA Commercial Zone to Edison, NJ. Supporting shipper: Valvoline Oil Company, Div. of Ashland Oil, Inc., P.O. Box 391, Ashland, KY 41101.

MC 59640 (Sub-1–10TA), filed August 29, 1980. Applicant: PAULS TRUCKING CORPORATION, Three Commerce Drive, Cranford, NJ 08016., Representative: Michael A. Beam, 301 Blair Road, Woodbridge, NJ 07095. *Contract carrier,* irregular routes: *Foodstuffs;* between Vineland, NJ, on the one hand, and, on the other, Detroit, MI and its commercial zone and Chicago, IL and its commercial zone, under continuing contract(s) with Progresso Quality Foods. Supporting shipper: Progresso Quality Foods, 500 Elmer Road, Vineland, NJ 08360.

MC 147605 (Sub-1–1TA) (republication), filed September 4, 1980. Applicant: MILLER PAVING LIMITED, Box 250, Unionville, Ontario, Canada L3R 2V3. Representative: Robert D. Gunderman, Esq., 710 Statler Building, Buffalo, New York 14202. *Contract carrier,* irregular routes: *Liquid asphalt cement, in bulk, in tank vehicles,* from Southfield, MI to ports of entry on the International Boundary line between the U.S. and CD on the Detroit and St. Clair Rivers; restricted to the transportation of traffic transported under a continuing contract or contracts with McAsphalt Industries Limited. Supporting shipper: McAsphalt Industries Limited, West Hill, Ontario, Canada.

MC 151408 (Sub-1–5TA), filed September 3, 1980. Applicant: CARGO TRANSPORT, INC., 100 Garfield Avenue, P.O. Box 268, Somerville, MA 02143. Representative: William F. Mix, 153 Grove Street, Lexington, MA 02173. *Contract carrier,* irregular routes: *Prefabricated buildings, wooden, complete, knocked down, in sections and when transported in connection with such buildings, component parts thereof and equipment and materials incidental to the erection and completion of such buildings, prefabricated structural beams, arches and trusses, buildings (cabins), prefabricated, wooden, knocked, component parts thereof and equipment and materials incidental to the erection and completion of such buildings,* between the facilities of Acorn Structures, Inc., Acton, MA on the one hand, and, on the other, points in the U.S. Supporting shipper: Acorn Structures, Inc., 1 Keefe Rd., Acton, MA 01720.

MC 65491 (Sub-1–1TA), filed September 2, 1980. Applicant: GEORGE W. BROWN, INC., 1475 East 222nd Street, Bronx, New York 10469. Representative: William Biederman, 371 Seventh Avenue, New York, NY 10001. *Pulp, paper or allied products and materials, equipment and supplies used in the manufacture of paper (except in bulk, and such size requiring special equipment),* between Lockhaven, PA, on the one hand, and on the other, MD, ME, MI, NH, NJ, NY, OH, and VT. Supporting shipper: Hammermill Paper Company, P.O. Box 268, Lock Haven, PA 17745.

MC 1783 (Sub-1–1TA) (republication), filed August 12, 1980. Applicant: BLUE LINE EXPRESS, INC., 260 D. W. Highway South, Nashua, NH 03060. Representative: Owen B. Katzman, 1828 L Street, NW., Suite 1111, Washington, DC 20036. *Insulating material, mineral wool, and fibrous glass materials and products (except in bulk)* from Delmar and Rotterdam Jct., NY to points in ME, NH and VT. Supporting shipper: Owens-Corning Fiberglas Corporation, Fiberglas Tower, Toledo, OH 43659.

MC 15178 (Sub-1–1TA), filed September 2, 1980. Applicant: GISZACK TRANSPORT, INC., 5 Williamson Place, Fort Lee, NJ 07410. Representative: John A. Schepisi, P.A., 611 Palisade Avenue, Englewood Cliffs, NJ 07632. (1) *Raw cheese,* from WI, MN, IA, OH, SD and PA, to NJ; (2) *Processed Packaged Cheese,* from NJ to PA, CT, MA, ME, NH, RI and VT. Supporting shipper: Northfield Cheese, 227 Union Street, Northvale, NJ 07647.

MC 143127 (Sub-1–20TA), filed September 2, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *Foodstuffs,* from Memphis, TN to points in the U.S. (except AK and HI). Supporting shipper: Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 1759 (Sub-1–2TA), filed September 3, 1980. Applicant: FROEHLICH TRANSPORTATION CO., INC., Federal Road, Danbury, CT 06810. Representative: Gerald A. Joseloff, P.O. Box 3258, Hartford, CT 06103. *Paper and paper products,* from St. Albans, VT to CT and NY. Supporting shipper: Fonda Royal Lace Group Saxon Industrial Inc., 15–21 Lower Newton Street, St. Albans, VT 05478.

MC 1814 (Sub-1–2TA), filed September 2, 1980. Applicant: HORSEMAN'S SHIPPING CORP., Box 411, Monticello, NY 12701. Representative: David Appel, Box 204, Rock Hill, NY 12775. *Horses,* between Monticello, NY and points in FL, GA, NC and SC. Supporting shipper(s): Charles Del Gatto Stable, 42 Kinnebrooke Trailer Park, Route 17B, Monticello, NY 12701; Ronald Saxe Stable, Brookside Trailer Park, Route 17B, Monticello, NY 12701; Ronald Schor Stable, 7221 NW 45th Street, Lauderhill, FL 33319; Anthony Manino Stable, c/o Farran Hamilton Road, Monticello, NY.

MC 48956 (Sub-1–3TA), filed September 2, 1980. Applicant: JAMES FLEMING TRUCKING, INC., 761 East Street, Suffield, CT 06078. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. *Contract carrier,* irregular routes: *Clay tile used in commercial construction and home building,* between Alexandria, VA, on the one hand, and, on the other, all points in CT, DE, IN, MA, MD, ME, MI, NH, NJ, NY, OH, PA, RI, VA, VT, and WV, under continuing contract(s) with Dal-Tile Corp. of Alexandria, VA. Supporting shipper: Dal-Tile Corp., 6688 Fleet Drive, Alexandria, VA 22310.

MC 151595 (Sub-1–1TA), filed September 2, 1980. Applicant: CLARK TRANSPORTATION AGENCY INC., 28 Westwood Parkway, Barre, VT 05641. Representative: Karson E. Clark, 28 Westwood Parkway, Barre, VT 05641. *Passengers and their baggage, in round trip charter and special operations,*

restricted to vehicles of 18 passengers or less, beginning and ending at Barre, Barre City, Williamstown, Graniteville, East Barre, South Barre, Websterville and Chelsea, VT and extending to ME, NH, MA, CT, RI and NY. Supporting shipper(s): Chelsea Area Senior Center, Chelsea, VT 05038; and Frances E. Churchill, Box 4, Graniteville, VT 05654.

MC 125040 (Sub-1–1TA), filed August 25, 1980. Applicant: R. CONLEY INC., 6891 Seneca Street, Elma, NY 14059. Representative: Robert D. Gunderman, 710 Statler Building, Buffalo, NY 14202. *Apple juice and vinegar, in bulk, in tank vehicles, and equipment, materials and supplies used in the manufacture, production, sale or distribution of such commodities,* between North Rose, NY, on the one hand, and on the other, points in NC, MI and IA; restricted to the transportation of traffic originating at or destined to the facilities of Speas Co., North Rose, NY. Supporting shipper: Speas Co., Box 4754, Route 414, North Rose, NY 14516.

MC 119443 (Sub-1–3TA), filed September 4, 1980. Applicant: P. E. KRAMME, INC., Main Street, Monroeville, NJ 08343. Representative: Gerald A. Kramme, Main Street, Monroeville, NJ 08343. *Liquid chocolate in bulk in tank vehicles,* from Charlotte, NC to Springdale, OH. Supporting shipper: Ambrosia Chocolate Co., Div. W. R. Grace Co., 1133 N. Fifth Street, Milwaukee, WI 53203.

MC 87855 (Sub-1–2TA), filed September 4, 1980. Applicant: J. V. MOTOR LINES INC., 69 Thomas Street, East Hartford, CT 06108. Representative: Hughan R. H. Smith, I.C.C. Practitioner, 26 Kenwood Place, Lawrence, MA 01841. *General commodities, (except classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (1) between all points in MA, on the one hand, and, on the other, all points in CT, ME, NH, RI, VT, NY and the NY Commercial Zone; (2) between all points in NY and NY Commercial Zone, on the one hand, and, on the other, all points in CT, ME, NH, RI, and VT; (3) between all points in CT, ME, NH and VT; (4) between all points in CT, on the one hand, and, on the other, all points in ME, NH, and VT. Tacking and interline requested. Supporting shipper: Dis-Con Inc., 40 Constitution Road, Charlestown, MA 02129.

MC 65491 (Sub-1–2TA), filed September 4, 1980. Applicant: GEORGE W. BROWN, INC., 1475 East 222nd Street, Bronx, NY 10469. Representative: William Biederman, 371 Seventh Avenue, New York, NY 10001. *Steel coils,* between Milford, CT and Sharon, PA. Supporting shipper: The Eastern Steel & Metal Co., Inc., Eastern Steel Rd., Milford, CT 06460.

MC 112694 (Sub-1–2TA), filed September 4, 1980. Applicant: JAMES J. GALLERY, INC., 555 Pleasant St., Watertown, MA 02172. Representative: Joseph M. Klements, 84 State St., Boston, MA 02109. *Frozen foods and foodstuffs moving under refrigeration,* between Watertown, MA, on the one hand, and, on the other, points in NJ. Supporting shipper: Howard Johnson Co., 309 Battles St., Brockton, MA 02402.

MC 146166 (Sub-1–1TA), filed September 4, 1980. Applicant: TRIANGLE TRANSPORT CO., INC., 74 Sulyma Street, Cumberland, RI 02864. Representative: William F. Poole, 41 Bea Drive, N. Kingston, RI 02852. *Contract carrier:* irregular routes: *Commodities dealt in by department stores, equipment parts and related accessory items,* between the facilities operated by The Outlet Co. at Providence and Coventry, RI and AL, FL, GA, MD, NJ, NC, PA, SC, VA, and WV. Supporting shipper: The Outlet Co., 170 Weybosset St., Providence, RI.

MC 151717 (Sub-1–1TA), filed September 2, 1980. Applicant: MONTREAL CONTAINER TERMINALS, INC., 6360 Notre Dame Street East, Montreal, Quebec, CN H1N 2E1. Representative: Adrien Paquette, 200 St. Jacques Street, Montreal, Quebec, CN H2Y 1M3. *General commodities and empty containers except Class B explosives, household effects, items of unusual value, items requiring specialized equipment* between ports of entry on the US-Canada border, and points in the states of MA, NJ, NY, VT; restricted to cargo having a prior or subsequent movement by water. Supporting shippers: Eastman Kodak, 2400 Mount Read Blvd., Rochester, NY 14650; Gillespie-Munro Inc., 2085 Union Ave., Suite 1850, Montreal, Quebec, CN H3A 2C3; Manchester Liners Ltd., P.O. Box 1178, 500 Place D'Armes, Montreal, Quebec, CN H2Y 3K2; Consarc Corp., 100 Indel Ave., Pancocas, NJ 08073; Kuehne & Nagel International, Ltd., 612 St. James Street, West Montreal, Quebec, CN H3C 3Y5.

The following applications were filed in Region 2. Send protests to ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 107012 (Sub-II–80TA), filed Sept. 3, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Soap and shampoo* from Redding and San Rafael, CA to Dover, DE for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: International Playtex, Inc., P.O. Box 631, Ridgely St., Plant No. 3, Dover, DE 19901.

Note.—Common control may be involved.

MC 151303 (Sub-II–2TA), filed August 28, 1980. Applicant: GEORGE W. SMYTH, JR., CO., 1101 Ritchie Rd., Capitol Heights, MD 20027. Representative: George W. Smyth, Jr. (same as applicant). *Cold rolled strip steel,* from Sparrows Point, MD to Boone and Lincolnton, NC for 270 days. Supporting shipper: Thompson Steel Co., Inc., P.O. Bos 6610, Sparrow Point, MD 21219.

MC 117883 (Sub-II–9TA), filed August 28, 1980. Applicant: SUBLER TRANSFER, INC., 1 Vista Dr., P.O. Box 62, Versailles, OH 45380. Representative: Robert Von Aschen (same as applicant). *Meat, meat products, meat by-products* and *articles distributed by meat packing houses* as described in Sections A & C of Appendix I to the Report in Descriptions on Motor Carrier Certificates, 61MCC 209 and 766 (except commodities in bulk and hides). From Erie, PA to CT, DE, IL, IN, MD, MA, MI, NH, NJ, NY, OH, RI, VA, VT, and DC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Gartner-Harf Co., 9380 Peach St., Waterford, PA 16441.

MC 147655 (Sub-II–3TA), filed September 3, 1980. Applicant: PAYNE, INC., P.O. Box 112, Brandy Station, VA 22714. Representative: Gary E. Thompson, 4304 East-West Hwy., Washington, DC 20014. *Fly ash, in bulk,* from the facilities of National Minerals Corp. in Indiana, Westmoreland, and Armstrong Counties, PA, to pts in MD and VA (except Clarke, Warren, Frederick, Shenandoah, and Loudoun Counties) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: National Minerals Corp., R.D. No. 4, Box 183–B, Indiana, PA 15701.

MC 28088 (Sub-2–4TA), filed September 2, 1980. Applicant: NORTH & SOUTH LINES, INC., 2710 S. Main St., Harrisonburg, VA 22801. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St, NW., Washington, DC 20004. *Frozen Foods,* from Camp Hill, PA to all points in AL, CT, DE, DC, FL, GA, IL, IN, KY, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, OH, RI, SC, TN, VT, VA, WV, and WI for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Pet Incorporated, Frozen Foods Division, 400 South Fourth St., St. Louis, MO 63102.

MC 151708 (Sub-II-1TA), filed September 2, 1980. Applicant: M & B FREIGHT LINES, INC., 2012 Center St., Ashland, PA 17921. Representative: Charles E. Creager, P.O. Box 1417, Hagerstown, MD 21740. *Contract;* irregular: *Such commodities as are used or dealt in by manufacturers of sound recordings,* between Glenn Brook, CT, Roselle, NJ, Bethlehem, PA, Madison Heights, MI, Niles, IL, Council Bluffs, IA, Winchester, VA, Atlanta, GA, and Jacksonville, IL including their respective commercial zones, on the one hand, and, on the other, points in MN, WI, MI, NY, MA, RI, CT, NJ, PA, OH, IN, IL, IA, MO, KY, WV, VA, DE, MD, NC, SC, GA, and DC including its commercial zone, for 270 days, under a continuing contract(s) with Capitol Records, Inc. An underlying ETA seeks 120 days' authority. Supporting shipper: Capitol Records, Inc., 980 Avenue B, Lehigh Valley Industrial Park, Bethlehem, PA 18017.

MC 147993 (Sub-II-3TA), filed September 2, 1980. Applicant: C. H. MASLAND & SONS, 50 Spring Rd., Box 40, Carlisle, PA 17013. Representative: J. Roger Gratz (same address as applicant). *Contract;* irregular: *motor vehicle parts or accessories used in the manufacturing of cars, trucks and trailers* from Cleveland and Dayton, OH, Grand Rapids and Detroit, MI, Chicago, IL, and St. Louis, MO, to Newark, DE for 270 days, under continuing contract(s) with Chrysler Corp. Supporting shipper: Chrysler Corp., P.O. Box 1976, Detroit, MI 48231.

MC 2368 (Sub-II-7TA), filed September 4, 1980. Applicant: BRALLEY-WILLETT TANK LINES, INC., P.O. Box 495, Richmond, VA 23204. Representative: William T. Marshburn (same as applicant). *Petroleum Products, in bulk, in tank vehicles,* from Bayonne, NJ, Marcus Hook and Pittsburgh, PA, and St. Louis, MO, and their commericial zone to Salem, VA, and its commercial zone for 270 days. Supporting shipper: Mohawk Rubber Co., P.O. Box 1250, Salem, VA 24153.

MC 141124 (Sub-II-1TA), filed September 2, 1980. Applicant: EVANGELIST COMMERCIAL CORP., P.O. Box 15000, Wilmington, DE 19850. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. *Hazardous waste* from Cincinnati, OH; Greenville, SC; Memphis, TN; and Newark, NJ to points in AL and and commodities used in the manufacture and distribution of pigments, dyestuffs, and disinfectants and chemicals in the reverse direction, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Hilton-Davis Chemical Co., Div. of Sterling Drug Inc., 2235 Langdon Farm Rd., Cincinnati, OH 45237.

MC 3114 (Sub-II-7TA), filed September 3, 1980. Applicant: T. H. COMPTON, INC., R.F.D. No. 1, Berkeley Springs, WV 25411. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 20006. *Liquefied Petroleum Gas (LPG)* from Greensburg, PA to Berkeley Springs WV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Pennsylvania Glass Sand Corp., Berkeley Springs, WV 25411.

MC 142864 (Sub-II-4TA), filed September 2, 1980. Applicant: RAY E. BROWN TRUCKING, INC., P.O. Box 501, Massillon, OH 44646. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. *Edible tallow, lard, shortening, vegetable oil, cooking or salad oil, and margarine,* between Kankakee County, IL, on the one hand, and, on the other, pts. in the states of CT, DE, MA, ME, ND, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and DC for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Bunge Edible Oil Corp., Box 192, Kankakee, IL 60901.

MC 119894 (Sub-II-2TA), filed September 2, 1980. Applicant: BOWARD TRUCK LINE, INC., 100 Roesler Rd., Glen Burnie, MD 21061. Representative: M. Bruce Morgan (same as applicant). *Paper, Paper Products, Scrap or Waste Paper, Carbon (Activated), and those commodities used in the manufacture or distribution of paper or paper products.* Between Covington, VA and Cleveland, TN and between Calhoun, TN and pts. in VA, NC and SC, for 270 days. Supporting shippers: Bowater Southern Paper Corp., Calhoun, TN 37309. Westvaco Corp., Covington, VA 24426.

MC 112304 (Sub-II-17TA), filed September 3, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John G. Banner, (same address as applicant). *Floor coverings, wallboard, panels, tile, insulation materials, and equipment, materials and supplies* (except in bulk), used in the installation and maintenance of the foregoing commodities from the facilities of Armstrong World Industries, Inc., in Lancaster County, PA, to all pts. in the states of CT, DE, DC, IL, IN, IA, KS, KY, ME, MD, MA, MI, MO, NH, NJ, NY, NC, OH, OK, RI, TN, TX, VT, VA, WV, and WI, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Armstrong World Industries, Inc., P.O. Box 3001, Lancaster, PA 17604.

MC 112304 (Sub-II-16TA), filed September 3, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John G. Banner, (same address as applicant). *Refractories, refractory products, insulation, insulating materials,* and *equipment, materials and supplies* used in the manufacture, distribution and installation of these commodities, between the facilities of A. P. Green Refractories Co., at or near Woodbridge, NJ, Philadelphia and Tarentum, PA, and Jackson and Oak Hill (Jackson County), OH, on the one hand, and, on the other, pts. in and east of WI, IL, and MO, and in and north of KY and VA, for 270 days. Supporting shipper(s): A. P. Green Refractories Co., Green Blvd., Mexico, MO 65265.

The following protests were filed in Region 4. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604.

NO. MC 151721 (Sub-4-1TA), filed September 3, 1980. Applicant: LAUFENBERG FEED & AGRI-SERVICE, INC., Route 1, P.O. Box 90A, Highland, WI 53543. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. *Ice melter, fertilizer, kitty litter, floor drying compounds, and such commodities as are distributed by, dealt in or used by retail stores,* between Viroqua, WI, on the one hand, and, on the other, CO, IL, IN, IA, KS, MD, MI, MN, MO, MT, NE, NJ, NY, ND, SD and TX, for 270 days. Underlying ETA seeks 120 days authority. Supporting shipper: Howard Johnson's Enterprises, Inc., Railroad Avenue, Viroqua, WI 54665.

MC 151672 (Sub-4-1TA), filed August 28, 1980. Applicant: RIGHT-WAY TRANSPORT, INC., 1133 A Avenue, Freeman Field, Seymour, IN 47274. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. *Gasoline, diesel fuel, home heating oils and aviation fuels,* between Jefferson County, KY on the one hand and, on the other points in the State of IN. An underlying ETA seeks up to 120 days authority. Supporting shippers: Kocolene Oil Corporation, U.S. Highway 50E, Seymour, IN 47274; Hukill Oil Company, P.O. Box 466, Seymour, IN 47274.

MC 111812 (Sub-4-11TA), filed August 29, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma, (same address as applicant). *Non-exempt Food or Kindred Products,* between Baltimore County, MD, on the one hand, and, on the other,

Los Angeles, San Francisco and Alameda Counties, CA. Supporting shipper: Hygrade Food Products Corp., P.O. Box 4771, Detroit, MI 48219.

MC 145842 (Sub-4–2TA), filed September 3, 1980. Applicant: SUNDERMAN TRANSFER, INC. P.O. Box 63, Windom, MN 56101. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. *Bakery goods, candy and confections,* from Chicago, IL, Grand Rapids, MI and Milwaukee, WI, to Minneapolis, MN. Underlying ETA seeks 120 days authority. Supporting shipper: Twin City Biscuit, Inc., Division Of Rose Confections, Plymouth, MN 55441.

MC 135052 (Sub-4–7TA), filed September 3, 1980. Applicant: ASHCRAFT TRUCKING, INC., 875 Webster Street, Shelbyville, IN 46176. Representative: Warren C. Moberly, 777 Chamber of Commerce Building, 320 North Meridian Street, Indianapolis, IN 46204. *Acoustical and thermal insulating products, and materials used in the manufacture and distribution thereof,* between points in Jefferson County, KY; Clark, Monroe, Marion, Vanderburgh and Shelby Counties, IN; Morgan County, AL; Cook County, IL; Milwaukee County, WI; and Wake County, NC. Supporting shipper: Thermacoustics Corp; 11323 Highway 60, Sellersburg, IN 47172. An underlying ETA seeks 120 days authority.

MC 97932 (Sub-4–1TA), filed September 3, 1980. Applicant: WREN, INC., d.b.a. LAKEVILLE MOTOR EXPRESS, 661 LaSalle Street, St. Paul, MN 55114. Representative: Richard L. Gill 1805 American National Bank Bldg. St. Paul, MN 55101. *General commodities, (except those of unusual value Class A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Minneapolis-St. Paul, MN and points in Polk, St. Croix and Burnett Counties, WI. An underlying ETA seeks 120 days authority. There are 15 supporting shippers.*

MC 124170 (Sub-4–6TA), filed September 3, 1980. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. *Such commodities as are dealt in and used by manufacturers, distributors and wholesalers of health and beauty aids,* between Greensboro, NC, on the one hand, and, on the other, points in AL, CA, CT, DE, FL, GA, IA, IL, IN, KY, MA, MD, ME, MI, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, TX, VA, VT, WI, WV and DC. Supporting shipper: Vidal Sasson, Inc., 9640 Owensmouth Avenue, Chatsworth, CA 91311.

MC 135152 (Sub-4–14TA), filed September 3, 1980. Applicant: CASKET DISTRIBUTORS, INC., Rural Route 3, West Harrison, IN 45030. Representative: James D. Campbell, P.O. Box 327, Harrison, OH 45030. *Trailers, trailer parts, and trailer chassis and material, equipment and supplies used in the manufacture of trailers* from Brazil, IN to all points in the U.S. except AL and HI. Supporting shipper: Great Dane Trailers, Inc., Hwy. 40, East, P.O. Box 350, Brazil, IN 47834.

MC 133490 (Sub-4–1TA), filed September 3, 1980. Applicant: LEE'S TRUCKING, INC., Route 2, Box 463, North Branch, MN 55056. Representative: Samuel Rubenstein, Post Office Box 5, Minneapolis, MN 55440. *Contract* irregular: *Containers, viz: plastic containers; glass containers; including closures therefore,* from Port Clinton, OH, and Elgin, IL, to Chaska, MN, under continuing contract or contracts with Minnetonka, Inc., Minnetonka, MN. Supporting shipper: Minnetonka, Inc., Minnetonka, MN.

MC 128648 (Sub-4–1TA), filed September 2, 1980. Applicant: TRANS-UNITED, INC., 425 W. 152nd St., East Chicago, IN 46312. Representative: Joseph Winter, 29 S. LaSalle St., Chicago, IL 60603. Contract: irregular: (1) *Such commodities as are dealt in or used by dealers and manufacturers of industrial, construction, road building, logging, and mining equipment* (except commodities in bulk), and (2) *Equipment, materials, and supplies used in the manufacture of the commodities named in (1) above* (except commodities in bulk), between points in the United States (except AK and HI), under continuous contract(s) with the Pettibone Corporation and its wholly-owned subsidiaries, Pettibone Corporation, Hanson Machinery Co., Pettibone Mercury Corporation, Pettibone Michigan Corporation, Pettibone Ohio Corporation, and Universal Engineering Corporation. An underlying ETA seeks 120 days authority. Supporting shippers: There are seven statements in support of this application which may be examined at the Regional ICC office in Chicago, IL.

Note.—Applicant presently holds authority in MC 128648 (Subs-1, 5, 6 and 7) to transport a broad range of commodities between 34 named points, on the one hand, and, on the other, points in the U.S. (except AK and HI) under contract with Pettibone Corporation, of Chicago, IL. The purpose of this application is to round out the commodity and territorial descriptions in the above permits and to add various subsidiaries of Pettibone Corporation as additional contract shippers during the pendency of applicant's corresponding permanent authority application.

MC 151696 (Sub-4–1TA) filed September 2, 1980. Applicant: DAM-RIDGE TRANSPORTATION COMPANY, INC., 2890 Wilson Avenue, Madison, IN 47250. Representative: Robert A. Kriscunas, Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Contract,* irregular, *Automobile lifts, parts, accessories and supplies,* Between Madison, IN, on the one hand, and, on the other, points in the United States (except AK and HI). RESTRICTED to a contract or continuing contracts with Rotary Lift/Division of Dover Corporation, for 270 days. An underlying ETA seeks 120 days operating authority. Supporting shipper: Rotary Lift/Division of Dover Corporation, 2700 Lanier Drive, Madison, IN 47250.

MC 43038 (Sub-4–16), filed August 29, 1980. Applicant: COMMERCIAL CARRIERS, INC., 20300 Civic Center Drive, 4th Floor, Box CS 5027, Southfield, MI 48037. Representative: Paul H. Jones, 29725 Shacket Avenue, Madison Heights, MI 48071. *Motor Vehicles,* (excluding trailers) in secondary movements, in truckaway service, between points in the states of CO and UT, on the one hand, and, on the other, points in AZ, CA, CO, ID, KS, MT, NE, NV, NM, ND, OK, OR, SD, UT, WA and WY for 270 days. An underlying ETA seeks 120 days authority. Restrictions: The operations authorized herein are restricted to the transportation of traffic manufactured, imported, assembled or distributed by General Motors Corporation. Supporting shippers: General Motors Corporation, Suite 1300, 755 W. Big Beaver Road, Troy, MI 48084.

MC 139276 (Sub-4–1TA), filed August 27, 1980. Applicant: ALOHA FREIGHTWAYS, INC., 1069 Bryn Mawr Avenue, Bensenville, IL 60106. Representative: Grace Kasallis (same as applicant). *Contract,* irregular; *Machinery and machinery parts thereof* between Chicago Commercial Zone and points in Continental U.S. An underlying ETA seeks 120 days authority. There are 14 supporting shippers.

MC 126346 (Sub-4–16TA), filed August 28, 1980. Applicant: HAUPT CONTRACT CARRIERS, INC., P.O. Box 1023, Wausau, WI 54401. Representative: Elaine M. Conway, 10 S. LaSalle St., Chicago, IL 60603. *Contract; irregular: Such commodities as are dealt in or used by manufacturers of electric motors and generators,* between points in the U.S., under continuing contract with Marathon Electric. Supporting

shipper: Marathon Electric, 100 E. Randolph St., Wausau, WI 54401.

MC 118696 (Sub-4-26TA), filed August 28, 1980. Applicant: FERREE FURNITURE EXPRESS, INC., 252 Wildwood Road, Hammond, IN 46234. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204. (1) *Insulation and insulation products and materials, equipment and supplies* used in the manufacture and distribution thereof (except in bulk), between Rock County, WI; Washita County, OK; Warren County, OH and Huron County, OH on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK, and TX; and (2) *Urethane foam and urethane foam products, and materials, equipment and supplies* used in the manufacture thereof (except in bulk), between Green County, WI, on the one hand, and points in and east of ND, SD, NE, KS, OK, and TX, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Janesville Products, a Unit of AMCA International Corporation, Hwy 51 South, P.O. Box 873, Janesville, WI 53545.

MC 148966 (Sub-4-4TA), filed August 28, 1980. Applicant: DROTZMANN, INC., P.O. Box 667, Yankton, SD 57078. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (1) From the facilities of Terminal Freight Cooperative Association at Boston, MA; North Bergen, NJ; Philadelphia, PA; and Cleveland, OH to Seattle, WA; Portland, OR, Los Angeles, CA; and Pocatello, ID and (2) From the facilities of Terminal Freight Cooperative Association at Los Angeles, CA to Seattle, WA; Portland, OR; Pocatello, ID; and Murray, UT for 270 days. An ETA seeks 30 days. Restriction: Restricted to traffic which is at the time moving on bills of lading of non-profit shipper association (operating pursuant to 10562(3) of the Interstate Commerce Act (formerly 402(c)). Supporting shipper(s): Terminal Freight Cooperative Association, 1430 Branding Lane, Downers Grove, IL 60515.

MC 151488 (Sub-4-1TA), filed August 29, 1980. Applicant: BROOKLYN EXPRESS CO., P.O. Box 29572, Brooklyn Center, MN 55429. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. *Contract;* Irregular: *Soft drink beverages* from Minneapolis, MN (Fridley) to points in IA, MN, ND, SD and WI, under continuing contract or contracts with N. Star Beverages, Inc., Fridley, MN. Supporting shipper: N. Star Beverages, Inc., Fridley, MN 55421.

MC 151618 (Sub-4-1TA), filed August 29, 1980. Applicant: H. F. RADANDT, INC., 3106 Locust Lane-2nd Crossing, Eau Claire, WI 54701. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. *Structural steel,* including shipments in shipper-owned trailers, from points in Eau Claire County, WI to points in MN, IA, MI and IL. Supporting shipper: Phoenix Steel, Inc., 2800 Melby Street, Eau Claire, WI.

MC 145750 (Sub-4-2TA), filed September 3, 1980. Applicant: CHARLES SIZEMORE d.b.a. C. S. TRUCK SERVICE, 930 Caroline Street, O'Fallon, IL 62269. Representative: Charles Sizemore (same address as applicant). *Contract* irregular: *Ice cream, sherbets, ice cream novelties and dairy products, and materials, equipment and supplies used in the production and distribution of the above commodities,* between O'Fallon, IL, on the one hand, and, on the other, points in FL, GA, OH and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Prairie Farms Dairy, Inc., South Oak and U.S. Hwy 50, O'Fallon, IL 62269.

MC 35628 (Sub-4-9TA), filed September 2, 1980. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, 110 Ionia Avenue, N.W., P.O. Box 175, Grand Rapids, MI 39501. Representative: Michael P. Zell (address same as applicant). Common—Regular: *General commodities,* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving all points in Todd and Logan Counties, Kentucky, as off route points, in connection with applicant's presently authorized regular route service. Applicant has filed an underlying ETA. There are fourteen (14) supporting shipper statements.

MC 95876 (Sub-4-4TA), filed September 2, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., Box 1377, St. Cloud, MN 54301. Representative: William L. Libby (same as applicant). *Crushed stone, and crushed stone products, except in bulk,* from Wheatland, WY to points in the U.S. except HI, for 270 days. Supporting shipper: Mustard Seed Stone & Materials Co., Drawer 4406, Orchards, WA 98662.

MC 119656 (Sub-4-2TA), filed September 2, 1980. Applicant: NORTH EXPESS, INC., 219 East Main St., P.O. Box 247, Winamac, IN 46996. Representative: John Deremigio (same address as applicant). *Treated lumber and lumber products* from Morristown, IN to points in IL, MI, OH, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Indiana Wood Preserving, Inc., Box 506 Morristown, IN 46161.

MC 124078 (Sub-4-34TA), filed September 2, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Soda ash,* from Newark, NJ to points in CT, DE, MD MA, NY, PA, RI, VA. An underlying ETA seeks 30 days authority. Supporting shipper: Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, OK 73125.

MC 145715 (Sub-4-8TA), filed September 3, 1980. Applicant: BELL TRUCKING, INC., 2504 Industrial Park Rd., Van Buren, AR 72956. Representative: Elaine M. Conway, 10 S. LaSalle Street, Chicago, IL 60603. *Shortening,* from the facilities of Chicago Shortening at Chicago, IL to Laredo, TX; Sunny Vale, CA; and Frankfort, KY. Restricted to shipments originiating at and destined to the above-named points. An underlying ETA seeks 120 days authority. Supporting shipper: Chicago Shortening, 9101 S. Baltimore Ave., Chicago, IL, 60617.

MC 115651 (Sub-4-7TA), filed September 3, 1980. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Rd., P.O. Box 39, Rockford, IL 61105. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. *Petroleum products, in bulk, in tank vehicles* from McFarland, WI to points in IL. Supporting shipper: Hampshire Fuel Stop, Inc., Hampshire, IL.

MC 147039 (Sub-4-7TA), filed September 3, 1980. Applicant: T.S.I., d.b.a. A. J. PELLEGRINO CORPORATION, 21055 West Road, Trenton, MI 48183. Representative: Clarence Herr, P.O. Box 42131, Detroit, MI 48242. *Autombile parts* between NY, OH, PA, and TN on the one hand, and, Loredo, TX on the other. Supporting shipper: Ford Motor Company, One Park Lane Blvd., Park Lane Tower East, Suite 200, Dearborn, MI.

MC 151573 (Sub-4-3TA), filed September 3, 1980. Applicant: MOREHOUE CARTAGE, INC., 14847 South Menard, Oak Forest, IL 60452. Representative: Martin J. Kennedy, 120 West Madison Street, Chicago, IL 60602. (1) *Brick* and (2) *Cement in bulk,* (1) between points in IA, IL, IN, KY, MI, and WI, and (2) from Logansport, IN to Hazel Crest, IL. Supporting shippers: Best Bricks, Inc., 1220 W. 171 Street,

Hazelcrest, IL 60429; and, Streater Brick Systems, West end of 9th St., Streater, IL 61364.

MC 144741 (Sub-4-2TA), filed September 3, 1980. Applicant: NETTLETON ENTERPRISES CO., INC., d.b.a. NORWOOD TRANSPORT, INC., Route 1, Box 96, Elgin, IL 60120. Representative: Anthony E. Young, Suite 350, 29 S. LaSalle St., Chicago, IL 60603. *Commodities, the transportation of which because of size or weight require the use of special equipment,* between points in IL, IN, IA, MI, and WI. Supporting shippers: There are seven supporting shippers.

MC 151713 (Sub-4-1TA), filed September 2, 1980. Applicant: BDL TRUCKING, INC., 18026 Ute Street NW., Anoka, MN 55303. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Such commodities as are dealt in or used by manufacturers and distributors of roofing and road equipment, and materials, equipment and supplies used in connection therewith,* between Minneapolis, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Garlock Equipment Company. Supporting shipper: Garlock Equipment Company, 2601 Niagra Lane, Minneapolis, MN 55441.

MC 146071 (Sub-4-3TA), filed September 2, 1980. Applicant: DEETZ TRUCKING, INC., P.O. Box 2, Strum, WI 54770. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, Co 80203. *(1)Fire Retardant insulation (except in bulk) and (2) materials, equipment, and supplies used in the installation of fire retardant insulation (except in bulk),* from the facilities of American Energy Products, Inc. at or near Edison, NJ to points in MN, IA, WI, IL, LA and TX. Supporting shipper: American Energy Products, Inc., 435 Raritan Center Building, Edison, NJ 08817.

MC 136771 (Sub-4-1TA), filed September 2, 1980. Applicant: HY-WAY TRANSIT, INC., Route 1, Cedar Grove, WI 53013. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, Madison, Wisconsin 53705. *(1) Foodstuffs, and (2) materials, equipment and supplies used in the production and distribution of foodstuffs* between Belgium, Random Lake, and Sturgeon Bay, WI on the one hand and, on the other hand, points in the U.S. in the east of MN, IA, NE, KS, OK, and TX under continuing contract(s) with the Krier Preserving Company, Belgium, WI. Supporting shipper: The Krier Preserving Company, 705 Main St., Belgium, WI 53004.

MC 15975 (Sub-4-11TA), filed September 2, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). *(1) Such commodities as are dealt in or used by grocery, drug and hardware business houses and retail chain stores; (2) industrial products, institutional products, and (3) equipment, materials and supplies* used in the manufacture and distribution of the commodities named in (1) and (2), above (except commodities in bulk), between the facilities of Purex Corporation at st. Louis, MO, on the one hand, and, on the other, points in IL, IN, KS, KY, MN, OK and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Purex Corporation, 6901 McKissock, St. Louis, MO 63147.

MC 29555 (Sub-4-3TA), filed September 2, 1980. Applicant: BRIGGS TRANSPORTATION CO., N-400 Griggs-Midway Building, St. Paul, Minnesota 55104. Representative: Winston W. Hurd (same address as applicant). *General commodities, except those of unusual value, livestock, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment (except those requiring temperature control) and those injurious or contaminating to other lading,* serving points and places in the following counties of Wisconsin—Crawford, Richland, Columbia, Dane, Dodge, Jefferson, Waukesha, Rock, Walworth, Racine and Kenosha; and the following counties of Minnesota—Stearns, Sherburne, Wright, McLeod, Carver, Scott, Le Sueur, Rice, Brown, Blue Earth, and Waseca. Applicant intends to tack their present authority with that sought in this application including the utilization of connecting routes between the terminal facilities located at St. Paul, Minnesota and Milwaukee, Wisconsin with regard to the Minnesota counties and the terminal facilities located at Milwaukee, Wisconsin for the purpose of serving the Wisconsin counties. Interlining is also intended. There are 46 statements of support attached.

MC 120364 (Sub-4-8TA), filed August 29, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Road, Rockford, IL 61109. Representative: James A. Spiegel, Esq., Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Common-Regular; *General commodities (except those of unusual value, dangerous articles, commodities in bulk, household goods as defined by the Commission, commodities requiring special equipment, frozen foods, motor vehicles, and farm equipment and supplies)* between Columbia, Crawford, Dane, Grant, Iowa, LaFayette, Richland, and Sauk counties, WI, on the one hand, and on the other hand, the Commercial Zone of Chicago, IL, (as defined by the Commission) and points within IL bounded by a line beginning at the IL-WI state line and extending southerly on IL Hwy. 78, then to junction with IL Hwy 88, then on IL Hwy. 88 to junction with IL Hwy. 92 then easterly on IL Hwy. 92 to junction with U.S. Hwy 34, then easterly on U.S. Hwy. 34 to junction with IL Hwy. 59, then northerly on IL Hwy. 59 to junction with IL Hwy. 83 to the IL-WI state line, then west on the state line to the place of the beginning, including the Illinois points outside said geographic area of Des Plaines, Mt. Prospect, Palatine, Arlington Heights, Elizabeth, Savanna, Mundelein, Round Lake, Woodbine, Apple River, Waukegan, Hanover, North Chicago, Galena, and Scales Mounds, IL. An underlying ETA seeks 90 days authority. There are 11 supporting shippers.

MC 146969 (Sub-4-7TA), filed September 2, 1980. Applicant: STAN KOCH & SONS TRUCKING, INC., 4901 Excelsior Boulevard, Minneapolis, MN 55416. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Vacuums and vacuum accessories and parts,* between Bloomington, IL, on the one hand, and, on the other, Bloomington, MN. Supporting shipper: Magam Industrial Corporation, 4901 Excelsior Boulevard, St. Louis Park, MN 55416.

MC 150399 (Sub-4-1TA), filed September 2, 1980. Applicant: CHARTER BUS SERVICE, INC., 722 N. 3rd Street, Milwaukee, WI 53203. Representative: William C. Dineen, 710 N. Plankinton Avenue, Milwaukee, WI 53203. *Contract;* Irregular: *Passengers and groups of passengers* and their baggage, in charter operations, in round trip tours, beginning and ending at points in IA, IL, IN, KY, MI, MN, MO, ND, OH, SD and WI and extending to points in the U.S., including AK, but excluding HI, under contract(s) with Travel & Tour Service, Inc. Supporting shipper: Travel & Tour Service, Inc., 722 N. 3rd Street, Milwaukee, WI 53203.

MC 128543 (Sub-4-7TA), filed August 29, 1980. Applicant: CRESCO LINES, INC., 13900 South Keeler Avenue, Crestwood, IL 60445. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. *Contract;* Irregular: *Pipe, tubing and accessories therefor,* from points in MI to St. Louis, MO, and Staunton, IL, and points in their respective commercial zones,

restricted to traffic moving to the facilities of Tubular Steel, Inc., at Hazelwood, MO, and Staunton, IL, under a continuing contract with Tubular Steel, Inc. Supporting shipper: Tubular Steel, Inc., 7225 Polson Lane, Hazelwood, MO 63042.

MC 136713 (Sub-4-2TA), filed August 29, 1980. Applicant: AERO LIQUID TRANSIT, INC., 1717 Four Mile Road N.E., Grand Rapids, MI 49505. Representative: Daniel J. Kozera, Jr., The McKay Tower, Suite 2-A, Grand Rapids, MI 49503. *Liquefied petroleum gas, in bulk, in tank vehicles,* from the port of entry on the International Boundary Line between the U.S. and Canada, at or near Port Huron, MI, to points in IL. An underlying ETA seeks 120 days authority. Supporting shipper: Demert & Dougherty, Inc., 5000 West 41st Street, Chicago, IL 60650.

MC 151686 (Sub-4-1TA), filed August 29, 1980. Applicant: ACME TRANSFER & STORAGE CO., INC., 201 5th Ave., New Brighton, MN 55112. Representative: Robert L. Cope, 1730 M Street, NW., Suite 501, Washington, DC 20036. *Contract;* irregular: *General Commodities* (except household goods as defined by the Commission and Classes A and B explosives), between the commercial zone of Minneapolis, MN, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Minnesota Inter-Modal Shippers Association, Inc. Supporting shipper: Minnesota Inter-Modal Shippers Association, Inc., 2500 N.E. Kennedy St., Minneapolis, MN 55413.

MC 147645 (Sub-4-1TA), filed August 29, 1980. Applicant: DOTY TRUCKING, INC., R.R. No. 2, Box 310, Columbus, Indiana 47201. Representative: Warren C. Moberly, Harrison & Moberly, 320 N. Meridian Street, 777 Chamber of Commerce Bldg., Indianapolis, Indiana 46204, (317) 639-4511. *Contract bus parts,* from points in the states of IN, MI, IL, OH, KY, AL, MO, and NY to Brownsville, TX. Supporting shipper: Eagle International, Inc., 2045 Les Mauldin Blvd., Brownsville, TX 78520.

MC 146079 (Sub-4-1TA), filed August 29, 1980. Applicant: JACKSON TRANSPORTATION, INC., R.R. 1, Box 410-A, Clayton, IN. 46118. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. (1) *Stoves and ranges,* from the facilities of Jenn-Air Corp. at Indianapolis, IN to points in the U.S. (except AK and HI); and (2) *materials, equipment and supplies* used in the manufacture and distribution of stoves and ranges, from points in the U.S. (except AK and HI) to the facilities of Jenn-Air Corp. at Indianapolis, IN. Supporting shipper: Jenn-Air Corp., Indianapolis, IN.

MC 151705 (Sub-4-1TA), filed September 2, 1980. Applicant: JOHN M. HELFRICH, Glen Ullin, ND 58531. Representative: John B. Van de North, Jr., 2200 First National Bank Building, St. Paul, MN 55101. *Forest products,* between points in the U.S. under a continuing contract with Lavelle Lumber Co. of Fargo, ND. Supporting shipper: Lavelle Lumber Co., Box 258, Fargo, ND 58108.

MC 146969 (Sub-4-6TA), filed September 2, 1980. Applicant: STAN KOCH & SONS TRUCKING, INC., 4901 Excelsior Boulevard, Minneapolis, MN 55416. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Salt,* between Reno and Rush Counties, KS, on the one hand, and, on the other, points in IA, MN, ND and SD. Supporting shipper: Cosmos Hardware & Supply, Inc., 4901 Excelsior Boulevard, Minneapolis, MN 55416.

MC 133689 (Sub-4-29TA), filed September 2, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples St. NE., Blaine, MN 55434. Representative: Robert P. Sack, Box 6010, West St. Paul, MN 55118. *General commodities* (except household goods as defined by the Commission and Classes A and B explosives) between points in the U.S. in and east of ND, SD, NE, KS, OK and TX. An underlying ETA seeks 120 days authority. Supporting shippers: There are 39 statements of support attached. Applicant intends to interline at points sought to be served.

MC 146753 (Sub-4-4TA), filed August 29, 1980. Applicant: SAM YOUNG, INC., Box 337, Wolcott, IN 47995. Representative: Lester R. Gutman, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Drugs, pharmaceuticals, toilet articles and materials, equipment and supplies* used in their production, packaging and distribution, between Allegan, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: L. Perrigo, 117 Water Street, Allegan, MI 49010.

The following applications were filed in Region 5. Send Protests to: Consumer Assistance Center, Interstate Commerce Commission, P.O. Box 17150, Fort Worth, TX 76102.

MC 112713 (Sub-5-15TA), filed September 3, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., 10990 Roe Avenue, Overland Park, Kansas 66207. Representative: Robert E. DeLand (same as applicant). *General commodities (except Classes A and B explosives, commodities in bulk, those requiring special equipment, household goods as defined by the Commission and those of unusual value),* between Los Angeles, CA, and the facilities of the Wal-Mart Stores, Inc., located at or near Bentonville and Searcy, AR and their commerical zones. Supporting shipper: Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR.

MC 118341 (Sub-5-1TA), filed September 3, 1980. Applicant: VALLEY TRUCKING CO., INC., P.O. Box 2298, Brownsville, TX 78520. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Foodstuffs,* from Cameron, Hidalgo, Willacy, Webb and Starr Counties, TX; Corpus Christi, Dallas, Forth Worth, Houston and San Antonio, TX and their commerical zones; to points in the U.S. Supporting shippers: Tre-Mar Export-Import, P.O. Box 974, Weslaco, TX 78594, Jac Frozen, Inc., 2100 Boca Chica, Brownsville, TX 78520, and Fresca Sales, Inc., P.O. Box 446, Hidalgo, TX 78557.

MC 129903 (Sub-5-2TA), filed September 3, 1980. Applicant: EMPORIA MOTOR FREIGHT, INC, Box 1103, Route 5, Emporia, KS 66801. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Common, Regular: *General commodities, with the usual exceptions,* between Kansas City, MO and its commercial zone, Wichita, KS and its commerical zone, serving all points in Lyon County, KS and the point of Council Grove, KS and its commerical zone as off-route points: (1) From Kansas City, MO over Interstate Hwy. 70 to Topeka, KS, then over Interstate Hwy. 35 to Wichita, KS, and return over the same route; (2) From Kansas City, MO over Interstate Hwy. 35 to Wichita, KS and return over same route. Supporting shippers: There are 14.

Note.—Applicant will interline at Kansas City, MO and Wichita, KS.

MC 144682 (Sub-5-6TA), filed September 3, 1980. Applicant: R. R. STANLEY, 1738 Empire Central, Dallas, Texas 75235. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, Texas 75245. *Pneumatic tires and tubes* between Seattle, WA; Oakland, CA; Houston, TX to all points in the states of TX and OK. Supporting shipper(s): Sumitomo Tires, 6304 Northwest 83rd Street, Oklahoma City, OK 73132 and Tire Experts, Inc., 1736 Empire Central, Dallas, TX 75235. Hearing site: (Dallas, TX).

MC 147677 (Sub-5-2 TA), filed September 3, 1980. Applicant: J & L TRUCK LINES, INC., a Texas corporation, P.O. Box 1069, Odessa, TX 79760. Representative: Joe L. White, P.O.

Box 1069, Odessa, TX 79760. Common; Regular. *General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (1) Between Ft. Worth-Dallas, TX commercial zone as defined by the Interstate Commerce Commission and Midland-Odessa, TX commercial zone as defined by the Interstate Commerce Commission, from Ft. Worth-Dallas over Interstate Highway 20 to Midland-Odessa, TX serving no intermediate points in Texas and return over the same route. (2) Between Lovington, NM and Roswell, NM from Lovington over NM ST Hwy 18 to junction U.S. Hwy 380 thence over U.S. Hwy 380 to Roswell, NM serving all intermediate points in NM and return over the same route. (3) Between Roswell, NM and Artesia, NM over U.S. Hwy 285 and U.S. Hwy 285 alternate route serving all intermediate points in NM and return over the same routes. (4) Between Carlsbad, NM and White City, NM over U.S. Hwy 62 and U.S. Hwy 180 and return over the same route, and between Carlsbad, NM and Malaga, NM over U.S. Hwy 285 serving all intermediate points in NM and return over the same route. (5) Between White City, NM and Malaga, NM over U.S. Hwy 62 and U.S. Hwy 180 a distance of five miles to the junction on unnumbered state road, thence over NM unnumbered state road to Malaga, NM and return over same route serving all intermediate points in NM. Applicant intends to interline with outer carriers in Ft. Worth-Dallas, TX, Odessa, TX, and Roswell, NM. Applicant intends to tack with its current authority. Supporting shippers: 89 supporting shippers.

MC 150088 (Sub-5–9 TA), filed September 3, 1980. Applicant: STERLING TRANSPORT DIVISION, INC., 801 Heinz Way, Grand Prairie, TX 75701. Representative: Robert K. Frisch, Brown & Walker, 2711 Valley View Lane, Suite 101, Dallas, TX 75234. *Garments and wearing apparel on hangers, and commodities, equipment, materials and supplies dealt in or used by retail, variety or department stores in mixed loads with garments and wearing apparel on hangers* between points in Dallas and Tarrant Counties, TX, on the one hand, and points in Carter, Comanche, Canadian, Cleveland, McClain, Oklahoma and Pottawatomie Counties, OK; Pulaski County, AR; and Bossier, Caddo and Ouachita Parishes, LA, on the other hand. Supporting shipper: Montgomery Ward, 3600 Rosemead Boulevard, Rosemead, CA 91770.

MC 150783 (Sub-5–9 TA), filed September 3, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., Post Office Box 757, Rogers, Arkansas 72756. Representative: Ronnie Sleeth, Post Office Box 757, Rogers, Arkansas 72756. *(1) Glassware and glass bottles and jars, and, (2) Materials, equipment and supplies utilized in the manufacture and distribution of the commodities named in (1) above.* Between the facilities of Libbey Glass at Toledo, OH; Shreveport, LA; City of Industry and Mira Loma, CA and points in the United States (except AK and HI). Supporting shipper: Libbey Glass, Post Office Box 919, Toledo, OH 43693.

MC 150783 (Sub-5–10 TA), filed September 3, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., Post Office Box 757, Rogers, Arkansas 72756. Representative: Ronnie Sleeth, Post Office Box 757, Rogers, Arkansas 72756. (1) *Such commodities as are dealt in by health and beauty aid distributors and wholesalers.* From the facilities of Supreme Distributors Company at or near Detroit, MI to points in AL, AR, CA, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NY, NC, OH, OK, PA, TN, and TX. Supporting shipper: Supreme Distribution Company, 6501 E. McNichols, Detroit, MI 48212.

MC 13547 (Sub-5–5TA) Republication, filed August 15, 1980. Applicant: LEONARD BROTHERS TRANSPORT CO. INC., 1528 West 9th Street Kansas City, 64101. Representative: Joe M. Lock, 1528 West 9th Street, Kansas City, MO 64101. Common-Regular: *General commodities except those of unusual value, Class A & B explosives, household goods, as defined by the Commission, articles in bulk and those requiring special equipment:* Between Kansas City, MO and Wichita, KS serving no intermediate points: (1) from Kansas City, MO over U.S. Highways 24–40–I70 to Topeka, KS, thence over U.S. Highway I 35 to Wichita, KS and return over the same route. (2) from Kansas City, MO over U.S. Highway I–35 to Wichita, KS and return over the same route for operating convenience only. Between Kansas City, MO and Hutchison, KS serving no intermediate point: (1) from Kansas City, MO over U.S. Highway 24–40–I 70 to Topeka, KS, thence over U.S. Highway I 35 to Wichita, KS, thence over U.S. Highway 96 to Hutchinson, KS; return over the same route. (2) from Kansas City, MO over U.S Highway 24–40–I 70 to Salina, KS, thence over U.S. Highways 81 and I135 to Newton, KS then over U.S. Highway 50 to Hutchinson, KS and return over the same route. Between Kansas City, MO and Omaha, NE serving no intermediate points: (1) from Kansas City, MD over U.S. Highway I 29 to Omaha, NE and return over the same route. Applicant intends to interline. Supporting shipper: None.

MC 108207 (Sub-5–22TA) Republication, filed August 13, 1980. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same address as applicant). *Plastic molding compounds, plastic granules, epoxy resins and molding compounds (except in bulk, in tank vehicles), in vehicles equipped with mechnical refrigeration,* from points in IL, LA, and WI, to points in AZ, AR, CA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, ND, NE, NV, NM, OH, OK, SD, TX, UT, WI, and Memphis, TN, restricted to traffic originating at or destined to the facilities of Morton Chemical. Supporting shipper: Morton Chemical, a Division of Morton Norwich, 1275 Lake Ave., Woodstock, IL.

MC 30605 (Sub-5–2TA) filed September 4, 1980. Applicant: THE SANTA FE TRAIL TRANSPORTATION COMPANY, 433 E. Waterman, Wichita, KS 67202. Representative: Mr. Kenneth A. Willhite, Traffic Manager, The Santa Fe Trail Transportation Company, 433 E. Waterman, Wichita, KS 67202. *General Commodities, except Class A and B explosives and household goods as defined by the Commission,* serving the Eastman Kodak Plant site at Windsor, CO, as an off-route point in connection with applicant's regular route authority. Supporting shipper: Eastman Kodak Company, 2400 Mt. Read Blvd., Rochester, NY 14650.

MC 53965 (Sub-5–4TA) filed September 4, 1980. Applicant: GRAVES TRUCK LINE, INC., Post Office Drawer 1387, Salina, Kansas 67401. Representative: James T. Graves, President (same as applicant). Common; regular. *General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* Between Houston, TX and Dallas, TX and their commercial zones, over Interstate Hwy 45. Applicant also seeks authority to tack and interline. Supporting shippers: 40.

MC 108207 (Sub-5–33), filed September 4, 1980. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same address as applicant). *Meats, meat products, meat byproducts, and foodstuffs,* from St. Louis, MO to points in MN. Supporting shipper: Levin Bros. Poultry Co., 6149 Page, St. Louis, MO 63133; Cyclone Sausage Co., 118 E.

Marccan, St. Louis, MO 63111; and DCA Food Industries, 701 Fee Fee, Maryland Heights, MO 63043.

MC 112713 (Sub-5-16TA), filed September 4, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: John M. Records, P.O. Box 7270, Overland Park, KS 66207. Common; Regular. *General commodities (except Classes A and B explosives, commodities in bulk, household goods as defined by the Commission, commodities of unusual value and those requiring special equipment), which are at the time moving on bills of lading of freight forwarders under 49 U.S.C. 10102(8),* (1) between Tampa, FL, and Miami, FL, serving all intermediate points: From Tampa over U.S. Hwy 41 to Miami and return over the same route; (2) between Naples, FL, and Port Everglades, FL, serving all intermediate points: From Naples over Florida Hwy 84 to Port Everglades and return over the same route. Applicant intends to tack. Supporting shipper: Yellow Forwarding Co., 10990 Roe Avenue, Overland Park, KS 66207.

MC 113908 (Sub-5-18TA), filed September 5, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: Jim G. Erickson (same address as applicant). *Wine and wine products, in bulk,* between (Canandaigua), Ontario County, NY, and (Chicago), Cook County, IL. Supporting shipper: Canandaigua Wine Company, Inc., 116 Buffalo Street, Canandaigua, NY 14424.

MC 116077 (Sub-5-9TA), filed September 5, 1980. Applicant: DSI TRANSPORTS, INC., 5851 San Felipe, Suite 800, Houston, TX 77057. Representative: J. C. Browder, 5851 San Felipe, Suite 800, Houston, TX 77057. *Chemicals, in bulk, in tank vehicles, from Brownsville, TX to Houston, TX Spring, TX, Tomball, TX, and Conroe, TX, and from Brownsville, TX to Atlanta, GA, Charlotte, NC and Chicago, IL. Supporting shipper: Bull Oil & Chemical Transporters, Inc., 6327 Darby Way, Spring, TX 77379.*

MC 126118 (Sub-27TA), filed September 4, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *Such commodities as are dealt in or used by manufacturers and distributors of filters* (except in bulk, in tank vehicles), between points in IL, on the one hand, and, on the other, points in the United States (except AK, HI and IL). Supporting shipper: Rex Filter Co., Mark Frankel, Warehouse Manager, P.O. Box 1, Barnhill, IL 62809.

MC 135861 (Sub-5-16TA), filed September 4, 1980. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. Contract, Irregular. *Power transmission machinery and related parts, attachments and accessories, and supplies (except commodities which for reason of size or weight require special equipment),* (1) from Chambersburg, PA to Chicago, IL; Dallas, TX; Atlanta, GA; San Leandro, CA; and Trenton, TN; and (2) from Trenton, TN to Chicago, IL; Dallas, TX; Atlanta, GA; San Leandro, CA and Chambersburg, PA. Supporting shipper: T. B. Woods Sons Company, 440 No. 5th Avenue, Chambersburg, PA 17201.

MC 144678 (Sub-5-4TA), filed September 4, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th Street, Overland Park, Kansas 66210. Representative: Harold H. Clokey, American Freight System, Inc., 9393 West 110th Street, Overland Park, Kansas 66210. Common; Regular. *General commodities (except household goods as defined by the Commission and Class A and B explosives).* Serving Salina and Reno Counties, Kansas as off route points in connection with its otherwise authorized regular route operation between Sioux Falls, South Dakota and Wichita, Kansas. Supporting shippers: Prince Manufacturing Corp., 4600 S. Lewis, Sioux City, Iowa 51106. Hydraulic Components, Inc., P.O. Box 187, Hardington, Nebraska 68739. Omahaline Hydraulics Corp., P.O. 4, Walthill, Nebraska 68067. Bridgeport Tooling Co., 213 Benson Building, Sioux City, Iowa 51101.

MC 144858 (Sub-5-7TA), filed September 4, 1980. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, Little Rock, AR 72209. Representative: Scott E. Daniel, 800 Nebraska Savings Building, 1623 Farnam, Omaha, NE 68102. *Wine (except in bulk),* from Westfield, NY to points in the United States. Supporting shipper(s): Mogan David Wine Corporation, P.O. Box 697, Ripon, CA 95366.

MC 145921 (Sub-5-1TA), filed September 4, 1980. Applicant: AIR COURIERS, INC., 9470 Aerospace Drive, St. Louis, MO 63134. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *General Commodities (except articles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities to bulk, and articles requiring special equipment),* between points in Adams, Brown, Schuyler, Pike, Cook, Lake, DuPage, Scott, Morgan, Cass, Mason, Menard, Logan, DeWitt, Macon, Piatt, Champaign, Vermilion, Sangamon, Christian, Moultrie, Douglas, Edgar, Coles, Shelby, Clark, Cumberland, Montgomery, Macoupin, Greene, Calhoun, Jersey, Bond, Madison, Fayette, Effingham, Jasper, Crawford, Clay, Richland, Lawrence, Marion, Clinton, St. Clair, Monroe, Randolph, Washington, Jefferson, Wayne, Edwards, Wabash, Perry, Franklin, Hamilton, White, Jackson, Williamson, Saline, Gallatin, Union, Johnson, Pope, Hardin, Alexander, Pulaski, Massac Counties, IL; and Warren, St. Louis, St. Charles, Franklin, Jefferson, Ste. Genervieve, St. Francois, Perry, Iron, Reynolds, Madison, Bollinger, Cape Girardeau, Wayne, Stoddard, Scott, Mississippi, New Madrid, Dunkin, Pemiscot, Butler, Ripley, Carter, Washington, Crawford, Phelps, Maries, Miller, Gasconade, Osage, Cole, Morgan, Moniteau, Callaway, Cooper, Boone, Montgomery, Lincoln, Pike, Audrain, Saline, Howard, Chariton, Macon, Randolph, Shelby, Monroe, Marion, Ralls, Lewis, Jackson, Platte, Clay, Lafayette, Clark Counties, MO; and Des Monies and Lee Counties, IA. Applicant intends to interline. Supporting shipper: There are 155.

MC 145997 (Sub-5-TA), filed September 4, 1980. Applicant: JEM EQUIPMENT, INC., Post Office Box 396, Alma, AR 72921. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Meats, Meat Products and Meat By-Products and Articles Distributed by Meat Packinghouses, as described in Sections A and C of Appendix 1 to the Report in Descriptions in Motor Carrier Certificates, 61 M. C. C. 209 and 766 (except hides and commodities in bulk)*—From the facilities of Vernon Calhoun Packing Company, at or near Palestine, TX—To points in the United States (except AK and HI). Supporting shipper: Vernon Calhoun Packing Company, Post Office Box 709, Palestine, TX 75801.

MC 146360 (Sub-5-10TA), filed September 5, 1980. Applicant: FLOYD SMITH, JR. TRUCKING, INC., P.O. Box 26656, Oklahoma City, OK 73126. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Frozen potato and vegetable products and frozen fruits,* (1) from the facilities of Idaho Frozen Foods at or near Nampa and Twin Falls, ID and Clearfield, UT to points in AZ, CA, CO, ID, IA, KS, MN, MT, NE, NV, NM, ND, OK, OR, SD, UT, WA, WI, and WY, and (2) from the

facilities of Idaho Frozen Foods at or near Laramie, WY to points in the U.S. (except AK and HI). Supporting shipper: Idaho Frozen Foods Corp., P.O. Box 128, Twin Falls, ID 83301.

MC 147196 (Sub-5–9TA), filed September 4, 1980. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 50262, New Orleans, LA 70150. Representative: Donald A. Larousse, P.O. Box 50262, New Orleans, LA 70150. Contract; Irregular. Iron and steel pipe, casings, fittings and accessories from the facility of Shamrock Tubular Products, Inc., Houston, Texas to all points in the States of CO, CA, KS, LA, NE, NM, ND, OK, UT, and WY. Supporting shipper: Shamrock Tubular Products, Inc., 11511 Katy Freeway, Suite 340, Houston, Texas 77079.

MC 148548 (Sub-5–2TA), filed September 5, 1980. Applicant: KEIM TRANSPORTATION, INC., P.O. Box 226, 420 N. Sixth, Sabetha, KS 66534. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Contract, irregular *lumber and plywood,* from the Commercial zones of Florien, Urania, Dodson, Ruston and Bogalusa, LA; Temple, Diboll and Pineland, TX; and Dierks and Hot Springs, AR to points and places in KS and NE. Supporting shipper: Hardman Lumber, 404 North First St., Osborne, KS 67473.

MC 151176 (Sub-5–2TA), filed September 4, 1980. Applicant: EDD EUBANKS TRUCKING COMPANY, Box 204 (Hwy 25 N) Dexter, MO 63841. Representative: Edd Eubanks, Box 204 (Hwy 25 N), Dexter, MO 63841. Contract, Irregular. *Automotive air and oil filters and parts therefor,* to and from Dexter, MO to and from points in AL, CA, GA, IL, KS, MI, MO (except St. Louis and Poplar Bluff), NJ, NC, OH, PA, TN (except Dyersburg and Memphis), TX and WV. Applicant intends to interline. Supporting shipper: Campbell Filter Company, Box 400, Dexter, MO 63841.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 144779 (Sub-6–2TA), filed August 28, 1980. Applicant: AHA, INC., Box 158, Panguitch, UT 84759. Representative: Glen M. Hatch, 80 West Broadway, Suite 300, Salt Lake City, UT 84101. *Lumber and other forest products* from Escalante, UT to points in OK, AZ, NV, ID and CO for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Escalante Sawmills, Inc., P.O. Box 299, Escalante, UT.

MC 151695 (Sub-6–1TA), filed August 29, 1980. Applicant: A&M TRUCKING, INC., P.O. Box 1464, Mills, WY 82644. (1) *Machinery, materials, equipment and supplies,* use 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, and (2) *Machinery, materials, equipment and supplies,* used in or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, restricted against the transportation of complete oil drilling rigs; (3) *Mine and mill machinery, equipment, materials and supplies,* between points in WY, CO, UT, ID, MT, ND, SD and NE for 270 days. Five supporting shippers. Their statements may be examined at the Regional office listed.

MC 151716 (Sub-6–2TA), filed September 2, 1980. Applicant: AMERICAN CARGO EXPRESS, INC., 747 Glasgow Avenue, Inglewood, CA 90301. Representative: Miles L. Kavaller, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. *Contract Carrier,* Irregular routes: *Furniture,* from Los Angeles, CA to points in the United States, for 270 days. Supporting shipper: Pacific Condi, Division of Pacific Furniture Company, 1965 East Vista Bella Way, Compton, CA 90220.

MC 135385 (Sub-6–1TA), filed August 29, 1980. Applicant: J. C. BANGERTER & SONS, INC. 1265 North Main St., Bountiful, UT 84010. Representative: Harry D. Pugsley, 1283 East South Temple No. 501, Salt Lake City, UT 84102. *Contract Carrier,* Irregular routes: *finished paper products and kraft products* between points in CA, NM, AZ, UT, WA, OR, OK, ID, and TX, for 270 days. Under continuing contracts with St. Regis Paper Company. Supporting shipper: St. Regis Paper Company, 4530 Loma Vista, Los Angeles, CA 90058.

MC 148561 (Sub-6–1TA), filed August 29, 1980. Applicant: BENETO, INC., 1700 South River Road, West Sacramento, CA 95691. Representative: Ronald C. Chauvel, 100 Pine St., Suite 2550, San Francisco, CA 94111. *Petroleum and petroleum products* (other than asphalt and road oil), in bulk, in tank vehicles, from points in Contra Costa, Solano, Yolo and Sacramento, CA to points in NV north of Hwy 6 and west of U.S. Interstate 95 for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Telum, Inc., 3227 North Canyon Rd., Provo, UT 84601.

MC 15180 (Sub-6–1TA), filed August 28, 1980. Applicant: BLACK BROS. & SON DISTRIBUTING, INC., 912 East 3rd Street, Los Angeles, CA 90013. Representative: Robert M. Black (same as applicant). *Contract carrier,* Irregular Routes: (1) *New Office Furniture, Crated or Uncrated,* from points in Los Angeles County, CA to the stores of Cascade Commercial Company d/b/a Discount Office Furniture Mart, located in Portland, OR and Seattle, WA, for the account of Cascade Commercial Company d/b/a Discount Office Furniture Mart, and (2) *Rolled Paper, Waxed and Glassine,* from Longview and Vancouver, WA and Portland, OR to Pacoima or Sylmar, CA, for the account of Westland Packaging, Inc., for 270 days. Supporting shipper(s): Cascade Commercial Company d.b.a. Discount Furniture Mart, 3825 1st Ave South, Seattle, WA; Westland Packaging, Inc., P.O. Box 1846, 11353 Bradley Ave, Pacoima, CA 91331.

MC 11722 (Sub-6–6TA), filed August 28, 1980. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98953. Representative: Philip G. Skofstad, 1525 NE Weidler, Portland, OR 97232. *Mattresses and box springs* from Twin Falls, ID, to points in OR and WA, for 270 days. Supporting shipper: Restonic Northwest, 326 Second Avenue, S., P.O. Box 1066, Twin Falls, ID 83301.

MC 42487 (Sub-6–30TA), filed September 2, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular routes: *General commodites, (except those of unusual value, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* serving the facilities of Organic Laboratories, Inc., at Willis, TX, as an off-route point in connection with carrier's otherwise authorized regular route operations for 270 days. Applicant intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined, as an off-route point, with an authority in MC 42487 (Sub-708). The (Sub-708) authorities, in turn, will be tacked or joined with other present authorities of Applicant at such points as St. Louis, MO, Kansas City, MO, Dallas, TX, Houston, TX and San Antonio, TX, to permit service to and from points throughout the United States. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in Tariffs

on file with the Interstate Commerce Commission. Supporting shipper(s): Organic Laboratories, Inc., Old Highway 75-Mockingbird Hill, Willis, TX.

MC 139171 (Sub-6-9TA), filed August 29, 1980. Applicant: CONTROLLED DELIVERY SERVICE, INC., P.O. Box 1299, City of Industry, CA 91749. Representative: Robert L. Cope, Suite 501, 1730 M Street, NW., Washington, DC 20036. *Contract Carrier,* Irregular routes: *General Commodities* (except household goods as defined by the Commission, and Classes A and B explosives), between the commercial zone of Los Angeles, CA, on the one hand, and, on the other, the commercial zone of Minneapolis, MN, under continuing contracts with Streamline Shippers Association, Inc., of Los Angeles, CA for 270 days. Supporting shipper: Streamline Shipper Association, Inc., 970 E. Third Street, Los Angeles, CA 90013.

MC 123023 (Sub-6-1TA), filed August 28, 1980. Applicant: DI PIETRO, TRUCKING CO., INC., 2201 Sixth Avenue South, Seattle, WA 98134. Representative: George H. Hart, 1100 IBM Building, Seattle, WA 98101. *Macaroni and macaroni products,* from the facilities of Merlino's Major Italian Foods Co. at Kent, WA to points in OR, CA and NV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Merlino's Major Italian Food Co., 8247 South 194th Street, Kent, WA 98031.

MC 151689 (Sub-6-2TA), filed August 29, 1980. Applicant: LARRY S. GREENLEE, d.b.a. G&S TRUCKING, 907 So. 2nd St. East, Baker, MT 59313. Representative: (same as applicant). *Machinery and supplies used and useful in the discovery, production, transmission and refining of petroleum or natural gas, excepting liquids in bulk,* for 270 days, from points in MT to points in ND, SD, and WY and return. Supporting shippers: There are six (6) shippers.

MC 151688 (Sub-6-1TA), filed August 29, 1980. Applicant: INDUSTRIAL FREIGHT SYSTEM, INC., 9120 San Fernando Rd., Sun Valley, CA 91352. Representative: Gary W. Wigand, 130311 San Antonio Dr., Suite 214, Norwalk, CA 90650. *General commodities* (except household goods as described by the Commission, commodities in bulk, articles of unusual value, motor vehicles and Classes A & B explosives), restricted to traffic moving on the Bills of Lading of Freight Forwarders from to or between points and places in CA, CO, FL, GA, IL, IN, KS, LO, MN, MI, MT, NJ, NY, OH, TN, TX, VA & WI, for 270 days. Supporting shippers: Coast Carloading Co., 1045 Richmond St., Los Angeles, CA and ABC-TNT/Acme Fast Freight, 2110 Alhambra Av., Los Angeles, CA 90031.

MC 134599 (Sub-6-35TA), filed August 28, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, Utah 84127. Representative: Mr. Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Contract carrier,* irregular routes *(1) Candy, chewing gum, drugs, and toilet preparations, and (2) materials, equipment and supplies used in the manufacture, sale and distribution of the commodities in (1) above* between points in the U.S. restricted to the transportation of shipments originating at or destined to the facilities of Warner-Lambert Company its divisions, affiliates and subsidiaries, for 270 days. Supporting shipper: Warner-Lambert Co., Morris Plains, NJ 07950.

MC 134599 (Sub-6-36TA), filed August 27, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 81849, Salt Lake City, Utah 84127. Representative: Mr. Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Contract carrier,* irregular routes, *plastic articles and parts, materials, equipment and supplies used in the manufacture, sale and distribution of plastic articles* (except in bulk) from Kalamazoo, MI and Warwick, RI, and points in their respective commercial zones, to the facilities of TFE Industries, Inc., Division of Dayco Corporation, at or near Welcome, NC, under contract(s) with Dayco Corporation, for 270 days. Supporting shipper: Dayco Corporation, P.O. Box 1004, Dayton, OH 45401.

MC 151679 (Sub-6-1TA), filed August 28, 1980. Applicant: L. G. KITCHENS TRANSPORTATION, INC., 31197 Clark Road, Lucerne Valley, CA 92356. Representative: John C. Russell, 1545 Wilshire Boulevard, Los Angeles, CA 90017. *Contract carrier,* irregular routes; *clay; ground, crushed or pulverized,* between points in the U.S., for 270 days. Supporting shipper: Industrial Mineral Ventures, Inc., Str. Route 15, P.O. Box 549, Lathrop Wells, NV.

MC 146082 (Sub-6-1TA), filed August 27, 1980. Applicant: DAN MONTANA, d.b.a. MONTANA BUILDING MATERIALS, 213 Cynthia, NW., Albuquerque, New Mexico 87114. Representative: Jeannie Montana (same address as applicant). *Contract Carrier,* Irregular routes: *Gypsum Wallboard* from Bernalillo Cty., NM to points in AZ, CO, and TX, for the account of American Gypsum Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: American Gypsum Company, I-25 at Jefferson St., NE, Albuquerque, NM.

MC 151678 (Sub-6-1TA), filed August 28, 1980. Applicant: NEU-WAY, INC., 23702 72nd Ave., Langley, British Columbia, Canada V3A 4PG. Representative: George R. LaBissoniere, 15 South Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* irregular routes: *Salt and salt products,* from Lake Point, UT, to points on the International Boundary line between the U.S. and Canada in WA, ID, and MT, for the account of Utah Salt Company for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Utah Salt Company, 1935 South Main St., Salt Lake City, UT 84115.

MC 151690 (Sub-6-1TA), filed August 29, 1980. Applicant: GARY NEAL PIERCE, d.b.a RENO-TAHOE TOUR COMPANY, 2503 East Second Street, Reno, NV 89502. Representative: (same as applicant). *Passengers and their baggage,* in special and charter operations, in sightseeing tours, in vehicles having a passenger capacity of not more than fifteen persons between points in Washoe, Storey Counties, NV, and Carson City, NV, and Alpine, NV, El Dorado and Placer Counties, CA, for 180 days. Supporting shippers: Daugherty Travel, Inc., P.O. Box 3156, Reno, NV 89505. Hyatt Lake Tahoe, Resort Hotel and Casino, P.O. Box 3239, Incline Village, NV 89450.

MC 150472 (Sub-6-2TA), filed August 29, 1980. Applicant: STRAINS TRANSPORTATION COMPANY, P.O. Box 800, Renton, WA 98055. Representative: Michael A. Jonson, 300 Central Building, Seattle, WA 98104. *Contract carrier,* irregular routes transporting *compressed gases and cyrogenic liquids in cylinders and in bulk, and accessorial equipment, including high pressure gases and/or liquid cyrogenic vessels used in the manufacture, sale and distribution of compressed gases,* including accessorial products, between Renton, Washington and Tualitin, Oregon for 270 days. An underlying ETA seeks 120 days authority. SS: Air Products & Chemicals, Inc. El Segundo, CA 90245.

MC 26396 (Sub-6-42TA), filed August 28, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Barbara S. George (same as applicant). *General commodities* (except A and B explosives, and except household goods, as defined by the Commission), between points in MT on the one hand, and, on the other, points in the United States, for 270 days. There are no supporting shippers.

MC 26396 (Sub-6-43TA), filed August 29, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Clay, crude or non-crude* (except in bulk, in tank vehicles), from the facilities of Oil-Dri Corporation of America at or near Christmas Valley, OR, to ports of entry on the International Boundary line between the U.S. and Canada located at Plentywood, Scobey, Opheim, Morgan, Simpson, Sweetgrass and Eureka, MT; and Pembina, St. John, Dunseith, Westhope and Portal, ND, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Oil-Dri Corporation of America, 520 North Michigan, Chicago, IL 60611.

MC 26396 (Sub-6-45TA), filed September 2, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Oil well drilling muds and compounds, in bags, drums or cans,* from points in AR, LA and TX to ports of entry on the International Boundary line between the U.S. and Canada located at Buffalo, Niagara Falls, Champlain and St. Regis, NY; and Calais, Vanceboro, Houlton, Fort Fairfield and Fort Kent, ME, for 270 days. Supporting shipper: Dresser Industries—Magcobar Group, 601 Jefferson, Houston, TX 77005.

MC 26396 (Sub-6-45TA), filed September 2, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Clay, crude or non-crude* (except in bulk, in tank vehicles) from the facilities of Oil-Dri Corporation of America at or near Christmas Valley, OR to points in the U.S. (except AK and HI) for 270 days. Supporting shipper: Oil-Dri Corporation of America, 520 North Michigan, Chicago, IL 60611.

MC 59800 (Sub-6-1TA), filed August 21, 1980. Applicant: WEICKER TRANSFER AND STORAGE COMPANY, 2900 Brighton Blvd., Denver, CO 80216. Representative: Joseph F. Nigro, 400 Denver Hilton Office Bldg., 1515 Cleveland Pl., Denver, CO 80202. *Primary metal products, including galvanized* (except coating or other allied processing); *fabricated metal products* (except ordnance); *machinery and supplies* (except mercer description commodities); *building and construction materials, including all concrete products* (except cement in bulk); and *construction trailers,* between points in CO on the one hand and points in AZ, NM, KS, NE, WY, UT and TX on the other, for 270 days. Supporting shippers: There are 8 shippers. Their statements may be examined at the Regional office listed.

MC 112989 (Sub-6-10TA), filed August 28, 1980. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same as applicant). *Containers, container closures and container accessories,* from points in CA to points in AZ and NV, for 270 days. Supporting shipper: Crown Cork and Seal, 601 Parr Blvd., Richmond, CA 94804, and Glass Containers Corp., 535 North Gilbert Ave., Fullerton, CA 92634.

MC 113678 (Sub-6-21TA), filed September 2, 1980. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner, (same as above). *such commodities as are used or dealt in by banking, savings and loan, and financial institutions, and their suppliers (except in bulk),* between Phoenix and Tucson, AZ; Concord, CA; Colorado Springs, Denver, Ft. Collins, Pueblo, and Wheatridge, CO; Boise, ID; Lawrence, KS; Las Vegas, NV; Albuquerque, NM, and Arlington and El Paso, TX, and their respective commercial zones for each point named above for 270 days. Supporting shipper: Rocky Mountain Bank Note Co., 11100 West 8th Avenue, Denver, Colorado.

MC 124679 (Sub-6-28TA), filed September 2, 1980. Applicant: C. R. ENGLAND AND SONS, INC., 975 West 2100 South, Salt Lake City, Utah 84119. Representative: Robert H. Cannon (same as applicant). *Paper and paper products,* from Wheeling, IL, Merced, CA, Thousand Oaks, CA, Phoenix, AZ, Appleton, WI and St. Helens, OR to Salt Lake City, UT and Idaho Falls, ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Great Western Business Forms, Inc., 790 West 1700 South, Salt Lake City, Utah 84119.

Note.—Applicant holds motor contract carrier authority in number MC-128813 and sub numbers thereunder, therefore dual operations may be involved.

MC 1515 (Sub-6-6TA), filed September 2, 1980. Applicant: GREYHOUND LINES, INC., Greyhound Tower Phoenix, AZ 85077. Representative: R. L. Wilson (same address as applicant). *Common carrier,* regular routes, *passengers and their baggage and express and newspapers,* in the same vehicle with passengers, between the junction of MI Hwy 3 and MI Hwy 59 near Mt. Clemens, MI, and the junction of MI Hwy 59 and Interstate Hwy 96 near Howell, MI: From the junction of MI Hwy 3 and MI Hwy 59 over MI Hwy 59 to junction Interstate Hwy 96 and return over the same route, serving all intermediate points for 180 days. Condition: This authority shall be of no further force and effect upon termination of the carrier's contract with the state of Michigan, Department of State Highways and Transportation. An underlying E.T.A. seeking 90 days authority has been filed. Supporting shipper: Michigan Department of Transportation, Bureau of Urban and Public Transportation, Intercity Division, 425 West Ottawa Street, Lansing, MI 48909.

MC 147161 (Sub-6-3 TA), filed September 2, 1980. Applicant: MASS TRANSIT, INC., 2450 Orange Avenue, Signal Hill, CA 90806. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. *Contract carrier:* Irregular routes: (1) *Such commodities as are dealt in by wholesale and retail grocery stores and food business houses;* and (2) *materials, equipment and supplies* as are used in the operation of wholesale and retail grocery stores and food business houses, from points in WA, OR, ID, UT, CO, AZ, NV and TX to the facilities of Lucky Stores, Inc. in CA for 270 days. Supporting shipper: Lucky Stores, Inc., 6565 Knott Avenue, Buena Park, CA 90620.

MC 148769 (Sub-6-2 TA), filed September 2, 1980. Applicant: SHELDON J. GOLDFIN, d.b.a. NEVADA PRODUCE, 50 Freeport Blvd., Unit No. 17, Sparks, NV 89431. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Contract carrier,* irregular routes; *Pancreas glands in refrigerated containers* from Sioux City, IA and Omaha, NE to New Orleans, LA, for 270 days, under contract to H. A. Salzman & Company. An underlying ETA seeks 120 days authority. Supporting shipper: H. A. Salzman, P.O. Box 337, Rock Island, IL 61201.

MC 147695 (Sub-6-1 TA), filed September 2, 1980. Applicant: ONAHU TRANSPORTATION CO., INC., 1445 Spencer St., Longmont, Colorado 80501. Representative: Doyle W. Bloder (same as applicant). *General commodities* between Johnson County, KS and Denver County, CO, for 270 days. Supporting shipper: J. C. Penny Co., Inc., Lenexa, Kansas 66219.

MC 110325 (Sub-6-40 TA), filed September 2, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, 1221 Baltimore Avenue, Kansas City, MO 64105. *Common carrier:* regular routes: *general*

commodities (except household goods as defined by the Commission and Classes A and B explosives), serving Willis, TX as an off-route point in connection with carrier's regular route operations, for 270 days. An underlying ETA seeks 120 days' authority. Applicant intends to tack and interline. Supporting shipper: Fresno Chemical Corporation, 2600 S. Loop West, Houston, TX 77054.

MC 110325 (Sub-6-41TA) filed September 2, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. *Common carrier,* regular routes: *General commodities* (except household goods as defined by the Commission and Classes A and B explosives), (1) Between Memphis, TN and its commercial zone, on the one hand, and, on the other, Indianapolis, IN and its commercial zone, serving all intermediate points and their respective commercial zones: From Memphis over Interstate Hwy 55 to its junction with Interstate Hwy 57, then over Interstate Hwy 57 to its junction with Interstate Hwy 70, then over Interstate Hwy 70 to Indianapolis, and return over the same route; (2) Between St. Louis, MO and its commercial zone, on the one hand, and, on the other Huntington, WV and its commercial zone, serving all intermediate points and their respective commercial zones: From St. Louis over Interstate Hwy 64 to Huntington, and return over the same route; for 270 days. An underlying ETA seeks 120 days authority.

Note.—Applicant proposes to tack the authority sought with its authority in MC 110325 and Subs thereto, and proposes to interline with other motor carriers. There are no supporting shippers.

MC 110325 (Sub-6-42TA) filed September 2, 1980. Applicant: TRANSCOM LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. *Common carrier,* regular routes: *General commodities* (except household goods as defined by the Commission and Classes A and B explosives), (1) Between Birmingham, AL and its commercial zone, on the one hand, and, on the other, Indianapolis, IN and its commercial zone, serving all intermediate points and their respective commercial zones: From Birmingham over Interstate Hwy 65 to Indianapolis and return over the same route; (2) Between Louisville, KY and its commercial zone, on the one hand, and, on the other, Cincinnati, OH and its commercial zone, serving all intermediate points and their respective commercial zones: From Louisville over Interstate Hwy 71 to Cincinnati, and return over the same route; for 270 days. An underlying ETA seeks 120 days authority.

Note.—Applicant proposes to tack the authority sought with its authority in MC 110325 and Subs thereto, and proposes to interline with other motor carriers. Applicant proposes to tack parts (1) and (2) of this application. There are no supporting shippers.

MC 110325 (Sub-6-43TA) filed September 2, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. *Common carrier,* regular routes: *General commodities* (except household goods as defined by the Commission and Classes A and B explosives), (1) Between Atlanta, GA and its commercial zone, on the one hand, and, on the other, Harrisburg, PA and its commercial zone, serving all intermediate points and their respective commercial zones: From Atlanta over Interstate Hwy 85 to junction with Interstate Hwy 95, then over Interstate Hwy 95 to junction with Interstate Hwy 83, then over Interstate Hwy 83 to Harrisburg, and return over the same route; (2) Between Atlanta, GA and its commercial zone, on the one hand, and, on the other, Nashville, TN and its commercial zone, serving all intermediate points and their respective commercial zones: From Atlanta over Interstate Hwy 75 to junction with Interstate Hwy 59, then over Interstate Hwy 59 to junction Interstate Hwy 24, then over Interstate Hwy 24 to Nashville, and return over the same route; (3) Between Atlanta, GA and its commercial zone, on the one hand, and, on the other, Cincinnati, OH and its commercial zone, serving all intermediate points and their respective commercial zones: From Atlanta over Interstate Hwy 75 to Cincinnati, and return over the same route; for 270 days. An underlying ETA seeks 120 days authority.

Note.—Applicant proposes to tack the authority sought with its authority in MC 110325 and Subs thereto, and proposes to interline with other motor carriers. There are no supporting shippers.

MC 110325 (Sub-6-44TA) filed September 2, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. *Common carrier,* regular routes: *General commodities* (except household goods as defined by the Commisson and Classes A and B explosives), (1) Between Fort Worth and Dallas, TX and their respective commercial zones, on the one hand, and, on the other, San Antonio, TX and its commercial zone, serving all intermediate points and their respective commercial zones: From Dallas and Fort Worth over Interstate Hwy 35E, Interstate Hwy 35W, and Interstate Hwy 35 to San Antonio, and return over the same route; (2) Between Houston, TX and its commercial zone, on the one hand, and, on the other, San Antonio, TX and its commercial zone, serving all intermediate points and their respective commercial zones: From Houston over Interstate Hwy 10 to San Antonio and return over the same route; for 270 days. An underlying ETA seeks 120 days authority.

Note.—Applicant proposes to tack the authority sought with its authority in MC 110325 and Subs thereto, and proposes to interline with other motor carriers. There are no supporting shippers.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-28283 Filed 9-12-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29398 (Sub-1)]

Chicago & North Western Transportation Co.—Operation of a Line of Railroad Between Coal Creek Junction, Wyo., and South Morrill, Nebr.

Chicago and North Western Transportation Company (North Western), 400 West Madison Street, Chicago, Cook County, IL 60606, represented by Christopher A. Mills, Senior Commerce Counsell, 400 West Madison Street, Chicago, IL 60606, hereby gives notice that on the 15th day of August, 1980, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 11343 for approval to operate a line of railroad pursuant to an agreement with its subsidiary Western Railroad Properties, Incorporated (WRPI).

The transaction involved herein is part of a larger transaction involving a project by North Western to implement transportation service as an origin carrier transporting coal from the Southern Powder River Basin in Wyoming. The operation will include unit-train coal movements along the following segments of line: Between Coal Creek Junction, WY, and Shawnee and Orin, WY, approximately 109 miles; between Shawnee and Crandall, WY, approximately 45 miles; between Crandall and Joyce, NE, approximately

56 miles; and between Joyce and South Morrill, NE, approximately three miles.

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-4), *Implementation-Nat'l Environmental Policy Act,* 1969, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation-Nat'l Environmental Policy Act, 1969, supra,* at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 29398 (Sub-1) and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20424, not later than 45 days after the date notice of the filing of the application is published in the Federal Register. Such written comments shall include the following; the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and sevice requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-28287 Filed 9-12-80; 8:45 am]

BILLING CODE 7035-01-M

Long- and Short-Haul Application for Relief; Formerly Fourth Section Application

September 10, 1980.

This application for long- and short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before September 30, 1980. No. 43860, Southwestern Freight Bureau, Agent, (No. B-88), increased rates on paper and paper products, from Southwestern stations, to Southwestern, Western, Illinois and Northern Territory destinations, as published in Supplement 134 to ICC SWFB 4571 and Supplement 20 to its Tariff ICC SWFB 4572-A, scheduled to become effective October 7, 1980. Grounds for relief—additional revenue to offset increased operating costs.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-28288 Filed 9-12-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-17]

Joyce E. Millette, M.D.; Revocation of Registration

On July 23, 1979, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause proposing to revoke the DEA registration of Joyce E. Millette, M.D. (Respondent), of West Hartford, Connecticut, and to deny the Respondent's pending application for renewal of such registration. Simultaneously, citing his finding of imminent danger to the public health and safety, the Administrator, pursuant to 21 U.S.C. 824(d), suspended the Respondent's registration pending a final determination in these proceedings.

The Respondent requested a hearing on the issues raised by the Order to Show Cause and, following the completion of prehearing procedures, the hearing in this matter was held in the Hampden County Courthouse, Springfield, Massachusetts, on October 30 and 31, 1979. Administrative Law Judge Francis L. Young, presided.

On February 29, 1980, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law, and decision. In compliance with 21 CFR 1316.65(b), as amended, copies of the Administrative Law Judge's opinion were served on the Respondent and on Government counsel. No exceptions were filed and, on March 27, 1980, Judge Young transmitted the record of these proceedings to the Administrator. The record included, *inter alia,* the Administrative Law Judge's report or opinion, the hearing transcript, all of the exhibits which had been placed in the record, and a number of papers which had been filed subsequent to the hearing.

The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

Judge Young's recommended findings of fact cover a full eighteen pages of his opinion. They trace the Respondent's problems with law enforcement authorities from the early 1970's through the most recent investigation which resulted in her conviction. They summarize the evidence in this case clearly and fairly. Although some of Judge Young's findings and conclusions are repeated in this final order, the Administrator wishes to make clear that he is adopting the Administrative Law Judge's report, and the recommendations therein, in their entirety.

The Administrator finds that the Respondent is a Canadian-born physician who received her medical degree at McGill University in Montreal in 1956. She was licensed to practice medicine in Connecticut and New Hampshire in about 1965. On or about September 10, 1970, Dr. Millette was indicted for murder in connection with an abortion death which occurred in Maine. She was never brought to trial in that case and the indictment against her was ultimately dismissed.

In 1971, the Respondent became the subject of an investigation by special agents of DEA's predecessor, the Bureau of Narcotics and Dangerous Drugs (BNDD). In the course of that investigation, a BNDD agent, acting in an undercover capacity, asked Dr. Millette for a prescription for methadone for a friend. The Respondent gave the agent such a prescription which she had written in the name "Glen Campbell." This was not the name the agent was using and the Respondent understood that the drugs to be obtained thereby were for a third party who was not present. The writing and delivery of that prescription under those circumstances was clearly unlawful.

In 1971 or 1972, the BNDD received information from Endo Laboratories, a pharmaceutical manufacturer which then produced a highly addictive Schedule II narcotic drug called Numorphan. The manufacturer reported that a distributor in the Boston area had ordered such large quantities of Numorphan that they had exceeded the manufacturer's allocation for that drug. Further investigation revealed that this was the result of extraordinarily large orders placed by two pharmacies in the North Shore area, adjacent to New Hampshire. These pharmacies had been filling the Respondent's Numorphan prescriptions in enormous numbers. So much Numorphan was available in the North Shore area as a result of the Respondent's prescriptions, that the illicit price per tablet there was fifty

cents. The same drug then sold illicitly in Boston for as much as ten dollars per tablet.

In about October of 1976, after the Respondent had moved to Connecticut, that State's Drug Control Division initiated an investigation of her activities, based upon complaints received from several Hartford-area pharmacies. These complaints had to do with the frequency and quantity of controlled substance prescriptions written by the Respondent, and the types of individuals who were coming in to have them filled. Following a meeting with officers of the Drug Control Division, at which meeting these complaints were discussed, the Respondent voluntarily surrendered her privileges with respect to Schedule II controlled substances.

In March of 1978, the Wethersfield, Connecticut Police Department investigated the death of a young man whose body was found in a ravine. The body was subsequently identified as that of a known drug abuser. The medical examiner reported that this man's death was caused by acute poisoning due to the ingestion of propoxyphene and meprobamate. Three empty prescription vials were found a short distance from the victim's body. The labels on each of these vials showed that they had contained medication prescribed for the victim by Dr. Millette. The prescriptions were for Darvocet-N, Valium and Soma Compound. Darvovet-N contains propoxyphene napsylate, a Schedule IV controlled substance; Valium is a trade name for diazepam, also a Schedule IV substance; and Soma Compound, although not a controlled substance, contains carisprodol, and isopropyl meprobamate.

Sergeant John Karangekis, a veteran police officer who commands Wethersfield's detective bureau testified that through information received by his department from informants, persons arrested for drug-related offenses, and other drug-oriented people, the Respondent has gained notoriety as a doctor from whom such persons can easily obtain controlled substances. With this as background, and subsequent to the death of the young overdose victim, Sergeant Karangekis sent detectives to three pharmacies in Wethersfield which filed their prescriptions by patient names as opposed to numerically. Their purpose was to look for prescriptions in the names of people known to the department as "drug-oriented." The detectives found that a majority of such people had numerous prescriptions on file. Some had three or four prescriptions for different controlled substances issued on the same date. The prescriptions had been written by Dr. Millette.

In June of 1978, A Hartford-area dentist found his son unconscious, apparently as the result of a drug overdose. Prescription vials found alongside the son's bed bore labels which identified them as having been prescribed by the Respondent. The vials had contained Valium and Carbrital, both controlled substances. The dentist's calls to the Respondent's office were answered by people whom he characterized as teenagers who did not appear to be too coherent in thought or speech. When the father finally got through Dr. Millettee, he asked her if she knew that the young man was addicted to drugs. The Respondent replied that she hadn't the time to check out the background of her patients. In the dentist's opinion, based upon his professional training and experience, the Respondent had prescribed drugs without adequate knowledge of the condition or medical background of the patient, in strengths and amounts which could have brought about dependency and possible death. Apparently without regard for the health and well-being of the patient.

According to reports filed by other Hartford-area physicians in April and June of 1979, at least two other potentially fatal drug overdose incidents, involving young women, were attributable to controlled substances which had been prescribed by Dr. Millette.

DEA's own investigation of the Respondent's prescribing activity began on or about August 10, 1978, when DEA agents were told of the numerous complaints concerning Dr. Millette by members of the Hartford Police Department. In the investigation which followed, three DEA agents, in undercover capacity, visited the Respondent's office, posing as persons seeking drugs for no legitimate medical purpose. This investigation culminated in the Respondent's indictment in December 1978. She was tried in April 1979, in the United States District Court for the District of Connecticut, before the Honorable Jon O. Newman, sitting without a jury. The indictment, in 18 counts, charged Dr. Millette with felony offenses under 21 U.S.C. 841(a)(1). Each count related to a controlled substance prescription which she had written for one or another of the three DEA agents. Judge Newman found Dr. Millette guilty and she was convicted on all 18 counts. Judge Newman's Memorandum of Decision, which is part of the record of this proceeding, discusses the factual setting of the undercover investigation in some depth. It also recounts much of the expert medical testimony which was offered by both the prosecution and the defense. A portion of that testimony is also part of the administrative record. Two of the three agents also testified in the administrative hearing. The Administrator finds, as did U.S. District Judge Newman and Administrative Law Judge Young, that the Respondent prescribed controlled substances without any regard to legitimate medical need or treatment. She has been convicted of felony offenses relating to controlled substances. There is a lawful basis for the revocation of her DEA registration and for the denial of her pending application.

Even in a case such as this one, where there is no dispute over the fact of a registrant's conviction, the Controlled Substances Act gives the Administrator discretion to revoke or not revoke a registration, to grant or to deny an application. The statute itself requires nothing more than the bare conviction to enable the Administrator to exercise this discretion. Nevertheless, this administration has traditionally looked beyond the conviction to determine if the Respondent has presented mitigatory evidence which might persuade the Administrator to adopt some remedy other than revocation or denial. If the Administrator decides that a registration should be revoked or denied, he does so because he believes, based upon the record before him, that such action best serves the public interest. If, on the other hand, he decides to leave a registration in force, or to grant an application, he does so because he has been shown adequate evidence indicating that the registrant or applicant, in spite of his or her conviction, can be now entrusted to handle controlled substances in a proper manner. A DEA registration carries with it enormous potential for harm. Controlled substances, properly administered or prescribed, may be very useful in the course of medical treatment. Improperly used, they have the potential for dependency, addiction and even death.

At the outset of this proceeding, the Administrator suspended Dr. Millette's registration based upon preliminary evidence which indicated that her continued prescribing of controlled substances would pose an imminent danger to the public health and safety. After a full evidentiary hearing, the Administrative Law Judge concluded that a physician with such a simplistic

approach to potential and actual abuse of dangerous drugs, especially by young people, should not be entrusted with the authority to dispense and prescribe controlled substances. Judge Young recommended that Dr. Millette's registration be revoked and that her application be denied. The Adminstrator agrees.

Dr. Millette's prescribing practices with respect to controlled substances have caused her to be the subject of law enforcement investigations and inquiries since 1971. The evidence in this proceeding clearly demonstrates that several overdose incidents and at least one death were attributable to the controlled substances she prescribed. The Administrator finds it hard to conceive of a more compelling case for revoking a registration or denying an application. It is indeed unfortunate that the law does not provide this administration with an effective means of revoking, denying or suspending a registration prior to the prosecution and conviction of a registrant such as this one. In a case such as this, such a procedure might conceivably have saved lives.

Having concluded that there is a lawful basis for the revocation of the Respondent's registration, and for the denial of her pending application, and having further concluded that the public interest demands such action, the Administrator, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM5669493, previously issued to Joyce E. Millette, M.D., be, and it hereby is, revoked, effective immediately. The Respondent's pending application is hereby denied.

Dated: September 9, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-28396 Filed 9-12-80; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

Notice is hereby given that the Coordinating Council on Juvenile Justice and Delinquency Prevention will meet Tuesday, September 30, 1980, at 633 Indiana Avenue, NW., Washington, DC, 13th Floor Conference Room. The meeting will be open to the public.

The meeting will begin at 10:00 a.m. Agenda items include discussion of staff support for the Council, an update on past agenda items (joint National Advisory Committee—Coordinating Council meeting and review of activities regarding juveniles in institutions with serious mental illness or retardation), legislative update on new legislation affecting youth, discussion of development of Coordinating Council workplans, and discussion of future agenda items. Time will be available for update from member agencies.

For further information contact Mr. James C. Shine, Executive Assistant and Special Counsel, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Department of Justice, 633 Indiana Avenue NW., Washington, DC, 20531.

Ira M. Schwartz,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 80-28289 Filed 9-12-80; 8:45 am]

BILLING CODE 4410-18-M

Tax Division

Advisory Committee on Tax Litigation; Open Meeting

There will be a meeting of the Advisory Committee on Tax Litigation on October 6, 1980, in Room 4107 of the Main Justice Building. The building is located between Pennsylvania and Constitution Avenues N.W. and Ninth and Tenth Streets, Washington, D.C. The meeting will begin at 9:30 a.m. The Agenda will include the following topics:

Taxpayers' voluntary disclsoure of criminal activity
Criminal and disciplinary sanctions against tax shelter promoters and advisors
Guidelines for civil purpose Rule 6(e) orders
Tax protester "zero liability returns"
Progress report on revisions in Tax Division criminal conference procedure
Proposed amendments to Sections 7602 and 7609, I.R.C.
Proposals by U.S. Attorneys' Advisory Committee and GAO to shorten the review process for criminal tax cases
Use of CID identification in third-party investigations
Competing claims of the Government and victims to recover proceeds of embezzlements and fraudulent investments
Collateral estoppel problems raised by the *Starker* decision
Tax protester harassment of Revenue Agents: how should the Tax Division respond?
Attorneys' fees in tax cases: pending legislation; what is "reasonable" and procedures for fixing awards
The release of tax return information to third parties
Use of magistrates in civil tax litigation
Expediting civil settlements
Discovery procedures in the Court of Claims.

The Members of the Advisory Committee on Tax Litigation are:

J. W. Bullion (Dallas, Texas)
Charles B. E. Freeman (Washington, D.C.)
Martin D. Ginsburg (Washington, D.C.)
Sharon L. King (Chicago, Illinois)
Charles S. Lyon (New York, New York)
Harry K. Mansfield (Boston, Massachusetts)
John T. Piper (Seattle, Washington)
Lipman Redman (Washington, D.C.)
Jules Ritholz (New York, New York)
Harvey M. Silets (Chicago, Illinois)
Charles M. Walker (Los Angeles, California)

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people. After the Committee members finish discussing the items on the agenda, there may be time for statements by nonmembers. If you want to make a statement at the meeting, or if you would like the Committee to consider a written statement, please call or write to the Special Assistant to the Assistant Attorney General, Tax Division, Department of Justice, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Special Assistant to the Assistant, Attorney General, Tax Division, Department of Justice, 202-633-2987, (not toll free).

Dated: September 10, 1980.

M. Carr Ferguson,

Assistant Attorney General, Tax Division, Department of Justice.

[FR Doc. 80-28387 Filed 9-12-80; 8:45 am]

BILLING CODE 4410-01-M

Advisory Committee on Tax Litigation; Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776, 5 U.S.C. App. I, Supp. II), and with the approval of the Attorney General, and the concurrence of the Office of Management and Budget, the Assistant Attorney General, Tax Division, Department of Justice, has determined that renewal of the Advisory Committee on Tax Litigation is in the public interest in connection with the performance of duties imposed on the Tax Division by law.

Purpose: The primary purpose of the Advisory Committee on Tax Litigation is to provide an organized public forum for discussions of relevant tax litigation issues between Justice Department officials and representatives of the public. The Advisory Committee also is to provide constructive observations about the Tax Division's current or proposed policies, programs, and procedures, and problems which may be encountered by taxpayers and tax practitioners in dealing with the Tax

Division, Department of Justice. Where appropriate or necessary, the Advisory Committee presents recommendations on improving Tax Division operations.

Membership: The Advisory Committee consists of twelve (12) members, all of whom must have a background and interest in, and concern for, litigation of Federal tax matters.

The Committee will have a balanced membership, including women, minority representatives, representatives of the academic and public interest group sectors, and private practitioners, selected from diverse geographical areas of the country, to be appointed by the Assistant Attorney General, Tax Division.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act, September 30, 1980.

Termination: The services of the Advisory Committee are expected to be needed for an indefinite period of time and the Committee will be an ongoing endeavor. The instant authorization is for a two-year term, with further provision for renewal of the Committee's charter on a biennial basis thereafter.

Interested persons are invited to submit comments regarding the renewal of the Advisory Committee on Tax Litigation. Such comments, as well as any inquiries, may be addressed to the Advisory Committee Management Officer, Tax Division, Department of Justice, Washington, D.C. 20530, phone: 202-633-2987.

Dated: September 8, 1980.

M. Carr Ferguson,

Assistant Attorney General, Tax Division, Department of Justice.

[FR Doc. 80-28386 Filed 9-12-80; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Grants and Contracts

September 9, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *"

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by: East River Legal Services in Sioux Falls, South Dakota, to serve Jerauld County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-28307 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

September 9, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *"

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

South Dakota Legal Services, Inc., in Mission, South Dakota, to serve Bennett, Brule, Buffalo, Charles Mix, Dewey, Gregory, Hyde, Jackson, Lyman, Mellette, Shannon, Todd, Tripp, Washabaugh and Zieback Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-28308 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

September 9, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Legal Aid Society of Central Texas in Austin, Texas, to serve San Saba County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, Colorado 80202.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-28309 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

September 9, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *"

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Waco-McLennan County Legal Aid in Waco, Texas, to serve Hamilton County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, Colorado 80202.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-28310 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

September 9, 1980.

The Legal Services Corporation was established pursuant to the Legal

Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *"

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Dallas Legal Services Foundation in Dallas, Texas, to serve Collin, Ellis, Grayson, Kaufman, and Rockwall Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, Colorado 80202.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-28311 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-35-M

Grants and Contracts

September 9, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Guam Legal Services Corporation, Inc., in Tamuning, Guam, to serve the territory of Guam.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Seattle Regional Office, 506 Second Avenue, Seattle, Washington 98104.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-28312 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL COMMUNICATIONS SYSTEM

Proposed Interim Federal Standard 1041 Telecommunications: Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment for Operation With Packet-Switched Date Telecommunications Networks

The Administrator of the General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the National Communications System (NCS) was designated by the Administrator, GSA, as the responsible agent for the development of telecommunication standards for NCS interoperability and the computer-communications interface. Further information on the NCS can be found in Department of Defense Directive 5100.41, "Arrangements for Discharge of Executive Agent Responsibilities for the NCS," and in an NCS Information Brochure available upon request from the National Communications System (NCS).

Proposed Interim Federal Standard 1041 adopts, with qualification, the 1980 revised version of the International Telegraph and Telephone Consultative Committee (CCITT) Recommendation X.25, "Interface between Data Terminal Equipment and Data Circuit-terminating Equipment for Terminals Operating in the Packet Mode on Public Data Networks," for optional use by Federal agencies pending the anticipated publication of a final joint Federal Standard (Telecommunications) and Federal Information Processing Standard in mid 1981. Because of immediate widespread implementations of CCITT Recommendation X.25, this Interim Federal Standard is proposed to provide initial guidance to assist in early implementations by Federal agencies and to reduce the possibility of numerous divergent implementations which could be counter to the interoperability objectives of the NCS. The proposed Interim Federal Standard 1041 has been prepared under the Federal Telecommunication Standards Program (FTSP) by the National Communications System's Office of Technology and Standards.

The purpose of this notice is to solicit comments on proposed Interim Federal Standard 1041 as to its technical content and urgency for publication as interim guidance to Federal departments and agencies and their contractors. Copies of the Proposed Interim Federal Standard can be obtained from this office.

Prior to adoption of the proposed Interim Federal standard, it is considered essential that proper consideration be given to the needs and views of industry, the public, and state and local governments, Interested parties may submit their comments to the Mr. Harold C. Folts, Office of Technology and Standards, National Communications System, Washington, D.C. 20305. All comments should be submitted within 60 days of the date of this Notice. Telephone inquiries and requests for copies of the proposed standard should be directed to Mr. Folts, telephone 692-2124.

Joseph Rose,

Deputy Manager.

September 10, 1980.

[FR Doc. 80-28309 Filed 9-12-80; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

Agency: National Endowment for the Humanities.

Action: Notice of Meetings.

Summary: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506.

Date: September 29, 1980.

Time: 9:00 a.m. to 5:30 p.m.

Room: 1134.

Program: This meeting will review applications submitted to the General Research Program for Area Studies; Africa, Asia, Europe, Latin America projects, Division of Research Programs, for projects beginning after March 1, 1981.

Date: October 2, 1980.

Time: 9:00 a.m. to 5:30 p.m.

Room: 1134.

Program: This meeting will review applications submitted to the General Research Program for Basic Research: Linguistics projects, Division of Research Programs, for projects beginning after December 1, 1980.

The proposed meetings are 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. Because the proposed meetings will consider information that is likely to disclose,

(1) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) information of a personal nature the disclosure of which would constitute

a cleary unwarranted invasion of personal privacy; and

(3) information the disclosure of which would significantly frustrate implementation of proposed agency action;

pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings 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 about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 80–28383 Filed 9–12–80 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for PCM, Subcommittee on Genetic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Genetic Biology of the Advisory Committee for Physiology, Cellular & Molecular Biology.

Date and time: October 30, 31–November 1, 1980, 9:00 AM.

Place: Room 338, National Science Foundation, 1800 G Street, N.W. Washington, D.C. 20550.

Type of Meeting: Closed.

Contact: Dr. Philip D. Harriman, Program Director, Genetic Biology.

Person: Program, Room 326. National Science Foundation, Washington, D.C. 20550.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in genetic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: September 10, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80–28351 Filed 9–12–80; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee on Biological Instrumentation; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Biological Instrumentation of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: Thursday & Friday, October 30 & 31, 1980 from 9:00 am to 5:00 pm.

Place: Room 1224, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. L. D. Faller, Program Director, Biological Instrumentation Program, Room 325, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–7652.

Purpose of subcommittee: To provide advice and recommendations concerning support for research Instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c). Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF, on July 6, 1979.

Dated: September 10, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80–28349 Filed 9–12–80 8:45 am]

BILLING CODE 7555–01–M

Subcommittee on Cellular Physiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Cellular Physiology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: November 3, 4, 5, 1980—starting at 9:00 a.m., to 5:00 p.m.

Place: Room 338, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550

Type of meeting: Closed.

Contact person: Dr. Barbara K. Zain, Asistant Program Director, Cellular Physiology Program, Room 332, National Science Foundation, Washington, D.C. 20550, telephone 202/357–7975.

Purpose of subcommittee: To provide advice and recommendations concerning support of research in cellular physiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal, concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management officer was delegated the authority to make determinations by the Director, NSF July 6, 1979.

Dated: September 10, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80–28352 Filed 9–12–80; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee on Ecological Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Ecological Sciences of the Advisory Committee for Environmental Biology.

Date and Time: October 8, 9 and 10, 1980; 8:30 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G St. NW, Washington, D.C. 20550.

Type of meeting: Closed.

Contact persons: Dr. David W. Johnston, Program Director, Ecology Program, (202) 357–9734, and Dr. W. Franklin Harris, Program Director, Ecosystem Studies Program (202) 357–9596, Room 336, National Science Foundation, Washington, D.C. 20550.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in ecological sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 10, 1980.

[FR Doc. 80–28360 Filed 9–12–80; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee Meeting for Metabolic Biology

In accordance with the Federal Advisoiry Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Metabolic Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: October 30, 31, 1980: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 421 National Science Foundation, 1800 G Street, N.W. Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Elijah B. Romanoff, Program Director, Metabolic Biology Program, Room 325, National Science Foundation, Washington, D.C. 20550, Telephone: (202)357–7987.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Metabolic Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section (10)d of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on July 6, 1979.

Dated: September 10, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80–28350 Filed 9–12–80; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee on Population Biology and Physiological Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Population Biology and Physiological Ecology of the Advisory Committee for Environmental Biology.

Date and time: October 16 and 17, 1980; 8:30 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G St NW, Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Jerry F. Downhower, Program Director, Population Biology and Physiological Ecology Program, Room 336, National Science Foundation, Washington, D.C. 20550, telephone (202) 357–9728.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 10, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80–28347 Filed 9–12–80; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee for Psychobiology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Psychobiology of the Advisory Committee for Behavioral and Neural Sciences.

Date and time: October 21 and 22, 1980, 8:30 a.m.—5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, N.W., Room 321, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, D.C. (202) 357–7949.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in psychobiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 10, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80–28348 Filed 9–12–80; 8:45 am]

BILLING CODE 7555–01–M

Subcommittee on Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Systematic Biology of the Advisory Committee for Environmental Biology.

Date and time: October 1, 1980, 7:00 p.m. to 11:00 p.m., October 2 and 3, 1980, 8:30 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G St., NW, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. John H. Beaman, Program Director, Systematic Biology Program, Room 336, National Science Foundation, Washington, D.C. 20550, telephone (202) 357–9588.

Purpose of subcommittee: To provide advice and recommendations concerning support for research, in systematic biology.

Agenda: To review and evaluate research proposals and project as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These

matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF, on July 6, 1979.

September 10, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80-28346 Filed 9-12-80 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-237, 50-249, 50-254, and 50-265]

Commonwealth Edison Co. and Iowa-Illinois Gas & Electric Co; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Provisional Operating License No. DPR-19, and Amendment No. 44 to Facility Operating License No. DPR-25, issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located in Grundy County, Illinois. The Commission has also issued Amendment No. 58 to Facility Operating License No. DPR-29, and Amendment No. 53 to Facility Operating License No. DPR-30, issued to Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company, which revised the Technical Specifications for operation of the Quad Cities Nuclear Power Station, Unit Nos. 1 and 2, located in Rock Island County, Illinois. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to allow the count rate on the Source Range Monitor (SRM) channels to go below three (3) counts per second when there are two or less fuel assemblies in a quadrant and they are positioned adjacent to the SRM in that quadrant.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need for be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated May 15, 1980, as supplemented September 3, 1980, (2) Amendment No. 49 to License No. DPR-19, Amendment No. 44 to License No. DPR-25, Amendment No. 58 to License No. DPR-29, and Amendment No. 53 to License No. DPR-30, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois, for Dresden 2 and 3 and at the Moline Public Library, 504 17th Street, Moline, Illinois, for Quad Cities 1 and 2. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 8th day of September 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-28298 Filed 9-12-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-249]

Commonwealth Edison Co. (Dresden Nuclear Power Station Unit 3); Order for Modification of License

I

The Commonwealth Edison Company (Licensee) is the holder of Facility Operating License No. DPR-25 which authorizes the operation of the Dresden Nuclear Power Station Unit 3 at steady state reactor power levels not in excess of 2527 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site near Morris, Illinois.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licenses by a series of letters and meetings during the months of February and March, 1980.

planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–25 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division, of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to John W. Rowe, Isham, Lincoln & Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Md.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28299 Filed 9-12-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for Wisconsin Electric Power Company's Point Beach Nuclear Plant, Units 1 and 2, from the University of Wisconsin Library—Stevens Point to the Joseph Mann Library, Two Rivers, Wisconsin. Limited documentation concerning the Point Beach Plant will be kept at the Stevens point location.

Members of the public may now inspect and copy documents and correspondence related to the licensing and operation of the Point Beach Plant at the Joseph Mann Library, 1516 Sixteenth Street, Two Rivers, WI 54241. The Library is open on the following schedule: 9:00am–8:30pm, Monday through Thursday; 9:00am–5:00pm on Friday and Saturday.

For further information, interested parties in the Two Rivers area may contact the LPDR directly through Ms. Gertrude Kamisky, Reference Librarian, telephone number (414) 794–7121. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 1717 H Street, N.W., Washington, DC 20555, telephone number (202) 634–3273. The cost of ordering records from the Public Document Room is 8¢ per page, plus postage and handling.

Questions concerning the availability of documents at the Point Beach LPDR and the NRC's local public document room program in general should be addressed to Ms. Jona L. Souder, Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 492–7536.

Dated at Bethesda, Maryland, this 9th day of September, 1980.

For the Nuclear Regulatory Commission.

Joseph M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 80-28300 Filed 9-12-80; 8:45 am]

BILLING CODE 7590-01-M

Senior Executive Service Performance Awards

AGENCY: Nuclear Regulatory Commission.

ACTION: Decisions on performance awards for senior executives.

SUMMARY: To implement 5 U.S.C. 5384 and in compliance with a July 21, 1980 memorandum from Alan K. Campbell, Director, Office of Personnel

Management, the Nuclear Regulatory Commission (NRC) has announced that it plans to make final performance awards determinations on recipients of Senior Executive Service performance award on or before September 30, 1980. Performance awards paid by NRC shall be based on recommendations by the Performance Review Board, established in accordance with 5 U.S.C. 4314, and final decision by the appointing authorities.

FOR FURTHER INFORMATION CONTACT:
Daniel J. Donoghue, Chairman, Performance Review Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301–492–7335.

Dated at Bethesda, Maryland this 9th day of September, 1980.

For the Nuclear Regulatory Commission.

Daniel J. Donoghue,

Chairman, Performance Review Board.

[FR Doc. 80-28301 Filed 9-12-80, 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

September 10, 1980.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB Reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—377–3627

Revisions

Bureau of the Census
Gloves and Mittens (shipments)
MA–23D
Annually
Producers of gloves and mittens, 250 responses; 250 hours
Office of Federal Statistical Policy and Standard, 673–7974

Bureau of the Census
December 1980 CPS—Post enumeration survey and trace
Sample
CPS–678, 678A, and 678B CPS–678A
Single time
Interviewed CPS households, 119,000 Responses; 5,640 Hours
Office of Federal Statistical Policy and Standard, 673–7974

DEPARTMENT OF ENERGY

Agency Clearance Officer—Diane W. Lique—633–8526

New Forms

1980 Survey of Large Combustors in Manufacturing
Industries
EIA–463
Single time
Large Manufacturers with combustors, 10,000 responses; 69,000 hours
Jefferson B. Hill, 395–7340

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strnad—245–7488

New Forms

Health Care Financing Administration (Departmental)
Evaluation of the Oklahoma Utilization Review System
HCFA–214, 214A, 215, and 215A
Single time
Hospital administrators and Staff, 228 responses; 969 hours
Eisinger, Richard, 395–6880

Revisions

Health Care Financing Administration (Medicaid)
Monthly statistical report on medical care
HCFR–120
Monthly
State medicaid (title XIX agencies), 648 responses; 21,384 Hours Eisinger, Richard, 395–6880

Social Security Administration
Application for widow's or widower's insurance benefits
SSA–10–BK

On occasion
Surviving widows/widowers age 60 or older/over 50 if disab. 661,000 responses; 121,183 hours
Barbara F. Young, 395–6880

Social Security Administration
Application for retirement insurance benefits
SSA–1–F6
On occasion
Applicants for retire. insur. benefits under the SSA 1,560,000 responses; 234,000 hours
Barbara F. Young, 395–6880

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523–6341

Revisions

Bureau of International Labor Affairs
Petition for adjustment assistance
ILAB 20 (revised) and ILAB 20–1 (English and Spanish translation)
On occasion
Workers at firms injured by import competition 3,200 responses; 3,200 hours
Arnold Strasser, 395–6880

SMALL BUSINESS ADMINISTRATION

Agency Clearance Officer—John Anderson—653–6890

Reinstatements

Data form procurement automated source system (PASS)
SBA–1167
On occasion
Small firms interested in Government contracting 20,000 responses; 5,000 hours
Edward C. Springer, 395–4814

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—389–2146

Extensions

50% employment requirement survey
VAF 22–8722, 22–8723, 22–8724
Other (see SF–83)
School & State approving agencies 375,000 responses; 650,000 hours
Laverne V. Collins, 395–6880.

C. Louis Kincannon,

Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–28384 Filed 9–12–80; 8:45 am]
BILLING CODE 3110–01–M

POSTAL SERVICE

Board of Governors; Closed Meeting

During its September 8, 1980, meeting the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of the meeting. The portion to be closed was to involve a discussion concerning pending litigation involving the Decision of the Governors of August 15, 1980, allowing the Postal Rate Commission's Recommended Decision upon Reconsideration in the Electronic Mail Classification Proposal case to take effect under protest. The vote followed a determination in accordance with the Government in the Sunshine Act that agency business required consideration of this litigation without the delay that would be necessary to afford public announcement at least one week before the meeting as described in 5 U.S.C. 552b(e). Thus, the Board determined by unanimous vote that the subject matter of the Board meeting as previously announced should be changed so as to add the discussion of this litigation to the agenda for this meeting, that agency business so required, and that no earlier announcement of the change was possible.

The Board determined, pursuant to 5 U.S.C. 552b(c)(10), that the portion of the meeting to be closed was exempt from the open meeting requirement of the Sunshine Act on the grounds that the public interest did not require otherwise and that the portion to be closed was likely to specifically concern participation in a civil action or proceeding.

The members of the Board voting in favor of closing this portion of the meeting were: Messrs. Wright, Allen, Babcock, Benson, Bolger, Camp, Ching, Hardesty, Hughes, Jenkins, and Sullivan.

In accordance with 5 U.S.C. 552b(f)(1), the General Counsel of the United States Postal Service certified that in his opinion the portion of the meeting to be closed might properly be closed to public observation pursuant to 5 U.S.C. 552(c)(10).

Louis A. Cox,

Secretary.

[FR Doc. 80–28295 Filed 9–12–80; 8:45 am]
BILLING CODE 7710–12–M

Board of Governors; Vote To Close Meeting

On September 8, 1980, the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of its meeting currently scheduled for October 7, 1980. Each of the members of the Board voted in favor of partially closing the meeting, which is expected to be attended by the following persons: Governors Wright, Allen, Babcock, Camp, Ching, Hardesty, Hughes, Jenkins, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Secretary to the Board Cox; Counsel to the Governors Califano; and Senior Assistant Postmaster General (Employee and Labor Relations Group) Ulsaker.

The portion of the meeting to be closed will consist of a discussion of the Postal Service's possible strategies and positions in anticipated collective bargaining negotiations involving parties to the 1978 National Agreement between the Postal Service and four labor organizations representing certain postal employees, which is scheduled to expire in July of 1980.

The Board of Governors is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the portion of the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. § 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors

has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the portion of the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(3) and 552b(c)(9)(B) of title 5 and section 410(c)(3) of title 39, United States Code, and sections 7.3(c) and 7.3(i) of title 39, Code of Federal Regulations.

Louis A. Cox,

Secretary.

[FR Doc. 80-28296 Filed 9-12-80 8:45 am]

BILLING CODE 4710-12-M

PRESIDENT'S COMMISSION ON PENSION POLICY

Meetings

The President's Commission on Pension Policy has scheduled meetings as follows:

September 25, a symposium to assess reaction to a proposal for universal minimum employer pensions; in the TIAA/CREF Building, 730 3rd Avenue, New York City; from 10:00 a.m. to 4:00 p.m.

October 3, a briefing on social security proposals; in Room 2010 of the New Executive Office Building, 726 Jackson Place, N.W.; Washington, D.C.; from 9:00 a.m. to 5:00 p.m.

October 25, 26, an interim report meeting; in the John Hay Room of the Hay Adams Hotel, Washington, D.C.; from 10:00 a.m. to 5:00 p.m.

November 14, a hearing on federal administration of pension programs/ ERISA funding standards; in Room 2010 of the New Executive Office Building, 726 Jackson Place, N.W.; Washington, D.C.; from 10:00 a.m. to 4:00 p.m.

November 21, a symposium on disability issues; to be announced, Knoxville, Tennessee; from 10:00 a.m. to 3:00 p.m.

December 11, a symposium on ownership and control of pension fund assets; in Room 2010 of the New Executive Office Building, 726 Jackson Place, N.W.; Washington, D.C.; from 10:00 a.m. to 4:00 p.m.

December 12, hearing on vesting and portability; in Room 2010 of the New Executive Office Building, 726 Jackson Place, N.W.; Washington, D.C.; from 10:00 a.m. to 5:00 p.m.

The meeting are open to public observation and observers will be admitted to the extent space is available.

The Commission procedures require interested individuals who wish to present testimony to the Commission to make a written request to the Executive Director at least two weeks before a meeting. The request should outline the contents of the statement to be presented and contain some background information about the presenter. Thirty copies of the formal statement must be recvied by the Executive Director ten days prior to the scheduled meeting.

The public is also encouraged at any time to submit written testimony without making a presentation.

Additional information may be obtained by calling Phil Sparks or Leigh McDermott at (202) 395-5132.

Signed at Washington, D.C., this 10th day of September 1980.

Thomas C. Woodruff,

Executive Director.

[FR Doc. 80-28364 Filed 9-12-80; 8:45 am]

BILLING CODE 6820-99-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-17130; File No. SR-Phlx-80-20]

Philadelphia Stock Exchange, Inc.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-24, 16 (June 4, 1975) ("Act"), notice is hereby given that on August 25, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Summary of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx") proposes new rules relating to disciplinary, enforcement and hearing procedures. These rules would implement by-law amendments recently proposed on the same subject. The rules cover jurisdiction, investigations, the complaint issuance process, pleadings, hearings, intervention, summary proceedings, offers of settlement, decisions, review, judgments and penalties; they define in detail the powers of the Business Conduct Committee, the Hearing Committee and its panels, and the staff; and they set forth the rights of respondents.

Exchange's Statement of Basis and Purpose Under the Act for the Proposed Rule Change

The purpose of the rule change is to provide procedural rules to implement authority granted in the Exchange by-laws to exercise disciplinary, enforcement and hearing functions.

The proposed rule changes would enhance the Exchange's ability to carry out its obligation under the Act to enforce compliance with the Act, the rules and regulations thereunder and its own rules (Act, Sec. 6(b)(1)); to discipline its members and their associated persons for rule violations in an appropriate manner with fitting sanctions (Act, Sec. 6(b)(6)); and to provide fair procedures for discipline (Act, Sec. 6(b)(7)).

Comments have neither been solicited nor received on the proposed rule change.

The Exchange believes no burden on competition will be imposed by the proposed rule change.

On or before October 20, 1980 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before October 6, 1980.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

September 8, 1980.

[FR Doc. 80-28315 Filed 9-12-80 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-626]

Toshiba Corp.; Application and Opportunity for Hearing

September 8, 1980.

Notice is hereby given that Toshiba Corporation, ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for exemption from the reporting requirements of Section 15(d) of the 1934 Act.

The Applicant states in part:

(1) The Applicant is a Japanese corporation subject to the reporting provisions of Section 15(d) of the 1934 Act.

(2) As of September 30, 1979, Applicant had 280 shareholders resident in the United States, and those persons held some 220,000,000 shares of common stock. Of that number, a subsidiary of General Electric Company held over 218,000,000 shares. Thus, holders resident in the United States other than General Electric held slightly over 2,000,000 shares, or approximately 0.1% of the total common stock outstanding.

In the absence of an exemption, Applicant would be required to file certain periodic reports with the Commission pursuant to Section 15(d) of the 1934 Act, including an annual report on Form 20-K for the fiscal year ended March 31, 1980. Applicant believes that the exemption would not be inconsistent with the public interest or the protection of investors in view of the very small number of common stockholders resident in the United States and the very small aggregate size of their holdings (other than the holding of General Electric).

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the office of the Commission at 1100 L Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person, not later than October 3, 1980, may submit to the Commission his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should briefly state the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Any time after said date, an order granting the application may be issued 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 notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Finance, purusant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-28314 Filed 9-12-80 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Application for Unlisted Trading Privileges and of Opportunity for Hearing

September 9, 1980

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

American General Corporation Common Stock, $1.50 Par Value (File No. 7-5734)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 30, 1980 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-28312 Filed 9-12-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1911]

Minnesota; Declaration of Disaster Loan Area

The following 15 counties and adjacent counties within the State of Minnesota constitute a disaster area as a result of natural disaster as indicated:

County	Natural disaster(s)	Date(s)
Becker	Drought	4/1/80-7/31/80.
Beltrami	Drought	1/1/80-8/5/80.
Clay	Drought	4/1/80-8/7/80.
Clearwater	Drought	4/1/80-8/5/80.
Hubbard	Drought	4/1/80-8/7/80.
Kittson	Drought	3/1/80-8/5/80.
Kochiching	Drought	4/1/80-8/8/80.
Lake of the Woods	Drought	4/1/80-6/30/80.
Marshall	Drought	1/1/80-8/8/80.
Mahnomen	Drought	4/1/80-8/5/80.
Norman	Drought	3/1/80-8/4/80.
Pennington	Drought	4/1/80-8/7/80.
	Hail storm	6/13/80.
Polk	Drought	4/1/80-8/8/80.
Red Lake	Drought	4/1/80-8/7/80.
	Hail storm	6/13/80.
	Tornado	7/11/80.
Roseau	Drought	Fall of 1979 thru 8/8/80.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 5, 1981, and for economic injury until the close of business on June 5, 1981, at:

Small Business Administration, District Office, Plymouth Building—Room 530, 12 South Sixth Street, Minneapolis, Minnesota 55402

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 5, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-28327 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1916]

Missouri; Declaration of Disaster Loan Area

All counties within the State of Missouri *except* Benton, Cass, Hickory, Jackson, Lincoln, Schuyler and Warren

Counties constitute a disaster area as a result of damage caused by both drought conditions which have existed in the entire state since April 1, 1980 and were continuing as of July 20 1980 and extremely high temperatures which began June 30, 1980 and were continuing as of July 20, 1980. The seven *excepted* counties are eligible for disaster loan assistance because they are adjacent to qualifying counties. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 5, 1981 and for economic injury until the close of business on June 5, 1981, at:

SMALL BUSINESS ADMINISTRATION, District Office, 12 Grand Building—5th floor, 1150 Grand Avenue, Kansas City, Missouri 64106

or

District Office, Mercantile Tower—Suite 2500, One Mercantile Center, St. Louis, Missouri 63101

or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: September 5, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-28325 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Public; Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, Kentucky, will hold a public meeting Thursday and Friday, October 2 and 3, 1980, at the Executive Inn Rivermont, One Executive Boulevard, Owensboro, Kentucky. Registration will be held at 1:00 p.m. on October 2, 1980, with adjournment at 12:00 noon October 3, 1980, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call R. B. Blakenship, District Director, U.S. Small Business Administration, Federal Office Building, Room 188, 600 Federal Place, Louisville, Kentucky 40201, (502) 582-5971.

Dated: September 8, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-28328 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council, Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of Little Rock, Arkansas, will hold a public meeting at 12:00 noon, Thursday, October 2, 1980, in the Capitol Club, Worthen Bank Building, 200 West Capitol Avenue, Little Rock, Arkansas, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Mr. Maurice Britt, District Director, U.S. Small Business Administration, P.O. Box 1401, Little Rock, Arkansas 72202—(505) 378-5277.

Dated: September 8, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-28329 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1905]

Virginia; Declaration of Disaster Loan Area

The following 3 independent cities and 40 counties and adjacent counties within the State of Virginia constitute a disaster area as a result of natural disaster as indicated:

	Natural disaster(s)	Date(s)
Cities:		
Chesapeake	Drought	5/25/80-8/1/80
Suffolk	Drought	5/25/80-7/11/80
Virginia Beach	Drought	6/10/80-7/18/80
Counties:		
Accomack	Drought and high temperatures.	5/20/80-7/1/80
Albemarle	Drought	5/21/80-7/14/80
Amelia	Drought	6/1/80-7/29/80
Amherst	Drought	5/15/80-7/28/80
Appomattox	Drought	6/1/80-7/30/80
Buckingham	Drought	6/1/80-7/5/80
Carolina	Drought	5/15/80-7/29/80
Charles City	Drought	5/15/80-7/31/80
Chesterfield	Drought	5/15/80-7/22/80
Cumberland	Drought	6/1/80-7/28/80
Dinwiddie	Drought	6/1/80-7/28/80
Essex	Drought	6/1/80-7/18/80
Fluvanna	Drought	6/1/80-7/29/80
Gloucester	Drought	6/1/80-7/22/80
Goochland	Drought	6/1/80-7/30/80
Hanover	Drought	6/1/80-7/29/80
Henrico	Drought	5/15/80-7/31/80
Isle of Wight	Drought	5/26/80-7/30/80
James City	Drought	5/15/80-7/30/80
King George	Drought	4/1/80-7/30/80
King and Queen.	Drought	5/15/80-7/15/80
King William	Drought	5/15/80-7/15/80
Lancaster	Drought	5/1/80-7/28/80
Louisa	Drought	2/1/80-7/28/80
Mathews	Drought	6/1/80-7/22/80
Middlesex	Drought and high temperature.	5/1/80-7/29/80
New Kent	Drought	5/15/80-7/31/80
Northampton	Drought and high temperature.	5/21/80-7/14/80
Northumberland.	Drought	5/1/80-7/17/80
Orange	Drought	6/1/80-7/21/80
Powhatan	Drought	6/1/80-7/22/80
Prince George	Drought	6/1/80-7/28/80
Richmond	Drought	5/19/80-6/21/80
Southhampton	Drought	6/1/80-7/25/80
Spotsylvania	Drought	6/1/80-7/30/80
Stafford	Drought	4/1/80-7/30/80
Surry	Drought	5/15/80-7/15/80
Sussex	Drought	6/1/80-7/29/80
Westmoreland	Drought	6/1/80-7/30/80
York	Drought	5/15/80-7/30/80

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on March 5, 1981, and for economic injury until the close of business on June 5, 1981 at: Small Business Administration, District Office, Federal Building, Room 3015, P.O. Box 10126, 400 North Eighth Street, Richmond, Virginia 23240 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 5, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-28326 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, Connecticut, will hold a public meeting at 10:00 a.m., Monday, October 6, 1980, at Schatz & Schatz, Ribicoff & Kotkin, One Financial Plaza, Fourth Floor, Hartford, Connecticut, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Jack M. Bernstein, District Director, U.S. Small Business Administration, One Financial Plaza, Fourth Floor, Hartford, Connecticut 06103 (203) 244-2511.

Dated: September 8, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-28330 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0403]

EAB Venture Corp.; Issuance of a License To Operate as a Small Business Investment Company

On June 17, 1980, a Notice was published in the Federal Register (45 FR

41108) stating that EAB Venture Corp., 10 Hanover Square, New York, New York 10005, had filed an application with the Small Business Administration pursuant to § 107.102 of the SBA rules and regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company.

Interested parties were given until the close of business July 8, 1980, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on August 18, 1980, issued License No. 02/02-0403 to EAB Venture Corp., pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 9, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-28421 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

[SBLC No. 0008]

Issuance of Small Business Lending Company Participation Agreement

On June 17, 1980 a notice was published in the Federal Register (45 FR 41109) stating an application had been filed by Independence Mortgage Company, Odessa, Texas 79762 to participate with the Small Business Administration (SBA) as a small business lending company (SBLC) pursuant to Subsection (b), Part 120, 13 CFR.

Interested parties were given until close of business July, 2, 1980 to submit their comments to SBA. Independence Mortgage Company also published a similar notice in the *Odessa American* and the western region of the *Wall Street Journal.* SBA received favorable comments from many lenders in the Odessa, Texas region.

Notice is hereby given that, in accordance with § 120.4(b) of the regulations, after review of the application and all other pertinent information, SBA shall issue Small Business Lending Company Participation Agreement No. 0008 to Independence Mortgage Company to operate as an SBLC in SBA's Region VI as stated in the Notice of June 17, 1980.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: September 5, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-28419 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

[SBLC No. 0009]

Money Store Investment Corp.; Application

On June 19, 1980, a notice was published in the Federal Register informing the public that an application had been filed by The Money Store Investment Corporation (MSIC), 256 Harrison Avenue, Lodi, New Jersey 07644, with the Small Business Administration (SBA) pursuant to § 120.4(b) of the SBA's rules and regulations, Title 13, CFR to operate as a small business lending company (SBLC).

Interested parties were given until close of business July 7, 1980, to submit their comments to SBA. The Money Store Investment Corporation also published a similar notice in a newspaper of general circulation and the *Wall Street Journal.* No comments were received.

Notice is hereby given that, in accordance with § 120.4(b) of the regulations, after review of the application and all other pertinent information, SBA shall issue a Small Business Lending Company Participation Agreement, No. 0009, to The Money Store Investment Corporation to operate as an SBLC in the thirteen state area as specified in the Notice of June 19, 1980.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans.)

Dated: September 4, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-28420 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Concord, New Hampshire, will hold a public meeting at 10:00 a.m., Wednesday, October 15, 1980, in the Federal Building, 55 Pleasant Street, Room 404, Concord, New Hampshire, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Bert Teague, District Director, U.S. Small Business Administration, 55 Pleasant Street, Concord, New Hampshire 03301, (603) 224-5588.

Dated: September 9, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 28417 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Denver, Colorado, will hold a public meeting at 9:30 a.m., Wednesday, October 15, 1980, in the Federal Courthouse, Room 503, 1961 Stout Street, Denver, Colorado, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, 721 19th Street, Room 426a., Denver, Colorado 80202, (303) 837-3673.

Dated: September 9, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-28418 Filed 9-12-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/322]

Advisory Committee to United States Section International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States section, International North Pacific Fisheries Commission, will meet on October 2, 1980, at the Baranoff Hotel, Juneau, Alaska, at 1:00 p.m. This session will discuss the 1978 Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, particularly that for dall porpoise, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session on October 2 will be open to the public.

The Advisory Committee will also meet from 9:00 a.m. to 2:00 p.m. on October 3, 1980. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the 27th Annual Meeting of the International North Pacific Fisheries Commission to be held in Vancouver, B.C., Canada,

during November 4–7, 1980. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee . . . shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section," the members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(d) and 5 U.S.C. 552b(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Carl Price, Pacific Fisheries Officer, Room 5806 (OES/OFA) U.S. Department of State, Washington, D.C. 20520. Mr. Price can be reached by telephone on (202) 632–2883.

Dated: September 4, 1980.

Morris D. Busby,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 80-28294 Filed 9-12-80; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80-103]

Equipment, Construction, and Materials

AGENCY: Coast Guard, DOT.

ACTION: Approval notice.

1. Certain laws and regulations (46 CFR Chapter 1) require that various items of lifesaving, firefighting and miscellaneous equipment, construction, and materials used on board vessels subject to Coast Guard inspection, or certain motorboats and other recreational vessels, and on the artifical islands and fixed structures on the outer Continental Shelf be of the types approved by the Commandant, U.S. Coast Guard. The purpose of this document is to notify all interested persons that certain approvals and certifications have been granted or modified as herein described during the period from 29 April 1980 to 11 June 1980 (List No. 3–80). These actions were taken in accordance with the procedures set forth in 46 CFR 2.75–1 to 2.75–50.

2. The statutory authority for equipment, construction, and material approvals is generally set forth in sections 367, 375, 390b, 416, 481, 489, 526p, and 1333 of Title 46, United States Code, section 1233 of Title 43, United States Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b)). The specification prescribed by the Commandant, U.S. Coast Guard for certain types of equipment, construction, and materials are set forth in 46 CFR Parts 160 to 164.

3. The approvals listed in this documents shall be in effect for a period of 5 years from the date of issuance, unless sooner cancelled or suspended by proper authority.

Lifeboat Winch

Approval No. 160.015/129/0, Type 75 G–S lifeboat winch, approval limited to mechanical components only and for a maximum working load of 14,000 lbs. pull at the drums (7,000 lbs. per fall), manufactured by Marine Safety Equipment Corp., Farmingdale, New Jersey 07727, effective 9 June 1980.

Ladder, Embarkation-Debarkation

Approval No. 160.017/52/1, Type I, embarkation-debarkation ladder, rope suspension, one piece wooden steps with "Comar Wedge", bottom four steps of "RIM" molded construction, all steps orange with non-skid surface, rope is dacron jacketed safety core, manufactured by Coast Marine and Industrial Supply, Inc., 398 Jefferson Street, San Francisco, CA 94133, effective 22 May 1980. (It supersedes Approval No. 160.017/52/0 dated 19 May 1980 to show new rope and steps.)

Emergency Provisions

Approval No. 160.026/48/0, Verkade survival rations for lifeboats—red pack, manufactured by Koninklijke Verkade Fabrieken B.V., Westzijde 103, P.O.B. 5, 1500 EA ZAANDAM, The Netherlands, effective 15 May 1980.

Approval No. 160.026/49/0, Verkade survival ration for life rafts—blue pack, manufactured by Koninklijke Verkade Fabrieken B.V. Westzijde 103, P.O.B. 5, 1500 EA ZAANDAM, The Netherlands, effective 15 May 1980.

Lifeboat Davit

Approval No. 160.032/230/1, Type PL 3400 fixed (outrigger) gravity davit; approved for a maximum working load of 14,000 lbs. using a single-part fall, manfactured by Whittaker Corp., 5159 Baltimore Drive, La Mesa, CA 92041, effective 3 June 1980. (It supersedes Approval No. 160.032/230/0 dated 19 March 1980 to show design revisions.)

Approval No. 160.032/232/1, Type PL 5001 fixed (outrigger) gravity davit; approved for a maximum working load of 18,000 lbs. using a single-part fall, manfactured by Whittaker Corp., 5159 Baltimore Drive, La Mesa, CA 92041, effective 3 June 1980. (It supersedes Approval No. 160.032/232/0 dated 25 February 1980 to show design revisions.)

Approval No. 160.032/237/0, Type PL 1402 fixed (outrigger) gravity davit; approved for a maximum working load of 6,000 lbs. using a single-part fall, manfactured by Whittaker Corp., 5159 Baltimore Drive, La Mesa, CA 92041, effective 3 June 1980.

Lifeboat

Approval No. 160.035/110/3, 28.0' x 9.79' x 4.12' steel, motor-propelled lifeboat without radio cabin or searchlight, Class 1, 62 person capacity, manufactured by Lane Marine Technology, Inc., 150 Sullivan Street, Brooklyn, NY 11231, effective 4 June 1980. (It is an extension of Approval No. 160.035/110/3 dated 24 July 1970.)

Approval No. 160.035/363/2, 24.0' x 8.0' x 3.5' steel, hand-propelled lifeboat, 40 person capacity, manufactured by Marine Safety Equipment Corp., Foot of Wychkoff Road, Farmingdale, NJ 07727, effective 2 June 1980. (It is an extension of Approval No. 160.035/363/2 dated 15 May 1975.)

Approval No. 160.035/498/0, 23.97' x 8.0' x 3.48' fibrous glass reinforced plastic lifeboat, oar-propelled, 40 person capacity, manufactured by Marine Safety Equipment Corp., Foot of Wychkoff Road, Farmingdale, NJ 07727, effective 21 May 1980. (It supersedes Approval No. 160.035/498/0 dated 26 March 1980 to show corrected capacity.)

Kapok Buoyant Cushions

Approval No. 160.048/33/0, Group approval for rectangular and trapezoidal kapok buoyant cushions Type IV PFD, manufactured by Noble Products Co., P.O. Box 327, Caldwell, OH 43724, effective 4 June 1980. (It is an extension of Approval No. 160.048/33/0 dated 21 July 1975.)

Unicellular Plastic Foam Work Vest

Approval No. 160.053/31/0, Unicellular plastic foam work vest as per military specification MIL–17653, Type V PFD, manufactured by Billy Pugh Co., Inc., P.O. Box 802, Corpus Christi, TX 78403, effective 13 May 1980. (It is an extension of Approval No. 160.053/31/0 dated 13 February 1975.)

Unicellular Plastic Foam Life Preserver

Approval No. 160.055/126/0, Adult, Model No. ILJ–100, Type I PFD, manufactured by Stearns Mfg. Co., P.O.

Box 1498, St. Cloud, MN 56301, effective 4 June 1980. (It supersedes Approval No. 160.055/126/0 dated 13 March 1980 to show drawing revision.)

Unicellular Polyethylene Buoyant Vest

Approval No. 160.060/38/0, Child Medium, Model No. 302, Type II PFD, manufactured by Miltco Products Corp., 139 Emerson Place, Brooklyn, NY 11205, effective 2 June 1980.

Approval No. 160.060/39/0, Child Small, Model No. 303, Type II PFD, manufactured by Miltco Products Corp., 139 Emerson Place, Brooklyn, NY 11205, effective 2 June 1980.

Approval No. 160.060/40/0, Child Medium, Model No. CMF–1, Type II PFD, manufactured by Kent Sporting Goods Co., 710 Orange Street, Ashland, OH 44805, effective 19 May 1980.

Approval No. 160.060/41/0, Child Small, Model No. CSF–1, Type II PFD, manufactured by Kent Sporting Goods Co., 710 Orange Street, Ashland, OH 44805, effective 19 May 1980.

Approval No. 160.060/42/0, Adult Universal, Model No. KF–1, Type II PFD, manufactured by Kent Sporting Goods Co., 710 Orange Street, Ashland, OH 44805, effective 19 May 1980.

Marine Buoyant Device

Approval No. 160.064/661/0, Adult Large, Model No. 7715, Type III PFD, manufactured by Fabrionics, Inc. for Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602, effective 5 June 1980. (It reinstates and extends Approval No. 160.064/661/0 dated 8 October 1974.)

Approval No. 160.064/662/0, Adult X-Large, Model No. 7710, Type II PFD, manufactured by Fabrionics, Inc. for Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602, effective 5 June 1980. (It reinstates and extends Approval No. 160.064/662/0 dated 8 October 1974.)

Approval No. 160.064/671/0, Child Medium, Model No. 7725, Type III PFD, manufactured by Fabrionics, Inc. for Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602, effective 14 May 1980. (It is an extension of Approval No. 160.064/671/0 dated 8 October 1974.)

Approval No. 160.064/672/0, Adult Medium, Model No. 7720, Type III PFD, manufactured by Fabrionics, Inc. for Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602, effective 5 June 1980. (It reinstates and extends Approval No. 160.064/672/0 dated 8 October 1974.)

Approval No. 160.064/866/0, Adult Small, Model No. 505, Type III PFD, manufactured by America's Cup, Inc. for Vogue Ski Co., 9416 East Gidley Avenue, Temple City, CA 91780, effective 13 May 1980. (It is an extension of Approval No. 160.064/886/0 dated 14 February 1975.)

Approval No. 160.064/867/0, Adult Medium, Model No. 505, Type III PFD, manufactured by America's Cup, Inc. for Vogue Ski Co., 9416 East Gidley Avenue, Temple City, CA 91780, effective 13 May 1980. (It is an extension of Approval No. 160.064/867/0 dated 14 February 1975.)

Approval No. 160.064/868/0, Adult Large, Model No. 505, Type III PFD, manufactured by America's Cup, Inc. for Vogue Ski Co., 9416 East Gidley Avenue, Temple City, CA 91780, effective 13 May 1980. (It is an extension of Approval No. 160.064/868/0 dated 14 February 1975.)

Approval No. 160.064/869/0, Adult X-Large, Model No. 505, Type III PFD, manufactured by America's Cup, Inc. for Vogue Ski Co., 9416 East Gidley Avenue, Temple City, CA 91780, effective 13 May 1980. (It is an extension of Approval No. 160.064/869/0 dated 14 February 1975.)

Approval No. 160.064/885/0, Adult, Model No. 705, Type III PFD, manufactured by Miltco Products Corp., 139 Emerson Place, Brooklyn, NY 11250, effective 12 May 1980. (It is an extension of Approval No. 160.064/885/0 dated 2 June 1975.)

Approval No. 160.064/886/0, Adult, Model No. 805, Type III PFD, manufactured by Miltco Products Corp., 139 Emerson Place, Brooklyn, NY 11250, effective 12 May 1980. (It is an extension of Approval No. 160.064/886/0 dated 2 June 1975.)

Approval No. 160.064/1089/0, Adult X-Large, Model No. CBVXL–103, Type III PFD, manufactured by Texas Recreation Corp. for Western Water Ski, 6077 S.W. Lakeview Blvd., Lake Oswego, OR 97034, effective 7 May 1980.

Approval No. 160.064/1096/1, Ladies Adult Universal, Model LSV–U, Type III PFD, manufactured by Fabrionics, Inc., Route 130 South, Camargo, IL 61919, effective 21 May 1980. (It supersedes Approval No. 160.064/1096/0 dated 16 June 1978 to show change in product description.)

Approval No. 160.064/1169/0, Adult Small, Model No. CBVS–100, Type III PFD, manufactured by Texas Recreation Corp. for Western Water Ski, 6077 S.W. Lakeview Blvd., Lake Oswego, OR 97034, effective 7 May 1980.

Approval No. 160.064/1170/0, Adult Medium, Model No. CBVM–101, Type III PFD, manufactured by Texas Recreation Corp. for Western Water Ski, 6077 S.W. Lakeview Blvd., Lake Oswego, OR 97034, effective 7 May 1980.

Approval No. 160.064/1171/0, Adult Large, Model No. CBVL–102, Type III PFD, manufactured by Texas Recreation Corp. for Western Water Ski, 6077 S.W. Lakeview Blvd., Lake Oswego, OR 97034, effective 7 May 1980.

Approval No. 160.064/1410/0, Adult Small, Model No. 5313, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 5 May 1980.

Approval No. 160.064/1411/0, Adult Medium, Model No. 5314, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 5 May 1980.

Approval No. 160.064/1412/0, Adult Large, Model No. 5316, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 5 May 1980.

Approval No. 160.064/1413/0, Adult X-Large, Model No. 5317, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 5 May 1980.

Approval No. 160.064/1414/0, Adult Small, Model No. 5413, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 5 May 1980.

Approval No. 160.064/1415/0, Adult Medium, Model No. 5414, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1416/0, Adult Large, Model No. 5416, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1417/0, Adult X-Large, Model No. 5417, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1418/0, Adult Small, Model No. 5613, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1419/0, Adult Medium, Model No. 5614, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1420/0, Adult Large, Model No. 5616, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1421/0, Adult X-Large, Model No. 5617, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1423/0, Adult Small, Model Nos. 5113, 5123, or 5133, Type III PFD with additional inflatable Type II characteristics, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1424/0, Adult Medium, Model Nos. 5114, 5124, or 5134, Type III PFD with additional inflatable Type II characteristics, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1425/0, Adult Large, Model Nos. 5116, 5126, or 5136, Type III PFD with additional inflatable Type II characteristics, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1426/0, Youth, Model Nos. 5213, 5223, or 5233, Type III PFD with additional inflatable bladder, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1427/0, Adult Medium, Model Nos. 5214, 5224, or 5234, Type III PFD with additional inflatable Type II characteristics, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1428/0, Adult Large, Model Nos. 5216, 5226, or 5236, Type III PFD with additional inflatable Type II characteristics, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1429/0, Adult Small/Medium, Model No. 5514, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1430/0, Adult Medium/Large, Model No. 5515, Type III PFD, manufactured by Soniform, Inc. for Offshore Products, Inc., El Cajon, California 92020, effective 6 May 1980.

Approval No. 160.064/1614/0, Child, Model No. 5710, Type III PFD, manufactured by Soniform, Inc., 1908 Friendship Drive, El Cajon, California 92020, effective 14 May 1980.

Approval No. 160.064/1615/0, Junior, Model No. 5711, Type III PFD, manufactured by Soniform, Inc., 1908 Friendship Drive, El Cajon, California 92020, effective 14 May 1980.

Approval No. 160.064/1616/0, Youth, Model No. 5712, Type III PFD, manufactured by Soniform, Inc., 1908 Friendship Drive, El Cajon, California 92020, effective 14 May 1980.

Approval No. 160.064/1718/0, Tyke, Model No. 304, Type III PFD, manufactured by Delta Marine Designs, Inc., for Atlantis Weathergear, Inc., Sag Harbor, New York 11963, effective 7 May 1980.

Approval No. 160.064/1719/0, Youth, Model No. 305, Type III PFD, manufactured by Delta Marine Designs, Inc., for Atlantis Weathergear, Inc., Sag Harbor, New York 11963, effective 8 May 1980.

Approval No. 160.064/1720/0, Adult Small, Model No. 306, Type III PFD, manufactured by Delta Marine Designs, Inc., for Atlantis Weathergear, Inc., Sag Harbor, New York 11963, effective 8 May 1980.

Approval No. 160.064/1721/0, Adult Medium, Model No. 307, Type III PFD, manufactured by Delta Marine Designs, Inc., for Atlantis Weathergear, Inc., Sag Harbor, New York 11963, effective 8 May 1980.

Approval No. 160.064/1722/0, Adult Large, Model No. 308, Type III PFD, manufactured by Delta Marine Designs, Inc., for Atlantis Weathergear, Inc., Sag Harbor, New York 11963, effective 8 May 1980.

Approval No. 160.064/1723/0, Adult X-Large, Model No. 309, Type III PFD, manufactured by Delta Marine Designs, Inc., for Atlantis Weathergear, Inc., Sag Harbor, New York 11963, effective 8 May 1980.

Approval No. 160.064/1724/0, Adult XX-Large, Model No. 310, Type III PFD, manufactured by Delta Marine Designs, Inc., for Atlantis Weathergear, Inc., Sag Harbor, New York 11963, effective 8 May 1980.

Approval No. 160.064/1747/0, Youth, Model YGF, Type II PFD, manufactured by Float Gear, Inc., 705B Arroyo Avenue, San Fernando, CA 91340, effective 21 May 1980. Also manufactured under same approval number for Taperflex of America, 558 Library Street, San Fernanado, CA 91341, Model YTF, Type III PFD effective 7 May 1980.

Approval No. 160.064/1748/0, Child, Model CFG, Type II PFD, manufactured by Float Gear, Inc., 705B Arroyo Avenue, San Fernando, CA 91340, effective 21 May 1980. Also manufactured under same approval number for Taperflex of America, 558 Library Street, San Fernanado, CA 91341, Model CTF, Type III PFD effective 7 May 1980.

Approval No. 160.064/1749/0, Infant, Model IFG, Type II PFD, manufactured by Float Gear, Inc., 705B Arroyo Avenue, San Fernando, CA 91340, effective 21 May 1980. Also manufactured under same approval number for Taperflex of America, 558 Library Street, San Fernanado, CA 91341, Model ITF, Type III PFD effective 7 May 1980.

Approval No. 160.064/1773/0, Child Small, Model No. PW-57, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 19 May 1980.

Approval No. 160.064/1781/0, Tyke, Model No. 304A, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1782/0, Youth, Model No. 305A, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1783/0, Adult Small, Model No. 306A, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1784/0, Adult Medium, Model No. 307A, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1785/0, Adult Large, Model No. 308A, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1786/0, Adult X-Large, Model No. 309A, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1787/0, Adult XX-Large, Model No. 310A, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1788/0, Special approval for Model 226 rectangular 15" x 15" x 2½" buoyant cushion, Type IV PFD, manufactured by Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602, effective 20 May 1980.

Approval No. 160.064/1792/0, Tyke, Model No. 504, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1793/0, Youth, Model No. 505, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1794/0, Adult Small, Model No. 506, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1795/0, Adult Medium, Model No. 507, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1796/0, Adult Large, Model No. 508, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1797/0, Adult X-Large, Model No. 509, Type III PFD, manufactured by Delta Marine Designs,

Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1798/0, Adult XX-Large, Model No. 510, Type III PFD, manufactured by Delta Marine Designs, Inc., 100 Condor Street, East Boston, MA 02128, effective 15 May 1980.

Approval No. 160.064/1799/0, Adult Small, Model No. FJS–50, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 20 May 1980.

Approval No. 160.064/1803/0, Adult Small, Model No. FJS–55 or IFJ–55, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 21 May 1980.

Approval No. 160.064/1804/0, Adult Medium, Model No. FJS–55 or IFJ–55, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 21 May 1980.

Approval No. 160.064/1805/0, Adult Large, Model No. FJS–55 or IFJ–55, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 21 May 1980.

Approval No. 160.064/1806/0, Adult X-Large, Model No. FJS–55 or IFJ–55, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 21 May 1980.

Approval No. 160.064/1807/0, Adult XX-Large (Super), Model No. FJS–55 or IFJ–55, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 21 May 1980.

Approval No. 160.064/1808, Adult Small, Model No. FJS–45 or IFJ–52, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 21 May 1980.

Approval No. 160.064/1809/0, Adult Medium, Model No. FJS–45 or IFJ–52, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 21 May 1980.

Approval No. 160.064/1810/0, Adult Large, Model No. FJS–45 or IFJ–52, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 21 May 1980.

Approval No. 160.064/1811/0, Adult X-Large, Model No. FJS–45 or IFJ–52, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 21 May 1980.

Approval No. 160.064/1812/0, Adult Small/Medium, Model No. FSS–500 or ISJ–500, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 3 June 1980.

Approval No. 160.064/1813/0, Adult Large/X-Large, Model No. FSS–500 or ISJ–500, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 3 June 1980.

Approval No. 160.064/1814/0, Adult Super/XX-Large, Model No. FSS–500 or ISJ–500, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 3 June 1980.

Approval No. 160.064/1823/0, Child Small, Model No. 909, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1824/0, Child Medium, Model No. 909, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1824/0, Child Medium, Model No. 909, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1825/0, Adult X-Small, Model No. 905, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1826/0, Adult Small, Model No. 905, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1827/0, Adult Medium, Model No. 905, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1828/0, Adult Large, Model No. 905, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1829/0, Adult X-Large, Model No. 905, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1833/0, Adult Small, Model No. 909B, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1834/0, Adult Medium, Model No. 909B, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1835/0, Adult Large, Model No. 909B, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1836/0, Adult X-Large, Model No. 909B, Type III PFD, manufactured by America's Cup, Inc., 1413 Potrero, South El Monte, CA 91733, effective 2 June 1980.

Approval No. 160.064/1880/0, Adult Medium, Model No. FJS–50, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 20 May 1980.

Approval No. 160.064/1881/0, Adult Large, Model No. FJS–50, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 20 May 1980.

Approval No. 160.064/1882/0, Adult X-Large, Model No. FJS–50, Type III PFD, manufactured by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301, effective 20 May 1980.

Fire Protection System

Approval No. 161.002/13/0, Kidde marine smoke detector, Model KMSD, aural type smoke detection system (24 or 48 zones), manufactured by Walter Kidde and Co., Inc., 675 Main Street, Belleville, NJ 07109, effective 11 June 1980.

Safety Valve (Power Boilers)

Approval No. 162.001/64/3, Type Series 1515B, carbon steel body pop safety valve, exposed spring, maximum pressure 600 p.s.i., maximum temperature 750 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 29 April 1980. (It is an extension of Approval No. 162.001/64/3 dated 7 January 1975.)

Approval No. 162.001/65/3, Type Series 1515C, alloy steel body pop safety valve, exposed spring, maximum pressure 600 p.s.i., maximum temperature 900 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 29 April 1980. (It is an extension of Approval No. 162.001/65/33 dated 7 January 1975.)

Approval No. 162.001/66/3, Type Series 1515A, carbon steel body pop safety valve, exposed spring, maximum pressure 600 p.s.i., maximum temperature 650 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 29 April 1980. (It is an extension of Approval No. 162.001/66/3 dated 7 January 1975.)

Approval No. 162.001/153/2, Type Series 1555A, carbon steel body pop safety valve, exposed spring, maximum pressure 600 p.s.i., maximum temperature 650 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 29 April 1980. (It is an extension of Approval No. 162.001/153/2 dated 7 January 1975.)

Approval No. 162.001/154/2, Type Series 1555B, carbon steel body pop safety valve, exposed spring, maximum pressure 600 p.s.i., maximum temperature 750 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 3 June

1980. (It is an extension of Approval No. 162.001/154/2 dated 7 January 1975.)

Approval No. 162.001/155/2, Type Series 1555C, alloy steel body pop safety valve, exposed spring, maximum pressure 600 p.s.i., maximum temperature 900 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 3 June 1980. (It is an extension of Approval No. 162.001/155/2 dated 7 January 1975.)

Approval No. 162.001/156/2, Type Series 1555D, alloy steel body pop safety valve, exposed spring, maximum pressure 600 p.s.i., maximum temperature 1000 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 3 June 1980. (It is an extension of Approval No. 162.001/158/1 dated 7 January 1975.)

Approval No. 162.001/158/2, Type Series 1556A, carbon steel body pop safety valve, exposed spring, maximum pressure 900 p.s.i., maximum temperature 650 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 4 June 1980. (It is an extension of Approval No. 162.001/160/2 dated 7 January 1975.)

Approval No. 162.001/160/2, Type Series 1556A, carbon steel body pop safety valve, exposed spring, maximum pressure 900 p.s.i., maximum temperature 750 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 3 June 1980. (It is an extension of Approval No. 162.001/158/2 dated 7 January 1975.)

Approval No. 162.001/162/2, Type Series 1556C, alloy steel body pop safety valve, exposed spring, maximum pressure 900 p.s.i., maximum temperature 900 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 4 June 1980. (It is an extension of Approval No. 162.001/162/2 dated 7 January 1975.)

Approval No. 162.001/164/2, Type Series 1556D, alloy steel body pop safety valve, exposed spring, maximum pressure 900 p.s.i., maximum temperature 1000 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 4 June 1980. (It is an extension of Approval No. 162.001/164/2 dated 7 January 1975.)

Approval No. 162.001/169/2, Type Series 1557A, carbon steel body pop safety valve, exposed spring, maximum pressures 1200 and 1500 p.s.i., maximum temperature 650 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 4 June 1980. (It is an extension of Approval No. 162.001/169/2 dated 7 January 1975.)

Approval No. 162.001/171/2, Type Series 1557B, carbon steel body pop safety valve, exposed spring, maximum pressures 1200 and 1500 p.s.i., maximum temperature 750 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 4 June 1980. (It is an extension of Approval No. 162.001/171/2 dated 7 January 1975.)

Approval No. 162.001/173/2, Type Series 1557C, alloy steel body pop safety valve, exposed spring, maximum pressures 1200 and 1500 p.s.i., maximum temperature 900 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 4 June 1980. (It is an extension of Approval No. 162.001/173/2 dated 7 January 1975.)

Approval No. 162.001/175/2, Type Series 1557D, alloy steel body pop safety valve, exposed spring, maximum pressures 1200 and 1500 p.s.i., maximum temperature 1000 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 4 June 1980. (It is an extension of Approval No. 162.001/175/2 dated 7 January 1975.)

Safety Valve

Approval No. 162.001/183/2, Type 1531–P1, consolidated drum pilot actuator pop safety valve, maximum pressure 1335 p.s.i., maximum temperature 1000 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301, effective 30 April 1980. (It is an extension of Approval No. 162.001/183/2 dated 7 January 1975.)

Approval No. 162.001/185/2, Type 1531–U1, consolidated superheated unloader safety valve, maximum pressure 1335 p.s.i., maximum temperature 1000 degrees F., manufactured by DRESSER, Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71302, effective 29 April 1980. (It is an extension of Approval No. 162.001/185/2 dated 8 January 1975.)

Pressure Vacuum Relief Valve

Approval No. 162.017/99/1, OCECO Model V–130N pressure vacuum relief valve, manufactured by The Johnson and Jennings Co., OCECO Div., 4700 W. Division Street, Chicago, IL 60651, effective 5 May 1980. (It is an extension of Approval No. 162.017/99/1 dated 4 April 1975.)

Approval No. 162.017/116/1, Waukesha pressure-vacuum relief valve, Type FLS, manufactured by Waukesha Bearings Corp., P.O. Box 798, Waukesha, WI 53186, effective 21 May 1980. (It supersedes Approval No. 162.017/116/0 dated 25 February 1975 to include added sizes.)

Liquefied Compressed Gas Safety Relief Valve

Approval No. 162.018/85/1, Crosby style JBS safety relief valve for liquefied compressed gas service, manufactured by Crosby Valve and Gage Co., Wrentham, Massachusetts 02093, effective 19 May 1980. (It supersedes Approval No. 162.018/85/1 dated 2 April 1980 to show new maximum set pressures.)

Approval No. 162.018/86/1, Crosby style JOS safety relief valve for liquefied compressed gas service, manufactured by Crosby Valve and Gage Co., Wrentham, Massachusetts 02093, effective 19 May 1980. (It supersedes Approval No. 162.018/86/1 dated 2 April 1980 to show new maximum set pressures.)

Backfire Flame Arrester for Gasoline Engines

Approval No. 162.041/124/0, Universal-Peerless Co. backfire flame arrester assembly, manufactured by Medalist Universal Motors, 1552 Harrison Street, P.O. Box 2508, Oshkosh, WI 54901, effective 14 May 1980. (It is an extension of Approval No. 162.041/124/0 dated 18 July 1975.)

Approval No. 162.041/125/0, Universal-Peerless Co. No. 296981 backfire flame arrester assembly, manufactured by Medalist Universal Motors, 1552 Harrison Street, P.O. Box 2508, Oshkosh, WI 54901, effective 14 May 1980. (It is an extension of Approval No. 162.041/125/0 dated 18 July 1975.)

Approval No. 162.041/202/0, Barbron all brass flame arresters, manufactured by Barbron Corporation, 14580 Lesure Avenue, Detroit, MI 48227, effective 5 May 1980. (It supersedes Approval No. 162.041/202/0 dated 8 November 1979 to show additional models.)

Oily Water Separators

Approval No. 162.050/1001/0, Sarex Model 10 GPM/OWS 2.27 m3/hr oily water separator, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 29 May 1980. (It supersedes Approval No. 162.050/0121/1 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1002/0, Sarex Model 10 GPM/VGS 2.27 m3/hr oily water separator, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 29 May 1980. (It supersedes

Approval No. 162.050/0121/2 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1003/0, Sarex Model 2 GPM/VGS 0.45 m3/hr oily water separator, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 23 May 1980. (It supersedes Approval No. 162.050/0121/3 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1004/0, Sarex Model 100 GPM/OWS 22.7 m3/hr oily water separator, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 29 May 1980. (It supersedes Approval No. 162.050/0121/4 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1005/0, Sarex Model 20 GPM/VGS 4.54 m3/hr oily water separator, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 29 May 1980. (It supersedes Approval No. 162.050/0121/5 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1006/0, Sarex Model 5 GPM/OWS 13.62 m3/hr oily water separator, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 29 May 1980. (It supersedes Approval No. 162.050/0121/6 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1007/0, Sarex Model 60 GPM/OWS 13.62 m3/hr oily water separator, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 29 May 1980. (It supersedes Approval No. 162.050/0121/7 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1008/0, Sarex Model 20 GPM/OWS 4.54 m3/hr oily water separator, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 29 May 1980. (It supersedes Approval No. 162.050/0121/8 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1009/0, Sarex Model 1 GPM/VGS .227 m3/hr oily water separator, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 2 June 1980. (It supersedes Approval No. 162.050/0121/9 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1010/0, Bilgemaster 1–2GPM Separator, sealed two section tank, manufactured by National Marine Service, Inc., 827 Hanley Industrial Court, St. Louis, MO 63144, effective 28 May 1980. (It supersedes Approval No. 162.050/0221/1 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1011/0, Bilgemaster 1–5GPM Separator, sealed two section tank, manufactured by National Marine Service, Inc., 827 Hanley Industrial Court, St. Louis, MO 63144, effective 28 May 1980. (It supersedes Approval No. 162.050/0221/2 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1012/0, Bilgemaster 1–10GPM Separator, sealed two section tank, manufactured by National Marine Service, Inc., 827 Hanley Industrial Court, St. Louis, MO 63144, effective 28 May 1980. (It supersedes Approval No. 162.050/0221/3 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1013/0, Bilgemaster 11–2GPM Separator, sealed two section tank, manufactured by National Marine Service, Inc., 827 Hanley Industrial Court, St. Louis, MO 63144, effective 28 May 1980. (It supersedes Approval No. 162.050/0221/4 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/1014/0, Bilgemaster 11–5GPM Separator, sealed two section tank, manufactured by National Marine Service, Inc., 827 Hanley Industrial Court, St. Louis, MO 63144, effective 28 May 1980. (It supersedes Approval No. 162.050/0221/5 dated 23 April 1980 to show revised approval numbers.)

Approval No. 162.050/1015/0, Bilgemaster 11–10GPM Separator, sealed two section tank, manufactured by National Marine Service, Inc., 827 Hanley Industrial Court, St. Louis, MO 63144, effective 23 May 1980. (It supersedes Approval No. 162.050/0221/6 dated 23 April 1980 to show revised approval number.)

Bilge Alarms

Approval No. 162.050/3001/0, Sarex Model BA–1 manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 2 June 1980. (It supersedes Approval No. 162.050/0133/1 dated 23 April 1980 to show revised approval number.)

Approval No. 162.050/3002/0, Sarex Model 2 OCA–1, oil content alarm, manufactured by Separation and Recovery Systems, 1733 Kaiser Avenue, Irvine, CA 92714, effective 2 June 1980. (It supersedes Approval No. 162.050/0133/2 dated 23 April 1980 to show revised approval number.)

Cargo Monitors

Approval No. 162.050/5001/0, Cargo deballasting meter, Model 5E, Type OTM 1411C, manufactured by Babcock-Bristol, Ltd., 218 Purley Way, Croydon, England, effective 28 May 1980. (It supersedes Approval No. 162.050/0125/1 dated 21 April 1980 to show revised approval number.)

Approval No. 162.050/5002/0, Salwico oil pollution monitor, manufacctured by Salen and Wicander Akrielbolag, P.O. Box 1122, S–171 22 Solna, Sweden, effective 29 May 1980. (It supersedes Approval No. 162.050/0225/1 dated 25 October 1979 to show revised approval number.)

Approval No. 162.050/5003/0, Cargo deballasting meter, Model 5E, Type OTM 1411C, manufactured by Sasakura Engineering Co. Ltd., 7–5 Mitejima 6–Chome, Nishiyodogawa–Ku, Osaka 555, Japan, effective 29 May 1980. (It supersedes Approval No. 162.050/0325/1 dated 9 January 1980 to show revised approval number.)

Approval No. 162.050/5004/0, OILCON cargo monitor, manufactured by International Marine Radio Co. Ltd., 302 Commonside East, Mitcham, Surrey CR4 1YT, England, effective 29 May 1980. (It supersedes Approval No. 162.050/0425/1 dated 6 March 1980 to show revised approval number.)

Bilge Monitors

Approval No. 162.050/9001/0, Itt Conoglow–VAF bilge monitor, manufactured by International Marine Radio Co. Ltd., 302 Commonside East, Mitcham, Surrey CR4 1YT, England, effective 29 May 1980. (It supersedes Approval No. 162.050/0129/1 dated 6 March 1980 to show revised approval number.)

Approval No. 162.050/9002/0, Oil Sentry Bilge Monitor, Model 0S100M, manufactured by Biospherics, Inc, 4928 Wyaconda Road, Rockville, MD 20852, effective 4 June 1980.

Structural Insulation

Approval No. 164.007/31/1, "Cafco Blaze Shield type D C/F" sprayed fiber type structural insulation, manufactured by United States Mineral Products Co., Stanhope, New Jersey 07874, effective 14 May 1980. (It reinstated Approval No. 164.007/31/1 dated 10 June 1974.)

Approval No. 164.007/47/0, "Cafco Deck Shield C/F" sprayed type structural insulation, manufactured by United States Mineral Products Co., Stanhope, New Jersey 07874, effective 14 May 1980. (It reinstates Approval No. 164.007/47/0 dated 10 June 1974.)

Bulkhead Panel

Approval No. 164.008/68/0, Hopeman Brothers' "Beta 100" building unit, manufactured by Hopeman Brothers, Inc., 156 East 46th Street, New York, NY 10017, effective 14 May 1980. (It supersedes Approval No. 164.008/68/0 dated 18 April 1975 to show new plant location.)

Noncombustible Materials

Approval No. 164.009/217/0, "Calcilite" calcium silicate pipe insulation, manufactured by Calcilite Insulation Products, Dresser Industries, Inc., P.O. Box 1153, Brunswick, GA 31520, effective 28 May 1980.

Interior Finish

Approval No. 164.012/28/0, "Mariner Coating 30-55" general purpose coating, manufactured by H. B. Fuller Co., P.O. Box 625, Springhouse, PA 19477, effective 21 May 1980. (It supersedes Approval No. 164.012/208/0 dated 21 June 1978 to show change in approval number.)

Marine Sanitation Device

Certification No. 159.15/1003/31/III, Model B35D, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 33 persons, manufactured by St. Louis Ship, Div. of Pott Industries, 611 E. Marceau Street, St. Louis, MO 63111, effective 20 May 1980.

Certification No. 159.15/1006/48/II, Model RF-200-C, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 200 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/49/II, Model RF-3500-C, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 3500 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/50/II, Model RF-4000-C, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 4000 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/51/II, Model RF-4500-C, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 4500 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/52/II, Model RF-5000-C, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 5000 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/53/II, Model RF-5500-C, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 5500 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/54/II, Model RF-6000-C, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 6000 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/55/II, Model RF-6500-C, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 6500 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/56/II, Model RF-7000-C, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 7000 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/57/II, Model RF-7500-C, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 7500 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certifications No. 159.15/1006/58/II, Model RF-9000-C certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 9000 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 6 May 1980.

Certification No. 159.15/1006/59/II, Model "Little Fox", certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 200 GPD, manufactured by Red Fox Industries, Inc., P.O. Drawer 640, Port of Iberia, New Iberia, LA 70560, effective 17 April 1980.

Certification No. 159.15/1009/2/I, Model D-1000, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 8 uses/hr., manufactured by Danforth, 500 Riverside Industrial Parkway, Portland, ME 04103, effective 4 January 1979. (New data card issued 3 June 1980 supersedes card issued 3 July 1979.)

Certification No. 159.15/1009/6/I, Model D-1000-ED, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 8 uses/hr., manufactured by Danforth, 500 Riverside Industrial Parkway, Portland, ME 04103, effective 4 January 1979. (New data card issued 3 June 1980 supersedes card issued 3 July 1979.)

Certification No. 159.15/1009/7/I, Model D-1000-RP, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 8 uses/hr., manufactured by Danforth, 500 Riverside Industrial Parkway, Portland, ME 04103, effective 4 January 1979. (New data card issued 3 June 1980 supersedes card issued 3 July 1979.)

Certification No. 159.15/1015/1/III, Model Clear Water Sanirator 57 P5E, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 12 persons, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 17 November 1976. (New data card issued 28 May 1980 supersedes card issued 8 May 1979.)

Certification No. 159.15/1015/2/III, Model Clear Water Sanirator 57 P2E, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacty 12 persons, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 17 November 1976. (New data card issued 28 May 1980 supersedes card issued 8 May 1979.)

Certification No. 159.15/1015/3/III, Model Clear Water Sanirator 75 P9E, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 12 persons, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 17 November 1976. (New data card issued

28 May 1980 supersedes card issued 8 May 1979.)

Certification No. 159.15/1015/4/III, Model Clear Water Sanirator 57 F5E, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 12 persons, manufactured by Marland Environmental System, Inc., P.O. Box 9, Walworth, WI 53184, effective 1 December 1976. (New data card issued 28 May 1980 supersedes card issued 8 May 1979.)

Certification No. 159.15/1015/5/III, Model Clear Water Sanihead No. 6, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 22 flushes, manufactured by Marland Environmental System, Inc., P.O. Box 9, Walworth, WI 53184, effective 3 January 1977. (New data card issued 29 May 1980 supersedes card issued 8 May 1979.)

Certification No. 159.15/1015/6/I, Model Clear Water Sani-System 600, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 750 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 17 February 1977. (New data card issued 28 May 1980 supersedes card issued 8 May 1979.)

Certification No. 159.15/1015/7/II, Model Clear Water Sani-System 600, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 750 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 20 September 1978. (New data card issued 28 May 1980 supersedes card issued 8 May 1979.)

Certification No. 159.15/1015/8/II, Model Clear Water Sani-System 630, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 3000 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 9 March 1979. (New data card issued 28 May 1980 supersedes card issued 8 May 1979.)

Certification No. 159.15/1015/9/II, Model Clear Water Sani-System 615, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 1350 GPD, manufactured by Marland Environmental System, Inc., P.O. Box 9, Walworth, WI 53184, effective 15 May 1979. (New data card issued 28 May 1980 supersedes card issued 17 May 1979.)

Certification No. 159.15/1015/14/II, Model MTT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacities 96,250 and 192,500 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/15/II, Model MTT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, capacities 27,000 and 20,000 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/16/II, Model MTT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacities 32,000, 36,000, 40,000, and 90,000 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/17/II, Model MMT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 510,000 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/18/II, Model MTT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 103,250 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/19/II, Model MTT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 85,950 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/20/II, Model MMT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 127,500 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/21/II, Model MMT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 297,000 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/22/II, Model MMT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 262,000 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/23/II, Model MMT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacities 157,500 and 105,000 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/24/II, Model MMT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 210,000 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1015/25/II, Model MMT-4 1 VAR, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 210,000 GPD, manufactured by Marland Environmental Systems, Inc., P.O. Box 9, Walworth, WI 53184, effective 13 May 1980.

Certification No. 159.15/1040/1/I, Model Delta Marine Head 12 VDC, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 20 GPH, manufactured by Galley Maid Marine Products, P.O. Box 10417, Riviera Beach, FL 33404, effective 11 February 1977. (New data issued 14 May 1980 supersedes card issued 1 May 1978.)

Certification No. 159.15/1040/2/I, Model Delta Marine Head 24 VDC, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 20 GPH, manufactured by Galley Maid Marine Products, P.O. Box 10417, Riviera Beach, FL 33404, effective 11 February 1977. (New data card issued 14 May 1980 supersedes card issued 1 May 1978.)

Certification No. 159.15/1040/3/I, Model Delta Marine Head 32 VDC, certified for use on inspected, small passenger and uninspected vessels,

certified for use in fresh, brackish and salt water, average capacity 20 GPH, manufactured by Galley Maid Marine Products, P.O. Box 10417, Riviera Beach, FL 33404, effective 11 February 1977. (New data card issued 14 May 1980 supersedes card issued 1 May 1978.)

Certification No. 159.15/1040/8/I, Model Delta Marine Head 115 VAC, certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 20 GPH, manufactured by Galley Maid Marine Products, P.O. Box 10417, Riviera Beach, FL 33404, effective 15 December 1977. (New data card issued 14 May 1980 supersedes card issued 1 May 1978.)

Certification No. 159.15/1046/16/II, Model STS–II (A/D) MARYLISA, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, for use on the MV MARYLISA, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 9 January 1980.

Certification No. 159.15/1046/17/I, Model STS–1P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, custom installation aboard the M/V Sagafjord, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 7 February 1980.

Certification No. 159.15/1046/17/II, Model STS–II (A/D), certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, custom installation aboard the M/V Cleanthes, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 18 March 1980.

Certification No. 159.15/1046/18/II, Model STS–II (A/D), certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, custom installation aboard M/V Armonia, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 18 March 1980.

Certification No. 159.15/1046/19/II, Model STS–II (A/D), certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, custom installation aboard M/V Karin Vatis, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 18 March 1980.

Certification No. 159.15/1046/21/II, Model Bio-STS–1000 D.C., certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 1000 GPD, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 18 March 1980.

Certification No. 159.15/1046/22/II, Model Bio-STS–1500 D.C., certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 1500 GPD, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 18 March 1980.

Certification, No. 159.15/1046/23/II, Model STS–II (C/D) D.C., certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 7.5 GPM, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 18 March 1980.

Certification No. 159.15/1046/24/II, Model Bio STS–500 D.C., certified for use on inspected, small passenger and uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 500 GPD, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 18 March 1980.

Certification No. 159.15/1046/25/II, Model STS–II (A/D), certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, custom installation aboard M/V Polar Argentina, manufactured by Sigma Treatment Systems, 2 Davis Avenue, Frazer, PA 19355, effective 18 March 1980.

Certification No. 159.15/1070/1/II, Model STS–2, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 40 persons, manufactured by Ishikawajima-Harima Heavy Industries Co. Ltd., Yokohama Shipyard, No. 12 Shin-Sugita-Cho. Isogo-Ku, Yokohama, Japan, effective 26 February 1979.

Certification No. 159.15/1070/2/II, Model STS–3, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 60 persons, manufactured by Ishikawajima-Harima Heavy Industries Co. Ltd., Yokohama Shipyard, No. 12 Shin-Sugita-Cho, Isogo-Ku Yokohama, Japan, effective 26 February 1979.

Certification No. 159.15/1070/3/II, Model STS–4, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 80 persons, manufactured by Ishikawajima-Harima Heavy Industries Co. Ltd., Yokohama Shipyard, No. 12 Shin, Sugita-Cho, Isogo-Ku, Yokohama, Japan, effective 26 February 1979.

Certification No. 159.15/1070/4/II, Model Fortune, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 80 persons, manufactured by Ishikawajima-Harima Heavy Industries, Co. Ltd., Yokohama Shipyard, No. 12 Shin-Sugita-Cho, Isog-Ku, Yokohama, Japan, effective 26 February 1979.

Certification No. 159.15/1070/5/II, Model Freedom, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 80 persons, manufactured by Ishikawajima-Harima Heavy Industries Co. Ltd., Yokohama Shipyard, No. 12 Shin-Sugita-Cho, Isogo-Ku, Yokohama, Japan, effective 26 February 1979.

Certification No. 159.15/1085/20/II, Model Fortune Vessel Retrofit, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, installed on Fortune class vessels, manufactured by Drexel Engineering Services, Waldron Road, Montrose, Angus DD10, Scotland, effective 22 April 1980.

Certification No. 159.15/1087/1/II, Model Crounse Incinerator, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 540 GPD, manufactured by Southern Towing Co., P.O. Box 411, Memphis, TN 38101, effective 17 April 1980.

Certification No. 159.15/1088/1/II, Model HU–2, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 50 persons, manufactured by Hacettepe University, Institute of Technology, Ankara, Turkey, effective 7 May 1980.

Certification No. 159.15/1089/1/II, Model CONAVE 10P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 24 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/2/II, Model CONAVE 15P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 32 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/3/II, Model CONAVE 20P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 48 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/4/II, Model CONAVE 30P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 64 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/5/II, Model CONAVE 40P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 80 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/6/II, Model CONAVE 50P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 100 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/7/II, Model CONAVE 60P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 120 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/8/II, Model CONAVE 70P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 140 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/9/II, Model CONAVE 80P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 160 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/10/II, Model CONAVE 100P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 240 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/11/II, Model CONAVE 150P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 320 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/12/II, Model CONAVE 200P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 400 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/13/II, Model CONAVE 250P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 560 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/14/II, Model CONAVE 350P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 720 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/15/II, Model CONAVE 450P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 900 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/16/II, Model CONAVE 550P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 1100 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/17/II, Model CONAVE 650P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 1300 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/18/II, Model CONAVE 750P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 1500 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/19/II, Model CONAVE 850P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 1700 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Certification No. 159.15/1089/20/II, Model CONAVE 1000P, certified for use on uninspected vessels, certified for use in fresh, brackish and salt water, average capacity 2000 persons, manufactured by Controles y Equipos Navales, S.A., Balmes, 152, Barcelona (8), Spain, effective 7 May 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

September 4, 1980.

[FR Doc. 80-28115 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-80-25]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 6, 1980.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 9, 1980.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
20635	Beech Aircraft	14 CFR 21.197	To allow petitioner to ferry uncompleted aircraft to a destination for completion.
20638	Air Transport Association of America	14 CFR 121.391(d)	A 90-day extension of the August 31 compliance date, which requires that flight attendants must remain seated at their assigned duty stations with seat belts fastened during groung taxi.
17145	United Airlines	14 CFR 121.655 and 121.697 (a) and (b).	An extension of the Oct. 13, 1980, expiration date of Exemption No. 2466A, which provides relief from the requirement for a signature on an automated load manifest.
20523	Cochise Airlines	14 CFR 121.313(d)	To permit two Convair 440 aircraft to operate without a means of indicating the adequacy of the power being supplied to the gyroscopic turn and bank indicators and the gyroscopic direction indicators.
20567	Swift Aire Lines, Inc	14 CFR 121.310(d)	To permit Nord 262 aircraft to operate with a cockpit control device that does not have an "on", "off", and "armed" function.
16301	Western Airlines	14 CFR 121.574	An extension of Exemption No. 2330B which permits petitioner to continue to allow passengers to carry and operate oxygen equipment that is maintained by Air Medic instead of by Western.
19335	Joe Rankin	14 CFR 21.17(A)(1)	Request reconsideration of Denial of Exemption No. 2905, which denied Mr. Rankin's request to validate Type Certificate (TC) No. 720 for the Porterfield Collegiate series airplanes so that the airplanes could be manufactured under that TC.
20491	Terry Hanson	14 CFR 63.37(b)(4)	To permit a substitution of simulator or CPT training time for required airplane flight time.
20583	Tenneco, Inc.	14 CFR 61.58(c)	To permit petitioner's pilots to complete their entire 24-month proficiency checks in an approved simulator. (This request would apply to those pilots who are current in the aircraft at the time of pilot-in-command check.)
20588	Dwight E. Lohrenz	14 CFR 133.1(b) and 133.45(a)	To permit external-load operations in which persons are carried as part of the external-load. The operation would involve carriage of medical technicians and ill or injured persons to a medical facility in a "Helicopter Trauma Unit," which would be suspended from a helicopter.
20406	Lockheed-California Co	14 CFR 21.183, 21.305, 25.1303(c)(1), 25.631, and 25.1581.	To permit the two Lockheed aircraft leased to Gulf Air to remain in CAA/UK configuration to match the rest of the four purchased aircraft in their fleet. (Aircraft are to be on U.S. registry)

Dispositions for Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
20204	Aeroservice International Inc	14 CFR Part 63, Appendix C(a)(3)(iv)(a).	To permit a Student Flight Engineer to receive credit for the required five hours training on an aircraft if accompanied by a qualified instructor or flight engineer when observing a flight deck crew in operation on a normal line flight in the aircraft type to be used in an approved training course. *Denied 8/27/80.*
20286	Ports-of-Call	14 CFR 121.547(a)(4) and 121.587.	To allow crew compartment door to be open at cruising altitude and to allow passengers, with certain limitations, to visit the crew compartments. *Denied 8/29/80.*
20386	Alaska Airlines	14 CFR 91.70(a)	To allow petitioner to operate its aircraft below 10,000 feet MSL, but not below 5,000 feet MSL, within the State of Alaska, at indicated airspeeds in excess of 250 knots. *Denied 8/22/80.*
18855	Helicopter Association of America	14 CFR 135.99, 135.159, 135.173, 135.181, and 135.223.	Amendment of Exemption No. 2695 to extend the expiration date. These partial exemptions allow the petitioner's members to operate without modifying their aircraft pending formal rulemaking action. *Granted 8/29/80.*
20283	Altair Airlines, Inc.	14 CFR 121.163(a)	To permit petitioner to operate its Fokker F-28 Mark 4000 aircraft in scheduled air service without first conducting 100 hours of proving tests. *Granted 9/2/80.*
20240	Herman Miller, Inc.	14 CFR 91.32(b)(1)(ii)	To allow petitioner's pilots to operate their Learjet Model, 35A to a maximum altitude of 45,000 feet without either pilot wearing an oxygen mask. *Granted 9/2/80.*
20013	University of Illinois	14 CFR 147.21(b) (1), (2), and (3)	Reconsideration of the Denial of Exemption to reduce the training hours in petitioner's approved aviation maintenance technician course curriculum. *Denied 9/3/80.*

[FR Doc. 80-28302 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[Docket No. RFA 505-80-4]

Purchase of Redeemable Preference Shares; Receipt of Application; Delaware & Hudson Railroad Co.

Project. Notice is hereby given that the Delaware and Hudson Railway Company ("applicant"), 40 Beaver Street, Albany, New York 12207, has filed an application with the Federal Railroad Administration ("FRA") under section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. 825, seeking financial assistance through the sale to the United States of redeemable preference shares ("shares") having an aggregate par value of $115,564,190. The applicant proposes to redeem the par value of the shares and to pay dividends on the shares such that 150% of the par value of all the shares will be redeemed not later than 30 years from the date of the original issuance of the shares. Payments will commence not earlier

than the 6th and not later than the 11th anniversary date of the original issuance of each share.

The proceeds of the sale of the shares are to be used by the applicant to rehabilitate its track from Sunbury, Pennsylvania, M.P. S.U. 0.00 to Rouses Point, New York, M.P. A 192.10; including the applicant's mainline route from Delanson, New York, M.P. A 26.30 to Mechanicville, New York, M.P. A 20.13 via Voorheesville, New York, a total of 500.9 total mainline route miles. Upon completion of this project, the requirements of FRA track Class 3 will have been met.

Project	FRA funding
Replacement of 445,348 ties and 49,350 line feet of switch timber	$27,053,330
Surfacing and renewing the ballast of 745.92 track miles	6,275,180
Reconstruction and repair of track and surrounding road surfaces at 98 highway-rail grade crossings	3,359,340
Installation of 167.49 track miles of new and second hand (relay) continuous welded rail	27,638,100
Drainage improvements over 23.95 side miles of track	197,670
Ballast cleaning of 236.6 pass miles	120,940
Installation of 319,735 additional rail anchors	639,800
Installation of a new track signal system	16,155,230
Reconstruction and repair of bridge decks, bridge abutments, spans and drainage culverts	13,178,640
Rehabilitation of 9 yards	10,753,480
Rehabilitation of two branch line segments; the Rutland Branch, M.P. A 77.38 to M.P. A 100.69, and the Adirondack Branch, M.P. 38.20 to M.P. A 94.96	10,192,480
Total	115,564,190

Justification for Project. The applicant states that upon completion of the Project, it will be able to efficiently move and schedule trains to operate up to a maximum speed of 40 miles per hour. The applicant further states that this rehabilitation will reduce derailment, employee accidents and grade crossing accidents, as well as enhance the operating efficiencies and revenues of the applicant.

Comments. Interested persons may submit written comments on the application to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590, not later than the comment closing date shown below. Such submission shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefore.

To the extent permitted by law, the application will be made available for inspection during normal business hours in Room 5415 at the above address of the FRA in accordance with the regulations of the Office of the Secretary of Transportation set forth in Part 7 of Title 49 of the Code of Federal Regulations.

The comments will be considered by the FRA in evaluating the application. Any commenter who wishes to have FRA acknowledge the receipt of his or her comments should include a self-addressed, stamped post card with the comments. No other acknowledgement of comments will be provided.

The FRA has not approved or disapproved this application nor has it passed upon the accuracy or adequacy of the information contained herein.

Dated: September 5, 1980.

Comment closing date: October 15, 1980.

John M. Sullivan,

Administrator, Federal Railroad Administration.

[FR Doc. 80-28355 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. IP79-12; Notice 3]

Hyosung (America), Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Hyosung (America) Inc. of New York City, New York to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published in the Federal Register on November 13, 1979, and an opportunity afforded for comment (44 FR 65514). The petition was granted in part and denied in part on May 19, 1980 (45 FR 32821). Thereafter Hyosung asked the agency to reconsider that portion of the petition which was denied.

Paragraph § 6.5(b) of Standard No. 119 requires tires to be marked with the tire identification number required by 49 CFR Part 574. Hyosung imported and distributed 2000 "Aurora-F8 1000-20 Load Range F" truck tires that lacked marking indicating the week and year of manufacture (the 19th week of 1979). Notwithstanding the filing of its petition, Hyosung corrected the date code noncompliance on all but 200 tires which are no longer in its hands.

Petitioner argued that its noncompliance was inconsequential as it related to motor vehicle safety since, in its opinion, manufacturing dates are unimportant and the model number of the tires is clearly understood by the dealer.

The agency denied the petition because Hyosung presented no data or arguments to support its statement that "the missing brand for the week and year of production is truly an inconsequential defect." The agency noted that, to the contrary, this information is needed to effect tire registration and to implement any notification and remedy campaign covering safety-related defects or noncompliances in the tires.

Hyosung has now informed the agency that the tires in question do "have a manufacturer's code stamped in the sidewall which permits determination of the week and year of manufacture by Hyosung (and) in the case of a defective tire Hyosung would be able to identify tires of the same batch which had been sold." This new information supports the petitioner's argument that its noncompliance is inconsequential. Although the manufacturer's code used by Hyosung is not in the form required by the Standard, the necessary information is present. Therefore, petitioner has met its burden of persuasion as to this noncompliance and its petition is now granted in full.

(Sec. 102. Pub. L. 93-492, 99 Stat. 1480 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on September 8, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-28354 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-59-M

National Highway Traffic Safety Administration Biomechanics Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. F), notice is hereby given of a meeting of the Biomechanics Advisory Committee to be held on October 2, 1980, in Room 6200, Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, D.C.

The meeting will begin at 9:00 a.m. and the agenda will consist of the following:

(1) Review of last meeting of the Biomechanics Advisory Committee; (2) Summary and discussion of projects reviewed by the Human Use Review Committee; and (3) Review of selected

research projects being considered by NHTSA.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Any member of the public may present a written statement to the Committee at any time.

This meeting is subject to the approval of the appropriate DOT officials. Additional information may be obtained from the NHTSA Executive Secretary, Room 5221, 400 Seventh Street, SW., Washington, D.C. 20590, telephone 202–426–2872.

Issued in Washington, D.C. on September 8, 1980.

Wm. H. Marsh,

Executive Secretary.

[FR Doc. 80-28344 Filed 9-12-80; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

Part-Time Career Employment Program

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Request for public comment on proposed Department of Transportation order.

SUMMARY: The Department of Transportation (DOT) has developed a proposed Departmental Order that would promote career part-time employment opportunities in the Department, and seeks public comment on the Order.

COMMENT CLOSING DATE: November 14, 1980.

ADDRESS: Comments should be sent to the following address: Docket Clerk, 400 Seventh Street SW., Room 10421, Washington, D.C. 20590. Comments are available for public inspection at this address on Monday through Friday from 9:00 a.m. to 5:30 p.m. Persons wishing to have their comments acknowledged should send a stamped, self-addressed post card with their comments. The Docket Clerk will return these post cards when the comments are docketed.

FOR FURTHER INFORMATION CONTACT: Norman Phelps, Chief, Evaluation, Staffing and Compensation Division, M–16, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426–2164.

SUPPLEMENTARY INFORMATION: The Federal Employees Part-Time Career Employment Act of 1978 (Pub. L. 95–437) directs Federal agencies to create a program to promote career part-time employment opportunities. The Department's policy is to make available as many opportunities as possible for career part-time employment in positions through the GS–15 level, and equivalent-level positions in other pay systems. The provisions of the proposed DOT Order published in this notice establish the administrative machinery to carry out this policy.

The proposed Departmental order, when it becomes final, would be a binding internal directive governing part-time career employment in the Department. As a Departmental Order, however, it will not be published in the Code of Federal Regulations. Its provisions may be supplemented periodically through the Department's directives system. In addition, Office of Personnel Management policy may require changes in the Order from time to time. Nevertheless, because the content of the Order is of interest to present and potential employees of the Department, as well as to persons interested in Federal personnel policy, we have decided to seek public comments on its provisions.

Paragraphs 1, 2, and 3 of the proposed Order set forth the objectives, scope, and legal and regulatory authorities for the part-time employment program. Paragraph 4 states that the Department's policy recognizes that many people would prefer or are only available for less than full-time employment. To the extent possible, the Department seeks to promote part-time employment opportunities. Moreover, DOT policy favors granting requests by full-time employees to change to part-time status, so long as the effectiveness and efficiency of the Department will not suffer as a result.

The most important portion of paragraph 5 defines part-time career employment as regularly scheduled work of from 16 to 32 hours per week performed by employees in the competitive or excepted service. Paragraph 6 points out that the program does not cover temporary or intermittent positions, positions at or above the GS–16 level, or to positions where a collective bargaining agreement establishes the number of hours per week. The paragraph also points out that part-time employment under the program could not be scheduled for more than 32 hours per week on a regular basis. Paragraph 7 of the Order simply states that part-time career employees who are members of a bargaining unit represented by a labor organization would not be excluded from the unit solely on the basis of their part-time status.

Paragraph 8 assigns the responsibilities for carrying out the part-time career employment program within the Department of Transportation. The Department as a whole, and each operating administration (e.g., the Federal Aviation Administration, Urban Mass Transportation Administration, Federal Highway Administration) would designate a part-time employment coordinator to be in charge of carrying out the program. Paragraph 9 would require each operating administration to set annual goals for establishing or converting positions for part-time career employment and to establish timetables setting forth interim and final deadlines for achieving these goals. The operating administrations would submit goals for each fiscal year to the Departmental Office of Personnel and Training by October 31 of each year. The paragraph would direct that such factors as workload fluctations, size of work force, employee interest in part-time schedules, personnel ceilings and fiscal constraints, and the availability of candidates for part-time career employment be considered among others in establishing the goals. Paragraph 10 would require the Office of Personnel and Training to evaluate the success of the operating administrations' programs. As a result of these evaluations, the Departmental coordinator of the part-time employment program would prepare reports to submit to the Office of Personnel Management twice each year.

As part of the part-time employment program, paragraph 11 would require each operating administration to review vacant positions to determine whether it is feasible to fill them on a part-time basis, to establish new part-time positions or convert existing full-time positions to part-time status in sufficient numbers to meet the established goals, and to notify the public of part-time opportunities.

As a document concerned solely with internal agency management, this proposed Order is exempt from the provisions of Executive Order 12044, "Improving Government Regulations," and the Department of Transportation's Regulatory Policies and Procedures. Consequently, a Regulatory Evaluation has not been prepared.

Issued in Washington, D.C. on September 3, 1980.

Neil Goldschmidt,

Secretary of Transportation.

Department of Transportation

Part-Time Career Employment Program

1. *Purpose.* This Order establishes the Part-time Career Employment Program

required by Chapter 34 of title 5, United States Code (U.S.C.). This continuing program is intended to:

a. Provide part-time employment opportunities to potential and current Department employees at all grade levels through GS–15 (or equivalent) and in professional, administrative, technical, clerical, and trades occupations;

b. Benefit the Department as an employer by increasing productivity and job satisfaction while lowering turnover rates and absenteeism;

c. Provide management with flexibility in meeting work requirements and filling shortages in various occupations;

d. Provide an alternative to individuals who need or desire shorter working hours; and

e. Support affirmative action programs for minorities, women, and handicapped individuals.

2. *Scope.* This program applies to all components of the Department except the Alaska Railroad.

3. *References.* a. Chapter 34 of title 5 U.S.C., "Part-time Career Employment Opportunities" codifies Pub. L. 95–437, the Federal Employees Part-time Career Employment Act of 1978.

b. Part 340 of 5 CFR and Federal Personnel Manual (FPM) Chapter 340 both titled "Part-time Employment", are Office of Personnel Management (OPM) regulations (5 CFR Part 340) and guidance materials (FPM 340).

c. Part 890 of 5 CFR and FPM Chapter 890 both titled "Federal Employees Health Benefits Program" are the OPM regulations (5 CFR Part 890) and guidance material (FPM Chapter 890). These existing materials have been revised to explain health insurance, retirement, and life insurance coverage for employees appointed under this program.

4. *Policy.* Recognizing that many people would prefer or are only available for less than full-time employment, and that work and resources rarely equate to an exact number and mix of full-time people; it is the policy of the Department, to the extent possible within resources and mission requirements, to promote career part-time employment opportunities in positions through GS–15 and equivalent positions in other pay plans. Further, when appropriate officials determine that the effectiveness and efficiency of the Department will not suffer requests from career employees to change from full-time to part-time employment will be approved.

5. *Definitions.* a. *Part-time Career Employment.* Regularly scheduled work of from 16 to 32 hours per week performed by an employee of an agency as defined in 5 U.S.C. 3401 (a) through (f), who has an appointment in tenure group I or II and who becomes employed on such part-time basis on or after April 8, 1979.

b. *Tenure Group I.* Applies to employees in the competitive service under career appointments who are not serving probation and permanent employees in the excepted service whose appointments carry no restrictions or conditions.

c. *Tenure Group II.* Applies to employees in the competitive service serving probation, career-conditional employees, and career employees in obligated positions. It also includes employees in the excepted service serving trial periods, whose tenure is indefinite solely because they occupy obligated positions; or whose tenure is equivalent to career-conditional in the competitive service.

6. *Exceptions.* These regulations do not apply to any positions designated as temporary or intermittent, positions at GS–16 (or equivalent) and above, or to positions where a collective bargaining agreement establishes the number of hours per week. Operating Administrations may not make exceptions to employ persons on a permanent part-time basis for more than 32 hours per week. This prohibition does not restrict temporarily increasing an employee's hours of duty above 32 hours per week for limited periods to meet heavy workloads, permit employee training, etc. Nor does this prohibition apply to the employment of part-timers who were already working on a permanent part-time basis before April 8, 1979, for as long as they continue to work part time. Operating Administrations are cautioned to monitor the use of part-time employees to work more than 32 hours per week. Heads of Operating Administrations or their designee, may authorize the employment of part-time workers for less than 16 hours per week if necessary to carry out their mission.

7. *Labor Organization Representation.* If a labor organization has been accorded exclusive recognition with respect to a unit within the Department, non-managerial, non-supervisory part-time career employees shall not be excluded from the unit solely on the basis that they are other than full-time employees.

8. *Program Responsibilities.* a. General direction for the Department's Part-Time Career Employment Program is under the jurisdiction of the Assistant Secretary for Administration.

b. The Director of Personnel and Training is assigned responsibility for the overall technical direction of the Program.

c. The Department Coordinator, designated by the Director of Personnel and Training, is responsible for:

(1) Reviewing goals and timetables for part-time employment developed by the Operating Administrations;

(2) Monitoring of the Department's Program;

(3) Providing advice and assistance to the Operating Administrations' officials;

(4) Consulting on the Program with interested parties in special emphasis areas, e.g., equal employment opportunity, selective placement, veterans, employee organizations, etc.;

(5) Maintaining Departmental liaison with groups interested in promoting part-time opportunities, and

(6) Preparing consolidated reports for transmittal to OPM and the Congress.

d. Heads of the Operating Administrations or their designee, are responsible for providing general direction for their Programs, and setting Program goals and timetables for meeting those goals.

e. Heads of the Operating Administrations or their designee, shall designate a Part-Time Employment Coordinator who shall have over-all responsibility for implementing and monitoring their Programs. The Coordinator's responsibilities include:

(1) Overseeing development and implementation of part-time employment goals and timetables;

(2) Consulting on the Program with interested parties, e.g., Equal Employment Opportunity and Federal Women Program officials, Handicapped Program Coordinators, representative of employee unions, organizations, etc.;

(3) Keeping managers, supervisors, and employees informed on the basic rules covering part-time employment, and position management and work assignment techniques that can lead to the most productive use of part-time workers;

(4) Maintaining liaison with groups interested in promoting part-time employment opportunties;

(5) Monitoring progress in expanding part-time employment opportunities, and

(6) Preparing reports on part-time employment for transmittal to the Office of Personnel and Training.

9. *Goals and Timetables.* a. Each Operating Administration shall set annual goals for establishing or converting positions for part-time career employment, and establish timetables setting forth interim and final deadlines for achieving such goals. Goals for each fiscal year must be established and

reported to the Office of Personnel and Training by October 31 of each year.

b. The following factors should be considered in indentifying part-time employment opportunities:

(1) Mission and occupational mix;

(2) Workload fluctuations;

(3) Size of workforce, turnover rate, and employment trends;

(4) Potential for improving sevice to the public;

(5) Affirmative action;

(6) Geographic dispersion;

(7) Current employee interest in part-time schedules;

(8) Personnel ceiling and fiscal contraints, and

(9) Availability of candidates for part-time career employment.

10. *Program Evaluation and Reporting.* a. The Part-Time Career Employment Program will be subject to continuing review and evaluation as a part of the regular personnel management evaluations conducted by the Office of Personnel and Training an OPM. Program evaluation shall also be included in each Operating Administration's internal personnel management evaluation process.

b. Operating Administrations are required to report twice each year to the Office of Personnel and Training on progress in meeting part-time employment goals, noting any impediments encounted and measures taken to overcome them. Program reports, as of March 31 and September 30 of each year, shall be submitted to the Office of Personnel and Training no later than April 30 and October 31, respectively. Reports must address the Operating Administration's progress in meeting part-time career opportunties for older persons, handicapped individuals, persons with family responsibilities, and students.

c. The Department Coordinator will review Operating Administration's reports, and submit a consolidated report to OPM by May 15 and November 15 of each year.

11. *Part-Time Employment Practices.* a. *Review of Vacant Positions.* Each Operating Administration must establish procedures to review positions which become vacant to determine the feasibility of filling them on a part-time career employment basis. This review shall include consideration of factors such as those used to establish goals and timetables.

b. *Establishing and Converting Part-Time Positions.* (1) Operating Administrations are required to establish a sufficient number of new part-time positions to meet their established goals.

(2) Employees should be given the opportunity to request and receive consideration to switch from full-time to part-time schedules, on a voluntary basis. Full-time employees cannot be required to accept part-time employment as a condition of continuing employment.

(3) Operating Administrations shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis.

c. *Notifying the Public of Part-Time Vacancies.* Operating Administrations are required to keep the public informed of job opportunities through publicizing vacant part-time positions in Department-wide vacancy announcements; Federal Job Information announcements; and maintaining contact with State Employment Service Offices, schools, organizations, and other sources of recruitment.

[FR Doc. 80-28353 Filed 9-12-80; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 180
Monday, September 15, 1980

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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CONSUMER PRODUCT SAFETY COMMISSION.

Revised Agenda [1]

TIME AND DATE: 9:30 a.m., Wednesday, September 17, 1980.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: 1. Potassium Supplements—Final PPPA Exemption:

The Commission will consider exemption of certain potassium supplements from child-resistant packaging requirements of the Poison Prevention Packaging Act. In June, 1979, the Commission proposed to exempt effervescent tablets containing no more than 50 milliequivalents of potassium. The Commission also will consider possible exemption of other forms of potassium supplements. The staff briefed the Commission on these matters at the September 10 meeting.

2. Briefing on Briefing—Packaging Format:

The staff will brief the Commission on possible changes it may make in the briefing packages it prepares for Commission consideration and decisions.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, DC 20207, Telephone (202) 634-7700.

Please note that as a rule CPSC holds meetings every Wednesday and Thursday. For current information on CPSC meeting, please call Mr. Butts.

[S-1703-80 9-11-80; 4:01 pm]

BILLING CODE 6355-01-M

[1] Agenda revised September 10, with the addition of item 2; agenda originally approved September 5.

2

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., September 18, 1980.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

MATTERS TO BE CONSIDERED:

Service Corporation Activity—First Federal Savings and Loan Association of Chicago, Chicago, Illinois.

Merger; Maintenance of Branch Offices; Cancellation of Membership and Insurance; Transfer of Stock and Amendment of Charter (Section 1.)—Main Federal Savings and Loan Association of Columbus, Columbus, Ohio INTO Park Federal Savings and Loan Association, Columbus, Ohio.

Bank Membership and Insurance of Accounts—Long Beach Savings and Loan Association, Long Beach, California.

No. 391, September 11, 1980.

[S-1701-80 Filed 9-11-80; 2:31 pm]

BILLING CODE 6720-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

September 10, 1980.

TIME AND DATE: 10 a.m., Tuesday, September 16, 1980.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Bishop Coal Company, WEVA 80-429-D (Petition for Discretionary Review; issues include whether operator must pay miners who accompanied inspector on nonregular inspections).

2. Sewell Coal Company, WEVA 80-264-R, etc. (Petition for Discretionary Review; issues include interpretation and application of 30 CFR 75.316).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-1702-80 Filed 9-11-80; 2:56 pm]

BILLING CODE 6820-12-M

4

FEDERAL RESERVE SYSTEM.

Board of Governors.

TIME AND DATE: 11:00 a.m., Friday, September 12, 1980.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Report to the Congress regarding implementation of the International Banking Act.

2. Any agenda items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: September 10, 1980.

Griffin L. Garwood,

Deputy Secretary of the Board.

[S-1695-80 Filed 9-10-80; 4:37 pm]

BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, September 10, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This matter was originally announced for a meeting on Monday, September 8, 1980).

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: September 10, 1980
Griffith L. Garwood,
Deputy Secretary of the Board.

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[USITC SE-80-43A]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 58296, September 2, 1980

PREVIOUISLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, September 18, 1980.

CHANGES IN THE MEETING: Emergency action to close a portion of the meeting originally announced as open to the public.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(4) and in conformity with 19 CFR 201.36(b)(4), Commissioners Alberger, Calhoun, Moore, Bedell, and Stern voted by action jacket GC-80-146 to hold the discussion with respect to item 4 [Petitions and complaints, if necessary; (a) Tire changers (Docket No. 673)] in closed session. Commissioners Alberger, Calhoun, Moore, Bedell, and Stern also determined, pursuant to 19 CFR 201.37(b) that Commission business requires the change in the determination of the Commission to open or close this portion of the meeting and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1698-80 Filed 9-11-80; 10:44 am]
BILLING CODE 7020-02-M

7

[USITC SE-80-44]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, September 25, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Consideration of the fiscal year 1982 budget.
6. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1699-80 Filed 9-11-80; 10:44 am]
BILLING CODE 7020-02-M

8

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9 a.m., September 18, 1980.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Illinois, 60611.

CHANGE IN THE MEETING: Additional item to be considered at the portion of the meeting which will be open to the public:

1. Centralization of computer systems analysts.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312-751-4920; FTS No. 387-4920.

[S-1697-80 Filed 9-10-80; 4:51 pm]
BILLING CODE 7905-01-M

9

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: 45 FR 58748, September 4, 1980 and 45 FR 59474 September 9, 1980.

STATUS: Open meeting/Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATES PREVIOUSLY ANNOUNCED: September 2, 1980/September 4, 1980.

CHANGES IN THE MEETING: Additional items and new meeting.

The following additional item was considered at an open meeting scheduled for Wednesday, September 10, 1980, at 10 a.m.:

Consideration of whether to issue a release announcing an interpretative letter of the Division of Corporation Finance permitting a foreign government to register its securities under the Securities Act of 1933 by means of a shelf registration statement. For further information, please contact Ronald Adee at (202) 272-3250.

The following additional items were considered at a closed meeting scheduled for Wednesday, September 10, 1980, following the 10 a.m. open meeting:

Formal order of investigation and access to investigative files by Federal, State, or Self-Regulatory authorities.

Consideration of *amicus* participation.

The following item was not considered at a closed meeting scheduled for Wednesday, September 10, 1980, following the 10 a.m. open meeting:

Litigation matter.

The following item will be considered at an open meeting scheduled for Thursday, September 18, 1980, at 10 a.m.:

Consideration of whether to issue a statement of the Commission's position on the American Law Institute's proposed Federal Securities Code. For further information, please contact Donald C. Langevoort at (202) 272-2426.

The following item will be considered at a closed meeting scheduled for Thursday, September 18, 1980, following the 10 a.m. open meeting:

Settlement of administrative proceeding of an enforcement nature.

Application for reentry into employment in the securities industry.

Chairman Williams and Commissioners Loomis and Friedman determined 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: Paul Lowenstein at (202) 272-2092.

September 11, 1980.
[S-1700-80 Filed 9-11-80; 1:01 pm]
BILLING CODE 8010-01-M

10

[Meeting No. 1252]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 7 p.m., CDT, Thursday, September 18, 1980.

PLACE: Fayetteville Recreation Center, U.S. Highway 64E, Fayetteville, Tennessee.

STATUS: Open.

MATTERS FOR ACTION:

B—Purchase Awards

1. Req. No. 827370—250-ton polar crane for Yellow Creek Nuclear Plant, Unit 1.
2. Req. No. 170183 (Reissue)—Load management control system for the Load Management Air-Conditioning Cycling Program.
3. Req. No. 167726—Design and fabrication of a fuel cell pilot plant in Muscle Shoals, Alabama.
4. Req. No. 579153—Material and equipment for modification of TVA's Urea Solution Plant in Muscle Shoals, Alabama.
5. Purchase of low sulfur coal for Widows Creek Steam Plant under Section 8(a) of the Small Business Act.

C—Power Items

1. New power contract with Tarrant City, Alabama.
2. New power contract with the Electric Plant Board of Monticello and the City of Monticello, Kentucky.
3. New power contract with the Electric Plant Board of Glasgow and the City of Glasgow, Kentucky.
4. Letter agreement with Cleveland, Tennessee, covering changes in lease

arrangements at the Cleveland District Substation.

5. Lease agreement with Electric Board of the City of Hartselle, Alabama, covering lease of 88-kV switching facilities and associated property at TVA's Hartselle District Substation.

6. Bill of sale and quitclaim dead covering conveyance of certain substation and transmission line facilities to the City of Bristol, Virginia.

7. Deed conveying to Cherokee Electric Cooperative a 2.47-acre substation site in the vicinity of Whitesboro, Alabama.

8. Memorandum of Understanding between National Aeronautics and Space Administration and TVA for development and demonstration of energy technologies.

9. Interagency agreement with U.S. Department of Energy for Evaluation of Sumner County, Tennessee, Resource Authority's Solid Waste to Energy Demonstration.

10. Subagreement under existing Interagency Agreement with Environmental Protection Agency providing for continuation of Energy Research and Development Program.

D—Personnel Items

*1. Change of status for Ermer G. Beasley, Jr., from Assistant Director, Nuclear Safety Review Staff, to Quality Assurance Manager, Office of Engineering Design and Construction, Knoxville, Tennessee.

*2. Change of status for Raymond W. Dibeler from Chief, Quality Assurance Staff, to Chief, Quality Assurance Branch, Division of Construction, Office of Engineering Design and Construction, Knoxville, Tennessee.

*3. Change of status for Robert Allison Costner, Jr., from Assistant Design Project Manager to Chief, Quality Assurance Branch, Division of Engineering Design, Office of Engineering Design and Construction, Knoxville, Tennessee.

*4. Change of status for David A. Patterson from Acting Assistant Manager, Office of Community Development, to Assistant to the Manager, Office of Planning and Budget, Office of the General Manager, Knoxville, Tennessee.

E—Real Property Transactions

*1. Abandonment of easement rights affecting approximately 4.9 acres of Watts Bar Reservoir land located in Loudon, Tennessee—Tract WBR–1644F.

2. Abandonment of right of way affecting 1.3 acres of Columbia Reservoir land in Maury County, Tennessee—Tract COLSR–1017.

3. Sale of permanent easement to Sterling Shelton for construction and maintenance of a private road affecting approximately 0.51 acre of Normandy Reservoir land in Coffee County, Tennessee—Tract XNRMR–2H.

4. Filing of condemnation suits.

F—Unclassified

1. Fertilizer distribution agreement with Svoboda Sales Company, Lincoln, Nebraska.

2. Agreement with Southern Railway Company for construction, maintenance, and operation of access track facilities for Yellow Creek Nuclear Plant near Iuka, Mississippi.

3. Agreement with Tennessee Elk River Development Agency providing for a comprehensive program of unified resource development for the Elk River area.

4. Workplans and budgets related to the mitigation program with the local governmental entities in the Hartsville Nuclear Plants project area.

*5. Settlement of action brought against The Aetna Casualty and Security Company for failure to pay amount of performance bond following breach of contract by Mountain View Coal Co., Inc.

6. Revised TVA policy code relating to occupational medical and related health services.

7. Revised TVA policy code relating to administration of Section 26a of the TVA Act which requires TVA approval of construction, operation, or maintenance of any obstruction affecting navigation, flood control, or public lands or reservations along or in the Tennessee River or its tributaries.

8. New TVA policy code relating to cash management.

9. Short-term borrowing from the Treasury.

10. Payment from power proceeds for fiscal year 1980 to the Treasury of the United States.

11. Payments to states and counties in lieu of taxes for fiscal year ending September 30, 1980, as provided under Section 13 of the TVA Act, as amended.

12. Contribution rates to the TVA Retirement System for fiscal year 1981 and determination of maximum amount to be credited under the Merit Incentive Supplemental Retirement Income Plan.

13. Interagency agreement with the Office of Surface Mining covering arrangements for assessment by TVA of cumulative hydrologic impacts of anticipated coal mining to facilitate management of the Surface Mining Control and Reclamation Act.

14. Interagency agreement with the Office of Surface Mining covering arrangements for technical assistance by TVA in evaluating and monitoring effects of abandoned mine reclamation efforts conducted by OSM in the area of the Big Creek Utility District Reservoir, Coalmont, Tennessee.

CONTACT PERSON FOR MORE INFORMATION: Craven Crowell, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: September 11, 1980.

[S-1704-80 Filed 9-11-80; 4:09 pm]

BILLING CODE 8120-01-M

*Approved by individual Board members.

Federal Register

Monday
September 15, 1980

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Under Federal Program for Georgia; Proposed Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 910

Surface Coal Mining and Reclamation Operation Under Federal Program for Georgia

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM or the Office), U.S. Department of the Interior is seeking comments on proposed rules which would amend 30 CFR Chapter VII by adding a new Part 910 to contain a Federal program for the regulation by the Secretary of the Interior (the Secretary) of coal exploration and surface coal mining and reclamation operations, including the surface effects of underground coal mining, on non-Federal and non-Indian lands within the State of Georgia in accordance with Section 504 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and 30 CFR Part 736.

DATES: Comments must be received by November 21, 1980, at the address below, but not later than 5:00 p.m. A public hearing will be held on November 18, 1980. Representatives of OSM will be available to meet with interested persons upon request between September 15, 1980 and November 21, 1980. Persons wishing to testify at the hearing should contact the person listed below under "For further information contact."

ADDRESS: Written comments must be mailed or hand-delivered to: Administrative Record Room, Office of Surface Mining, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902.

A transcript of the public hearing, all written comments received, summaries of meetings with representatives of OSM and other documents constituting the administrative record on the Georgia Federal program will be made available for public review during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Assistant Regional Director, 530 Gay Street, SW., Knoxville, Tennessee 37902 (615–637–8060)

SUPPLEMENTARY INFORMATION: This document contains proposed rules through which the Secretary and the Director, OSM (the Director) would regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State of Georgia.

Background

Title V of SMCRA requires the implementation of permanent programs to regulate coal exploration and surface coal mining and reclamation operations in each State. OSM promulgated national permanent program regulations in 30 CFR Chapter VII which establish the minimum standard for the regulatory programs in each State and the procedures for developing, promulgating, and implementing the programs.

The rules for the national 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 15385–15393 (March 13, 1979). 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 47424 (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), and at 44 FR 75302 (December 19, 1979), 44 FR 77440–77447 (December 31, 1979), 45 FR 2626–2629 (January 11, 1980), 45 FR 25998–26001 (April 16, 1980), 45 FR 39446–39447 (June 10, 1980), and 45 FR 52306–52317 (August 6, 1980).

Representatives of industry, two States and several environmental groups challenged the national 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) and January 30, 1980 (45 FR 6913). In two opinions the court remanded certain other regulations which had been challenged in the lawsuit. The opinions were issued on February 26, 1980, and May 16, 1980.

OSM has considered the reasons for these suspensions and remands in drafting the proposed Georgia program regulations. In some cases, OSM is proposing language in the Georgia program regulations. The basis for this language is explained in the discussions accompanying these provisions. A list of all the suspended and remanded Federal regulations, along with a statement of proposed disposition within the context of this Federal program for the State of Georgia, is set forth below under "Disposition of Suspended and Remanded National Permanent Program Regulations." This list identifies those provisions that the Secretary will not include in the proposed Georgia program and, for subject areas where rules are being proposed, the language the Secretary is proposing in order to render the proposed Georgia program operable. These determinations are made only for this proposed Georgia Federal program, in view of conditions in the State of Georgia. This proposed language does not supercede, amend or modify the permanent program rules in any way, nor does it limit the Secretary in considering alternative approaches in the context of other rulemakings. The Office will promulgate new provisions in the national permanent program regulations and the Georgia program will be amended to incorporate those provisions, to the extent appropriate.

Disposition of Suspended and Remanded National Permanent Program Regulations

Regulation	Topic	Extent of remand or suspension
30 CFR 700.11(b)	Regulations implementing the two-acre exemption in Section 528(2) of the Act.	Suspended. The following language is suspended, "or any such operation conducted by a person who affects or intends to affect more than two acres at physically unrelated sites within one year." (44 FR 67942 (1979).)
Proposed disposition: Section 528(2) of the Act exempts from regulation surface coal mining operations which affect two acres or less. Proposed Rule 910.701-11(a)(2) repeats the language of the statutory exemption and does not include the suspended language.		
30 CFR 701.5, 30 CFR 779, 30 CFR 780, 30 CFR 783, and 30 CFR 784.	"Mine plan area": Regulations applying permit requirements necessitate operators to supply information for areas outside the permit boundary.	Remanded. The definition of "mine plan area" (701.5) is suspended and the phrase "mine plan area" is suspended where it appears (779, 780, 783, 784). The information requirement is excessive as Sections 507 and 508 of the Act specifically articulate those instances in which information outside the permit area is necessary. (Court Opinion, Feb. 26, 1980, pp. 35, 36; May 16, 1980, pp. 57, 58.)

Disposition of Suspended and Remanded National Permanent Program Regulations —Continued

Regulation	Topic	Extent of remand or suspension
Proposed disposition: The Georgia proposed rules comply with the court's order. The term "mine plan area" is not used. In most cases, information is only required for the proposed permit area. In some instances, information is also required for adjacent areas or off-site areas. This would allow the Office flexibility to get sufficient information for areas outside the permit area when authorized under SMCRA.		
30 CFR 701.11(d)(1) (i) and (ii)	Provides that if pre-existing structures meet the Secretary's performance standards they may be exempted from the Secretary's reconstruction design requirements.	Suspended. The regulations are suspended insofar as they may be read to retain discretion in the regulatory authority to grant an exemption from reconstruction of existing structures after making the findings in 30 CFR 786.21. (44 FR 67942 (1979).)
Proposed disposition: Proposed Rules 910.701–11(c)(1) (i) and (ii) provide that the Office shall grant an exemption from reconstruction requirements for existing structures after obtaining the information required by proposed Rules 910.780–12 or 910.784–12 and after making the findings required in 910.786–21. Proposed Rules 910.701–11(c)(1) (i) and (ii) are based on a proposed national permanent program regulation published on February 6, 1980 (45 FR 25990). The reader is referred to the preamble discussion of that proposed rule for rationale.		
30 CFR 761.5	The definition of *public road*.	Suspended. The definition of *public road* is suspended. OSM will rely on Section 522(e)(4) of SMCRA to interpret this definition pending the outcome of rulemaking. (44 FR 67942 (1979).)
Proposed disposition: The proposed rule revises the definition of "public road." The suspended rule defined "public road" to mean any thoroughfare open to the public for the passage of vehicles. The proposed rule would narrow the scope of this definition. Section 522(e)(4) of the Act provides that, subject to certain exceptions, no surface coal mining operations shall be permitted "within one-hundred feet for the outside right-of-way line of any public road." No reference is made in the proposed regulation to ownership or maintenance of such a road by a public agency, since the Secretary believes that roads used by the public over an extended period of time should be considered public, even if not maintained by a governmental entity. This is in line with Congress' findings and purposes in SMCRA, 30 U.S.C. 1201 (c) and (d) and 1202 (a) and (m), to protect the health and safety of the public from the adverse disturbances of surface areas associated with surface coal mining operations which disturbances burden and adversely affect the public welfare. Proposed rule 910.761–5 will make the definition of public roads consistent with the rationale, set forth in the preamble to the permanent program regulations (44 FR 14991, March 13, 1979), of protecting public access to and use of roads which actually have been and are being used by the public. This definition is also consistent with court holding that the essential feature of a public road is that it is open to the public for travel, not that it is owned or maintained by a public agency. e.g., *Burdis v. Texas and Pacific Ry. Co.*, 569 F.2d 320 (5th Cir. 1978); *State v. O'Connor*, 184 A.2d 83. (N.J. 1962.)		
30 CFR 761.5(a)(2)(i)	"All permits test": In defining "valid existing rights" requires operator to have obtained all permits necessary for mining prior to 8/3/77.	Remanded. A good faith effort to obtain all permits before 8/31/77 should be sufficient to qualify for a valid prior existing right. (Court Opinion, Feb. 1980, p. 20.)
Proposed disposition: Proposed Rule 910.761–5(a)(i) requires that in order to establish a valid existing right to conduct surface coal mining operations, the person proposing to conduct such operations must have obtained validly issued, or have exercised a good faith attempt to obtain, on or before August 3, 1977, all necessary State and Federal permits. This requirement ensures that, in order to qualify for a valid existing right, an operator must have expended a sizeable investment and have a substantial expectation of mining. A good faith attempt to obtain all permits should suffice for meeting this test, since an operator who applies for all permits but fails to receive one through bureaucratic delay, has made the same investment and has the same expectations as an operator who timely receives all permits. The Office invites public comment about the extent to which the term "good faith" should be defined.		
30 CFR 761.11(c) and .12(f)(1)	Extension of prohibition of surface coal mining operations affecting any publicly-owned park or places included in the National Register of Historic Sites to operations affecting places "eligible for listing on" the National Register of Historic Places.	Suspended. Limitation on surface mining operations under approved State programs which will affect places eligible for listing on the National Register of Historic Places is to be deleted. (44 FR 67942 (1979).)
Proposed disposition: The phrase "eligible for listing on" does not appear in proposed Sections 910.761(c) and 910.761(e)(1), or in proposed Sections 910.776–13(b)(3) and 910.786–19(e) which are dependent on Sections 910.761–11(c) and 910.761–12(e)(1). The phrase is being proposed in Sections 910.776–12(a)(3), 910.779–12(b), 910.779–24(i), 910.783–12(b), and 910.783–24(i). Section 702 of SMCRA provides authority for OSM to meet the requirements of other applicable Federal laws. The information required under Sections 910.776–12(a)(3), 910.779–12(b), 910.779–24(i), 910.783–12(b) and 910.783–24(i) is necessary for OSM to meet its responsibilities for compliance with Section 106 of the National Historic Preservation Act of 1966.		
30 CFR 761.11(c) and .12(f)(1)	Privately owned places listed on the National Register of Historic Places and the phrase "or a statutory or regulatory responsibility for * * *.	Suspended. The words "or a statutory or regulatory responsibility for" in 30 CFR 761.12(f)(1) are suspended and both of these regulations are suspended insofar as they would apply to privately owned places listed on the National Register of Historic Places in addition to publicly-owned places. (44 FR 67942 (1979).)
Proposed disposition: The suspended language does not appear in proposed § 910.761–12(e)(1).		
30 CFR 771.611(b) (3) and (5)	Regulations require the notice of exploration to include a map of the exploration area and command an operator to explain his basis for entering the exploration area when surface is owned by a person other than the operator.	Remanded. Section 512(a) of the Act requires notice to include only a description, not a map, and provides no authority to require an operator to explain his basis for entering the land. (Court Opinion, May 16, 1980, p. 54.)
Proposed disposition: In accordance with the court opinion, there is no requirement for a map or for an explanation of the basis for entering the land in proposed Section 910.776–11(b). A map would, however, be a more effective way to indicate to the public and the Office just where exploration would occur. Maps might also be easier for operators to produce than legal descriptions. Therefore, proposed § 910.776–11(b) allows the option of providing a map.		
30 CFR 779.20, 30 CFR 780.16, 30 CFR 783.20, and 30 CFR 784.21.	Regulations requiring the permit application to contain a study of fish and wildlife, and a fish and wildlife reclamation plan.	Remanded. No authorization in the permit and bonding sections of the Act for fish and wildlife information. (Court Opinion, Feb. 26, 1980, pp. 38–39.)
Proposed disposition: The remanded permanent program language is being reproposed in the Georgia regulations. Section 702 of SMCRA provides authority for OSM to comply with other applicable Federal regulations. The provisions in proposed §§ 910.779–20, 910.780–16, 910.783–20, and 910.784–21 will provide information necessary for OSM to comply with the requirements of the Fish and Wildlife Coordination Act, as amended 16 U.S.C. 470, and the Endangered Species Act, as amended, 16 U.S.C. 531.		
30 CFR 779.21, and 30 CFR 783.21	Regulations require soil survey information in permit application for land not qualifying as prime farmland.	Remanded. Under Section 507(b)(16) of the Act, a permit application must contain a soil survey only for those lands which a reconnaissance inspection suggests may be prime farmland. (Court Opinion, Feb. 26, 1980, pp. 39–40.)
Proposed disposition: Proposed rules 910.779–21 and 910.783–21 provide that the permit application must contain a soil survey only for those lands which a reconnaissance survey indicates are or may be prime farmland. This provision is expressly required by Section 507(b)(16) of the Act. The Office may, however, request a soil survey when necessary, as when evaluating proposals to use alternative soil horizons in lieu of topsoil.		
30 CFR 783.14(a)(1)	Geology description for areas to be affected by surface operations and facilities.	Suspended. The regulation is suspended insofar as it requires a geologic description of the strata down to and immediately below any coal seam for areas to be affected only by "surface operations and facilities" where no removal of overburden down to level of coal seam will occur. (44 FR 77455 (1979).)
Proposed disposition: Proposed § 910.783–14(a)(1) requires a permit application for an underground mining operation to contain a detailed geology description only for those areas where overburden will be removed down to the level of the coal seam. For those areas where surface operations or facilities will not result in the removal of overburden down to the level of the coal seam to be mined, the geology description would be required only to the level of the stratum to be disturbed or affected. Proposed Rule 910.783–14(a)(1) is based on a proposed national permanent program regulation published April 16, 1980 (45 FR 25990) and the reader is referred to the preamble to that proposed rule for the rationale.		

Disposition of Suspended and Remanded National Permanent Program Regulations—Continued

Regulation	Topic	Extent of remand or suspension
30 CFR 783.25 (c), (h) and (i)	Regulations require cross sections, maps, and plans as part of the informational requisites of an underground permit application.	Remanded. Subsections (c), (h), and (i), which concern coal seam and overburden description; location of existing and previously mined areas; and location of waste disposal and impoundments, are suspended. Further rulemaking proceedings must be held (notice and public comment on the proposed justification). (Court Opinion, May 16, 1980, pp. 14–15.)

Proposed disposition: In accordance with the court decision, public comment is sought regarding proposed § 910.783–25 (c), (h) and (i). The Secretary believes that the information contained in paragraphs (c) and (h) is necessary for protection of the hydrologic balance, and Paragraph (c) is necessary to evaluate an applicant's ability to comply with subsidence performance standards. Further, the Secretary believes that the informational requirements of Paragraphs (c) and (i) will aid in the planning of waste handling. Accordingly, comments are particularly sought regarding those determinations.

30 CFR 785.17(a)	Prime farmland grandfather clause	Suspended. The prime farmland grandfather clause is suspended. The Secretary will rely on Section 510(d)(2), SMCRA, to interpret this exemption pending the outcome of further rulemaking. (44 FR 77455 (1979).)

Proposed disposition: The proposed Georgia program does not include special performance standards (analog to 30 CFR Part 823) for prime farmlands at this time. There are no known prime farmlands in the area of Georgia where there are existing or known potential surface coal mining operations. (Soil Survey of Chatooga, Florida, and Polk Counties, Georgia, 1976, U.S. Soil Conservation Service). The identification of potential prime farmlands will be required under § 910.799–27, and if any prime farmlands are present, OSM will require that special precautions, as required by the Act, be taken in mining and reclamation as required by proposed § 785.17. Section 910.783–27(d)(1) has been revised to reflect consultation with the Office. Meanwhile, the second sentence found in § 785.17(a) of the national permanent program does not appear in the proposed program for Georgia.

30 CFR 785.17(b)(3) and 30 CFR 823.14(c)	Moist bulk density standard for soil compaction.	Suspended. The regulation was suspended to allow further public comment. Until a standard for soil compaction is proposed and adopted, the Office will implement the permanent program prime farmland standards by requiring that prime farmland permit applications demonstrate and operators mine so that excessive compaction is avoided in replacement of the soil under Section 508(a)(4)–(5), 510(d)(1), and 515(b)(7), SMCRA. (44 FR 77455 (1979).)

Proposed disposition: No language is proposed to implement 30 CFR 785.17(b) (3) or (8) or 30 CFR Part 823. The word "Reserved" will be inserted pending later promulgation of these provisions for Georgia, if necessary. See discussion above for 30 CFR 785.17(a).

30 CFR 785.17(b)(8)	Regulation states that revegetation success for prime farmlands depends upon meeting a high management level standard.	Remanded The Act requires only that revegetation meet equivalent levels for surrounding non-mined prime farmlands. (Court Opinion, May 16, 1980, pp. 4–5.)

Proposed disposition: See discussion above for 30 CFR 785.17(a).

30 CFR 786.5	Words "or has not been"	Suspended. No longer part of definition of *irreparable harm to the environment.* (44 FR 67943 (1979).)

Proposed disposition: The definition of "irreparable damage to the environment" in proposed rule 910.786–5 does not contain the phrase "or has not been" to reflect the correct meaning of word "irreparable." Although the revision narrows the kinds of damages which can be considered irreparable for purposes of denying permits under Section 510(c) of the Act, it should not have any impact on the overall scope of the provision. Section 510(c) of the Act and proposed § 910.786–17(c) would prohibit the issuance of permits to an applicant who is in violation of the Act until that applicant submits proof that the violation has been or is in the process of being corrected, or that the applicant has filed and is pursuing in good faith an appeal of the violation. Thus, the law and the proposed regulations provide reasonable assurance that no person will be issued a permit who has failed to correct violations of the Act.

30 CFR 805.13(d)	Exception from revegetation requirements for a long-term intensive agricultural land use.	Suspended. The regulation is suspended insofar as exception is granted from requirements specified as those "of 30 CFR Part 816." (44 FR 67943 (1979).)

Proposed disposition: Proposed rule 910.805–13(e) grants an exception to the revegetation requirements of § 910.816–111(a) if the Office has approved a long-term intensive agricultural land use. 30 CFR 805.13(d) appeared to allow an exception to the revegetation requirements of all of § 816.116, which was not intended. The language of proposed rule 910.805–13(d) is based on the recently published revision to the national permanent program rules (45 FR 52319, August 6, 1980).

30 CFR 806.12(e)(6)(iii), (g)(7)(iii)	Cessation of operations upon insolvency of surety	Suspended. The regulation is suspended to the extent it requires cessation of operations upon the insolvency of a surety. (44 FR 67943 (1979).)

Proposed disposition: Proposed rule 910.806–12(e)(6)(iii) and (g)(7)(iii) would provide that upon the incapacity of a surety or bank a permittee shall be deemed to be without bond coverage in violation of proposed § 910.800–11(b). However, in such a situation the operator is not at fault and the Office proposes to allow a grace period in which an operator must replace bond coverage, rather than requiring an immediate cessation of operations. Cessation of operations might prove to be more detrimental to the environment and in some cases might result in operator failure and bankruptcy. The Office would issue a notice of violation which would specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period, the Office would maintain stringent inspection and monitoring of the operation to ensure compliance with other permit requirements, the regulatory program, and the Act. The language of proposed rules 910.806–12(e)(6)(iii) and (g)(7)(iii) is based on the recently revised national permanent program rules (45 FR 52320, August 6, 1980).

30 CFR 807.11(c)	Regulation does not allow citizen access to the mine site for performance bond release.	Remanded. Regulation implementing the informal conference provisions of Section 519 of the Act should include a provision for citizen's access to the mine-site. (Court Opinion, Feb. 29, 1980, pp. 41, 42).)

Proposed disposition: The Office proposes to provide for citizen access to the Georgia program in Rule 910.807–11(c).

30 CFR 808.12(c)	Bond liability limit	Suspended. Language suspended insofar as it indicated bond liability in the permit area was limited to hydrologic balance. (44 FR 67943 (1979).)

Proposed disposition: Proposed rule 910.808–12(e) provides that the Office may forfeit all or any bond for an entire permit area or any increment thereof. The liability under any bond covering any increment may extend to the entire permit area. Section 509 of the Act requires that bonds must be conditioned on faithful performance of all the requirements of the Act and the permit. Furthermore, the bond amount must be sufficient to assure the completion of the reclamation plan. In many cases, the complete reclamation plan may apply to the entire permit area. Therefore, the proposed rule provides that any bond deposited for an entire permit area or any increment may be forfeited to assure all aspects of reclamation of any portion of the permit area. The language of proposed rule 910.808–12(c) is based on the recently revised national permanent program rules (45 FR 52324, August 6, 1980).

30 CFR 808.14(b)	Regulation allows a regulatory authority to retain forfeited performance bond money unnecessary for costs and administrative expenses associated with reclamation.	Remanded. Section 509 provides no basis for forfeiture beyond amount necessary to implement and complete a reclamation plan. (Court Opinion, Feb. 26, 1980, pp. 44, 45.)

Proposed disposition: The Georgia program would not necessarily limit the amount of bond forfeiture. The proposed program provides for return of any sums not needed for reclamation.

Disposition of Suspended and Remanded National Permanent Program Regulations—Continued

Regulation	Topic	Extent of remand or suspension
30 CFR 816.42(a)(1) and (7), 30 CFR 817.42(a)(2) and (7)	Regulations required that runoff from reclaimed lands must meet the same effluent limitations as those for actively mined lands.	Remanded. Regulation is arbitrary unless Secretary can demonstrate its rationality with technical support and a showing of operator's ability to meet the standard. (Court Opinion, May 16, 1980, pp. 19–20.)
Proposed disposition: The remanded provisions are not included in proposed Georgia Rule 910.816–42 and 910.817–42, to comply with the language of the court opinion. Effluent limitations would not be applied to runoff from reclaimed lands during precipitation events.		
30 CFR 816.42(b), 30 CFR 817.42(b)	Application of effluent limitations to periods of heavy rainfall	Suspended. The precipitation event exemption is suspended and is being replaced since effluent limitations may often not be achievable with the use of coventional physical sediment removal measures. (44 F.R. 77452 (1979), 44 F.R. 77453 (1979).)
Proposed disposition: The rainfall exemption promulgated by the Environmental Protection Agency (44 FR 76791, 1979) was adopted in the national permanent program regulations by reference (45 FR 6913, 1980) and has been incorporated into proposed Rules 910.816–42(b) and 910.817–42(b).		
30 CFR 816.46(b), 30 CFR 817.46(b)	The minimum sediment sctrage volume for sedimentation ponds.	Suspended. Sediment storage design capacity, in addition to sedimentation pond size, is suspended. (44 F.R. 77453 (1979)).
Proposed disposition: Proposed rules 910.816–46(b) and 910.817–46(b) do not contain the suspended language. The proposed language, however, still requires a minimum sediment storage volume. The Office will evaluate the adequacy of the capacity on a site-specific basis under the proposed Georgia program.		
30 CFR 816.46(c), 30 CFR 817.46(c)	Requirement for a sedimentation pond to contain the capacity to detain water for a 24-hour period.	Suspended. OSM will reconsider and repropose requirements. (44 FR 77453 (1979).)
Proposed disposition: Proposed Rules 910.816–46(c) and 910.817–46(c) do not contain the suspended language. The proposed language, however, requires a theoretical detention time for the ten year, 24-hour precipitation event. The Office will establish the required theoretical detention time on a site-specific basis under the proposed Georgia program.		
30 CFR 816.46(d), 30 CFR 817.46(d)	Sedimentation ponds; dewatering	Suspended. The words "and shall have a discharge rate to achieve and maintain the required theoretical detention time" have been suspended. (44 FR 77453 (1979) and 45 FR 6913 (1980).)
Proposed disposition: Proposed Rules 910.816–46(d) and 910.817–46(d) do not include the suspended language. As discussed above for proposed Rules 910.816–46(c) and 910.817–46(c), the Office will provide assistance on a site-specific basis concerning theoretical detention time.		
30 CFR 816.46(h), 30 CFR 817.46(h)	Requirement that coal operators clean out sedimentation ponds when constitutes 60% of the sediment storage capacity.	Suspended. The required frequency of sediment removal from sedimentation ponds will be changed. (44 FR 77453 (1979) and 45 FR 6913 (1980).)
Proposed disposition: Proposed Rules 910.816–46(h) and 910.817–46(h) do not include the suspended language. The Office intends to provide assistance on a site-specific basis for determining the required frequency of sediment removal, under the proposed Georgia program.		
30 CFR 816.65(f), 30 CFR 817.65(f)	Regulation prohibits blasting within 1000 feet of any building and 500 feet of flammable facilities and water lines.	Remanded. The regulation is suspended insofar as it restricts blasting at distances greater than 300 feet. Improper expansion of limitations on blasting. See, *In re: Surface Mining Regulation Litgation*, No. 78–2190 (D.C. Cir. May 2, 1980) at 21–23 (Court Opinion, May 16, 1980, p. 26.)
Proposed disposition: Proposed Rules 910.816–65(f) and 910.817–65(f) reflect the interpretation of the court.		
39 CFR 816.89(a), 30 CFR 817.89(a)	Requirement that coal processing waste embankments contain a subdrainage system.	Suspended. Requirements are suspended to the extent that they would preclude an exemption from the underdrain requirement for coal processing waste banks where an operator can demonstrate that an alternative to the required subdrainage system would ensure structural integrity of the waste bank and protection of ground or surface water quality. (44 FR 77455 (1979).)
Proposed disposition: These regulations were suspended to the extent that an exemption was not provided where an operator demonstrated that a subdrainage system was not required to ensure structural integrity of the wastebank and protection of surface and ground water quality. After a careful review of pertinent literature, OSM agrees that there are areas where subdrains are not required to protect water supplies or ensure the stability of the wastebank. See (1) *Papers presented before the Third Symposium on Coal Mine Drainage Research*, C.T. Holland, Chairman, Mellon Institute, May 19–20, 1969; (2) *Pollution control guidelines for Coal Refuse Piles and Slurry Ponds*, W.A. Wahler and Associates for Office of Research and Development, EPA, Cincinnati, Ohio 45268; (3) *MSHA Engineering and Design Manual, Coal Refuse Disposal Facilities*, prepared by D'Appolonia Consulting Engineer, Inc., 1975. Accordingly, the Office proposes an exemption in rule 910.816–89(a) and solicits public comment on the extent to which criteria should be outlined.		
30 CFR 816.95, 30 CFR 817.95	Air quality control regulations directing operator to limit fugitive dust.	Remanded. No authority to regulate air quality except as related to erosion. (Court Opinion, May 16, 1980, pp. 27–29.)
Proposed disposition: The proposed Georgia program does not include special performance standards for air quality control. Sections 910.816–95 and 910.817–95 are reserved pending the promulgation of national standards in the national permanent program. In the interim, state air quality regulation will prevail. See: "Georgia Air Quality Act of 1978," Ga. code Ann. § 2701 *et seq.*, and Georgia Rules and Regulations 391–3–1. The Office solicits public comments on possible alternatives for dealing with mine-related air quality problems.		
30 CFR 816.103(a)(1), 30 CFR 817.103(a)(1)	Cover of acid- and toxic-forming material	Suspended. The regulation is suspended insofar as it does not allow for treatment as an alternative to covering. OSM will apply § 515(b)(14) and 516(b)(10), SMCRA, and 30CFR 816.48 and 817.43 pending the outcome of the rulemaking.
Proposed disposition: Proposed rules 910.816–103(a)(1) and 910.817–103(a)(1) allows for treatment of acid-and toxic-forming material's as an alternative to covering the materials. the proposaed language is the same as that proposed for inclusion in the national permanent program regulations on February 6, 1980 (45 FR 8244–8245).		
30 CFR 816.115, 30 CFR 817.115	Regulations require actual grazing on and mandatory crop production from lands proposed as pasture or farm lands for post mining use.	Remanded. Regulations exceed the statutory authority which requires only that restored lands be "capable" of supporting the designated use. (Court Opinion, Feb. 26, 1980, pp. 58–59.)
Proposed disposition: Proposed rules 910.816–115 and 910.817–115 provide that when the approved postmining land use is range or pasture, grazing use of such lands during the period of operator responsibility is allowable to demonstrate revegetation success and assure the premined capability has been restored, but it is not required.		

Disposition of Suspended and Remanded National Permanent Program Regulations —Continued

Regulation	Topic	Extent of remand or suspension
30 CFR 816.116(b), 30 CFR 817.116(b)	Regulations delay triggering an operator's five-year period of responsibility for revegetation until the operator meets the Secretary's standard for vegetative cover density.	Remanded. Regulation improperly extends periods of responsibility for re<vegetation. Section 515(b)(20) of the Act intends to impose liability from the point at which the operator has completed seeding and fertilizing. Section 805.13(b) provides that the period of liability shall begin again whenever augmented seeding, fertilizing, irrigation, or other work is required or conducted on the site prior to bond release. (Court Opinion, Feb. 26, 1980, pp. 59-61.)
Proposed disposition: Proposed Rules 910.816-116(b) and 910.817-116(b) reflect the interpretation of the court.		
30 CFR 816.133(b)(1), 30 CFR 817.133(b)(1)	Regulations require operator to restore previously mined but unreclaimed land to the "highest" and best use * * * compatible with surrounding areas.".	Remanded. Section 515(b)(2) allows the operator to choose between restoring the land to condition capable of supporting prior-to-mining use or higher use (Court Opinion, May 16, 1980, p. 55-56.)
Proposed disposition: Proposed Rules 910.816-133(b)(1) and 910.817-133(b)(1) reflect the interpretation of the court.		
30 CFR 816.133(c) (4) and (9), 30 CFR 817.133(c) (4) and (9).	Regulations requiring operator to include with permit application a letter of commitment for postmining land use.	Remanded. Exceeds statutory authority as Section 515(b)(2) of the Act only requires an operator to demonstrate a "reasonable likelihood" of attaining a postmining use that is higher or better than previous use. (Court Opinion, Feb. 26, 1980, pp. 62, 63.)
Proposed disposition: Proposed Rules 910.816-133(c) (4) and (g) and 910.817-133(c)(4) and (g) reflect the interpretation of the Court.		
30 CFR 701.5, 816.150-176, 817.150-176	Regulations governing roads, *i.e.*, classification system, including definition of "road" in 30 CFR 701.5.	Remanded. Inadequate notice and opportunity to comment on the road classification system by not alerting the plaintiffs to the possibility of such a system (Court Opinion, May 16, 1980, pp. 32-36.)
Proposed disposition: Proposed Rules 910.701-5, 910.816-150 through 176 are based on 30 CFR 701.5, 816.150 through 176, and 817.150 through 176 of the national permanent program regulations. These national permanent program regulations were remanded because inadequate notice and opportunity to comment were afforded the public. That procedural defect should not affect the rules being proposed today, since they will now go through a public comment period. The definition of Class III roads, found at 30 CFR 910.701-5, is designed to allow prompt approval of an applicant's request for a light-use road requiring a minimum of surface disturbance. The Office also solicits public comment in the appropriateness of defining Class II and III roads by length of use, as in the analogous national permanent program regulation 30 CFR 701.5.		
30 CFR 817.52(a)(1)	Monitoring of ground water level infiltration rates, subsurface flow and storage characteristics and the quality of groundwater.	Suspended. The language "on the recharge capacity of reclaimed lands and * * *" is suspended since underground mining should not affect the structural integrity of water-bearing formations and thus no special precautions are necessary to protect recharge capacity. (44 FR 77455 (1979).)
Proposed disposition: The proposed Georgia program will not require this type of monitoring.		
30 CFR 817.54	Regulation requires underground operator to replace the water supply of landowners if the operation contaminates, diminishes, or interrupts the supply.	Remanded. Section 717(b) of the Act provides authority to require water replacement only for surface coal mining operations. (Court Opinion, May 16, 1980, pp. 36-37).
Proposed disposition: This requirement was remanded on the basis that the section of the Act cited in the litigation applied only to surface mining. The Georgia proposed rules do not include the requirement to replace water supplies when contaminated, diminished or interrupted by underground mining, in compliance with the court order.		
30 CFR 817.101(b)(1), 30 CFR 187.102	Regulations apply "approximate original contour" (AOC) regulations to underground mining.	Remanded. The regulations as applied to underground mining must provide some flexibility for settled fills that have become stabilized and revegetated. (Court Opinion, May 16, 1980, pp. 17-18.)
Proposed disposition: Proposed rules 910.817-101 and 910.817-102 give flexibility to the underground mine operator in returning the surface to the approximate original contour for areas (1) where settled fills have become stabilized and revegetated; (2) where an underground mine is in operation at the time of promulgation and (3) where underground mining activities affect previously mined lands that have not been restored to the standards of this Part and sufficient spoil is not available to otherwise comply with this section. The Office considered a number of alternatives in drafting these proposed rules. Exempting those mines that demonstrate insufficient present spoil would not account for possible accumulation of sufficient mine development waste during the life of the mine to achieve approximate original contour. Requiring spoil piles and spoil in the downslope to be used to achieve approximate original contour is impractical and may create other safety and environmental problems. Exempting all deep mines from approximate original contour requirements would not implement SMRCA. Allowing spoil on downslope and bench to remain if stability and revegation can be demonstrated would provide flexibility for areas of existing underground mining activities and areas where underground mining activities affect previously mined lands if adequate criteria could be developed and met. The proposed rules require that all areas affected by surface operations shall still be returned to approximate original contour except for those areas mentioned above: The proposed rules exempt these areas where the existing fills can be demonstrated to be stable and the fills have been properly revegetated from the original contour requirement. If the existing fills are not stable or are not properly revegetated, the Office may require that those areas be properly stabilized and revegetated. For areas where existing underground mining activities are in progress at the time this program is promulgated and for areas where new underground mining activities affect previously mined lands that have not been properly reclaimed, the proposed rules require that the areas return to approximate original contour as closely as possible and that the backfilling and grading of those areas be accompanied by acceptable stability, revegetation and other environmental protection.		
30 CFR Part 823	This Part sets forth performance standards for operations on prime farm land.	Remanded to promulgate and exemption. The application of prime farm land requirements to underground mining is upheld, but an exemption is required for surface facilities actively used over extended periods but which affect a minimal amount of land. (Court Opinion, May 16, 1980, pp. 1-3.)
Proposed disposition: See discussion above for 30 CFR 785.17(a).		

Under Sections 501–503 of the Act and 30 CFR Part 731 States were provided the opportunity to submit programs for approval by the Secretary and thus achieve primacy for regulating coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands. A deadline of August 3, 1979, was established by 30 CFR 731.12 for submittal of State programs. The deadline for submissions was extended to March 3, 1980, by an opinion on August 21, 1979, of the District Court for the District of Columbia, *In Re: Permanent Surface Mining Regulation Litigation,* 13 ERC 1586. By March 3, 1980, 24 of the States with known coal reserves had submitted programs to obtain primacy.

Under Section 504 of SMCRA and 30 CFR 736.11, OSM must promulgate and implement a Federal program in each State that did not submit a program by March 3, 1980, and in which 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. On May 16, 1980 (45 FR 32328–32331) OSM published an advance notice of intent to promulgate Federal regulatory programs for States with known surface coal mining and reclamation activities that did not submit programs by March 3, 1980. That notice stated that the State of Georgia by letter dated June 20, 1979, advised

OSM that it would not be submitting a program for approval by the Secretary. Coal mining operations are currently being conducted in Georgia. Therefore, OSM is proposing these rules to implement a Federal regulatory program on non-Federal and non-Indian lands in the State of Georgia.

Under Section 504(g) of the Act any statutes or regulations of the State which are in effect to regulate surface coal mining and reclamation operations subject to the Act shall, insofar as they interfere with the achievement of the purposes and the requirements of the Act and the Federal program, be preempted and superseded by the Federal program. In accordance with 30 CFR 736.23, the Director has identified the following statutes and regulations:

(a) Georgia Surface Mining Act of 1968 Ga Code Anno § 43–1401 et seq.;

(b) Rules for Land Reclamation, Georgia Department of Natural Resources, Environmental Protection Division; Chapter 391–3–3 (1976).

The Georgia Surface Mining Act of 1968 regulates surface mining in Georgia. Surface mining is defined in the Act as "any activity constituting all or part of a process for the removal of minerals, ores and other solid matter for sale or for processing or for consumption in the regular operation of a business." The Act therefore regulates the mining of other minerals as well as coal. The Federal program promulgated herein for the regulation of surface mining is pervasive with regard to coal mining, and to the extent that the Georgia Surface Mining Act of 1968 regulates surface coal mining, it will be preempted and superseded by this Federal program. In no instance is the Georgia Act more stringent than the Federal act or regulation. The Georgia Act will no longer be applicable to the regulation of coal exploration or surface coal mining operations in the State of Georgia.

Similarly, the rules and regulations of the Georgia Department of Natural Resources, Environmental Protection Division, concerning land reclamation after coal mining to be preempted and superceded by the program promulgated herein. These rules and regulations were adopted pursuant to the Georgia Surface Mining Act of 1968. Like that act these rules pertain to the mining of other minerals in addition to coal. They are in no instance more stringent than the Federal act or regulations. These rules and regulations will no longer be applicable to surface coal mining operation to the extent that they affect surface coal mining.

Copies of the Georgia Surface Mining Act of 1968 and the rules and regulations of the Georgia Department of Natural Resources are in the administrative record and are available for review at the place listed above under "Address."

OSM published a notice of intent to promulgate a Federal program for Georgia in the Federal Register on May 16, 1980 (45 FR 32328–32330). Only two comments were received.

One commenter stated that the regulations should be specific to the State's environmental characteristics as required by 30 CFR 736.22(a)(1). OSM has considered the environmental characteristics of Georgia in developing the proposed regulations. As discussed below, public comment is requested on whether further consideration of environmental characteristics and revisions to regulations is needed.

The other commenter requested that a regulatory analysis be prepared. As discussed below under "Other Information," OSM has determined that the regulatory analysis prepared for the national permanent program regulations fulfills any requirement for economic analysis of the proposed program.

Public Comment Period

The comment period on the proposed rules will extend until November 21, 1980. All written comments must be received at the address given above by 5:00 p.m. on November 21, 1980. Comments received after that hour will not be considered or included in the administrative record for this rulemaking. The Office cannot insure that written comments received or delivered during the comment period to any locations other than that specified above will be considered and included in the administrative record for this rulemaking.

Availability of Copies

Copies of the proposed regulations are available for inspection and copies may be obtained at the following offices:

Administrative Record, Office of Surface Mining, 530 Gay Street, S.W., Knoxville, Tennessee 37902.

Office of Surface Mining, Department of the Interior, Room 153, 1951 Constitution Avenue, NW., Washington, D.C. 20240, 202–343–4278.

Public Hearing

A public hearing will be held on November 18, 1980, in the Auditorium, Richard B. Russell Building, 75 Spring Street, Atlanta, Georgia. The hearing will begin at 7:00 p.m. Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. It would be helpful and would assist the court reporter if commenters would file a written statement at the time of giving oral testimony. Submission of written statements whenever possible in advance of the hearing date, to the person identified above under "For further information contact," would greatly assist OSM officials who will attend the hearing. Advance submissions will give OSM officials an opportunity to consider appropriate questions which could be asked to clarify or elicit more specific information from the person testifying. The administrative record will remain open for receipt of additional written comments until November 21, 1980.

Persons in the audience who have not been scheduled to speak and wish to do so will be heard after the scheduled speakers. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned if thay are not present when all scheduled speakers conclude.

Public Meetings

Representatives of OSM will be available to meet between [date of publication] and November 21, 1980, at the request of members of the public, Federal or State representatives, industry officials, labor representatives, or environmental organizations, to receive their advice and recommendations concerning the content of the proposed regulations.

Persons wishing to meet representatives of OSM during this time may request to meet with them at the Regional office or the Washington office. OSM representatives will be available for such meetings from 9:00 a.m. to noon and 1:00 p.m. to 4:00 p.m., local time, Monday through Friday, excluding holidays, at the locations listed above. Summaries of meetings will be prepared and made promptly available for public review in the administrative record at the address listed above under "Address."

GAO Review

The reocrd-keeping and reporting requirements of the proposed rules are the same as the national permanent program regulations which were cleared by the General Accounting Office (GAO) (44 FR 18552–18562, March 28, 1979, and 44 FR 35192–35193, June 18, 1979). Forms are being developed for use in implementing the recordkeeping and reporting requirements of the program. All forms that will affect 10 or more persons will be cleared with the General Accounting Office, with accompanying notices in the Federal Register, in accordance with the requirements of 4 CFR Part 10.

Other Information

The Department of the Interior has determined that the proposed rules are significant as defined in 43 CFR Part 14. However, a regulatory analysis is not required because the proposed rules which would affect the entire economy or the economy of an individual region, industry or level of government as defined in 43 CFR 14.3(c)(5), were analyzed in the regulatory analysis for the national permanent program regulations. Copies of that regulatory analysis (March 1979) are available for review at the addresses listed above under "Availability of Copies." The "Determination of Significance" document prepared by OSM under 43 CFR Part 14 is available for inspection in the administrative record at the address indicated above.

An environmental impact statement is not required pursuant to Section 702(d) of SMCRA, which states that the promulgation of Federal programs pursuant to Section 504 of SMCRA shall not constitute a major Federal action within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Content and Organization of the Program

Section 504(a) of the Act and 30 CFR 736.22(a)(1) require that each Federal program consider the nature of the State's soils, topography, and climate and biological, chemical, geological, hydrological, agronomic and other relevant physical conditions. To date, no special environmental conditions have been identified. Suggestions in this area are invited. Provisions proposed to meet that requirement must also be in accordance with the Act and consistent with the national permanent program regulations as defined in 30 CFR 730.5. Also, the Director shall include any provisions that are necessary to implement the requirements of 30 CFR 736.22(a)(2) regarding the Endangered Species Act of 1973, as amended (16 U.S.C. 531 et seq.), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661–666c), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a), and other relevant Federal laws imposing duties upon the Secretary, including the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Under section 504(g) of the Act and 30 CFR 736.22(a)(3) and 736.23(b), OSM also must include the provisions of any existing State statutes and regulations which provide for more stringent land use and environmental control and regulation of coal exploration or surface coal mining and reclamation operations than do the provisions of the Act or the national permanent program regulations. In preparing the proposed rules, OSM reviewed existing State statutes and regulations and incorporated any provisions more stringent than the national minimum requirements promulgated by OSM in 30 CFR Chapter VII.

In addition, State statutory or regulatory provisions that were equivalent to the Federal act and regulations have been incorporated into the proposed rules to the extent possible. This is to provide better continuity of existing operations during transition from State regulation to Federal regulation, better coordination with other State agencies which have responsibilities relating to the regulation of coal exploration and surface coal mining and reclamation operations, and to ease the transition from Federal to State regulation if the State of Georgia elects to submit a program for approval by the Secretary at a future date.

State requirements in Georgia Code Ann. Section 56–412, pertaining to limitation of risks for surety insurance companies and Georgia Code Ann. Section 41A–1306, 1309, pertaining to limitation on loan amounts made by banks, have been incorporated into 30 CFR 910.806–12. Compliance with the Georgia Safe Dams Act of 1978 and the Rules For Dams Safety, chapter 391–3–8 of the Rules of the Department of Natural Resources, Environmental Protection Division, have been incorporated into 30 CFR 910.816–49(a)(8) and 30 CFR 910–817–49(a)(8) to the extent of requiring that the operator obtain a permit for permanent impoundments. The requirements of Chapter 391–34 of the rules of the Georgia Department of Natural Resources, Environmental Protection Division, pertaining to solid waste management, have been incorporated into 30 CRF 910.816–89 and 30 CFR 910.817–89. Regulations setting forth noxious weed species in the Georgia Seed Law and Rules and Regulations have been incorporated into the definition of noxious weeds in § 910.701–5. All of the revisions to the national permanent program regulations to incorporate provisions of existing State statutes and regulations are identified by Section and discussed in more detail below.

The proposed rules are based on applicable provisions of the permanent program regulations, 30 CFR Chapter VII, as follows:

Subchapter A—General
Subchapter F—Areas Unsuitable for Mining
Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems Under Regulatory Programs
Subchapter J—Bond and Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations
Subchapter K—Permanent Program Performance Standards
Subchapter L—Permanent Program Inspection and Enforcement Procedures

The Office has not yet promulgated 30 CFR Subchapter M, Training Program for Blasters and Members of Blasting Crew and Certification Program for Blasters. (See discussion in preamble to the permanent program regulations, 44 FR 15390, March 13, 1979.) After those regulations are promulgated, the Office will amend the Georgia program to incorporate the applicable provisions of 30 CFR Subchapter M.

Technical literature cited by OSM in the preamble to the permanent regulatory program (44 FR 14901–15309, March 13, 1979) was also relied upon in developing the regulations for the Georgia Federal Program. The reader is referred to that preamble for a discussion of the bases and purposes of the permanent program rules proposed to be incorporated in the Georgia program without substantive change.

The following types of changes have been made to the language in 30 CFR Chapter VII, Subchapters A, F, G, J, K, and L:

a. *Editorial changes.* Provisions in those Subchapters that provide guidance for development of permanent regulatory programs have been deleted. The guidance applicable to the development of a Federal Program has been incorporated into the procedures and standards in the proposed rules, as appropriate. Examples of such deletions include many of the Parts entitled "Scope," "Applicability," and "Responsibility." Such Parts were retained where they contained language critical to understanding subsequent provisions. In addition, other minor language changes were made to reflect the program for the State of Georgia or to identify applicable State statutes or regulations, where appropriate. Changes of this type are not substantive and no explanation of these changes is provided below. Provisions in those subchapters that apply only to State programs or the Federal lands program also have been deleted.

b. *Substantive revisions to procedures or standards.* Discussion of substantive

revisions to procedures or standards is provided below to enable the reviewer to understand the rationale behind the proposed provisions and, where appropriate, alternatives considered by OSM in developing the proposed rules. The discussions are in numerical order and under the program subheadings.

c. *Development of new procedures or standards.* Discussion is also provided of new procedures or standards developed by OSM to exercise discretion provided in the national permanent program regulations or to make provisions of the program compatible with other Federal or State statutes or regulations.

The numbering system of the national permanent program regulations has been incorporated into the numbering system for the proposed program. Program elements have been categorized under headings similar to the subchapter titles. Subchapter T in 30 CFR Chapter VII has been established to include regulatory programs by State. Each State is assigned a part number. The proposed program for the State of Georgia is assigned Part 910.

In addition to the proposed rules, the Federal regulatory porgram for the State of Georgia will include the following provisions of 30 CFR Chapter VII:

30 CFR Chapter VII, subchapter P—Protection of employees

30 CFR Chapter VII, Part 706—Restriction of Financial Interest of Federal Employees

Those provisions have been fully promulgated and implemented for application to all regulatory programs under 30 CFR Chapter VII. They will not be modified for application in any specific State. Therefore, those provisions, as codified in 30 CFR Chapter VII, are part of the Federal regulatory program for the State of Georgia.

On Federal lands in the State of Georgia, the permanent regulatory program will consist of the Federal rules made applicable under 30 CFR Chapter VII, Subchapter D, Parts 740–745, and Subchapter F, Part 761, §§ 761.11(b)(2) and 761.12(c), and Part 769. The permanent regulatory program becomes effective in Georgia on the same date the Federal program becomes effective.

Comment is solicited on all aspects of the proposed rules as they relate to the State of Georgia. Written and oral public comments should be as specific as possible. The Office will appreciate all comments, but those most useful and likely to influence decisions on the proposed rules will be those which refer to source material which provides a basis for any given recommendation. Commenters should also explain the rationale for each recommendation.

Many of the proposed rules are identical to the provisions of the national permanent program regulations. Comment is invited on the applicability of those provisions to the State of Georgia in accordance with the requirements of 30 CFR 736.22(a)(1), 736.22(a)(3), and 736.23(b) as described above.

This rulemaking is not the appropriate forum for seeking changes to the national permanent program regulations other than as they apply to the State of Georgia. Should a reviewer wish to suggest changes to the national permanent programs regulations independent of the proposed program for the State of Georgia, he or she may file a petition with the Director in accordance with the requirements of 30 CFR 700.12 to request a rulemaking for the issuance, amendment, or repeal of any regulation under the national permanent program regulations. Comments submitted that are not relevant to the proposed rulemaking for the State of Georgia will not be considered.

Detailed Discussion

General

Sections 910.701–4 through 910.701–12 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter A, General. The following substantive revisions have been made:

Section 910.701–4 provides the Director with the authorities delegated by the Secretary in 30 CFR Part 736. Section 910.701–4 also states that the Secretary retains certain responsibilities and that the Director may delegate certain responsibilities to the Regional Director or other OSM official. Delegations of responsibilities by the Director would be made through the OSM Directives System and would be available for public review at the regional office and the Washington office.

Section 910.701–5 would contain all applicable difinitions from 30 CFR 700.5 and 701.5.

The Office believes it necessary to add the definition of "mining activity phase" to facilitate the application of § 910.778–17. This definition recognizes each mining phase to insure orderly mining and reclamation operations.

The Office modified the definition of "steep slope" from the definition in 30 CFR 701.5 to eliminate the language that would allow the regulatory authority to define a slope of less than 20° as a steep slope. The Office feels that the new definition will add consistency in the regulations with other States in the Southeast. None of the other States in the Southeast with topographic and geomorphic features similar to those found in the Georgia coal region treates lesser slopes as "steep slopes" for purposes of the Federal Surface Mining Act. The Office has found no reason to define "steep slope" different from the other Southeastern States.

Section 910.701–14(a) would require that the Office make records locally available to the public at the county courthouse. This requirement is contingent on whether the county will agree to file the records. OSM requests suggestions in the case that an agreement cannot be reached. This requirement applies also to §§ 910.776–11(d), 910.776–12(b)(1), 910.776–17(a), 910.782–20, 910.786–11(d)(1), and 910.786–13(b)(2).

Section 910.701–16 would establish that the Federal program for the State of Georgia would be terminated, as established in 30 CFR 736.16, upon approval of a State program in accordance with the requirements of 30 CFR Chapter VII, Subchapter C.

Areas Unsuitable for Mining

Subparts 910.761 through 910.764 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter F, Areas Unsuitable for Mining. The following substantive revisions have been made:

Section 910.764–3 would establish the effective date for implementing the petition process for designating lands unsuitable for surface coal mining or terminating designations. The effective date for the petition process would be one year after Part 910 is effective in accordance with the requirements of section 504(a) of the Act and 30 CFR 765.13.

A phrase has been added in § 910.764–19(b) to assure that the Georgia Department of Natural Resources is notified of areas designated unsuitable or for which designations have been terminated. This notification will be provided as a courtesy since that agency regulates aspects of surface coal mining operations through its responsibilities under the Georgia Water Quality Control Act, the Georgia Air Quality Act, the Georgia Safe Dams Act and other Georgia statutes listed in § 910.770–12 of these proposed rules.

Permits and Coal Exploration Approvals

Subparts 910.770 through 910.795 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter G, Surface Coal Mining and Reclamation Operations Permits

and Coal Exploration Procedures Systems. The following substantive revisions have been made:

In § 910.770–12 the Office added a list of the Georgia statutes which could affect permit issuance. Ten statutes are administered by the Georgia Department of Natural Resources and one rule is administered the Georgia Safety Fire Commission. The Office will coordinate permit issuance with these agencies where applicable.

Under § 910.771–21 (b)(1) and (b)(3), a complete application for a permit or application for a revision to a permit would have to be filed at least 12 months prior to the date on which permit issuance is desired. The 12-month period is based on an estimate of the maximum time it would take the Office to process the application and comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR Parts 1500–1508, 43 FR 55978–56007, November 29, 1978), and the Department of the Interior regulations (516 DM 1–6, 45 FR 27541, April 23, 1980). The Office is required, by 30 CFR 736.22(a)(2), to include in a Federal program any provisions necessary to implement the requirements of Federal laws imposing duties upon the Secretary.

The National Environmental Policy Act (NEPA) requires a detailed environmental impact statement (EIS) for major Federal actions significantly affecting the quality of the human environment. The Office cannot determine, except on the basis of a complete permit application, whether an EIS will be required. The NEPA EIS process, including public participation requirements and coordination responsibilities, takes an average of 12 months to complete. The 12-month period does not preclude the Office from processing applications in a shorter time period if it determines that an EIS is not required. In order to determine whether an EIS would be required, the Office would normally prepare an environmental assessment which would result in either a decision to prepare an EIS or in a finding of no significant impact (FONSI). If a FONSI results, the permit application process could take a considerably shorter time.

The Office considered the alternative of a 15-month or longer period, but rejected it as being unduly burdensome to impose on coal operators and the industry. The Office would welcome suggestions on how this time limit can be alternatively established and the factors which should be considered.

Under § 910.771–21(b)(2), an application for permit renewals would have to be filed at least 120 days before the expiration of the original permit, as expressly provided by Section 506 of the Act.

Under § 910.771–21(b)(3), an application for a revision to a permit would have to be filed at least six months before the expected revision would be needed. The six month period is based on an estimate of the average time it would take the Office to process an application for a revision. This six month estimate does not preclude the office from processing applications in a shorter period.

The Office also considered two alternatives of shorter and longer periods. A 90-day period was rejected as not allowing enough time to assure meeting the procedural requirements, including public participation, mandated by the Act. An eight month alternative, although sufficient to ensure compliance with processing requirements, was rejected as imposing too long a time period on operators and the coal industry.

Under § 910.771–21(b)(4), an application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the Office not later than 30 days after that succession is approved, as expressly provided for by Section 506(b) of the Act.

It is proposed that § 910.771 of the Federal program include a new provision, § 910.771–22, which would set forth a reasonable time limit in which the Office must notify the applicant of the completeness or incompleteness of the permit application.

Complete applications are required throughout the permanent regulatory program. The Office may reject a flagrantly deficient application by notifying the applicant of the findings or the Office may request that specific additional information be submitted by a given date. The applicant will also file the public notice as required by § 910.786–11(a).

A determination of completeness or incompleteness is a necessary step in the permit application process. A permit application may only be properly reviewed for technical adequacy when the required information has been submitted.

By adding a new section, the Office is attempting to clarify the time limits of determining completeness. This amendment is intended to help expedite the permitting process. The Office is inviting comments on this approach.

OSM proposes that a time limit be set for an applicant for a permit to be notified of the completeness or incompleteness of the permit application. The permanent regulatory program does not explicitly provide a minimum or maximum time limit within which a finding of completeness must be transmitted to the permit applicant. It is proposed that a time limit be specified for the applicant to be notified of the determination of completeness or incompleteness, in whole or in part, of the permit application.

It is proposed that the specific time limit be determined on a State-specific basis depending upon the size of the State and the number of mines within that State. In the case of the Federal program in Georgia, it is proposed that a 60-day limit be specified. In Federal program states with larger mines, a longer time limit may be required. This determination would be made on a State-specific basis.

It is proposed that within 60 days of receipt of the permit application, the Office must notify the applicant, in writing, of the completeness and acceptability for further review of the application. The mining and reclamation plans which are included as part of the application are lengthy and technically complex documents, and the reviews must be thorough to assure adequacy. The detailed technical review of the permit application cannot begin without having all of the required data, due to the interrelated nature of the material to be reviewed.

Sixty days was selected as a reasonable length of time to determine completeness after consideration of several alternatives. Thirty days was considered and rejected as too short a time to assure a complete review of the application submitted. Many applications are lengthy and all are technically complex. In a case when several applications are submitted simultaneously, 30 days may be inadequate to assure that a determination of completeness could be made on all submissions.

One hundred days was considered as another alternative for the time limit on notification of completeness. This period was rejected as being unreasonbly long for the size of the Federal program in Georgia. The entire permit application process would be extended to an unnecessarily lengthy process and this would impose an unfair burden on the coal operators.

By proposing 60 days for the determination of completeness, enough time will be allowed for a thorough review and determination of completeness while not imposing the unnecessary burden on the coal operators. Of course, OSM may determine an application complete or incomplete within a shorter period of

time if possible, but would be bound to complete the review within 60 days. By allowing 60 days for the determination of completeness, enough time will be allowed for a thorough review and determination while not imposing the unnecessary burden on the operator of extending the permit application process unreasonably. OSM invites comments on this time period.

In Subpart 910.771–23, the Office eliminated language providing the option of requiring a scale larger than 1:24,000 for areas adjacent to the permit. There are no physical characteristics in the Georgia coalfield area which require a larger scale.

Under 30 CFR 771.25, the Office is required to establish a permit fee. The Office is considering the permit fee and implementing procedures through a separate rulemaking procedure. The proposed rules are expected to be published in the Federal Register by late summer, 1980. The Georgia regulations will incorporate that permit fee, after it is established through the separate rulemaking procedures and before this Federal program is effective.

Under § 910.776–12(b)(1), within a week after the Office has determined the application for approval or disapproval for coal exploration to be complete, the applicant must post a public notice of the filing of the application. This section is designed to implement Sections 102(i) and 517 of the Act by providing for fully informed decisions on applications by the Office. The Office has proposed this time period based on recognition that until the application is determined to be complete, it can be changed by submission of additional information by the applicant. Once the application is determined to be complete, public notice should be afforded as soon as practicable.

Under § 910.776–12(b)(3), any person with an interest which is or may be adversely affected by a coal exploration activity may file written comments on the application within 15 days after the posting of the public notice. The Office considered shorter and longer periods for submission of comments. A shorter period (ten days) would not allow sufficient public notice to comply with statutory mandates. A longer period (30 days) would burden the processing of the application and would probably not result in any additional comments from those likely to be affected.

Under § 910.776–13(a), the Office will normally act on a completed application for approval or disapproval of exploration of more than 250 tons within 60 days. This period is based on an estimate of the time necessary to determine whether the operations will comply with the performance standards of § 910.815, allow public participation, and find that interests covered under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et. seq.),* the National Historic Preservation Act of 1966 (16 U.S.C. 470), and the National Environmental Policy Act of 1969 (42 U.S.C. 4332) will be adequately protected. The period could be lengthened to as much as 12 months if the Office determines that a longer period is necessary to comply with statutory requirements. This period does not preclude the Office from processing applications in much shorter time if compliance with these statutes does not require preparation of an environmental impact statement, extensive consultation with another Federal agency, or any other time-consuming statutory or regulatory requirement. Thus, in the vast majority of cases, the Office will act within the 90 day requirement. The Office considered establishing a shorter time period, but felt that the uncertainties of compliance with statutory requirements necessitated providing flexibility in the regulation. A longer time period, while providing the Office with greater flexibility, was rejected as being an unduly long time to impose on the applicant.

In Subparts 910.779–15 and 910.783–15 the Office has required that in cases where the ground-water resource is significant and warrants protection, the minimum data collection efforts toward describing aquifer characteristics shall consist of static water-level measurements, yield, drawdown, and specific capacity. Because the values are influenced by precipitation, rock type and fracture systems, it is important that these well tests be performed (1) seasonally and (2) on the same wells from premining through reclamation.

The water level of a well bailed or pumped at a constant rate will drop rapidly at first and then more slowly *(A Practical Handbook for Individual Water-Supply Systems in West Virginia* by Ronald H. Landers, West Virginia Geological and Economic Survey, 1976). As a result, specific capacity, or the ratio of yield to drawdown, may vary with the duration of bailing or pumping. Therefore, it is desirable that specific capacity be determined at "equilibrium" drawdown. The base-line data resulting from this kind of well test is useful for comparing results obtained during later tests and may indicate the failure of the aquifer.

The Office believes that these tests provide in many cases an economical and efficient means of achieving the requirements of the first sentence in §§ 910.779–15(b) and 910.783–15(b) that "recharge, storage, and discharge characteristics of aquifers" be described according to the detail required by the Office. In some cases, additional tests may be required.

Section 910.780–15 has been modified by the incorporation of Georgia air quality control regulations.

Section 910.780–21(c) has been modified to allow discretion in setting the parameters for hydrologic information on a case-by-case basis.

The Office recognizes that hydrologic water-quality impacts historically associated with surface mining range over a broad spectrum of problems, but include acidity, dissolved solids, sedimentation, trace metal, and biological degradation. These and other problems may occur singly or in various combinations at a given site, whereas they all may be absent at an adjacent site. Because of this variable geographic distribution of water-quality impacts within relatively small areas, the Office has decided to leave the choice of "other parameters" to be decided on a case-by-case basis. It is believed that the mandatory parameters, local conditions, and the assessment of existing data will suffice for intelligently selecting additional parameters if needed. (*Water Resources Data for West Virginia, Water Year 1977, 1978, 1979, U.S. Geological Survey; Water Resources of the Coal River Basin, West Virginia,* West Virginia Geological and Economic Survey, River Basin Bulletin 5 by J. S. Bader and J. L. Chisholm.)

Sections 910.783–18, 910.783–19, 910.783–25, 910.784–14(c), 910.784–26 were modified in the same manner as their counterparts in the sections for surface mining, 910.779–18, 910.779–19, 910.779–25, 910.780–21(c) and 910.780–15 respectively.

The Office proposes under § 910.786–11(a) that the applicant not be required to file a newspaper notice of the filing of the application until the permit is determined complete. In that way the public review process will begin once a complete document is available for review. The process, when combined with the proposed maximum six month processing procedures for a permit not requiring an Environmental Impact Statement, would enable the Office to move quicker in processing than it could with an incomplete application. Also, the process would not require republishing the notice and opening the review process for public comment for new material since the material would be complete. OSM invites comments on this process.

Under § 910.786–12(b), written comments on permit applications may be submitted by the public entities notified under § 910.786–11(b) and (c) within 30 days of the receipt of written notification of the availability of a complete permit application. This section is proposed primarily to implement the provisions of Section 513(a) of the Act which require that local governmental bodies be notified and given an opportunity to comment on permit applications which may impact the environment within their area of responsibility. The Office has proposed a 30-day comment period as reasonable for public entities to comment on permit applications and as consistent with the 30-day periods established in §§ 910.786–13(a) and 910.786–14(a). The Office rejected a shorter period as insufficient to allow public entities time to prepare comments on permit applications which are often lengthy and complex. The alternative of a longer period was considered, but rejected as unduly lengthening the permit application process.

Section 910.786–14(b) has been modified to define a reasonable time to convene an informal conference as * * * within 30 days following the receipt of the request." This period appears to be reasonable for all parties to prepare arguments to discuss the adverse impacts of the issuance of the permit. A 30-day period is used throughout this document and is determined to be a reasonable time.

Under § 910.786–15(a), information contained in permit applications on file with the Office is to be open on written request for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Fridays, except holidays. The Office considers that this period will afford the public a reasonable opportunity for access to these materials, as required by Section 517(f) of the Act.

Under § 910.786–23(b)(2)(ii), the Office will approve or deny a complete application in accordance with § 910.771–21(b)(1). The basis and purpose of this Section is identical to that of § 910.771–21 and the reader is referred to the preamble to that Section.

Under § 910.786–23(e)(1)(ii), the Office would provide a copy of its decision to the State agency(ies) with responsibility for administering State laws or regulations on surface mining. Section 514(b) of the Act requires that any State or local government agency or authority shall have the right to file comments or objections to permit applications. The Office believes that those State or local agencies should be informed of any decision on a permit application. Because the State agency(ies) may have certain enforcement responsibilities under State law, a copy of the permit will be made available as necessary to specific State offices.

Section 910.788–12(a)(1) includes parameters for determining when permit revisions are needed. Changes in mining or reclamation operations will periodically require a revision of the permit. Some unforeseen circumstances may arise in mining, such as running into gas pockets in deep mining which will necessitate a move to another mine within the permit area, and a permit revision will be necessary. The permit revision will be necessary to insure that unique environmental situations will be properly considered as they were when the original permit was issued.

Under § 910.788–18(b)[2], any person whose interests are or may be adversely affected by the transfer, assignment, or sale of rights may submit written comments on the application for approval within 30 days after the last day of the newspaper notice. Section 513(b) of the Act specifically provides that persons having an interest that may be adversely affected have the right to file written comments on the permit application. The 30-day period is consistent with other comment periods established in §§ 910.786–12, 910.786–13, and 910.786–14. The Office considered alternatives of shorter and longer periods for submission of comments. A shorter period (15 days) would not be sufficient to allow for informed comment, while a longer period (45 days) unnecessarily lengthens the application processing time.

In Subpart 910.795, the terms "off-site" and "on-site" have been changed to "adjacent area" and "permit area," as appropriate, to be consistent with terminology in the permanent program regulations. Inconsistency in these terms occurred because the small operator assistance program regulations (30 CFR Part 795) were promulgated on December 13, 1977 (42 FR 62710–12), and the permanent program regulation definitions (30 CFR 701.5) were not promulgated until March 13, 1979 (44 FR 15312–15463).

Bond and Insurance Requirements

Sections 910.800 through 910.808 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations. The following substantive revision has been made:

Section 910.806–12 has been revised to include applicable provisions of State requirements on surety companies (Ga Code Ann § 56–412) and letters of credit (Ga Code Ann § 41A–1306, 1309).

Performance Standards

Subparts 910.815 through 910.828 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter K, Permanent Program Performance Standards. The following substantive revisions have ben made:

Language in 30 CFR Chapter VII, Subchapter K, particularly §§ 816.42 and 817.42, referring to compliance with State water quality standards has not been changed. The Office reviewed existing Georgia water quality control standards (Chapter 391–3–6) and determined that they have been approved by the Environmental Protection Agency in accordance with the Federal Water Pollution Control Act Amendments of 1972. Additionally, revisions are pending that will result in conformity of the Georgia standards to those of the Federal Clean Water Act pursuant to EPA new source standards (Section 306 of the Act). In view of the existing Georgia water quality standards and proposed revisions, and because the Office is unaware of any regionally significant water quality problems in the Georgia mining area, the Office has elected to set forth no additional water quality standards.

New sections have been added as §§ 910.816–49(a)(8) and 910.817–49(a)(8). Pursuant to the Georgia Safe Dams Act of 1978 and Rules for Dam Safety (Chapter 391–3–8) promulgated by the Georgia Department of Natural Resources, Environmental Protection Division, these new sections require that permits for permanent impoundment be obtained from the Georgia Environmental Protection Division. Such permits are not required for temporary impoundments as the Georgia Safe Dam Act of 1978 specifically exempts from compliance such temporary dams constructed for surface mining activities.

Language in 30 CFR 816.61 and 817.61 requiring compliance with all applicable State laws in the use of explosives has not been changed. The Office has reviewed the rules of the Georgia Safety Fire Commission, Chapter 120–3–10, entitled "Rules and Regulations for Explosives and Blasting Agents," and has determined that these rules essentially deal with storage and transportation rather than use of explosives. Storage and transporation are traditionally considered as separate from use, and Federal agencies other than OSM, such as the Mine Safety and Health Administration, the Bureau of Alcohol, Tobacco and Firearms and the Department of Transportation, have primary regulatory authority over these

subjects. Therefore, the Office has not specifically cited Georgia Chapter 120-3-16 in §§ 816.61 and 817.61.

No reference to a State agency concerned with the safety of mine workers appears in §§ 910.816-79 and 818-15, as there is no Georgia State agency specifically responsible for the safety of mine workers.

A reference to the Georgia Rules and Regulations for Solid Waste Management (Chapter 391-3-4) has been incorporated into §§ 910.816-89 and 910.817-89. The Office has determined that surface mining operations in Georgia are within the purview of that Act and therefore cited it in these regulations. The Georgia regulation requires permits for final disposal and establishes operation standards for disposal sites.

The Georgia Rules and Regulations on Air Quality (Chapter 391-3-1) have been cited in §§ 910.816-95 and 910.817-95. These changes are discussed in the preamble to 910.780-15.

Language in 30 CFR 910.816-112 and 910.817-112 relating to meeting applicable State seed or introduced species statutes has been changed to include a reference to the noxious weed species set out in the Georgia Seed Laws and Rules and Regulations. The Georgia Seed Laws and Rules and Regulations are not otherwise applicable as the statute and rules regulate the marketing of seeds and plants rather than their use. The definition of "noxious weeds" in 30 CFR 701.5 has also been revised to incorporate this list of noxious weeds.

Inspection and Enforcement

Subparts 910.842 through 910.845 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter L, Permanent Program Inspection and Enforcement Procedures. The following substantive revisions have been made:

Language has been added to §§ 910.842-16(b), 910.843-13(c), and 910.843-14(d) which would assure that the Georgia Department of Natural Resources receives copies of all required records, reports, inspection materials or other information, including copies of show cause orders and notices of violations. This would be a courtesy to the State agency which has responsibilities for regulating certain aspects of coal exploration and surface coal mining and reclamation operations under the Georgia Water Quality Control Act, Georgia Air Quality Act and other statutes listed in 30 CFR 910.770-12. OSM considered not notifying the State agency, but felt that the State would not be recognized as an interested party in enforcement actions taken against surface mines within its jurisdiction if copies were not provided. OSM also considered providing the State with copies of only specific enforcement actions but felt that any separation would be artificial and would not recognize the State as an interested party.

In drafting the Georgia program provisions on inspection and enforcement, OSM is considering making additional changes in the permanent program rules. These changes are primarily being considered in order to clarify ambiguities or to implement OSM policies in the rules. Public comment is invited on the following nine additional modifications under consideration.

1. § *910.842-15 Review of Decision Not to Inspect or Enforce (Citizen Complaints).*

As a matter of policy, OSM has agreed in the interim program to provide interested persons with the right to appeal adverse decisions to the Board in accordance with 43 CFR 4.1280. This policy would be incorporated in the regulation by adding the following sentence at the end of (b): "Any decision issued under this subsection shall specifically provide interested persons with the right of appeal to the Interior Board of Surface Mining and Reclamation Appeals in accordance with the procedures at 43 CFR Part 4."

2. § *910.843-12 Notices of Violation.*

After (b)(4) add in a separate paragraph:

"Provided however, that the failure of an inspector to comply with these provisions shall not be used as a defense to the fact of the violation if the person against whom the violation was issued has actual notice of (1) a problem which is a violation of the Act and, (2) the action required to abate the violation."

3. § *910.843-13 Suspension or Revocation of Permits.*

At the end of (b) add a sentence requiring a written decision with a right of appeal to the Board as follows:

Delete last sentence and add the following:

"The basis for this finding shall be made in writing and shall provide interested persons with the right of appeal to the Interior Board of Surface Mining and Reclamation Appeals in accordance with the procedures at 43 CFR Part 4."

4. § *910.843-14(a)(1) Determination of Amount of Penalty.*

In the first line of (a)(1) insert the phrase "notice at the site of the" between the words "the" and "coal."

5. § *910.843-15(e) Assessment of Separate Violations for Each Day.*

In the fourth line of (e) insert the phrase "other than the person or persons involved in the inspection which led to the issuance of the notice or" order after "representative of the Office."

6. § *910.843-15(e) Assessment of Separate Violations for Each Day.*

Place a period after "expired" and add the following sentence:

"Each violation shall be counted for one full year after all rights to appeal the notice or order have expired."

7. § *910.845-17 Procedures for Assessment of Civil Penalties.*

At the end of (b) add the following sentence:

"The failure of the Office to serve the proposed assessment within 30 days shall not be grounds for dismissal of the assessment unless the person against whom the proposed penalty has been addressed can show actual prejudice as a result of the delay beyond 30 days."

8. § *910.845-18 Procedures for Assessment Conference.*

(a) At the end of (a) add the following sentence:

"The Conference Officer shall be an employee of the Office not involved in the inspection which resulted in the notice or order at issue."

(b) At the end of (b)(1) add the following sentence: "The failure of the Office to hold a conference within 60 days from the date the proposed assessment is issued shall not be grounds for dismissal of the assessment unless the person against whom the proposed penalty has been issued can show actual prejudice as a result of the delay beyond 60 days."

9. The regulations do not incorporate any procedures to insure the implementation of Section 518(f). OSM has recently promulgated a directive on this provision that might be useful in establishing standards for issuance of Section 518(f) penalties. A copy of this directive is available at the location identified above under "Address." OSM might include these or similar procedures in these proposed rules.

Statement of Authorship

The proposed rules were developed by a team from OSM Region II, Knoxville, Tennessee. Team members were Roger Calhoun, Team Leader, State Programs Division; Steve Weber, Inspection and Enforcement Division; Willis Gainer, Gary Tucker, Robert Stansfield, and James Ellis, Technical Services Division.

Dated: September 3, 1980.

Joan M. Davenport,

Assistant Secretary, Energy and Materials.

Part 910 is added to read as follows:

PART 910—FEDERAL REGULATORY PROGRAM FOR THE STATE OF GEORGIA

General

Subpart 910.701—General

Sec.
910.701–1 Scope.
910.701–3 Authority.
910.701–4 Responsibility.
910.701–5 Definitions.
910.701–11 Applicability.
910.701–12 Petitions To Initiate Rulemaking.
910.701–13 Notice of Citizen Suits.
910.701–14 Availability of Records.
910.701–15 Computation of Time.
910.701–16 Termination of Program.

Subpart 910.707—Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction

910.707–1 Scope.
910.707–5 Definitions.
910.707–11 Applicability.
910.707–12 Information to be maintained on the site.

Subpart 910.761—Areas Designated by Act of Congress

910.761–4 Responsibility.
910.761–5 Definitions.
910.761–11 Areas where mining is prohibited or limited.
910.761–12 Procedures.

Subpart 910.762—Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

910.761–4 Responsibility.
910.761–5 Definitions.
910.761–11 Criteria for designating lands unsuitable.
910.761–13 Land exempt from designation as unsuitable for surface coal mining operations.
910.761–14 Exploration of land designated as unsuitable for surface coal mining operations.

Subpart 910.764—Process for Designating Areas Unsuitable for Surface Coal Mining Operations

910.761–3 Authority.
910.761–13 Procedures: Petitions.
910.761–15 Procedures: Initial processing, recordkeeping, and notification requirements.
910.761–17 Procedures: Hearing requirements.
910.761–19 Procedures: Decision.
910.761–23 Public information.

Surface Coal Mining and Reclamation Operations Permits and Coal Exploration System

Subpart 910.770—General Requirements for Permit and Exploration Procedures

910.770–4 Responsibilites.
910.770–5 Definitions.
910.770–12 Coordination with requirements under other laws.

Subpart 910.771—General Requirements for Permits and Permit Applications

910.771–11 General requirements for permits: Operators.
Sec.
910.771–13 Continued operation under interim permits.
910.771–19 Compliance with permits.
910.771–21 Permit application filing deadlines.
910.771–22 Review of permit application.
910.771–23 Permit applications—General requirements for format and contents.
910.771–25 Permit fees. [Reserved]
910.771–27 Verification of application.

Subpart 910.776—General Requirements for Coal Exploration

910.776–11 General requirements: Exploration of less than 250 tons.
910.776–12 General requirements: Exploration of more than 250 tons.
910.776–13 Applications: Approval or disapproval of exploration of more than 250 tons.
910.776–14 Applications: Notice and hearing for exploration of more than 250 tons.
910.776–15 Coal exploration compliance duties.
910.776–17 Public availability of information.

Subpart 910.778—Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

910.778–13 Identification of interests.
910.778–14 Compliance information.
910.778–15 Right of entry and operation information.
910.778–16 Relationship to areas designated unsuitable for mining.
910.778–17 Permit term information.
910.778–18 Personal injury and property damage insurance information.
910.778–19 Identification of other licenses and permits.
910.778–20 Identification of location of public office for filing of application.
910.778–21 Newspaper advertisement and proof of publication.

Subpart 910.779—Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

910.779–11 General requirements.
910.779–12 General environmental resources information.
910.779–13 Description of hydrology and geology: General requirements.
910.779–14 Geology description.
910.779–15 Ground water information.
910.779–16 Surface water information.
910.779–17 Alternative water supply information.
910.779–18 Climatological information.
910.779–19 Vegetation information.
910.779–20 Fish and wildlife resources information.
910.779–21 Soil resources information.
910.779–22 Land-use information.
910.779–24 Maps: General requirements.
910.779–25 Cross sections, maps, and plans.
910.779–27 Prime farmland investigation.

Subpart 910.780—Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan

910.780–11 Operation plan: General requirements.
910.780–12 Operation plan: Existing structures.
Sec.
910.780–13 Operation plan: Blasting.
910.780–14 Operation plan: Maps and plans.
910.780–15 Air pollution control plan.
910.780–16 Fish and wildlife plan.
910.780–18 Reclamation plan: General requirements.
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General

Subpart 910.701—General

§ 910.701–1 Scope.

(a) This Part 910 sets forth and identifies the Federal Program applicable to all coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Georgia.

(b) The following regulations apply to the Federal program in the State of Georgia:

(1) Subparts 910.760 through 910.764 for areas unsuitable for surface coal mining operations and the process for designating these lands or withdrawing the designation.

(2) Subparts 910.770 through 910.795 on the process for application, approval, denial, revision, and renewal of permits for surface coal mining and reclamation operations, including the small operator assistance program, requirements for special categories of these operations, and requirements for coal exploration;

(3) Subparts 910.800 through 910.808 on public liability insurance and performance bonds or other assurances of performance for surface coal mining and reclamation operations;

(4) Subparts 910.815 through 910.828 on performance standards which apply to coal exploration, surface coal mining and reclamation operations, and special categories of these operations;

(5) Subparts 910.842 through 910.845 on inspection and enforcement responsibilities and civil penalties; and

(6) Subpart 910.850 on the training, examination, and certification of blasters.

(7) 30 CFR Subchapter P on protection of employees.

(8) 30 CFR Part 706 on restriction of financial interests of Federal employees.

§ 910.701–3 Authority.

(a) The Secretary is required by Section 504(a) of the Surface Mining Control and Reclamation Act (the Act) to prepare, promulgate and implement a Federal program for the State of Georgia because the State of Georgia failed to submit a program covering surface coal mining and reclamation operations by March 3, 1980, in accordance with Section 504(a) of the Act, 30 CFR Part 731, and the July 25, 1979, and August 21, 1979, opinions of the District Court for the District of Columbia *In Re: Permanent Surface Mining Regulation Litigation.*

§ 901.701-4 Responsibility.

The Director of the Office of Surface Mining has primary responsibility for the regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of Georgia in accordance with Section 504 of the Act and 30 CFR Part 736. The Director has responsibility for review of and decisions on permits and bonding for surface coal mining and reclamation operations, approval of coal exploration which substantially disturbs the natural land surface and removes more than 250 tons of coal from the earth in any one location, inspection and enforcement of coal exploration and surface coal mining and reclamation operations for compliance with permits and exploration approvals issued under this program, except where the primary responsibility has been retained by the Secretary as specified in this program. The Director may delegate all or any part of his responsibilities to a Regional Director or other official of the Office of Surface Mining except where the Director is specifically identified as the responsibile official in this program.

§ 910.701-5 Definitions.

As used in this part, the following terms have the specified meanings, except where otherwise indicated:

Acid drainage means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

Act means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87).

Adjacent area means land located outside the permit area, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the Act may be adversely impacted by surface coal mining and reclamation operations.

Affected area means, the respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, *affected area* means: (a) Any water or surface land upon or in which those activities are conducted or located; and (b) land or water which is located above underground mine workings.

Agricultural use means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

Applicant means any person seeking a permit from the Office to conduct surface coal mining and reclamation operations pursuant to this program.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the Office has determined that they comply with 30 CFR 910 816-49 and 910.816-56, 910.816-133 or 910.817-49, 910.817-56, and 910.817-133.

Aquifer means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

Auger mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

Best technology currently available means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 30 CFR 910.816 and 910.817. Within the constraints of this program, the Office shall have the discretion to determine the best technology currently available on a case-by-case basis.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of anthracite.

Coal classifications are published by the American Society of Testing and Materials under the title, *Standard Specification for Classification of Coals by Rank*, ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coal by rank is presented on page 223. This publication is hereby incorporated by reference as it exists on the date of adoption of these regulations. Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the Federal Register. This ASTM Standard is on file and available for inspection at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 1100 L St. NW., Washington, D.C. Incorporation by reference provisions approved by the Director of the Federal Register, February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.

Coal exploration means the field gathering of: (a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this Part.

Coal processing plant means a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: Loading facilities; storage and stockpile facilities; sheds, shops and other building; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities.

Coal processing waste means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported

from coal preparation plants, after physical or chemical processing, cleaning or concentrating of coal.

Combustible material means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

Compaction means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled pacement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

Cropland. means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

Department means the Department of the Interior.

Director means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Subparts 910.800 through 910.808 of this Part is released.

Diversion means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

Downslope means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads of railways, or for other similar purposes.

Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

Existing structure means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the implementation of this Federal program.

Federal lands means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands. However, lands or mineral interests east of the 100th meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority are not subject to Section 714 (surface owner protection) and 715 (Federal lessee protection) of the Act.

Federal lands program means a program established by the Secretary pursuant to Section 523 of the Act to regulate surface coal mining and reclamation operations on Federal lands.

Federal program means a program established by the Secretary pursuant to Section 504 of the Act to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State in accordance with the Act and 30 CFR Chapter VII.

Fugitive dust means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

Ground water means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

Half-shrub means a perennial plant with a woody base whose annually produced stems die back each year.

Head-of-hollow fill means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20° or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

Highwall means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

Historically used for cropland means (a) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations; (b) lands that the Office determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (c) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

Impoundment means a close basin, naturally formed or artificially built,

which is dammed or excavated for the retention of water, sediment, or waste.

In situ processes means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

Indian lands means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

Intermittent stream means—

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Office.

(a) *Cropland* means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(b) *Pastureland or land occasionally cut for hay.* Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(c) *Grazingland.* Includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(d) *Forestry.* Land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(e) *Residential.* Includes single-and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(f) *Industrial/Commercial.* Land used for—

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an intergral part of these operations is also included. Support facilities include, but are not limited to, parking storage or shipping facilities.

(g) *Recreation.* Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) *Fish and wildlife habitat.* Land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(i) *Developed water resources.* Includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) *Undeveloped land or no current use or land management.* Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

Moist bulk density means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (⅓ bar moisture tension). Weight is determined after drying the soil at 105°C.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

Noxious plants means species that have been included in the "Noxious Week List" set forth in regulation 4 of the Georgia Seed Laws and Rules and Regulations.

Office means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

Operator means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

Outslope means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Perennial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

Performance bond means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of this Part and the requirements of the permit and reclamation plan.

Permanent diversion means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Office and other appropriate State and Federal agencies including but not limited to Corps of Engineers and the U.S. Fish and Wildlife Service.

Permit means a permit to conduct surface coal mining and reclamation operations issued by the Office pursuant to this Part. For purposes of the Federal lands program, permit means the document issued authorizing surface coal mining and reclamation operations on Federal lands, after approval of a mining plan by the Secretary.

Permit area means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by

the Office. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit.

Permittee means a person holding or required by this Part to hold a permit to conduct surface coal mining and reclamation operations issued by the Office pursuant to this Part.

Person means an individual, Indian tribe when conducting surface coal mining reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal, State or local government.

Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person—

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary, or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary.

Precipitation event means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, *precipitation event* also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

Prime farmland means those lands which are defined by the Secretary of Agriculture in 7 CFR Part 657 and which have historically been used for cropland as that phrase is defined above.

Public office means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

Rangeland means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Reclamation means those actions taken to restore mined land as required by this Part to a postmining land use approved by the Office.

Recurrence interval means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

Reference area means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the Office. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

Regional Director means a Regional Director of the Office or a Regional Director's representative.

Regulatory authority means the Secretary when administering this Part.

Regulatory program means any approved State or Federal program.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a Class I, Class II, or Class III road located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(a) *Class I Road* means a road used for transportation of coal.

(b) *Class II Road* means any road, exclusive of Class I and Class III roads, used for transportation of personnel, equipment, and materials.

(c) *Class III Road* means a road used primarily for a short duration during favorable weather periods, requiring Office approval on a case-by-case basis. Examples of permissible use are:

(1) Exploration; and

(2) Occasional inspection of monitoring equipment, weather station, and test plots.

Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

Secretary means the Secretary of the Interior or the Secretary's representative.

Sedimentation pond means a primary sediment control structure designed, constructed and maintained in accordance with 30 CFR 910.816-46 and including, but not limited to, a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

Significant, imminent environmental harm to land, air or water resources means—

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which—

(1) Is causing such harm; or

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 521(a)(3) of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

Slope means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units or horizontal distance (e.g., 1v:5h). It may also be expressed as a percentage or in degrees.

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field

characteristics and laboratory data. The three major soil horizons are—

(a) *A horizon.* The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) *B horizon.* The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) *C horizon.* The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Soil survey means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 30 CFR 910.785–17(b)(1).

Spoil means overburden that has been removed during surface coal mining operations.

Stabilize means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

Steep slope means any slope of more than 20°.

Substantially disturb means, for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

Surface coal mining operations means—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine-site: *Provided,* These activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act: *And provided further,* That excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) Areas upon which the activities described in paragraph (a) of this section occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

Surface mining activities means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

Suspended solids or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR Part 136).

Temporary diversion means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operationa and not approved by the Office to remain after reclamation as part of the postmining land use.

Topsoil means the A soil horizon layer of the three major soil horizons.

Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contain a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

Underground development waste means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities.

Underground mining activities means a combination of—

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

Valley fill means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20° or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10°.

Water table means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 910.701–11 Applicability

(a) Subpart 910.701 through 910.845 apply to all coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State of Georgia, except—

(1) The extraction of coal by a landowner for his or her own

noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(2) The extraction of coal for commercial purposes where the surface mining operation affects two acres or less.

(3) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;

(4) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with Subpart 910.707;

(5) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale;

(6) The exploration for or extraction of coal on Indian or Federal lands.

(b) Except as stated in § 910.701.11(a)(1)–(6) above, any person who conducts surface coal mining and reclamation operations on non-Indian or non-Federal lands in the State of Georgia on or after 8 months from the effective date of this part shall have a permit issued pursuant to this part. However, under conditions specified in 30 CFR 910.771–13(b), a person may continue operations under a previously issued Georgia permit after the effective date of this part.

(c)(1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operations shall comply with the performance standards and the design requirements of Subparts 910.815 through 910.828 of this part, except that—

(i) An existing stucture which meets the performance standards of Subparts 910.815 through 910.826 of this part but does not meet the design requirements of Subparts 910.815 through 910.828 of this part may be exempted from meeting those design requirements by the Office. The Office shall grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 910.780–12 or 910.874–12.

(ii) If the performance standard of 30 CFR Chapter VII, Subchapter B is at least as stringent as the comparable performance standard of Subparts 910.815 through 910.828 of this part, an existing structure which meets the performance standards of 30 CFR Chapter VII, Subchapter B may be exempted by the Office from meeting the design requirements of Subparts 910.815 through 910.828 of this part. The Office shall grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 910.780–12 or 910.784–12.

(iii) An existing structure which meets a performance standard of 30 CFR Chapter VII, Subchapter B which is less stringent than the comparable performance standards of Subparts 910.815 through 910.828 of this part or which does not meet a performance standard of Subparts 910.815 through 910.828 of this part for which there was no equivalent performance standard in 30 CFR Chapter VII, Subchapter B shall be modified or reconstructed to meet the design standard of Subparts 910.815 through 910.828 pursuant to a compliance plan approved by the Office only as part of the permit application as required in 30 CFR 910.780–12 or 910.784–12 and according to the findings required by 30 CFR 910.786–21.

(iv) An existing structure which does not meet the performance standards of 30 CFR Chapter VII, Subchapter B and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the design standards of Subparts 910.815 through 910.828 of this part prior to issuance of the permit.

(2) The exemptions provided in paragraph (c)(1)(i) and (c)(1)(ii) of this section shall not apply to:

(i) The requirements for existing and new waste piles used either temporarily or permanently as dams or embankments; and

(ii) The requirements to restore the approximate original contour of the land.

(d)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the effective date of this Part shall either file a notice of intention to explore or obtain approval of the Office as required by 30 CFR 910.776.

(2) Coal exploration performance standards in 30 CFR 910.815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface 2 months after the effective date of this part.

§ 910.701–12 Petitions to initiate rulemaking.

(a) Any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulations in this Part. The petition shall be submitted to the Office of the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240.

(b) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendment, or repeal of a regulation and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of the petition, the Director shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be published in the Federal Register seeking comments from the public on the proposed change. The Director may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

(d) Within 90 days from receipt of the petition, the Director shall issue a written decision either granting or denying the petition. The Director's decision shall constitute the final decision for the Department.

(1) If the petition is granted, the Director shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Director shall notify the petitioner in writing, setting forth the reasons for denial.

§ 910.701–13 Notice of citizen suits.

(a) A person who intends to initiate a civil action on his or her own behalf under Section 520 of the Act shall give notice of intent to do so, in accordance with this Subpart.

(b) Notice shall be given by certified mail to the Secretary, the Director and the Regional Director.

(c) Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of the Act or any regulation, order, or permit issued under the Act.

(d) Service of notice under this Section is complete upon mailing to the last known address of the person being notified.

(e) A person giving notice regarding an alleged violation shall state, to the extent known—

(1) Sufficient information to identify the provision of the Act, regulation, order, or permit allegedly violated;

(2) The act or omission alleged to constitute a violation;

(3) The name, address, and telephone numbers of the person or persons responsible for the alleged violation;

(4) The date, time, and location of the alleged violation;

(5) The name, address, and telephone number of the person giving notice; and

(6) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

(f) A person giving notice of an alleged failure by the Secretary or the Office to perform a mandatory act or duty under the Act shall state, to the extent known—

(1) The provision of the Act containing the mandatory act or duty allegedly not performed.

(2) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

(3) The name, address, and telephone number of the person giving notice; and

(4) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

§ 910.701-14 Availability of records.

(a) Records required by the Act to be made available locally to the public shall be retained at the County courthouse (Clerk's Office).

(b) Other records or documents in the possession of the Office may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

§ 910.701-15 Computation of time.

(a) Except as otherwise provided, computation of time under 30 CFR Chapter VII and this Part is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the Office is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

§ 910.701-16 Termination of the program.

Termination of the Federal program in the State of Georgia shall be accomplished at the same time and through the procedures for approval of a State program for the State of Georgia under 30 CFR Part 732. The Federal program in the State of Georgia shall not be considered terminated until a State program for the State of Georgia has been approved by the Secretary in accordance with 30 CFR Part 732.

Subpart 910.707—Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction

§ 910.707-1 Scope.

(a) This subpart establishes the procedures for determining those surface coal mining and reclamation operations which are exempt from this Part because the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.

(b) This subpart exempts the extraction of coal which is incidental to government-financed construction from the requirements of this part, if that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it.

§ 910.707-5 Definitions.

As used in this subpart, the following terms have the specified meaning:

Extraction of coal as an incidental part means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of this subpart, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of this Part.

Government financing agency means a Federal, State, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

Government-financed construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

§ 910.707-11 Applicability.

(a) Coal extraction which is an incidental part of government-financed construction and for which there is compliance with the provisions of this subpart, is exempt from the other provisions of this part.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph (a) of this section shall not proceed until a permit has been obtained from the Office under this part.

§ 910.707-12 Information to be maintained on site.

Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal and affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show—

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Subpart 910.761—Areas Designated by Act of Congress

§ 910.761-4—Responsibility.

The Director or his designee shall determine—

(a) Whether any application for a permit for surface coal mining operations must be denied because the operations are prohibited or limited by Section 522(e) of the Act; and

(b) Whether an applicant for a permit either had any valid existing rights on August 3, 1977, or was conducting an existing surface coal mining operation on those lands on August 3, 1977.

§ 910.761-5 Definitions.

For the purposes of this subpart—

Valid existing rights means:

(a) Except for haul roads,

(1) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce coal by a surface coal mining operation; and

(2) The person proposing to conduct surface coal mining operations on such lands either

(i) Had been validly issued, or exercised a good faith attempt to obtain, on or before August 3, 1977, all State and Federal permits necessary to conduct such operations on those lands, or

(ii) Can demonstrate that the coal is both needed for, and immediately

adjacent to, an on-going surface coal mining operation for which all permits were obtained prior to August 3, 1977;

(b) For haul roads,

(1) A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or

(2) Any other road in existence as of August 3, 1977;

(c) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right;

(d) "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a State or Federal permit.

No significant recreational, timber, economic or other values incompatible with surface coal mining operations means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on adjacent areas which may be affected by mining. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber management and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archeologic, esthetic, fish, wildlife, plants or cultural interests.

Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in Section 701(28) of the Act and the definition of surface coal mining operations appearing in 30 CFR 910.701–5.

Significant forest cover means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture shall decide on a case-by-case basis whether the forest cover is significant within those national forests west of the 100th meridian.

Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

Public building means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

Surface coal mining operations which exist on the date of enactment means all surface coal mining operations which were being conducted on August 3, 1977.

Public park means an area dedicated or designated by any Federal, State, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

Public road means any thoroughfare open to the public which has been, and is being used by the public for vehicular travel.

Cemetery means any area of land where human bodies are interred.

§ 910.761–11 Areas where mining is prohibited or limited.

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), and National Recreation Areas designated by Act of Congress;

(b) On any lands which will adversely affect any publicly owned park or places included on the National Register of Historic Places, unless approved by the Federal, State or local agency with jurisdiction over the park or places;

(c) Within 100 feet measured horizontally of the outside right-of-way line of any public road, except—

(1) Where mine access roads or haulage roads join such right-of-way line; or

(2) Where the Office allows the public road to be relocated or the area affected to be within 100 feet of such road, after—

(i) Public notice and opportunity for a public hearing in accordance with § 910.761–12(c); and,

(ii) Making a written finding that the interests of the affected public and landowners will be protected;

(d) Within 300 feet measured horizontally from any occupied dwelling, unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet;

(e) Within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

(f) Within 100 feet measured horizontally of a cemetery.

§ 910.761–12 Procedures.

(a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the Office shall review the application to determine whether surface coal mining operations are limited or prohibited under § 910.761–11 on the lands which would be disturbed by the proposed operation.

(b)(1) Where the proposed operation would be located on any lands listed in § 910.761–11 (a) and (f), the Office shall reject the application if the applicant had no valid existing rights for the area on August 3, 1977, or if the operation did not exist on that date.

(2) If the Office is unable to determine whether the proposed operation is located within the boundaries of any of the lands in § 910.761–11(a) or closer than the limits provided in § 910.761–11(f),the Office shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within 30 days of receipt of the request.

(c) Where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to

relocate any public road, the Office shall—

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) Provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing;

(3) Provide an opportunity for a public hearing at which any member of the public may participate in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(4) Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

(d) Where the proposed surface coal mining operations would be conducted within 300 feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.

(e)(1) Where the proposed surface coal mining operation may adversely affect any public park or places included on the National Register of Historic Places, the Office shall transmit to the Federal, State or local agencies with jurisdiction over the park or historic place a copy of the completed permit application containing the following:

(i) A request for that agency's approval or disapproval of the operations;

(ii) A notice to the appropriate agency that it must respond within 30 days from receipt of the request.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(f) If the Office determines that the proposed surface coal mining operation is not prohibited under Section 522(e) of the Act (30 U.S.C. 1272(e)), it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 30 CFR 910.762 and 910.769.

(g) A determination by the Office that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 30 CFR 910.787-11(c) and 12(b)(2).

Subpart 910.762—Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

§ 910.762-4 Responsibility.

The Office shall use the criteria in this subpart for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

§ 910.762-5 Definitions.

For purposes of this Subpart:

Fragile lands means geographic areas containing natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 522(e) of the Act and 30 CFR 910.761.

Historic lands means historic or cultural districts, places, structures or objects, including archeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listening on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

§ 910.762-11 Criteria for designating lands as unsuitable.

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the Office determines that reclamation is not technologically and economically feasible.

(b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will—

(1) Be incompatible with existing State or local land use plans or programs;

(2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

§ 910.762-13 Land exempt from designation as unsuitable for surface coal mining operations.

The requirements of this subpart do not apply to—

(a) Lands on which surface coal mining operations were being conducted on the date of enactment;

(b) Lands covered by a permit issued under the Act; or

(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

§ 910.762-14 Exploration on land designated as unsuitable for surface coal mining operations.

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Section 522 of the Act and regulations of Subparts 910.760 through 910.764 does not prohibit coal exploration operations in the area, if conducted in accordance with this program. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the Office under 30 CFR 910.776 to insure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

Subpart 910.764—Process for Designating Areas Unsuitable for Surface Coal Mining Operations

§ 910.764-3 Authority.

The Director or his designee has authority under Sections 504(a) and 522 of the Act to receive and review petitions to designate lands as unsuitable for all or certain types of surface coal mining operations and for terminating such designations beginning 1 year after this program is effective.

§ 910.764-13 Procedures: Petitions.

(a) *Right to petition.* Any person having an interest which is or may be adversely affected has the right to petition the Office to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

(b) *Designation.* The only information that a petitioner need provide is:

(1) The location and size of the area covered by the petition;

(2) Allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations;

(3) A description of how mining of the area has affected or may adversely affect people, land, air, water or other resources;

(4) The petitioner's name, address and telephone number; and

(5) Identification of the petitioner's interest which is or may be adversely affected.

(c) *Termination.* The only information that a petitioner need provide to terminate a designation is:

(1) The location and size of the area covered by the petition;

(2) Allegations of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on:

(i) The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in 30 CFR 910.762-11(b); or

(ii) Reclamation now being technogically and economically feasible, if the designation was based on the criteria found in 30 CFR 910.762-11(a); or

(iii) The resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in 30 CFR 910.762-11(b).

(3) The petitioner's name, address and telephone number; and

(4) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.

§ 910.764-15 Procedures: Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 30 days of receipt of a petition, the Office shall notify the petitioner by certified mail whether or not the petition is complete under § 910.764-13 (b) or (c).

(2) The Office shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the Office finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) The Office may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of § 910.764-13 are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the Office pursuant to the procedures of this subpart.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Office shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the Office shall not consider the petition and shall return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) If the Office determines that the petition is incomplete or frivolous, it shall return the petition to the petitioner, with a written statement of the reason for the determination and the categories of information needed to make the petition complete.

(6) The Office shall notify the person who submits a petition of any application for a permit received which proposes to include any area covered by the petition.

(7) Any petitions received after the close of the public comment period on a permit application relating to the same proposed permit area shall not prevent the Office from issuing a decision on that permit application. The Office may return any petition received thereafter to the petitioner with a statement why the Office cannot consider the petition. For the purposes of this Section, close of the public comment period shall mean at the close of any informal conference held under 30 CFR 910.786-14, or, if no conference is requested, at the close of the period for filing written comments and objections under 30 CFR 910.786-12 and 13.

(b)(1) Within three weeks after the determination that a petition is complete, the Office shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the Office to have an interest in the property.

(2) Within three weeks after the determination that a petition is complete, the Office shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the State, and in the Federal Register.

(c) Until three days before the Office holds a hearing under 30 CFR 910.764-17, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(d) Beginning immediately after a complete petition is filed, the Office shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Office. The Office shall make the record available for public inspection, free of charge, and copying, at reasonable cost, during all normal business hours at a central location of the county or multi-county area in which the land petitioned is located, and at the Regional Office and the Washington, D.C., Office of the Office.

§ 910.764-17 Procedures: Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the Office shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative and fact-finding in nature, without cross-examination of witnesses. The Office shall make a verbatim transcript of the hearing.

(b)(1) The Office shall give notice of the date, time, and location of the hearing to:

(i) Location, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person with an ownership or other interest known to the Office in the area covered by the petition.

(2) Notice of the hearing shall be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing.

(c) The Office shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(d) The Office may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the Office shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

§ 910.764-19 Procedures decision.

In reaching its decision, the Office shall use—

(1) The information contained in the data base and inventory system developed in accordance with the requirements of 30 CFR 764.21;

(2) Information provided by other governmental agencies;

(3) The detailed statement prepared under Section 910.764-17(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Office including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The Office shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding, and to the Georgia Department of Natural Resources.

(c) The decision of the Office with respect to a petition, or the failure of the Office to act within the time limits set forth in this Section, shall be subject to judicial review by the United States District Court for the District in which the area is located in accordance with Section 526(a)(2) and (b) of the Act and 30 CFR 910.787-12.

§ 910.764-23 Public information.

The Office shall:

(a) Make the information and data base system available to the public for inspection free of charge and for copying at reasonable cost;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

(c) Maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.

(d) Make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

Subpart 910.770—General Requirements for Permit and Exploration Procedures

§ 910.770-4 Responsibilities.

(a) Persons seeking to engage in surface coal mining and reclamation operations must submit an application for and obtain a permit for those operations in accordance with Subparts 910.770 through 910.785. Persons seeking to conduct coal exploration must first file the notice of intention or obtain approval of the Office as required under 30 CFR 910.776.

(b) It is the responsibility of the applicant to provide to the Office all of the information required by Subparts 910.780 and 910.784 except where specifically exempted.

(c) The Office shall review each application for exploration approval and for a permit, approve or disapprove each permit application or exploration application, and issue, condition, suspend, or revoke exploration approval, permits, renewals, or revised permits under this part.

(d) It is the responsibility of the Department and other Federal governmental agencies to provide information to the Office where specifically required in Subparts 910.780 and 910.784.

§ 910.770-5 Definitions.

As used throughout Subparts 910.770 through 910.795, except where otherwise indicated:

Applicant means a person who seeks to obtain exploration approval or a permit under Subparts 910.770 through 910.795.

Application means the documents and other information filed with the Office under Subparts 910.770 through 910.795 for the issuance of exploration approval or a permit.

Complete application means an application for exploration approval or permit, which contains all information required under the Act, and Subparts 910.770 through 910.795.

General area means, with respect to hydrology, the topographic and groundwater basin surrounding a proposed permit area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.

Principal shareholder means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

Property to be mined means both the surface and mineral estates on and underneath lands which are within the permit area.

Violation notice means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

§ 910.770-12 Coordination with requirements under other laws.

This Federal program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with—

(a) Any other Federal or State permit process applicable to those operations including, at a minimum, permits required under the—

(1) Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*);

(2) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(3) Resource Conservation and Recovery Act (42 U.S.C. 3251 *et seq.*);

(4) Georgia Water Quality Control Act (§ 17-501);

(5) Georgia Solid Waste Management Act (§ 43-1601) (permit required from Georgia Department of Natural Resources);

(6) Georgia Air Quality Act of 1973;

(7) Georgia Safe Dams Act of 1973;
(8) Georgia Hazardous Waste Management Act of 1972;
(9) Georgia Groundwater Use Act; and
(10) Rules of the Georgia Safety Fire Commission (Blaster Permit).

(b) The requirements of any water quality management plans which have been approved by the Administrator of the United States Environmental Protection Agency under Sections 208 or 303(c), (e) of the Clean Water Act, as amended, (33 U.S.C. Sections 1288, 1313(c), (e)).

(c) The applicable requirements of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended, (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); Executive Order 11593; the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); and the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4332); the Georgia Wildflower Preservation Act of 1973 (§ 43–1801 *et seq.*); the Georgia Endangered Wildlife Act of 1973 (§ 43–2101 *et seq.*); the Georgia Heritage Trust Act of 1975 (§ 43–2301 *et seq.*); and the Georgia Cave Protection Act of 1977 (§ 43–2501 *et seq.*).

Subpart 910.771—General Requirements for Permits and Permit Applications

§ 910.771–11 General requirements for permits: Operators.

Except as provided for in § 910.771–13, on and after 8 months from the date on which this part becomes effective, no person shall engage in or carry out surface coal mining and reclamation operations on non-Federal or non-Indian lands within the State of Georgia, unless that person has first obtained a valid permit issued by the Office.

§ 910.771–13 Continued operation under interim permits.

A person conducting surface coal mining operations, under a permit issued or amended by the State in accordance with the requirements of Section 502 of the Act, may conduct these operations beyond the period prescribed in § 910.771–11, if—

(a) Timely and complete application for a permit under this Part has been made.

(b) The Office has not yet rendered an initial decision with respect to such application; and

(c) The operations are conducted in compliance with all terms and conditions of the interim permit, the requirements of the Act, 30 CFR Subchapter B, and the State statutes and regulations.

§ 910.771–19 Compliance with permits.

All persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to Subparts 910.770 through 910.785 and shall comply with the terms and conditions of the permit.

§ 910.771–21 Permit application filing deadlines.

(a) *Initial implementation of this part.* (1) Not later than 2 months following the effective date of this part, regardless of litigation contesting the development, promulgation, or implementation of this part, each person who conducts or expects to conduct surface coal mining and reclamation operations 8 months from the effective date of this Part, shall file an application for a permit for those operations.

(2) Applications for those operations which are not filed within the time required by paragraph (a)(1) of this section shall be deemed applications filed under paragraph (b)(1) of this section.

(b) *Filing deadlines after initial implementation of this part*—(1) *General.* Each person who conducts or expects to conduct new surface coal mining and reclamation operations shall file a complete application for a permit for those operations at least 12 months prior to the date upon which permit issuance is desired by the applicant. If the completeness review under § 910.771–22 determines an environmental impact statement is not necessary, the Office shall attempt to complete the review process within 6 months or less. If an environmental impact statement is to be prepared, the Office shall attempt to complete its decision within 12 months.

(2) *Renewal of valid permits.* An application for renewal of a permit under 30 CFR 910.788–13 and 910.788–14 shall be filed with the Office at least 120 days before the expiration of the permit involved.

(3) *Revisions of permits.* Any application for revision of a permit under 30 CFR 910.788–12 shall in all cases be filed with the Office before the date on which the permittee expects to revise surface coal mining or reclamation operations. The application shall be submitted to the Office as soon as practicable after it becomes apparent that a revision will be needed and, if possible, at least 12 months before the operations are to be revised. The Office will consider emergency applications on a case-by-case basis.

(4) *Succession to rights granted under prior permits.* Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the Office not later than 30 days after that succession is approved by the Office.

§ 910.771–22 Review of permit application.

(a)(1) Within 60 days of the receipt of an application the Office shall review it for apparent completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office shall:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings, or

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted, or

(iii) Judge the application apparently complete and acceptable for further review.

(2) Should the applicant not submit the information as provided by paragraph (a)(1)(ii) of this section by the indicated date, the Office shall reject the application. When the applicant submits the required information by the indicated date, the Office shall review it and advise the applicant within 30 days of its acceptability. When, with the additional information, the application is judged apparently complete, the applicant shall be advised by the Office to file the public notice pursuant to 30 CFR 910.786–11(a).

(3) The Office shall review the application, written comments, written objections, and records of any informal conference held with respect to the application under § 910.786–11 through 15 and approve or disapprove the application.

(4) The Office shall approve or disapprove all applications for permits on the basis of—

(i) Complete applications for permits and revisions or renewals thereof which meet the requirements of this part;

(ii) Public participation as provided for in this part;

(iii) Compliance with any applicable provision of 30 CFR 910.785.

(iv) Processing and review of applications as required by this Part.

(5) The detailed review for compliance with the National Environmental Policy Act of 1969, *as amended*, and § 910.786–19 shall be made on the basis of a complete application. The Office may require specific additional information from the applicant as the review progresses, when such specific information is vital for a

recommendation of approval under § 910.786–17. Failure to submit the required information by the date(s) requested could result in disapproval of the application.

§ 910.771–23 Permit applications—General requirements for format and contents.

(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the format required by the Office. The application shall be complete and include, at a minimum: for surface mining activities, all the applicable information required under 30 CFR 910.778, 910.779, and 910.780; for underground mining activities, all the information required under 30 CFR 910.782, 910.783, and 910.784; and, for special types of surface coal mining and reclamation operations, all the information required under 30 CFR 910.785.

(b) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the Office.

(c) All technical data submitted in the application shall be accompanied by—

(1) Names of persons or organizations which collected and analyzed such data;

(2) Dates of the collection and analyses; and

(3) Descriptions of methodology used to collect and analyze the data.

(d) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency consulted by the applicant in preparation of the application for information on land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archeological, cultural, and historic features.

(e) Maps and plans—General requirements.

(1) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the remainder of the adjacent area shall clearly show the lands and waters within that area and be in a scale of 1:24,000 or larger.

(2) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the life of the operations. At a minimum, distinctions shall be clearly shown among those portions of the life of the operations in which surface coal mining operations occurred—

(i) Prior to August 3, 1977;

(ii) After August 3, 1977, and prior to either—

(A) May 3, 1978; or

(B) In the case of an applicant or operator which obtained a small operator's exemption in accordance with 30 CFR 910.710–12, January 1, 1979;

(iii) After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the effective date of this part.

(iv) After the estimated date of issuance of a permit by the Office.

§ 910.771–25 Permit fees. [Reserved]

§ 910.771–27 Verification of application.

Applications for permits shall be verified under oath or affirmation, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

Subpart 910.776—General Requirements for Coal Exploration

§ 910.776–11 General requirements: Exploration of less than 250 tons.

(a) Any person who intends to conduct coal exploration during which less than 250 tons of coal will be removed in the area to be explored shall, prior to conducting the exploration, file with Office a written notice of intention to explore.

(b) The notice shall include—

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(3) A statement of the period of intended exploration, including a description of the area to be explored;

(4) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation; and

(5) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.

(c) Any person who conducts coal exploration activities pursuant to this section which substantially disturb the natural land surface shall comply with 30 CFR 910.815.

(d) The Office shall, except as otherwise provided in § 910.776–17, place such notices on public file and make them available for public inspection and copying. Notices required by the Act to be made available locally to the public shall be retained at the County Courthouse (Clerk's Office) and the regional office.

§ 910.776–12 General requirements: Exploration of more than 250 tons.

Any person who intends to conduct coal exploration in which more than 250 tons of coal are removed in the area to be explored, shall, prior to conducting the exploration, obtain the written approval of the Office, in accordance with the following:

(a) *Contents of application for approval.* Each application for approval shall contain, at a minimum, the following information—

(1) The name, address, and telephone number of the applicant;

(2) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(3) An exploration and reclamation operations plan, including—

(i) A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (a)(5) of this section, including surface topography; geological, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 *et seq.*); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; and known archeological resources located within the proposed exploration area;

(ii) A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

(iii) An estimated timetable for conducting and completing each phase of the exploration and reclamation;

(iv) The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

(v) A description of the measures to be used to comply with the applicable requirements of 30 CFR 910.815;

(4) The name and address of the owner(s) of record of the surface land

and of the subsurface mineral estate of the area to be explored;

(5) A map at a scale of 1:24,000 or larger, showing the areas of land to be substantially disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and

(6) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(b) *Public notice and opportunity to comment.* Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within a week after the Office has determined the application to be complete, public notice of the filing of the application shall be posted at the County Courthouse (Clerks Office) and at the regional office.

(2) The public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address to which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

(3) Any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within 15 days after the posting of the notice, as prescribed in paragraph (b)(1) of this section.

§ 910.776-13 Applications: Approval or disapproval of exploration of more than 250 tons.

(a) The Office shall act upon a completed application for approval within 60 days, unless a longer period is necessary to comply with other Federal laws and regulations.

(b) The Office shall approve a complete application if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application—

(1) Will be conducted in accordance with Subpart 910.815.

(2) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(3) Will not adversely affect cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over such matters.

(c) *Terms of approval.* Each approval shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with 30 CFR 910.815.

§ 910.776-14 Applications: Notice and hearing for exploration of more than 250 tons.

(a) The Office shall notify the applicant and the appropriate local government officials, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The Office shall provide public notice of approval or disapproval of each application, by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

(b) Any person with interests which are or may be adversely affected by a decision of the Office pursuant to paragraph (a) of this section, shall have the opportunity for administrative and judicial review as are set forth in 30 CFR 910.787.

§ 910.776-15 Coal exploration compliance duties.

(a) All coal exploration and reclamation which substantially disturb the natural land surface or which remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of this Part and any conditions on approval for exploration and reclamation imposed by the Office.

(b) Any person who conducts any coal exploration in violation of the provisions of this Subpart or Subpart 910.815 shall be subject to the provisions of Subparts 910.842 through 910.845.

§ 910.776-17 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to the Office under this Subpart shall be made available for public inspection and copying at the County Courthouse (Clerk's Office).

(b)(1) The Office shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the Office determines that the information is confidential.

(2) The Office shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(3) Information requested to be held as confidential under this section shall not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

Subpart 910.778—Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

§ 910.778-13 Identification of interests.

(a) Each application shall contain the names and addresses of—

(1) The permit applicant, including his or her telephone number;

(2) Every legal or equitable owner of record of the property to be mined;

(3) The holders of record of any leasehold interest in the property to be mined;

(4) Any purchaser of record under a real estate contract of the property to be mined;

(5) The operator, if the operator is a person different from the applicant, including his or her telephone number; and

(6) The resident agent of the applicant who will accept service of process, inlcuding his or her telephone number.

(b) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(1) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(2) Name and address of any person who is a principal shareholder of the applicant; and

(3) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the 5 years preceding the date of application.

(c) If any owner, holder, purchaser, or operator, identified under paragraph (a)

of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(d) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant subsequent to 1970 and by any person identified in paragraph (b)(3) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(e) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the proposed permit area.

(f) Each application shall contain the name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all sections, if any.

(g) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

§ 910.778-14 Compliance information.

Each application shall contain—

(a) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has—

(1) Had a Federal or State mining permit suspended or revoked in the last 5 years; or,

(2) Forfeited a mining bond or similar security deposited in lieu of bond.

(b) If any such suspension, revocation, or forfeiture has occured, a statement of the facts involved, including—

(1) Identification number and date of issuance of the permit or date and amount of bond or similar security;

(2) Identification of the authority that suspended or revoked a permit or forefeited a bond and the stated reasons for that action;

(3) The current status of the permit, bond, or similar security involved;

(4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forefeiture; and

(5) The current status of these proceedings.

(c) A listing of each violation notice received by the applicant in connection with any surface coal mining operation during the 3-year period before the application date, for violations of any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation, or of any provision of the Act pertaining to air or water environmental protection. The application shall also contain a statement regarding each violation notice, including—

(1) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(2) A brief description of the particular violation alleged in the notice;

(3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;

(4) The current status of the proceedings and of the violation notice; and

(5) The actions, if any, taken by the applicant to abate the violation.

§ 910.778-15 Right of entry and operation information.

(a) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area—

(1) A copy of the written consent of the surface owner to the extraction of coal by surface mining methods; or

(2) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under the applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to afford the Office the authority to adjudicate property title disputes.

§ 910.778-16 Relationship to areas designated unsuitable for mining.

(a) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 30 CFR 910.764 or under study for designation in an administrative proceeding under those subparts.

(b) If an applicant claims the exemption in 30 CFR 910.786-19(d)(2), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(c) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 30 CFR 910.761-12(e).

§ 910.778-17 Permit term information.

(a) Each application shall state the anticipated or actual starting and termination date of each mining activity *phase* and the anticipated number of acres of land to be affected for each mining activity *phase* of mining and over the total life of the permit.

(b) If the applicant proposes to conduct the surface mining activities in excess of 5 years, the application shall contain the information needed for the showing required under 30 CFR 910.786-25(a).

§ 910.778-18 Personal injury and property damage insurance information

Each permit application shall contain either a certificate of liability insurance or evidence that the self-insurance requirements in 30 CFR 910.806-14 are satisfied.

§ 910.778-19 Identification of other licenses and permits.

Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by—

(a) Type of permit or license;

(b) Name and address of issuing authority;

(c) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(d) If a decision has been made, the date of approval or disapproval by each issuing authoity.

§ 910.778-20 Identification of location of public office for filing of application.

Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection under 30 CFR 910.786-11(d).

§ 910.778–21 Newspaper advertisement and proof of publication.

A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the Office and made a part of the complete application, not later than 4 weeks after the last date of publication required under 30 CFR 910.786–11(a).

Subpart 910.779—Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

§ 910.779–11 General requirements.

Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent area, or more extensive area as required, that may be affected by the proposed surface mining activities.

§ 910.779–12 General environmental resources information.

Each application shall describe and identify—

(a) The size, sequence, and timing of the areas for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed surface mining activities; and

(b) The nature of cultural and historic resources listed on the National Register of Historic Places and known archeological features within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, data of Federal, State and local archeological, historical, and cultural preservation agencies.

§ 910.779–13 Description of hydrology and geology: General requirements.

(a) Each application shall contain a description of the geology, hydrology, and water quality and quantity of all lands within the proposed permit area, adjacent area, and the general area. The description shall include information on the characteristics of all surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to §§ 910.779–13 through 910.779–17 and conform to the following:

(b)(1) Information on hydrology, water quality and quantity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the Office, to the extent that this data is available from an appropriate Federal or State agency.

(2) If this information is not available from those agencies, the applicant may gather and submit this information as part of the permit application.

(3) The permit shall not be approved until this information is made available in the application.

(c) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

§ 910.779–14 Geology description.

(a) The description shall include a general statement of the geology within the proposed permit area down to and including the first aquifer to be affected below the lowest coal seam to be mined.

(b)(1) Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined to provide the following data in the description:

(i) Location of subsurface water, if encountered;

(ii) Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;

(iii) Physical properties of each stratum within the overburden including compaction and erodibility;

(iv) Chemical analyses of each stratum within the overburden and the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity producing materials; and

(v) Analyses of the coal seam, including, but not limited to, an analysis of the sulfur, pyrite, and marcasite content.

(2) If required by the Office, test borings or core samplings shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance on a site by site basis.

(3) An applicant may request that the requirement for a statement of the results of the test borings or core samplings be waived. The waiver may be granted only if the Office makes a written determination that the statement is unnecessary because other equivalent information is accessible to it in a statisfactory form.

§ 910.779–15 Ground water information.

(a) The application shall contain a description of the ground water hydrology for the proposed permit area and adjacent area, including, at a minimum—

(1) The depth below the surface and the horizontal extent of the water table and aquifers;

(2) The lithology and thickness of the aquifers;

(3) Known uses of the water in the aquifers and water table; and

(4) The quality of subsurface water, if encountered.

(b) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the Office. At a minimum static water level, yield, drawdown, and specific capacity of a sufficient number of wells shall be seasonally measured to demonstrate that surface mining activities are not adversely impairing the water yielding capability of off-site aquifers.

§ 910.779–16 Surface water information.

(a) Surface water information shall be described, including the name of the watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds, and springs, the location of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within the proposed permit area and adjacent area.

(b) Surface water information shall include—

(1) Minimum, maximum, and average discharge conditions which identify critical low flow and peak-discharge rates of streams sufficient to identify seasonal variations; and

(2) Water quality data within the proposed permit area and adjacent area to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas, sufficient to identify seasonal variations, showing—

(i) Total dissolved solids in milligrams per liter;

(ii) Total suspended solids in milligrams per liter;

(iii) Acidity;

(iv) pH in standard units;

(v) Total and dissolved iron in milligrams per liter;

(vi) Total manganese in milligrams per liter; and

(vii) Such other information as the Office determines is relevant.

§ 910.779-17 Alternative water supply information.

The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area and adjacent area for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

§ 910.779-18 Climatological information.

(a) When requested by the Office, the application shall contain a statement of the climatological factors that are peculiar to the locality of the land to be affected, including:

(1) The average seasonal precipitation;

(2) The average direction and velocity of prevailing winds; and

(3) Seasonal temperature ranges.

(b) The Office may request such additional data as deemed necessary to ensure compliance with the requirements of this Part on a site by site basis.

§ 910.779-19 Vegetation information.

(a) The permit application shall, if required by the Office, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(b) Sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 30 CFR 910.779-20.

§ 910.779-20 Fish and wildlife resources information.

(a) Each application shall include a study of fish and wildlife and their habitats within the proposed permit area and the portions of the adjacent areas where effects on such resources may reasonably be expected to occur.

(b) Prior to initiating such studies, the applicant shall contact the Office to determine what fish and wildlife resources information will be required.

(c) The Office, in consultation with the appropriate State and Federal fish and wildlife management, conservation, or land management agencies having responsibilities for fish and wildlife or their habitats, shall determine the level of detail and the areas of such studies, according to—

(1) Published data and other information;

(2) Site-specific information obtained by the applicant; and

(3) Written guidance obtained from agencies consulted.

§ 910.779-21 Soil resources information.

(a) The applicant shall provide adequate soil survey information for those lands in the permit application which a reconnaissance inspection indicates are or may be prime farmlands or if otherwise required pursuant to those Federal statutes set forth in Section 702 of the Act, consisting of the following:

(1) A map delineating different soils;

(2) Soil identification;

(3) Soil description; and

(4) Present and potential productivity of existing soils.

(b) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 30 CFR 910.816-22.

§ 910.79-22 Land-use information.

(a) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including—

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.

(2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (a) of this section in conjunction with other environmental resources information required under this Subpart. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities or appropriate State natural resource or agricultural agencies.

(b) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available—

(1) The type of mining method used;

(2) The coal seams or other mineral strata mined;

(3) The extent of coal or other minerals removed;

(4) The approximate dates of past mining, and

(5) The uses of the land preceding mining.

(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit area and adjacent area.

§ 910.779-24 Maps: General requirements.

The permit application shall include maps showing—

(a) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(c) The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought;

(d) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of current use of the buildings;

(e) The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(f) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(g) The location of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area defined by the Office and those surface waters in the proposed permit area and adjacent area which will receive discharges from affected areas;

(h) Each public road located in or within 100 feet of the proposed permit area;

(i) The boundaries of any public park and locations of any curtural or historical resources listed in the National Register of Historic Places and

known archeological sites within the permit area and adjacent area.

(j) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(k) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and

(l) Other relevant information required by the Office.

§ 910.779-25 Cross sections, maps, and plans.

The application shall include cross sections, maps, and plans showing—

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent area;

(f) Location and extent of sub-surface water, if encountered, within the proposed permit area or adjacent area;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit area and adjacent area;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundment, and water treatment and air pollution control facilities within the proposed permit area;

(j) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area;

(k) Sufficient slope measurements to represent adequately the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

(1) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the Office.

(2) Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the Office to be representative of the premining configuration of the land.

(3) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(l) Maps, plans, and cross sections included in a permit application which are required by this section shall be 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 and shall be updated as required by the Office.

§ 910.779-27 Prime farmland investigation.

(a) The applicant shall conduct a pre-application investigation of the proposed permit area to determine whether lands within the area may be prime farmland.

(b) Land shall not be considered prime farmland where the applicant can demonstrate one of the following—

(1) The land has not been historically used as cropland;

(2) The slope of the land is 10 percent or greater;

(3) Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season, more often than once in 2 years, and the flooding has reduced crop yields; or

(4) On the basis of a soil survey of lands within the proposed permit area, there are no soil map units that have been designated prime farmland by the U.S. Soil Conservation Service.

(c) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one of the criteria of paragraph (b) of this section.

(d) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. Soil Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(1) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall consult with the Office to obtain guidance for meeting the requirements of Section 515(b)(7) of the Act.

(2) When a soil survey for lands within the proposed permit area contains soil map units which have not been designated as prime farmland after review by the U.S. Soil Conservation Service, the applicant shall submit a request for negative determination for non-designated land with the permit application establishing compliance with paragraph (b) of this section.

Subpart 910.780—Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan

§ 910.780-11 Operation plan: General requirements.

Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in § 910.816-133):

(1) Dams, embankments, and other impoundments;

(2) Overburden and topsoil handling and storage areas and structures;

(3) Coal removal, handling, storage, cleaning, and transportation areas and structures;

(4) Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

(5) Mine facilities; and

(6) Water and air pollution control facilities.

§ 910.780-12 Operation plan: Existing structures.

(a) Each application shall contain a description of each existing structure proposed to be used in connection with

or to facilitate the surface coal mining and reclamation operation. The description shall include—

(1) Location;

(2) Plans of the structure which describe its current condition;

(3) Approximate dates on which construction of the existing structure was begun and completed; and

(4) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of this part or, if the structure does not meet the performance standards of this part, a showing whether the structure meets the performance standards of 30 CFR, Subchapter B.

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include—

(1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of this part;

(2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of this part are met; and

(4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

§ 910.780–13 Operation plan: Blasting.

Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of 30 CFR 910.816–61 through 910.816–68 and including the following:

(a) Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;

(b) Description of procedures and plans for recording and retention of information on the following during blasting—

(1) Drilling patterns, including size, number, depths, and spacing of holes;

(2) Charge and packing of holes;

(3) Types of fuses and detonation controls; and

(4) Sequence and timing of firing holes.

(c) Description of blasting warning and site access control equipment and procedures;

(d) Description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to be used;

(e) Description of plans for recording and reporting to the Office the results of preblasting surveys, if required; and

(f) Description of unavoidable hazardous conditions for which deviations from the blasting schedule will be needed under 30 CFR 910.816–65(b).

§ 910.780–14 Operation plan: Maps and plans.

Each application shall contain maps and plans of the proposed permit area and adjacent area as follows—

(a) The maps and plans shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 30 CFR 910.779–24 through 910.779–025.

(b) The following shall be shown for the proposed permit area unless otherwise specified by the requirements of this section:

(1) Buildings, utility corridors and facilities to be used;

(2) The area of land to be affected within the proposed life of operations, according to the sequence of mining and reclamation;

(3) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subparts 910.800 through 910.808;

(4) Each coal storage, cleaning and loading area;

(5) Each topsoil, spoil, coal waste, and non-coal waste storage area;

(6) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

(7) Each air pollution monitoring collection and control facility;

(8) Each source of waste and each waste disposal facility relating to coal processing or pollution control;

(9) Each facility to be used to protect and enhance fish and wildlife and related environmental values;

(10) Each explosive storage and handling facility; and

(11) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 30 CFR 910.780–25, and fill area for the disposal of excess spoil in accordance 30 CFR 910.780–35.

(c) Maps, plans, and cross-sections required under paragraphs (b)(4), (5), (10), and (11) of this section shall be 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, except that—

(1) Maps, plans and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and

(2) Maps, plans, and cross-section of spoil disposal facilities may only be prepared by a qualified registered professional engineer.

§ 910.780–15 Air pollution control plan.

(a) For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the Office, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under paragraph (a)(2) of this section to comply with applicable Federal and State air quality standards, including Chapter 391–3–1 Rules and Regulations for Air Quality Control, Georgia Department of Natural Resources.

(2) A plan for fugitive dust control practices, as required under 30 CFR 910.816–95.

§ 910.780–16 Fish and wildlife plan.

(a) Each application shall contain a fish and wildlife plan, consistent with 30 CFR 910.816–97 which provides:

(1) A statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the permit area and portions of adjacent areas as determined by the Office pursuant to § 910.779–20(c).

(2) If the applicant states that it will not be practicable, in accordance with paragraph (a)(1) of this section, to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under 30 CFR 910.816–111 through 910.816–117, a statement shall be provided which establishes, to the satisfaction of the Office, why it is not practicable to achieve such a condition.

(b) A statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:

(1) Threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, *as amended* (16 U.S.C. Sec. 1531 *et seq.*) and their critical habitats;

(2) Species such as eagles, migratory birds or other animals protected by State or Federal law, and their habitats; or other species identified through the consultation process pursuant to § 910.779–20; or

(3) Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

§ 910.780–18 Reclamation plan: General requirements.

(a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with the environmental protection performance standards of Subparts 910.815 through 910.828. The plan shall include, at a minimum, all information required under 30 CFR 910.780–18 through 910.780–37.

(b) Each plan shall contain the following information for the proposed permit area—

(1) A detailed timetable for the completion of each major step in the reclamation plan;

(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Subparts 910.800 through 910.828, with supporting calculations for the estimates on a form provided by the Office.

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 30 CFR 910.816–101 through 910.816–106;

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 30 CFR 910.816–21 through 910.816–25.

(5) A plan for revegetation as required in 30 CFR 910.816–111 through 910.816–117, including, but not limited to, descriptions of the—

(i) Schedule of revegetation;

(ii) Species and amounts per acre of seeds and seedlings to be used;

(iii) Methods to be used in planting and seeding;

(iv) Mulching techniques;

(v) Irrigation, if appropriate, and pest and disease control measures, if any; and

(vi) Measures proposed to be used to determine the success of revegetation as required in 30 CFR 910.816–116.

(vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 30 CFR 910.816–59;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 30 CFR 910.816–89 and 910.816–103 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 30 CFR 910.816–13 through 910.816–15; and

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act [42 U.S.C. 7401 *et seq.*], the Clean Water Act [33 U.S.C. 1251 *et seq.*], and other applicable air and water quality laws and regulations and health and safety standards.

§ 910.780–21 Reclamation plan: Protection of hydrologic balance.

(a) Each plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with 30 CFR 910.816, to ensure the protection of—

(1) The quality of surface and ground water systems, within proposed permit area and adjacent area, from the adverse effects of the proposed surface mining activities;

(2) The rights of present users of surface and ground water; and

(3) The quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with 30 CFR 910.779–17 and 910.816–54, where the protection of quantity cannot be ensured.

(b) The description shall include—

(1) A plan for the control, in accordance with 30 CFR 910.816, of surface and ground water drainage into, through, and out of the proposed permit area;

(2) A plan for the treatment, where required under Subparts 910.815 through 910.828, of surface and ground water drainage from the area to be disturbed by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 30 CFR 910.816–42.

(3) A plan for the restoration of the approximate recharge capacity of the proposed permit area and adjacent area, in accordance with 30 CFR 910.816–51; and

(4) A plan for the collection, recording, and reporting of ground surface water quality and quantity data, according to 30 CFR 910.816–52.

(c) The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the Office in a site-by-site basis.

§ 910.780–23 Reclamation plan: Postmining land uses.

(a) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain—

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where a land use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 910.816–133; and

(3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

§ 910.780–25 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.

(a) *General.* Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing

waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall—

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture;

(ii) Contain a description, map, and cross section of the structure and its location;

(iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(v) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the Office. The Office shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall—

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(ii) Include any geotechnical investigation, design, and construction requirements for the structure;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not meet size or other criteria of 30 CFR 77.216(a) shall—

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor except that all coal processing waste dams and embankments covered by 30 CFR 910.816–91 through 910.816–93 shall be certified by a qualified registered professional engineer;

(ii) Include any design and construction requirements for the structure, including any required geotechnical information;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(b) *Sedimentation ponds.* Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 30 CFR 910.816–46. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 30 CFR 910.816–49. Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216–1 and 77.216–2.

(c) *Permanent and temporary impoundments.* Permanent and temporary impoundments shall be designed to comply with the requirements of 30 CFR 910.816–49. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216–1 and 77.216–2.

(d) *Coal processing waste banks.* Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 910.816–81 through 910.816–85.

(e) *Coal processing waste dams and embankments.* Coal processing waste dams and embankments shall be designed to comply with the requirements of 30 CFR 910.816–91 through 910.816–93. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216–1 and 77.216–2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure is 20 feet or higher or impounds more than 20 acre-feet, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

§ 910.780–27 Reclamation plan: Surface mining near underground mining.

For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 30 CFR 910.816–79.

§ 910.780–29 Diversions.

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 30 CFR 910.816–43 through 910.816–44.

§ 910.780–31 Protection of public parks and historic places.

For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the Office and other agencies as required in 30 CFR 910.761–12(f).

§ 910.780–33 Relocation or use of public roads.

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 30 CFR 910.761–12(d), the applicant seeks to have the Office approve—

(a) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(b) Relocating a public road.

§ 910.780–35 Disposal of excess spoil.

(a) Each application shall contain descriptions, including appropriate maps and cross section drawings, of the proposed disposal site and design of the spoil disposal structures according to 30 CFR 910.816–71 through 910.816–74. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

(b) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(1) The character of bedrock and any adverse geologic conditions the disposal area;

(2) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;

(3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(4) A technical description of the rock materials to be utilized the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(5) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternative considered in selecting the specific design specifications and methods.

(c) If, under 30 CFR 910.816–71(i), rock-toe buttresses or key-way cuts are required, the application shall include the following:

(1) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(2) Engineering specifications utilized to design the rock-toe buttress or key-way cuts which shall be determined in accordance with paragraph (b)(5) of this section.

§ 910.780–37 Transportation facilities.

Each application shall contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval is required for alternative specifications, or for steep cut slopes under 30 CFR 910.816–150(d), 910.816–152(c), 910.816–160(d) or 910.816–162(c).

(c) A description of measures to be taken to obtain approval of the alternation or relocation of a natural drainageway under 30 CFR 910.816–153(d), 910.816–163(d) or 910.816–173(c).

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval, under 30 CFR 910.816–153(c)(2)(vi) and 910.816–163(c)(2)(vi).

(e) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Subpart 910.782—Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

§ 910.782–13 Identification of interests.

(a) Each applicant shall contain the names and addresses of—

(1) The permit applicant, including his or her telephone number;

(2) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(3) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined;

(4) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined;

(5) The operator, if the operator is a person different from the applicant, including his or her telephone number; and

(6) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(b) Each applicant shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(1) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(2) Name and address of any person who is a principal shareholder of the applicant; and

(3) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the 5 years preceding the date of application.

(c) If any owner, holder, purchaser, or operator, identified under paragraph (a) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(d) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant subsequent to 1970 and by any person identified in paragraph (b)(3) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(e) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the proposed permit area.

(f) Each application shall contain the name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all sections, if any.

(g) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

§ 910.782–14 Compliance information.

Each application shall contain—

(a) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(1) Had a Federal or State mining permit suspended or revoked in the last 5 years; or,

(2) Forfeited a mining bond or similar security deposited in lieu of bond.

(b) If any such suspension, revocation, or forfeiture has occurred, a statement of the facts involved, including:

(1) Identification number and date of issuance of the permit or date and amount of bond or similar security;

(2) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(3) The current status of the permit, bond, or similar security involved;

(4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forefeiture; and

(5) The current status of these proceedings.

(c) A listing of each violation notice received by the applicant in connection with any surface coal mining operation during the 3-year period before the application date, for violations of any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation, or of any provision of the Act pertaining to air or water environmental protection. The application shall also contain a statement regarding each violation notice, including—

(1) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(2) A brief description of the particular violation alleged in the notice;

(3) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;

(4) The current status of the proceedings and of the violation notice; and

(5) The actions, if any, taken by the applicant to abate the violation.

§ 910.782–15 Right of entry and operation information.

(a) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area—

(1) A copy of the written consent of the surface owner to the extraction of coal by surface mining methods; or

(2) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, documentation that under the applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to afford the Office the authority to adjudicate property title disputes.

§ 910.782–16 Relationship to areas designated unsuitable for mining.

(a) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 30 CFR 910.761 and 910.764 or under study for designation in an administrative proceeding initiated under those subparts.

(b) If an applicant claims the exemption in 30 CFR 910.786–19(d)(2), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(c) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 30 CFR 910.761–12(e).

§ 910.782–17 Permit term information.

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings, for each phase of mining and over the total life of the permit.

(b) If the applicant proposes to conduct the underground mining activities in excess of 5 years, the application shall contain the information needed for the showing required under 30 CFR 910.786–25(a).

§ 910.782–18 Personal injury and property damage insurance information.

Each application shall contain either a certificate of liability insurance or evidence that the self-insurance requirements in 30 CFR 910.806–14 are satisfied.

§ 910.782–19 Identification of other licenses and permits.

Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by—

(a) Type of permit or license;

(b) Name and address of issuing authority;

(c) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(d) If a decision has been make, the date of approval or disapproval by each issuing authority.

§ 910.782–20 Identification of location of public office for filing of application.

Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection under 30 CFR 910.786–11(d). The location of the file copy will be at the County courthouse (Clerk's Office) and at the regional office.

§ 910.782–21 Newspaper advertisement and proof of publication.

A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the Office and made a part of the complete application not later than 4 weeks after the last date of publication required under 30 CFR 910.786–11(a).

Subpart 910.783—Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

§ 910.783–11 General requirements.

Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent area, or more extensive area as required, that may be affected by the proposed underground mining activities.

§ 910.783–12 General environmental resources information.

Each application shall describe and identify—

(a) The size, sequence, and timing of mining of the areas for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed underground mining activities; and

(b) The nature of cultural and historic resources listed in the National Register of Historic Places and known archeological sites within the proposed permit area and adjacent area. The description shall be based on all available information, including, but not limited to, data of Federal, State and local archeological, historic, and cultural preservation agencies.

§ 910.783-13 Description of hydrology and geology: General requirements.

(a) Each application shall contain a description of the geology, hydrology and water quality and quantity of all lands within the proposed permit area, the adjacent area, and the general area. The description shall include information on the charactertisitcs of all surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to §§ 910.783-13 through 910.783-16 and conform to the following:

(1) Information on hydrology, water quality and quanitity, and geology related to hydrology of areas outside the proposed permit area and within the general area shall be provided by the Office, to the extent that this data is available from an appropriate Federal or State agency.

(2) If this information is not available from those agencies, the applicant may gather and submit this information as part of the permit application.

(3) The permit shall not be approved until this information is made available in the application.

(b) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

§ 910.783-14 Geology description.

(a) The description shall include a general statement of the geology within the proposed permit area, down to and including the first aquifer to be affected below the lowest coal seam to be mined. The geology for areas proposed to be affected by surface operations and facilities, those surface lands overlying coal to be mined, and the coal to be mined shall be separately described, as follows:

(1) Geology of all the strata to be disturbed or affected by surface operations or facilities shall be described. The description shall include, at a minimum, the lithologic characteristics and physical and chemical properties of each stratum. For those areas to be affected by surface operations or facitilies where removal of the overburden down to the level of the coal seam will occur, the geology of the strata down to and including the stratum immediately below any coal seam to be mined shall be described, including the following data resulting from analyses of test borings, core samplings, or outcrop samples—

(2) The geology for those surface lands within the proposed permit area which are underlain by the coal seam to be extracted and the geology of the coal seam itself, including—

(i) Location of subsurface water, if encountered;

(ii) The depth, classification, and geologic structure of the overburden;

(iii) Pyritic content and potential alkalinity of the stratum immediately above and below the coal seam to be mined and the clay content of the stratum immediately below the coal seam to be mined; and

(iv) Pyrite, marcasite, and sulfur content of the coal seam.

(b) An applicant may request that the requirements of paragraph (a)(1) of this section be waived. The waiver may be granted only if the Office makes a written determination that the statement required is unnecessary because other equivalent information is accessible to it in a satisfactory form.

§ 910.783-15 Ground water information.

(a) The application shall contain a description of the ground water hydrology for the proposed permit area and adjacent area, including, at a minimum—

(1) The depth below the surface and the horizontal extent of the water table and aquifers;

(2) The lithology and thickness of the aquifers;

(3) The uses of the water in the aquifers and water table; and

(4) The quality of subsurface water, if encountered.

(b) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, in the detail required by the Office.

At a minimum, static water level, yield, drawdown, and specific capacity of a sufficient number of wells shall be seasonally measured to demonstrate that surface mining activities are not adversely impairing the water yielding capability of off-site aquifers.

§ 910.783-16 Surface water information.

(a) Surface water information shall be described, including the name of the watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds, and springs, the locations of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within the proposed permit area and adjacent area.

(b) Surface water information shall include:

(1) Minimum, maximum, and average discharge conditions, which identify critical low flows and peak discharge rates of streams sufficient to identify seasonal variations; and

(2) Water quality data within the proposed permit area and adjacent area to identify the characteristics of surface waters in, discharging into, or which will receive flows of surface or ground water from the affected areas sufficient to identify seasonal variations, showing—

(i) Total dissolved solids in milligrams per liter;

(ii) Total suspended solids in milligrams per liter;

(iii) Acidity;

(iv) pH in standard units;

(v) Total and dissolved iron in milligrams per liter;

(vi) Total manganese in milligrams per liter; and

(vii) Such other information as the Office determines is relevant.

§ 910.783-17 Alternative water supply information.

The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area for domestic, agricultural, industrial, or other legitimate use.

§ 910.783-18 Climatological information.

(a) When requested by the Office, the application shall contain a statement of the climatological factors that are peculiar to the locality of the land to be affected, including—

(1) The average seasonal precipitation;

(2) The average direction and velocity of prevailing winds; and

(3) Seasonal temperature ranges.

(b) The Office may request such additional data as deemed necessary to ensure compliance with the requirements of this part on a site by site basis.

§ 910.783-19 Vegetation information.

(a) The permit application shall, if required by the Office, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(b) Sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and

wildlife identifed under 30 CFR 910.779–20.

§ 910.783-20 Fish and wildlife resources information.

(a) Each application shall include a study of fish and wildlife and their habitats within the proposed permit area where surface operations will be conducted or facilities located and the portions of the adjacent areas where effects on such resources may reasonably be expected to occur.

(b) Prior to initiating such studies, the applicant shall contact the Office to determine what fish and wildlife resources information will be required.

(c) The Office, in consultation with the appropriate State and Federal fish and wildlife management, conservation, or land management agencies having responsibilities for fish or wildlife or their habitats, shall determine the level of detail and the areas of such studies according to:

(1) Published data and other information;

(2) Site specific information obtained by the applicant; and

(3) Written guidance obtained from agencies consulted.

§ 910.783-21 Soil resources information.

(a) The applicant shall provide adequate soil survey information for those lands in the permit application which a reconaissance inspection indicates are or may be prime farmlands or if otherwise required pursuant to those Federal statutes set forth in Section 702 of the Act, consisting of the following:

(1) A map delineating different soils;

(2) Soil identification;

(3) Soil description; and

(4) Present and potential productivity of existing soils.

(b) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests reqnired under 30 CFR 910.817–22.

§ 910.783-22 Land-use information.

(a) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including—

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.

(2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (a) of this section in conjunction with other environmental resources information required under this Subpart. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

(ii) The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yeild of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities or appropriate State natural resources or agricultural agencies.

(b) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available—

(1) The type of mining method used;

(2) The coal seams or other mineral strata mined;

(3) The extent of coal or other minerals removed;

(4) The approximate dates of past mining; and

(5) The uses of the land preceding mining.

(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit area and adjacent area.

§ 910.783-24 Maps: General requirements.

The permit application shall include maps showing:

(a) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities;

(c) The boundaries of all areas proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the mining of subareas for which it is anticipated that additional permits will be sought;

(d) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(e) The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(f) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(g) The locations of water supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the Office, and those surface waters in the permit area and adjacent area which will receive discharges from affected areas;

(h) Each public road located in or within 100 feet of the proposed permit area;

(i) The boundaries of any public park and locations of any cultural or historical resources listed on the National Register of Historic Places and known archeological sites within the proposed permit area and adjacent area.

(j) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(k) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and

(l) Other relevant information required by the Office.

§ 910.783-25 Cross sections, maps, and plans.

The application shall include cross sections, maps, and plans showing—

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application.

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent area;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent area,

including, but not limited to areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross-sections and contour maps;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit area and adjacent area;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location and dimensions of existing areas of spoil, waste, coal development waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(j) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the area affected by surface operations and facilities, measured and recorded according to the following:

(1) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the Office.

(2) Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the Office to be representative of the premining configuration of the land.

(3) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(l) Maps, plans and cross sections included in a permit application and required by this Section shall be 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 and shall be updated as required by the Office.

§ 910.783-27 Prime farmland investigation.

(a) The applicant shall conduct a pre-application investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(b) Land shall not be considered prime farmland where the applicant can demonstrate one or more of the following:

(1) The land has not been historically used as cropland;

(2) The slope of the land is 10 percent or greater;

(3) Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in 2 years and the flooding has reduced crop yields; or

(4) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. Soil Conservation Service.

(c) If the investigation establishes that the lands are not prime farmland, the applicant shall permit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one or more of the criteria in paragraph (b) of this section.

(d) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. Soil Conservation Service to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no such soil survey has been made for these lands, the applicant shall cause such a survey to be made.

(1) When a soil survey as required in paragraph (d) of this section contains soil map units which have been designated as prime farmlands, the applicant shall consult with the Office to obtain guidance for meeting the requirements of Section 515(b)(7) of the Act.

(2) When a soil survey as required in paragraph (d) of this section contains soil map units which have not been designated, after review by the U.S. Soil Conservation Service, as prime farmland, the applicant shall submit a request for negative determination for non-designated land with the permit application establishing compliance with paragraph (b) of this section.

Subpart 910.784—Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan

§ 910.784-11 Operation plan: General requirements.

Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area,including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is necessary for postmining land use as specified in § 910.817-133)—

(1) Dams, embankments, and other impoundments;

(2) Overburden and topsoil handling and storage areas and structures;

(3) Coal removal, handling, storage, cleaning, and transportation areas and structures;

(4) Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

(5) Mine facilities; and

(6) Water pollution control facilities.

§ 910.784-12 Operation plan: Existing structures.

(a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include—

(1) Location;

(2) Plans of the structure which describe its current condition;

(3) Approximate dates on which construction of the existing structure was begun and completed; and

(4) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of this part, or if the structure does not meet the performance standard of this part, a showing whether the structure meets the performance standards of 30 CFR Subchapter B.

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include—

(1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of this part;

(2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of this part are met; and

(4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

§ 910.784-13 Reclamation plan: General requirements.

(a) Each application shall contain a plan for the reclamation of the lands within the proposed permit area, showing how the applicant will comply with the environmental protection performance standards of this part. The plan shall include, at a minimum, all information required under 30 CFR 910.784-13 through 910.784-26.

(b) Each plan shall contain the following information for the proposed permit area;

(1) A detailed timetable for the completion of each major step in the reclamation plan;

(2) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Subparts 910.800 through 910.808, with supporting calculations for the estimates;

(3) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 30 CFR 910.817-101 through 910.817-106;

(4) A plan for removel, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 30 CFR 910.817-21 and 910.817-25;

(5) A plan for revegetation as required in 30 CFR 910.817-111 through 910.817-116, including, but not limited to, descriptions of the—

(i) Schedule of revegetation;

(ii) Species and amounts per acre of seeds and seedlings to be used;

(iii) Methods to be used in planting and seeding;

(iv) Mulching techniques;

(v) Irrigation, if appropriate, and pest and disease control measures, if any;

(vi) Measures proposed to be used to determine the success of revegetation as required in 30 CFR 910.817-116; and

(vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 30 CFR 910.817-59;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 30 CFR 910.817-89 and 910.817-103 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross-sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 30 CFR 910.817-13 through 910.817-15; and

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

§ 910.784-14 Reclamation plan: Protection of hydrologic balance.

(a) Each plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed underground mining activities, in accordance with 30 CFR 910.817, to ensure the protection of:

(1) The quality of surface and ground water within the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities;

(2) The rights of present users to surface and groundwater;

(3) The quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities, in accordance with 30 CFR 910.783-17; and

(4) Water quality by locating openings for mines in accordance with 30 CFR 910.817-50.

(b) The description shall include—

(1) A plan for the control, in accordance with 30 CFR 910.817, of surface and ground water drainage into, through, and out of the proposed permit area;

(2) A plan for the treatment, where required under Subparts 910.815 through 910.828, and surface and ground water drainage from the area to be affectd by the proposed activities; and proposed quantitative limits on pollutants in discharges subject to 30 CFR 910.817-42;

(3) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 30 CFR 910.817-52.

(c) The description shall include a determination of the probable hydrologic consequences of the proposed underground mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the Office on a site by site basis.

(d) Each plan shall contain a detailed description, with appropriate drawings, of permanent entry seals and down-slope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit area.

§ 910.784-15 Reclamation plan: Postmining land uses.

(a) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain—

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where a land use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 910.817-133; and

(3) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable State and local land use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

§ 910.784-16 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.

(a) *General.* Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall—

(i) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture;

(ii) Contain a description, map, and cross section of the structure and its location;

(iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(v) Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Office. The Office shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a) shall—

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(ii) Include any geotechnical investigation, design, and construction requirements for the structure;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) shall—

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor except that all coal processing waste dams and embankments covered by 30 CFR 910.817–91 through 910.817–96 shall be certified by a qualified registered professional engineer;

(ii) Include any design and construction requirements for the structure, including any required geotechnical information;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(b) *Sedimentation ponds.* (1) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 30 CFR 910.817–46. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 30 CFR 910.817–49.

(2) Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216–1 and 77.216–2.

(c) *Permanent and temporary impoundments.* Permanent and temporary impoundments shall be designed to comply with the requirements of 30 CFR 817.49. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216–1 and 77.216–2.

(d) *Coal processing waste banks.* Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 910.817–81 through 910.817–85.

(e) *Coal processing waste dams and embankments.* Coal processing waste dams and embankments shall be designed to comply with the requirements of 30 CFR 910.817–91 through 910.817–93. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216–1 and 77.216–2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure is 20 feet or higher or impounds more than 20 acre-feet, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

§ 910.784–17 Protection of public parks and historic places.

For any public parks or historic places that may be adversely affected by the propsed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the Office and other agencies as required in 30 CFR 910.761–12(f).

§ 910.784–18 Relocation or use of public roads.

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 30 CFR 910.761–12(d), the applicant seeks to have the Office approve—

(a) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(b) Relocating a public road.

§ 910.784–19 Underground development waste.

Each plan shall contain descriptions, including appropriate maps and cross section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 30 CFR 910.817–71 and 910.817–74. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to 30 CFR 910.780–35.

§ 910.784–20 Subsidence control plan.

The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit and adjacent area

and whether subsidence if it occurred could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the evenf of mine subsidence, and if the Office agrees with such conclusion, no further information need be provided in the application under this Section. In the event the survey shows such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or forseeable use of the land, or if the Office determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information—

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

(1) The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

(2) The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value or reasonably forseeable use of the surface, including—

(1) The anticipated effects of planned subsidence, if any;

(2) Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including such measures as—

(i) Backstowing or backfilling of voids;

(ii) Leaving support pillars of coal; and

(iii) Areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

(3) Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably forseeable use of the surface including. such measures as—

(i) Reinforcement of sensitive structures or features;

(ii) Installation of footers designed to reduce damage caused by movement;

(iii) Change of location of pipelines, utility lines or other features;

(iv) Relocation of movable improvements to sites outside the angle-of-draw; and

(v) Monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or forseeable use of lands which may occur, including one or more of the following as required by 30 CFR 910.817–124—

(1) Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition.

(2) Replacement of structures destroyed by subsidence.

(3) Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses.

(4) Purchase of non-cancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or forseeable use of the surface, including such measures as—

(1) The results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence.

(2) Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

§ 910.784–21 Fish and wildlife plan.

(a) Each application shall contain a fish and wildlife plan, consistent with the performance standards of 30 CFR 910.817–97 and which provides:

(1) A statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the portions of the permit area and adjacent areas as determined by the Office pursuant to Section 910.783–20.

(2) If the applicant states that it will not be practicable, in accordance with paragraph (a)(1) of this section, to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under 30 CFR 910.817–111 and 910.817–117, a statement shall be provided which establishes, to the satisfaction of the Office, why it is not practicable to achieve such a condition.

(b) A statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:

(1) Threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 *et seq.* and their critical habitats);

(2) Species such as eagles, migratory birds or other animals protected by State or Federal law, and their habitats; or other species identified through the consultation process pursuant to 30 CFR 910.783–20; or

(3) Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs, supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

§ 910.784–22 Diversions.

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 30 CFR 910.817–43 through 910.817–44.

§ 910.784–23 Operation plan: Maps and plans.

Each application shall contain maps, plans, and cross sections of the proposed permit area and adjacent areas as follows—

(a) The maps, plans and cross sections shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 30 CFR 910.783–24 through 910.783–25.

(b) The following shall be shown for the proposed permit area unless otherwise specified for the requirements of this section:

(1) Buildings, utility corridors, and facilities to be used;

(2) The area of land to be affected within the proposed life of operations, according to the sequence of mining and reclamation;

(3) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subparts 910.800 through 910.808;

(4) Each coal storage, cleaning and loading area;

(5) Each topsoil, spoil, coal preparation waste, underground development waste, and non-coal waste storage area;

(6) Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

(7) Each source of waste and each waste disposal facility relating to coal processing or pollution control;

(8) Each facility to be used to protect and enhance fish and wildlife related environmental values;

(9) Each explosive storage and handling facility;

(10) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 30 CFR 910.784–16 and disposal areas for underground development waste and excess spoil, in accordance with 30 CFR 910.784–19.

(11) Each profile, at cross sections specified by the Office of the anticipated final surface configuration to be achieved for the affected areas;

(12) Location of each water and subsidence monitoring point;

(13) Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Maps, plans, and cross sections required under paragraphs (b)(5), (6), (10), and (11) of this section shall be prepared by, or under the direction of and certified by a qualified professional engineer, or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture, except that—

(1) Maps, plans, and cross sections for sedimentation ponds may only be prepared by a qualified registered engineer; and

(2) Excess spoil and underground development waste facilities maps, plans, and cross sections may only be prepared by a qualified registered professional engineer.

§ 910.784–24 Transportation facilities.

Each application shall contain a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval is required for alternative specifications or steep cut slopes under 30 CFR 910.817–150(d), 910.817–152(c), 910.817–160(d) or 910.817–162(c).

(c) A description of each measure to be taken to obtain approval of alteration or relocation of a natural drainageway under 30 CFR 910.817–153(d), 910.817–163(d), or 910.817–173(c).

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval under 30 CFR 910.817–153(c)(2)(vi) and 910.817–163(c)(2)(vi).

(e) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

§ 910.784–25 Return of coal processing waste to abandoned underground workings.

(a) Each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Office and the Mine Safety and Health Administration under 30 CFR 910.817–86.

(b) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(c) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(d) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the Office from requirements specifying hydrologic monitoring.

§ 910.784–26 Air pollution control plan.

For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(a) An air quality monitoring program, if required by the Office, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under paragraph (b) of this section to comply with applicable Federal and State air quality standards; and including Chapter 391–3–1 Rules and Regulations for Air Quality Control.

(b) A plan for fugitive dust control practices, as required under 30 CFR 910.817–95.

Subpart 910.785—Requirements for Permits for Special Categories of Mining

§ 910.785–13 Experimental practices mining.

(a) Paragraphs (b)–(i) of this section apply to any person who conducts or intends to conduct surface coal mining and reclamation operations under a permit authorizing the use of alternative mining practices on an experimental basis if the practices require a variance from the environmental protection performance standards of Subparts 910.815 through 910.828.

(b) The purpose of this section is to provide requirements for the permitting of surface coal mining and reclamation operations that encourage advances in mining and reclamation practices or allow postmining land use for industrial, commercial, residential or public use (including recreational facilities) on an experimental basis.

(c) Experimental practice, as used in this section, means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes. Experimental practices need not comply with specific environmental protection performance standards of Subparts 910.815 through 910.828, if approved pursuant to this section.

(d) No person shall engage in or maintain any experimental practice, unless that practice is first approved in a permit by the Director.

(e) Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the Director. The permit application shall contain appropriate descriptions, maps and plans which show:

(1) The nature of the experimental practice;

(2) How use of the experimental practice—

(i) Encourages advances in mining and reclamation technology, or,

(ii) Allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under this part.

(3) That the mining and reclamation operations proposed for using an experimental practice are not larger or more numerous than necessary to determine the effectiveness and

economic feasibility of the experimental practice;

(4) That the experimental practice—

(i) Is potentially more or at least as environmentally protective, during and after the proposed mining and reclamation operations, as those required under Subparts 910.815 through 910.828; and

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of Subparts 910.815 through 910.828;

(5) That the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved. The monitoring program shall—

(i) Insure the collection and analysis of sufficient and reliable data to enable the Director to make adequate comparisons with other surface coal mining and reclamation operations employing similar experimental practices; and

(ii) Include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the experimental practice.

(f) Each application shall set forth the environmental protection performance standards of Subparts 910.815 through 910.828 which will be implemented, in the event the objective of the experimental practice is a failure.

(g) All experimental practices for which variances are sought shall be specifically identified through newspaper advertisements by the applicant and the written notifications by the Office required under 30 CFR 910.786–11.

(h) No permit authorizing an experimental practice shall be issued, unless the Office first finds, in writing, upon the basis of both a complete application filed in accordance with the requirements of this Section that:

(1) The experimental practice meets all of the requirements of paragraphs (e)(2) through (e)(5) of this section;

(2) The experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved;

(3) The experimental practice has been specifically approved, in writing, by the Director, based on the Director's findings that all of the requirements of paragraphs (e)(1) through (e)(5) of this section will be met; and

(4) The permit contains conditions which specifically—

(i) Limit the experimental practice authorized to that granted by the Director;

(ii) Impose enforceable alternative environmental protection requirements; and

(iii) Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application, with such additional requirements as the Office may require.

(i) Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety at least every 3 years by the Office, or at least once prior to the middle of the permit term. After review, the Director shall require by order, supported by written findings, any reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety. Any person who is or may be adversely affected by the order shall be provided with an opportunity for an informal conference as established in 30 CFR 910.786–14.

§ 910.785–14 Mountaintop removal mining.

(a) This Section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.

(b) Mountaintop removal mining means surface mining activities, where the mining operations removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in 30 CFR 910.824–11(a)(6), by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this Section.

(c) The Office may issue a permit for mountaintop removal mining, without regard to the requirements of 30 CFR 910.816–101 through 910.816–105 to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(1) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if—

(i) After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the Office to constitute an equal or better economic or public use of the affected land compared with the pre-mining use;

(ii) The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of 30 CFR 910.816–133;

(iii) The proposed use would be compatible with adjacent land uses and existing State and local land use plans and programs; and

(iv) The Office has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any State or Federal agency which the Office, in its discretion, determines to have an interest in the proposed use;

(2) The applicant has demonstrated that, in place of restoration of the land to be affected to the approximate original contour under 30 CFR 910.816–101 through 910.816–105, the operation will be conducted in compliance with the requirements of 30 CFR 910.824.

(3) The requirements of 30 CFR 910.824 are made a specific condition of the permit.

(4) All other requirements of this Part are met by the proposed operations.

(5) The permit is clearly identified as being for mountaintop removal mining.

(d)(1) Any permits incorporating a variance issued under this section shall be reviewed by the Office to evaluate the progress and development of mining activities to establish that the operator is proceeding in accordance with the terms of the variance—

(i) Within the sixth month preceding the third year from the date of its issuance;

(ii) Before each permit renewal; and

(iii) Not later than the middle of each permit term.

(2) Any review required under paragraph (d)(1) of this section need not be held if the permittee has demonstrated and the Office finds, in writing, within the three months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and this Part.

(3) The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the Office, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of this part.

§ 910.785–15 Steep slope mining.

(a) This Section applies to any person who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except—

(1) Where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently

rolling terrain, leaving a plan or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(2) Where a person obtains a permit under the provisions of § 910.785–14; or

(3) To the extent that a person obtains a permit incorporating a variance under § 910.785–16.

(b) Any application for a permit for surface coal mining and reclamation operations covered by this Section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 30 CFR 910.826–12.

(c) No permit shall be issued for any operations covered by this Section, unless the Office finds, in writing, that in addition to meeting all other requirements of Subparts 910.815 through 910.828, the operation will be conducted in accordance with the requirements of 30 CFR 910.826–12.

§ 910.785–16 Permits incorporating variances from approximate original contour restoration requirements for steep slope mining.

(a) This Section applies to non-mountaintop removal, steep slope surface coal mining and reclamation operations where the operation is not to be reclaimed to achieve the approximate original contour required by 30 CFR 910.816–101 through 910.816–106 or 910.817–101 through 910.817–106 and 910.826–12(b).

(b) The objective of this section is to allow for a variance from approximate original contour restoration requirements on steep slopes for surface coal mining and reclamation operations to—

(1) Improve watershed control of lands within the permit area and on adjacent lands; and

(2) Make land within the permit area, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities.

(c) The Office may issue a permit for surface mining activities incorporating a variance from the requirement for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a complete application, that all of the following requirements are met:

(1) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use.

(2) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.

(3) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of 30 CFR 910.816–133 or 910.817–133.

(4) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if—

(i) There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges prior to mining, so as to improve public or private uses or the ecology of such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws;

(ii) The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water, and

(iii) The Georgia Department of Natural Resources approves the plan.

(5) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under 30 CFR 910.778–15 or 910.782–15 and shall show an understanding that the variance could not be granted without the surface owner's request.

(6) The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 30 CFR 910.826–15.

(7) All other requirements of this part will be met by the proposed operations.

(d) If a variance is granted under this Section—

(1) The requirements of 30 CFR 910.826–15 shall be made a specific condition of the permit.

(2) The permit shall be specifically marked as containing a variance from approximate original contour.

(e) Any permits incorporating a variance issued under this Section shall be reviewed by the Office to evaluate the progress and development of the mining activities, to establish that the operator is proceeding in accordance with the terms of the variance—

(1) Within the sixth month preceding the third year from the date of its issuance;

(2) Before each permit renewal; and

(3) Not later than the middle of each permit term.

(f) If the permittee demonstrates to the Office at any of the times specified in paragraph (e) of this section that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit and this part, the review required at that time need not be held.

(g) The terms and conditions of a permit incorporating a variance under this Section may be modified at any time by the Office, if it determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of this part.

§ 910.785–17 Prime farmlands.

If prime farmlands in the permit area are identified in the application, the applicant shall provide such additional information and the permit shall contain such performance standards as the Office shall specify.

§ 910.785–18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining operations.

(a) *Scope.* This section applies to any person who conducts or intends to conduct combined surface mining activities and underground mining activities, where contemporaneous reclamation as required by § 910.816–100 is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operation for the surface mining activities can be completed.

(b) *Objective.* This section is to allow for delay in reclamation of surface mining activities, if that delay will allow underground mining activities to be conducted to ensure both maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or water.

(c) *Application contents for variances.* Any person who desires to obtain a variance under this section shall file with the Office complete applications for both the surface mining activities and underground mining activities which are to be combined. The operation and reclamation plans for these permits shall contain appropriate narratives, maps and plans, which—

(1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

(2) Show how multiple future disturbances of surface lands or waters will be avoided;

(3) Identify the specific surface areas for which a variance is sought and the particular sections of the Act and this part from which a variance is being sought;

(4) Show how the activities will comply with 30 CFR 910.818.

(5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(6) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and,

(7) Show how off-site storage of spoil will be conducted to comply with the requirements of the Act and 30 CFR 910.816–71 through 910.816–74.

(d) *Issuance of permit.* A permit incorporating a variance under this Section may be issued by the Office if it first finds, in writing, upon the basis of a complete application filed in accordance with this section, that—

(1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

(3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of this Part and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(4) The surface area of surface mining activities proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by Subpart 910.816.

(6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 30 CFR 910.818.

(7) Provisions for off-site storage of spoil will comply with the requirements of 30 CFR 910.816–71 through 910.816–74.

(8) Liability under the performance bond required pursuant to Subparts 910.800 through 910.808 have been complied with; and

(9) The permit for the surface mining activities contains specific conditions:

(i) Delineating the particular surface areas for which a variance is authorized;

(ii) Identifying the particular requirements of 30 CFR 910.818 which are to be complied with, in lieu of the otherwise applicable provisions of 30 CFR 910.816 and

(iii) Providing a detailed schedule for compliance with the particular requirements of Subpart 910.818 identified under paragraph (d)(9)(ii) of this section.

(e) *Review of permits containing variances.* Variances granted under permits issued under this Section shall be reviewed by the Office no later than 3 years from the dates of issuance of the permit and any permit renewals.

§ 910.785–20 Augering.

(a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.

(b) Any application for a permit for operations covered by this Section shall contain, in the operation and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with 30 CFR 910.819.

(c) No permit shall be issued for any operations covered by this Section unless the Office finds, in writing, that in addition to meeting all other applicable requirements of this part, the operation will be conducted in compliance with 30 CFR 910.819.

§ 910.785–21 Coal processing plants or support facilities not located within the permit area of a specified mine.

(a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing coal processing plants or support facilities not within a permit area of a specific mine. Any person who operates such a processing plant or support facility shall have obtained a permit from the Office in accordance with the requirements of this section.

(b) Any application for a permit for operations covered by this section shall contain in the operation and reclamation plan, specific plans, including descriptions, maps and cross sections of the construction, operation, maintenance and removal of the processing plants and associated support facilities. The plan shall demonstrate that those operations will be conducted in compliance with 30 CFR 910.827.

(c) No permit shall be issued for any operation covered by this Section, unless the Office finds, in writing, that, in addition to meeting all other applicable requirements of this part, the operations will be conducted in compliance with the requirements of 30 CFR 910.827.

§ 910.785–22 In situ processing activities.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(b) Any application for a permit for operations covered by this Section shall be made according to all requirements of Subparts 910.815 through 910.828 applicable to underground mining activities. In addition, the operation and reclamation plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 30 CFR 910.828, including—

(1) Delineation of proposed holes and wells and production zone for approval of the Office;

(2) Specifications of drill holes and casings proposed to be used;

(3) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

(4) Plans for monitoring surface and ground water and air quality, as required by the Office.

(c) No permit shall be issued for operations covered by this section, unless the Office first finds, in writing, upon the basis of a complete application made in accordance with paragraph (b) of this section, that the operation will be conducted in compliance with all requirements of Subparts 910.815 through Subparts 910.828 relating to underground mining activities, and 30 CFR 910.817 and 910.828.

Subpart 910.786—Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

§ 910.786–5 Definitions.

As used in 30 CFR 910.786–17(d) and 910.786–19(i)—

Irreparable damage to the environment means any damage to the environment that cannot be corrected by actions of the applicant.

Willful violation means an act or omission which violates the Act, State, or Federal laws or regulations, or individual permit conditions, committed by a person who intends the result which actually occurs.

§ 910.786–11 Public notices of filing of permit applications.

(a) An applicant for a permit shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operations at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the application is determined complete by the Office. The advertisement shall contain, at a minimum, the following information:

(1) The name and business address of the applicant; and,

(2) A map or description which shall—

(i) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

(ii) Clearly show or describe the exact location and boundaries of the proposed permit area;

(iii) State the name of the U.S. Geological Survey 7.5-minute quadrangle map(s) which contains the area shown or described; and

(iv) If a map is used, indicate the north point.

(3) The location where a copy of the application is available for public inspection under paragraph (c) of this section; and

(4) The name and address of the Office to which written comments, objections, or requests for informal conferences on the application may be submitted under §§ 910.786–12, and 910.786–14.

(5) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the duration of the relocation.

(b) Upon receipt of a complete application for a permit, the Office shall issue written notification of—

(1) The applicant's intention to surface mine a particularly described tract of land;

(2) The application number;

(3) Where a copy of the application may be inspected; and,

(4) Where comments on the application may be submitted under § 910.786–12.

(c) The written notifications shall be sent to—(1) Federal, State and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies;

(2) Governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;

(3) Sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(4) The Federal or State governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.

(d)(1) The applicant shall make a full copy of his or her complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the recorder at the courthouse of the county where the mining is proposed to occur, or if approved by the Office, at another equivalent public office, if it is determined that that office will be more accessible to local residents than the county courthouse.

(2) The applicant shall file the copy of the complete application under paragraph (d)(1) of this section by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the public office at the same time the revision is submitted to the Office.

§ 910.786–12 Opportunity for submission of written comments on permit applications.

(a) Written comments on permit applications may be submitted to the Office by the public entities to whom notification is provided under § 910.786–11 (b) and (c) with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(b) These comments shall be submitted to the Office and within 30 days of the receipt of the application under § 910.786–11 (b) and (c).

(c) The Office shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application for permit under § 910.786–11(d). A copy shall also be transmitted to the applicant.

§ 910.786–13 Right to file written objections.

(a) Any person whose interests are or may be adversely affected or an officer or head of any Federal, State, or local government agency or authority shall have the right to file written objections to an initial or revised application for a permit with the Office, within 30 days after the last publication of the newspaper notice required by § 910.786–11(a).

(b) The Office shall, immediately upon receipt of any written objections—

(1) Transmit a copy of them to the applicant; and,

(2) File a copy for public inspection at the public office where the applicant filed a copy of the application for permit under § 910.786–11(d).

§910.786–14 Informal conferences.

(a) *Procedure for requests.* Any person, whose interests are or may be adversely affected by the issuance of the permit, or the officer or head of any Federal, State or local government agency or authority may, in writing, request that the Office hold an informal conference on any application for a permit. The request shall—

(1) Briefly summarize the issues to be raised by the requestor at the conference;

(2) State whether the requestor desires to have the conference conducted in the locality of the proposed mining operations;

(3) Be filed with the Office not later than 30 days after the last publication of the newspaper advertisement placed by the applicant under § 910.786–11(a).

(b) Except as provided in paragraph (c) of this section, if an informal conference is requested in accordance with paragraph (a) of this section, the Office shall hold an informal conference within 30 days following the receipt of the request. The informal conference shall be conducted according to the following:

(1) If requested under paragraph (a)(2) of this section, it shall be held in the locality of the proposed mining.

(2) The date, time, and location of the informal conference shall be advertised by the Office in a newspaper of general circulation in the locality of the proposed mine at least two weeks prior to the scheduled conference.

(3) If requested, in writing, by a conference requestor in a reasonable time prior to the conference, the Office may arrange with the applicant to grant parties to the conference access to the proposed permit area for the purpose of gathering information relevant to the conference.

(4) The requirements of Section 5 of the Administrative Procedures Act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference. The conference shall be

conducted by a representative of the Office who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all the parties. The record shall be maintained and shall be acessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Subparts 910.800 through 910.808.

(c) If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

(d) Informal conferences held in accordance with this Section may be used by the Office as the public hearing required under 30 CFR 910.761–12(d) on proposed uses or relocation of public roads.

§ 910.786–15 Public availability of information in permit applications on file with the Office.

(a) Information contained in permit applications on file with the Office shall be open, upon written request, for public inspection and copying between 8:00 a.m. and 4:30 p.m., Mondays through Fridays, except for holidays.

(1) Information pertaining to coal seams, test borings, core samplings, or soil samples in permit applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected; and

(2) Information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record; and

(3) Information in the reclamation plan portions of the application, which is required to be filed with the Office only under Section 508 of the Act shall be held in confidence by the Office upon the written request of the applicant.

(b) The Office shall provide for procedures to maintain information required to be kept confidential under paragraph (a) of this section separately from other portions of the permit application. This information shall be clearly identified by the applicant and submitted separately from other portions of the application.

§ 910.786–17 Review of permit applications.

(a)(1) The Office shall review the complete application and written comments, written objections submitted, and records of any informal conference held under 30 CFR 910.786–12 through 910.786–14.

(2) The Office shall determine the adequacy of the fish and wildlife plan submitted pursuant to 30 CRR 910.780–16 or 30 CFR 910.784–21 in consultation with State and Federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations.

(b) If the Office decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subparts 910.800 through 910.808.

(c) If the Office determines from either the schedule submitted as part of the application under 30 CFR 910.778–14(c) or 910.782–14(c), or from other available information, that any surface mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection, or of any provision of the Act, the Office shall require the applicant, before the issuance of the permit, to either—

(1) Submit to the Office reviewing the application, proof which is satisfactory to the Office, department, or agency which has jurisdiction over such violation, that the violation—

(i) Has been corrected,

(ii) Is in the process of being corrected; or

(2) Establish to the Office that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any surface coal mining operations being conducted under a pemit issued according to this paragraph shall be immediately terminated, unless and until the provisions of paragraph (c)(1) of this section are satisfied.

(d) Before any final determination by the Office that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the Act of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the Act, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in § 910.787–11.

§ 910.786–19 Criteria for permit approval or denial.

No permit or revision application shall be approved, unless the application affirmatively demonstrates and the Office finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that—

(a) The permit application is accurate and complete and that all requirements of this Part have been complied with.

(b) The applicant has demonstrated that surface coal mining and reclamation operations, as required by this Part, can be feasibly accomplished under the operation and reclamation plan contained in the application.

(c) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance, has been made by the Office and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed permit area.

(d) The proposed permit area is:

(1) Not included within an area designated unsuitable for surface coal mining operations under 30 CFR 910.764; or

(2) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 30 CFR 910.764, unless the applicant demonstrates that, before January 4, 1977, he or she has made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit; or

(3) Not on any lands subject to the prohibitions or limitations of 30 CFR 910.761–11 (a), (f), or (g); or

(4) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 30 CFR 910.761–12(d); or

(5) Not within 300 feet from any occupied dwelling, except as provided for in 30 CFR 910.761–11(e) and 910.761–12(e).

(e) The proposed operations will not adversely affect any publicly-owned parks or places included in the National

Register of Historic Places, except as provided for in 30 CFR 910.761–11(c).

(f) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Office the documentation required under 30 CFR 910.778–15(b) or 910.782–15(b).

(g) The applicant has either—

(1) Submitted the proof required by Section 910.786–17(c)(1); or

(2) Made the demonstration required by Section 910.786–17(c)(2).

(h) The applicant has submitted proof that all reclamation fees required by 30 CFR Subchapter R have been paid.

(i) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the Act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act.

(j) Surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area.

(k) The applicant will submit the performance bond or other equivalent guarantee required under Subparts 910.800 through 910.808 prior to the issuance of the permit.

(l) The applicant has, with respect to prime farmland, obtained either a negative determination or satisfied the requirements of 30 CFR 910.785–17.

(m) The proposed postmining land use of the permit area has been approved by the Office in accordance with the requirements of 30 CFR 910.816–133 or 910.817–133.

(n) The Office has made all specific approvals required under Subparts 910.815 through 910.828.

(o) The Office has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

§ 910.786–21 Criteria for permit approval or denial: Existing structures.

(a) No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the Office finds, in writing, on the basis of information set forth in the complete application that—

(1) If the applicant proposes to use an existing structure in accordance with exemption provided in 30 CFR 910.701–11(d)(1)(i)—

(i) The structure meets the performance standards of this Part; and

(ii) No significant harm to the environment or public health or safety will result from use of the structure.

(2)(i) If the applicant proposes to use an existing structure in accordance with the exemption provided in § 910.701–11(d)(1)(ii),

(A) The structure meets the performance standards of the 30 CFR Subchapter B;

(B) No significant harm to the environment or public health or safety will result from use of the structure; and

(C) The performance standards of 30 CFR Subchapter B are at least as stringent as the performance standards of this Part.

(ii) If the Office finds that the structure meets the criteria of 30 CFR 910.701–11(d)(1)(iii) but does not meet the criterion of paragraph (b)(1)(iii) of this section, the Office shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that—

(A) The modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of this Part as soon as possible, but not later than six months after issuance of the permit;

(B) The risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(C) The applicant will monitor the structure to determine compliance with the performance standards of this Part.

(b) Should the Office find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permit under this part. Abandonment of the structure shall proceed on a schedule approved by the Office, in compliance with 30 CFR 910.816–132 or 910.817–132.

§ 910.786–23 Permit approval or denial actions.

(a) The Office shall approve, require modification of, or deny all applications for permits under this Part on the basis of—

(1) Complete applications for permits and revisions or renewals thereof;

(2) Public participation as provided for in Subparts 910.770 through 910.795;

(3) Compliance with any applicable provisions of 30 CFR 910.785; and

(4) Processing and review of applications as required by this Subpart.

(b) The Office shall take action as required under paragraph (a) of this section, within the following times—

(1) *Initiation of regulatory program.* Except as provided for in paragraph (b)(3) of this section and 30 CFR 910.771–13, a complete application submitted to the Office within the time required by 30 CFR 910.771–21(a)(1) shall be processed by the Office so that an application is, to the extent possible, approved or denied—

(i) Within eight months after the effective date of this Part; and

(ii) If an informal conference has been held pursuant to 30 CFR 910.786–14 within 60 days from the close of the conference.

(2) *Subsequent operation of regulatory program.* Except as provided for in paragraph (b)(3) of this section, a complete application submitted to the Office after the time required in 30 CFR 910.771–21(a)(1) and in accordance with 30 CFR 910.771–21(b) shall be processed by the Office, so that an application is approved or denied, to the extent possible, within the following times:

(i) If an informal conference has been held under Section 910.786–14 within 60 days of the close of the conference; or

(ii) If no informal conference has been held under 30 CFR 910.786–14 then within 3 months, if preparation of an environmental impact statement is not required for compliance with Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, or within 12 months if preparation of an environmental impact statement is required.

(3) Notwithstanding any of the foregoing provisions of this Section, no time limit under the Act or this Section requiring the Office to act shall be considered expired from the time the Office initiates a proceeding under 30 CFR 910.786–17(d) until the final decision of the hearing body.

(c) If an informal conference is held under Section 910.786–14, the Office shall give its written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(d) If no such informal conference has been held, the Office shall give its written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and

stating the specific reasons in the decision.

(e) Simultaneously, the Office shall—

(1) Give a copy of its decision to:

(i) Each person and government official who filed a written objection or comment with respect to the application; and

(ii) The Georgia Department of Natural Resources.

(2) Publish a summary of its decision in a newspaper or similar periodical of general circulation in the general area of the operation.

(f) Within 10 days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee which complies with Subparts 910.800 through 910.808, the Office shall notify the local government officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the lands within the permit area.

§ 910.786-25 Permit terms.

(a) Each permit shall be issued for a fixed term not to exceed 5 years. A longer fixed permit term may be granted, if—

(1) The application is full and complete for the specified longer term; and

(2) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

(b)(1) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The Office may grant reasonable extensions of time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if—

(i) Litigation precludes the commencement or threatens substantial economic loss to the permittee, or

(ii) There are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the Office under this paragraph shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(c) Permits may be suspended, revoked, or modified by the Office, in accordance with 30 CFR 910.785-13, 910.785-15, 910.785-16, 910.785-18, 910.788-11, and Subparts 910.842 through 910.845.

§ 910.786-27 Conditions of permits: General and right of entry.

Each permit shall ensure and contain specific conditions requiring that—

(a) Except to the extent that the Office otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application; and

(b) The permittee shall allow the authorized representatives of the Office, including, but not limited to, inspectors and fee compliance officers, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to—

(1) Have the rights of entry provided for in 30 CFR 910.840-12 and 910.842-13; and

(2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with 30 CFR 910.842, when the inspection is in response to an alleged violation reported to the Office by a private person.

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the maps submitted under 30 CFR 910.779, 910.780 or 910.783, 910.784 and approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect pursuant to Subparts 910.800 through 910.808.

§ 910.786-29 Conditions of permits: Environment, public health, and safety.

Each permit shall ensure and contain specific conditions requiring that the—

(a) Permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) Immediate implementation of measures necessary to comply; and

(3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Subparts 910.815 through 910.828 and which prevents violation of any other applicable State or Federal law.

(c) The permittee shall conduct its operations—

(1) In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

(2) Utilizing any methods specified in the permit by the Office in approving alternative methods of compliance with the performance standards of Subparts 910.815 through 910.828.

Subpart 910.787—Administrative and Judicial Review of Decisions on Permit Applications

§ 910.787-11 Administrative review.

(a) Within 30 days after the applicant or permittee is notified of the final decision of the Office concerning the application for a permit, revision or renewal thereof, permit, application for transfer, sale, or assignment of rights, or concerning an application for coal exploration under 30 CFR 910.776-14, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing by the Office of Hearings and Appeals, Department of the Interior, on the reasons for the final decision in accordance with this Section.

(b) All hearings or applications for permits, revisions, renewals thereof, applications for transfer, sale or assignment of rights granted under permits, and applications for coal exploration shall be of record and governed by 5 U.S.C. Section 554 and 43 CFR Part 4.

§ 910.787-12 Judicial review.

(a) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in paragraph (b) of this section, if—

(1) The applicant or person is aggrieved by the decision of the hearing authority in an administrative review proceeding conducted pursuant to § 910.787-11; or

(2) Either the Office or the hearing authority for administrative review under § 910.787-11 fails to act within time limits specified in the Subparts 910.770 through 910.795.

(b) The action of the Office or hearing authority identified in paragraph (a) of this section is subject to judicial review by the United States District Court for the district in which the coal exploration or surface coal mining and reclamation operations is or would be located, in the time and manner provided for in Section 526(a)(2) and (b) of the Act. The availability of such review shall not be considered to limit the operations of rights established in Section 520 of the Act.

Subpart 910.788—Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits

§ 910.788-3 Responsibilities.

The Office shall—

(a) Ensure that permits are revised prior to changes in surface coal mining and reclamation operations;

(b) Ensure that all permits are regularly reviewed to determine that surface coal mining and reclamation operations under these permits are conducted in compliance with this Part;

(c) Effectively review and act on applications to renew existing permits, in a timely manner, to ensure that surface coal mining and reclamation operations continue, if they comply with this part; and

(d) Ensure that no person conducts surface coal mining and reclamation operations, through the transfer, sale, or assignment of rights granted under permits, without the prior approval of the Office.

§ 910.788-5 Definitions.

As used in § 910.788-17 through 910.788-19.

Successor in interest means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

Transfer, assignment, or sale of rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the Office.

§ 910.788-11 Review of outstanding permits.

(a) (1) The Office shall review each permit issued and outstanding under this part during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 30 CFR 910.785-13, 910.785-14, 910.785-16, and 910.785-18.

(2) For permits of longer than five year terms, a review of the permit shall be no less frequent than the permit midterm or every five years, whichever is more frequent.

(b) After this review, the Office may, by order, require reasonable revision or modificaton of the permit provisions to ensure compliance with this Part.

(c) copies of the decision of the Office shall be sent to the permittee.

(d) Any order of the Office requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 30 CFR 910.787.

§ 910.788-12 Permit revisions.

(a) A revision to a permit shall be obtained—

(1) For changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit such as a change in mining method, a significant change in hydrologic balance outside of the mine plan area, a change in postmining land use, or a major structural change in sedimentation ponds, coal waste piles, coal processing waste disposal facilities, dams, impoundments or embankments, the application for permit revision shall also include the following, as applicable:

(i) A description of the type, engineering technique and method of any proposed changes in coal mining methods, anticipated change in the annual and total production of coal by tonnage resulting from the proposed changed mining method, and the major equipment to be used for the proposed changes in coal mining methods;

(ii) A description of any major structural changes proposed for sedimentation ponds, dams, embankments or other impoundments, coal waste piles, and coal processing waste disposal facilities, together with a reclamation plan for such proposed changes, meeting the applicable requirements of § 910.780-25 or § 910.784-19.

(iii) A description meeting the requirements of § 910.780-21 or § 910.784-17 of the measures to be taken during and after the proposed changes in coal mining or reclamation operations to ensure the protection of—

(A) The quantity and quality of surface and ground water in the adjacent areas from any anticipated significant adverse effects of the proposed change, or to provide alternative sources of water in accordance with § 910.779-17 and 910.816-54 or § 910.783-17 and 910.817-54, where such protection of the quantity of surface and ground water in the adjacent areas cannot be ensured; and

(B) The right of present users of surface and ground water;

(iv) A description of the proposed change in post-mining land-use, meeting the requirements of § 910.780-23 and § 910.784-18; and

(2) When required by an order issued under 30 CFR § 910.788-11;

(3) In order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(b) The application for revision shall be filed in accordance with the following:

(1) The permitee shall submit the application to the Office within the time provided for by 30 CFR § 910.771-21(b)(3);

(2) The scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be as provided. Any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 30 CFR 910.778, 910.779, 910.780, 910.782, 910.783, 910.784 910.785, or in the conditions of the original permit, shall, at minimum, be subject to the requirements of 30 CFR 910.786, and 910.787.

(c) The Office shall approve or disapprove the complete application for revision, in accordance with the requirements of 30 CFR 910.786, within 6 months, if no environmental impact statement is needed for compliance with the National Environmental Policy Act of 1969, as amended, and within 12 months if an environmental impact statement is needed.

(d) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this subpart.

§ 910.788-13 Permit renewals: General requirements.

(a) Any valid, existing permit issued pursuant to this Part shall carry with it the right of successive renewal upon expiration of the term of the permit, in accordance with §§ 910.788-14 through 910.788-16. Successive renewal shall be available only for those areas which were specifically approved by the Office on the application for the existing permit as within the boundaries of the permit.

(b) Permit renewal shall not be available for conducting surface coal

mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit. Approval of permits to conduct operations on these lands shall be obtained in accordance with § 910.788–14(b)(2).

§ 910.788–14 Permit renewals: Completed applications.

(a) *Contents.* Complete applications for renewals of a permit shall be made within the time prescribed by 30 CFR 910.7771–21(b)(2). Renewal applications shall be in a form and with contents required by the Office in accordance with paragraph (b)(2) of this section, including at a minimum, the following:

(1) A statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal;

(2) A copy of the newspaper notice and proof of publication of same under 30 CFR 910.786–11(a); and

(3) Evidence that liability insurance policy or adequate self-insurance under 30 CFR 910.806–14 will be provided by the applicant for the proposed period of renewal.

(b) *Processing and review.* (1) Complete applications for renewal shall be subject to the requirements of public notification and participation contained in 30 CFR 910.786–11 and 910.786–14.

(2) If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the complete application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under 30 CFR 910.771, 910.778, 910.779, 910.780, 910.782, 910.783, 910.784, 910.785, 910.786, 910.787, and 910.788, and Subparts 910.800 through 910.808.

(3) If the surface coal mining reclamation operations authorized under the original permit were not subject to the standards contained in Sections 510(b)(5) (A) and (B) of the Act and Section 910.785–19 of this Part, because the permittee complied with the exceptions to Section 510(b)(5) of the Act, the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to 30 CFR 910.780 or 910.784 for the original permit shall not be subject to the standards contained in Sections 501(b)(5) (A) and (B) of the Act and 30 CFR 910.785–19.

(4) Before finally acting to grant the permit renewal, the Office shall require any additional performance bond needed by the permittee to comply with the requirements of § 910.788–16(a)(4) to be filed with the Office.

§ 910.788–15 Permit renewals: Terms.

Any permit renewal shall be for a term not to exceed the period of the original permit established under 30 CFR 910.786–25.

§ 910.788–16 Permit renewals: Approval or denial.

(a) The Office shall, upon the basis of a complete application for renewal and completion of all procedures required under §§ 910.788–14 and 910.788–15, issue a renewal of a permit, unless it is established and written findings by the Office are made that—

(1) The terms and conditions of the existing permit are not being satifactorily met;

(2) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards in Subparts 910.815 through 910.828.

(3) The requested renewal substantially jeopardizes the operator's continuing responsibility to comply with this Part;

(4) The operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the Office might require pursuant to Subparts 910.800 through 910.808; or

(5) Any additional revised or updated information required by the Office has not been provided by the applicant.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The Office shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

(d) Any person having an interest which is or may be adversely affected by the decision of the Office shall have the right to administrative and judicial review set forth in 30 CFR 910.787.

§ 910.788–17 Transfer, assignment, or sale of permit rights: General requirements.

No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Part shall be made without the prior written approval of the Office, in accordance with §§ 910.788–17 through 910.788–19.

§ 910.788–18 Transfer, assignment, or sale of permit rights: Obtaining approval.

(a) Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued under this Part shall, prior to the date of such transfer, assignment or sale—

(1) Obtain the performance bond coverage of the original permittee by

(i) Obtaining transfer of the original bond;

(ii) Obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the Office. If such an agreement is reached, the Office may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;

(iii) Providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or

(iv) Such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee; and

(2) Provide the Office with an application for approval of such proposed transfer, assignment, or sale, including—

(i) The name and address of the existing permittee;

(ii) The name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent;

(iii) For surface mining activities, the same information as is required by 30 CFR 910.778–13, 910.778–14, 910.778–15, 910.778–16(c), 910.778–18 and 910.778–19 for applications for new permits for those activities; or

(iv) For underground mining activities, the same information as is required by 30 CFR 910.782–13, 910.782–14, 910.782–15, 910.782–16(c), 910.782–18 and 910.782–19 for applications for new permits for those activities.

(3) Obtain the written approval of the Office for transfer, assignment, or sale of rights, according to paragraph (c) of this section.

(b)(1) The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in

the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under this paragraph.

(2) Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, State or Federal government agency may submit written comments on the application for approval to the Office, within 6 months.

(c) The Office may, upon the basis of the applicant's compliance with the requirements of paragraphs (a) and (b) of this section, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that—

(1) The person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in 30 CFR 910.785, 910.786–19, 910.786–21 and the requirements of this Part.

(2) The applicant has, in accordance with 30 CFR 910.788–18(a)(1), submitted a performance bond or other guarantee as required by Subparts 910.800 through 910.808 and at least equivalent to the bond or other guarantee of the original permittee; and

(3) The applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with the Subparts 910.770 through 910.795 as required in § 910.788–19.

§ 910.788–19 Requirements for new permits for persons succeeding to rights granted under a permit.

(a) A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved operation and reclamation plan and permit of the original permittee.

(b) Pursuant to § 910.788–18(c)(3), any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall—

(1) Make application for a new permit under 30 CFR 910.771 through 910.787, if the change involves conducting operations outside the original permit area; or

(2) Make application for a revised permit under Section 910.788–12.

Subpart 910.795—Small Operator Assistance

§ 910.795 Scope.

This subpart comprises the small operator assistance program (SOAP program) and governs the procedures for providing assistance to qualified small mine operators who request assistance under Section 507(c) of the Act, for—

(a) The determination of the probable hydrologic consequences of mining and reclamation, under Section 507(b)(11) of the Act; and

(b) The statement of physical and chemical analyses of test borings or core samplings, under Section 507(b)(15) of the Act.

§ 910.795–2 Objective.

The objective of this Subpart is to meet the intent of Section 502(c) of the Act by—

(a) Providing services and other necessary assistance to qualified small operators; and

(b) Assuring that the Office shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

§ 910.795–3 Authority.

The Office shall provide financial and other assistance under Section 507(c) of the Act to the extent funds are appropriated by Congress specifically for the SOAP program.

§ 910.795–4 Responsibilities.

(a) The Office shall—

(1) Review requests for assistance and determine qualified operators;

(2) Develop and maintain a list of qualified laboratories, and select and pay laboratories for services rendered;

(3) Conduct periodic on-site evaluations of the SOAP program activities with the appropriate small operator; and

(4) Participate in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency, and other appropriate agencies or institutions.

(b) The Office shall develop oversight policies and procedures to implement the SOAP program. These shall include policies and procedures for—

(1) Data acquisition, analysis and interpretation;

(2) Interstate coordination and exchange of data;

(3) Model contract stipulations;

(4) National qualification of labs.

(c) The Office shall insure that applicable equal opportunity in employment provisions are included within any contract or other procurement documents.

§ 910.795–5 Definitions.

As used in this subpart—

Monitoring means the collection of environmental data by either continuous or periodic sampling methods.

Probable cumulative impacts means the expected total qualitative, and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.

Probable hydrologic consequence means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; the stream channel conditions; and the aquatic habitat in the permit and adjacent area.

§ 910.795–5–11 Small operator assistance program initiation procedures.

The Office shall initiate the program by—

(a) Making announcements in periodicals and the news media:

(b) Contacting operators and laboratories;

(c) Making applications and other information for assistance and qualification available to operators and laboratories; and

(d) Providing seminars, workshops and other assistance to operators and laboratories.

§ 910.795–12 Program services.

To the extent possible with available funds, the Office shall for qualified small operators who request assistance—

(a) Select and pay a qualified laboratory to—

(1) Determine for the operator the probable hydrologic consequences of the mining and reclamation operations in the permit and adjacent area in accordance with § 910.795–16.

(2) Prepare a statement of the results of test borings or core samplings for the proposed permit area in accordance with 910.795–16.

(b) Collect and provide general hydrologic information on the general area within which the anticipated mining will occur. The information provided shall be limited to that required to relate the hydrology of the general area to the hydrology of the proposed permit area.

§ 910.795–13 Eligibility for assistance.

An applicant is eligible for assistance if the applicant—

(a) Intends to apply for a permit pursuant to the Act; and

(b) Establishes that the probable total actual and attributed production of the applicant for each year of the permit will not exceed 100,000 tons. Production from the following operations shall be attributed to the applicant—

(1) All coal produced by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or any other manner whatsoever, by the applicant.

(2) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the applicant owns more than a 5 percent interest.

(3) All coal produced by persons who own more than 5 percent of the applicant or who directly or indirectly control the applicant by reason of stock ownership, direction of the management or in any other manner whatsoever.

(4) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the applicant.

§ 910.795–14 Filing for assistance.

Each applicant shall submit the following information to the Office on an application form provided by the Office at any time after initiation of the small operator assistance program within the state in which mining is proposed—

(a) A statement of intent to file a permit application;

(b) The names and addresses of—

(1) The potential permit applicant;

(2) The potential operator if different from the applicant.

(c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under § 910.795–13. The schedule shall include for each location—

(1) The name under which coal is or will be mined;

(2) The permit number and Mine Safety and Health Administration identification number;

(3) The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant; and

(4) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant.

(d) A description of—

(1) The method of surface coal mining operation proposed;

(2) The anticipated starting and termination dates of mining operations;

(3) The number of acres of land to be affected by the proposed mining; and

(4) A general statement on the probable depth and thickness of the coal resource.

(e) A U.S. Geological Survey topographic map of 1:24,000 scale or larger or other topographic map of equivalent detail which clearly shows—

(1) The area of land to be affected and the natural drainage above and below the affected areas;

(2) The names of property owners, within the area to be affected and of adjacent lands;

(3) The location of existing structures and developed water sources within the area to be affected and on adjacent lands;

(4) The location of existing and proposed test boring or core sampling; and

(5) The location and extent of known working of any underground mines.

(f) A map of the permit area at a scale of 1:6,000 or larger.

(g) Copies of documents which show that—

(1) The applicant has a legal right to enter and commence mining within the permit area; and

(2) A legal right of entry has been obtained for the Office and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

§ 910.795–15 Application approval and notice.

(a) If the Office finds the applicant eligible, and does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall—

(1) Determine the minimum data requirements necessary to meet the provision of § 910.795–16.

(2) Select the services of one or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved report shall be provided to the applicant.

(b) The Office shall inform the applicant in writing if the application is denied and shall state the reasons for denial.

(c) The granting of assistance under this subpart shall not be factor in decisions by the Office on a subsequent permit application.

§ 910.795–16 Data requirements.

(a) *General.* This Section describes the minimum requirements for the collection of data to meet the objective of the program. The Office shall determine the data collection requirements for each applicant or grroup of applicants. Data collection and analysis may proceed concurrently with the development of operation and reclamation plans by the operator. The data requirements shall be based on—

(1) The extent of currently available hydrologic and core analysis data for the applicable area provided by the Office; and

(2) The data collection and analysis guidelines developed and provided by the Office.

(b) *Specific Provisions*—(1) A determination of the probable hydrologic consequences of the mining and reclamation operations in the permit and adjacent area shall be made by a qualified laboratory. The data for this determination shall include—

(i) The existing and projected surface and ground water seasonal flow regime, including water level and water table evaluations. The Office shall specify duration and return frequencies to be used in the determination.

(ii) The existing and projected seasonal quality of the surface and g round water regime. This shall include measurements and estimates of dissolved and suspended solids, pH, iron, manganese, surface and channel erosion and other water quality parameters specified by the Office.

(2) A statement of the results of test borings or core samplings from the proposed permit area, including—

(i) Logs from any drill holes including identification of each stratum and water level penetrated;

(ii) The coal seam thickness and its chemical analysis including sulfur content;

(iii) The chemical analysis of potentially acid or toxic forming sections of the overburden, and the chemical analysis of the stratum lying immediately underneath the coal to be mined.

(c) *Exemptions.* The statement under paragraph (b)(2) of this section may be waived by the Office by a written determination that such requirements are unnecessary with respect to the specific permit application.

(d) *Data Availability.* Data collected under the SOAP program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available.

§ 910.795–17 Qualified laboratories.

(a) *General.* (1) As used in this section, *qualified laboratory* means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the

required determination or statement under the SOAP program.

(2) The Office shall establish and periodically publish in the Federal Register a list of qualified laboratories which may be used under the procedures of this section.

(3) Persons who desire to be included in the list of qualified laboratories established by the Office shall apply to the Office and provide such information as is necessary to establish the qualifications required by paragraph (b) of this section.

(b) *Basic qualifications.* (1) To qualify, the laboratory shall demonstrate in an application form provided by the Office and by an on-site inspection of its personnel and facilities that it.—

(i) Is staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed.

(ii) Is capable of collecting necessary field data and samples.

(iii) Has adequate space for material preparation, cleaning and sterilizing necessary equipment, stationary equipment, storage, and space to accommodate periods of peak work loads.

(iv) Meets the requirements of the Occupational Safety and Health Act.

(v) Has the financial capability and business organization necessary to perform the work required.

(vi) Has analytical, monitoring and measuring equipment capable of meeting the applicable standards and methods contained in.—

(A) *Standard Methods for the Examination of Water and Waste Water, 14th Edition, 1975.* This publication is available from the American Public Health Association, 1015 18th Street, NW., Washington, D.C. 20036.

(B) *Methods for Chemical Analysis of Water and Wastes, 1974.* This publication is available from the Office of Technology Transfer, U.S. Environmental Protection Agency, Industrial Environmental Research Laboratory, Cincinnati, Ohio 45268. These standards are hereby incorporated by reference.

(vii) Has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, engineering or analytical methods, or by those appropriate methods or guidelines for data acquisition recommended by the Office or other Federal agencies.

(2) The qualified laboratory shall be capable of performing either the determination or statement under §§ 910.795–16 (b)(1) or (b)(2). Subcontractors may be used to provide the services required provided their use is defined in the application for qualification and approved by the Office.

§ 910.795–18 Assistance funding.

(a) *Use of Funds.* Funds authorized for this SOAP program shall not be used to cover the costs of test boring or core sampling.

(b) *Allocation of Funds.* The Office shall to the extent practicable establish a formula for allocating funds to service eligible small operators if available funds are less than those required to provide the services pursuant to this subpart. This formula shall include such factors as the applicant's.—

(1) Anticipated date of filing a permit application;

(2) Anticipated date for commencing mining; and

(3) Performance history.

§ 910.795–19 Applicant liability.

(a) The applicant shall reimburse the Office for the cost of the laboratory services performed pursuant to this subpart if the applicant:—

(1) Submits false information;

(2) Fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report;

(3) Fails to mine after obtaining a permit; or

(4) If the Office finds that the applicant's actual and attributed annual production of coal exceeds 100,000 tons during any year of mining under the permit for which the assistance is provided.

(b) The Office may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith. The incorporations by reference in this Subpart were approved by the Director, Office of the Federal Register on November 11, 1977 and are on file in the Federal Register information center.

Bond and Insurance Requirements

Subpart 910.800—General Requirements for Bonding of Surface Coal Mining and Reclamation Operations

§ 910.800–5 Definitions.

Surety bond means an indemnity agreement in a sum certain payable to the Office executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the surface or underground coal mining operation subject to the indemnity agreement is located.

Collateral bond means an indemnity agreement in sum certain deposited with the Office or executed by the permittee and supported by one or more of the following—

(a) The deposit of cash in one or more federally insured accounts, payable only to the Office upon demand;

(b) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and in the possession of, the Office;

(c) Negotiable certificates of deposit, payable only to the Office and in its possession;

(d) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only upon presentation by the Office;

(e) A perfected, first-lien security interest in real or personal property, in favor of the Office;

(f) Investment-grade rated securities, having the highest rating issued by a nationally recognized securities rating service, endorsed to the order of, and in the possession of, the Office, excluding all issues of the type traded on a commodity exchange such as contracts for future delivery of goods.

Self-bond means an indemnity agreement in a sum certain payable to the Office executed by the permittee and by each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee, and supported by agreements granting the Office a security interest in real or personal property pledged to secure performance by the permittee.

Common-size comparative balance sheet means item amounts from a number of the permittee's or applicant's successive yearly balance sheets arranged side by side in a single statement followed by common-size percentages whereby: (a) The asset total is assigned a value of 100 percent; (b) the total of liabilities and owner equity is also assigned a value of 100 percent; and (c) each individual asset, liability, and owner equity item is shown as a fraction of one of the 100 percent totals.

Common-size comparative income statement means an operator's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by common-size percentages whereby net sales are assigned a 100 percent value, and then each statement item is shown as a percentage of net sales.

Retained earnings means stockholder's equity that has arisen from retained assets from earnings in the

business. This shall include only earnings from normal operations and not gains from such transactions as the sale of plant assets or investments.

Working capital means the excess of the operator's current assets over its current liabilities.

Current assets means cash and assets that are reasonably expected to be realized in cash or sold or consumed within one year.

Current liabilities means debts or other obligations that must be paid or liquidated within a short period of time, usually a year. This shall also include dividends payable on preferred stock within one year.

Current ratio means the relation of current assets to current liabilities.

Acid-test ratio means the relation of quick assets to current liabilities.

Quick assets means cash and current assets that can be quickly turned into cash.

Cash means (a) all cash items except cash (1) restricted by an agreement, or (2) described as earmarked for a particular purpose; and (b) short-term investments such as stocks, bonds, notes, and certificates of deposit, where the intent and ability to sell them in the near future is established by the operator.

Liquidity ratio means the relation of cash to current liabilities.

Asset ratio means the relation of total assets to total liabilities.

Return on investment means the relation of net profit for the last yearly period to ending net worth.

Net worth means preferred and common stock, all surplus accounts, and retained earnings.

Net profit means the bottom line of the income statement after taxes, including taxes based on income, adjustments, all extraordinary income and expense, but before preferred and common stock dividends.

Capital assets means those assets such as land, buildings and equipment held for use in the production or sale of other assets or services.

§ 910.800-11 Requirement to file a bond.

(a) After an application for a new, revised or renewed permit to conduct surface coal mining and reclamation operations has been approved under Subparts 910.770 through 910.795, but before such permit is issued, the applicant shall file with the Office a performance bond payable to the Office. The performance bond will be conditioned upon the faithful performance of all the requirements of the provisions of the reclamation plan and permit. The amount, duration, form, conditions and terms of the performance bond shall conform to 30 CFR Subparts 910.805 and 910.806.

(b) An operator shall not disturb surface acreage or extend any underground shafts, tunnels or operations prior to receipt of approval from the Office of a performance bond covering the surface acreage to be affected.

(1) Liability on the performance bond shall cover all surface coal mining and reclamation operations to be conducted within the permit area during the life of the mine. After the amount of the bond has been determined for the permit area in accordance with 30 CFR Subpart 910.805, the permittee or applicant may either file—

(i) The entire performance bond required during the term of the permit; or

(ii) A cumulative bond schedule listing the areas covered by the bond and the sequence for release of acreage as it progresses through varying reclamation phases and for the addition of other acreage as it is affected. The amount of bond required to obtain a permit shall include the full reclamation cost of the initial area being affected; or

(iii) An incremental bond schedule and the new performance bond required for the first increment in the schedule.

(2) When the operator elects to "increment" the amount of the performance bond during the term of the permit, he shall identify the initial and successive incremental areas for bonding on the permit application map submitted for approval as provided in 30 CFR 910.780–14, and shall specify the proportion of the total bond amount required for the term of the permit which will be filed prior to commencing operations on each incremental area. The scheduled amount of each performance bond increment shall be filed in the sequence approved in the permit, and shall be filed with the Office at least 30 days prior to the commencement of surface coal mining and reclamation operations in the next incremental area.

(c) The amount, duration, form, conditions and terms of the performance bond shall conform to 30 CFR Subparts 910.805 and 910.806.

§ 910.800-12 Requirement to file a certificate of liability insurance.

Each applicant for a permit shall submit to the Office, as part of the permit application—

(a) A certificate issued by an insurance company authorized to do business in the United States. The amount, duration, form, conditions and terms of this insurance shall conform to 30 CFR 910.806–14; or

(b) Evidence that it satisfies applicable State or Federal self-insurance requirements and that self-insurance for liability is otherwise consistent with 30 CFR 910.806–14.

§ 910.800-13 Responsibilities.

(a) The Office shall prescribe and furnish forms for filing performance bonds.

(b) The Office shall prescribe terms and conditions for performance bonds and insurance by regulations which meet, at a minimum, the requirements of Subparts 910.805 and 910.806.

(c) The Office shall determine the amount of the performance bond required for the permit area, including adjustments to the initial amount from time-to-time as land acreages in the permit area are revised, or when other relevant conditions change according to the minimum requirements of § 910.805–11(a).

(d) The Office may not accept a self-bond in lieu of a surety or collateral bond, unless the permittee meets the requirements of § 910.806–14 and any evaluation criteria established by the Office.

(e) The Office shall release the permittee from his bond and insurance requirements consistent with 30 CFR Subpart 910.807.

(f) The Office shall cause all or part of a bond to be forfeited consistent with 30 CFR Subpart 910.808.

Subpart 910.801—Bonding Requirements for Underground Coal Mines, Coal-Processing Plants, Associated Structures, and Other Coal-Related Long-Term Facilities and Structures

§ 910.801-1 Scope.

This Subpart establishes bonding procedures applicable to long-term facilities, such as underground mines, coal-processing plants, refuse areas, and other long-term facilities and structures associated with surface and underground coal mining. Such permits may have several renewal terms, or may have a single permit term in excess of 5 years, so long as the surface area affected during the life of the facility remains basically unchanged.

§ 910.801-4 Responsibilities.

The Office shall ensure that bond coverage is provided for long-term surface facilities and surface areas of underground mines subject to the requirements of this part. Specific reclamation techniques required for underground mines and long-term facilities, such as the removal of deposits of coal mines, sealing of shafts

and portals, and removal of structures, shall be considered in determining the amount of bond to complete the reclamation and as determined in the associated cost estimates.

§ 910.801–11 Applicability.

(a) Operations subject to provisions of this Subpart are—

(1) Portions of underground coal mines which will continuously disturb the surface for a period in excess of 5 years and surface construction activities included under subsidence-control measures and mine-drainage treatment in 30 CFR 910.801–16;

(2) Coal-processing plants to be operated for more than 5 years from the date a permit is first issued under this part;

(3) Coal-refuse areas to be operated for more than 5 years;

(4) Coal-loading facilities to be operated for more than 5 years from the date a permit is first issued for it under this part; and

(5) Long-term coal-related facilities to be permitted for operation longer than 5 years in accordance with 30 CFR 910.785–21.

(b) Operations listed in paragraph (a) of this section, conducted within a permit area for a mine which includes areas or facilities not subject to this subpart, may be bonded as a separate increment of the surface mine permit area. If bonded separately, provisions of this Subpart shall apply to that increment. If bonded as part of the permit area which includes areas or facilities not subject to this subpart, bond liability shall continue in accordance with 30 CFR 910.805–13.

§ 910.801–12 Amount of bond required.

(a) The Office shall determine the bond amount necessary to complete reclamation of the area in accordance with 30 CFR 910.805–11.

(b) The area considered in the reclamation plan shall include the entire area disturbed.

(c) The amount of bond necessary to obtain a permit is the entire performance bond required during the term of the permit.

§ 910.801–13 Period of liability.

(a) The period of liability for every bond covering a long-term operation shall commence with issuance of a permit and extend until all reclamation, restoration, and abatement work under provisions of the permit have been completed, and the bond released in accordance with Subpart 910.807 or replaced in accordance with paragraph (b) of this section.

(b) To achieve the liability requirements for long-term operations, continuous bond coverage shall be provided. Bond coverage shall commence with issuance of a permit, cover the initial term of the bond, and be conditioned to extend, replace, or pay the full amount of the bond 120 days prior to the expiration of any bond term, which in no case shall be less than 5 years. Failure to extend or replace bond coverage not less than 120 days prior to expiration shall subject the bond to conditions of forfeiture under Subpart 910.808.

§ 910.801–14 Form of bond.

Performance bonding may be authorized by the Office in accordance with the methods listed in 30 CFR 910.806–11. An escrow account may be established on the basis of a coal-production rate, periodic-deposit schedule, or other similar schedule, so that replacement of surety bond with collateral bond in whole or in part may be authorized in accordance with 30 CFR 910.8906–13. Upon development of full bond coverage under an escrow account, any surety bond or indemnity agreement may be released. All bonding methods shall comply with the provisions and conditions set forth in this Subpart.

§ 910.801–15 Applicability of other sections.

Except to the extent that other provisions of Subparts 910.800 through 910.808 conflict with this subpart, all other portions of Subparts 910.800 through 910.808 shall apply to bonding requirements for underground coal mining operations and long-term coal-related facilities subject to this Subpart.

§ 910.801–16 Subsidence and mine drainage.

(a) 30 CFR 910.784–20 and 910.817–121 through 910.817–126 shall apply to the protection of surface-owner property rights against potential damage caused by unplanned subsidence. All measures undertaken to conform with 30 CFR 910.784–20(b) in the prevention of damage to surface facilities through planned subsidence shall be subject to performance bond coverage, and the estimated cost of such measures shall be included under 30 CFR 910.805–11. In addition, the bond liability shall extend to performance of the construction, site preparation, and relocations approved by the Office under 30 CFR 910.784–20(a). Release of bond coverage for construction of control measures to prevent subsidence shall be authorized only after final inspection, acceptance, and approval of the Office, and shall not be subject to the liability period of 30 CFR 910.805–13 or the bond-release criteria of 30 CFR 910.807–12. Procedures for seeking bond release for construction of surface measures shall be conducted in accordance with 30 CFR 910.807–11. Inspections of the construction of surface control measures shall be coordinated with the surface owner, if possible. If a surface owner refuses to allow an inspection, a separate request to waive inspection shall be sent to the surface owner, by certified mail with return receipt requested. If the Office receives no response within 30 days of delivery of the notice, or if within such period a response is received which waives the inspection or denies reasonable access for inspection, the Office may assume that the inspection has been waived and the applicable portion of the bond may be released without inspection having occurred.

(b) Performance-bond liability shall include construction of planned impoundments, conveying systems, and treatment facilities for mine drainage in accordance with the standards of 30 CFR 910.816–42, 910.816–48, 910.816–50, 910.817–42, 910.817–48, and 910.817–50. Bond release for such facilities shall be authorized only after final inspection, acceptance, and approval of the Office and is not subject to the period of liability of 30 CFR 910.805–13 or the bond-release criteria of 30 CFR 910.807–12. Procedures for seeking bond release shall be conducted in accordance with 30 CFR 910.807–11. Bond liability with respect to mine drainage shall extend to the construction and ultimate removal of facilities described in the permit application or reclamation plan as associated with the treatment of mine drainage. Bond coverage for any subsequent revegetation on that area previously used as an impoundment shall be subject to liability and releases of 30 CFR 910.805–13, 910.807–11, and 910.807–12. The estimated bond amount computed under 30 CFR 910.805–11 need not include continuous treatment, monitoring, or potential unpredictable expenses as a result of mine drainage.

§ 910.801–17 Bond forfeiture.

The Office shall forfeit a bond pursuant to this subpart if—

(a) The operator has not filed a performance bond or other security as required under this subpart, 120 days prior to bond expiration; or

(b) The Office determines that a permittee is subject to forfeiture under the criteria of 30 CFR 910.809–13(a).

Subpart 910.805—Amount and Duration of Performance Bond

§ 910.805-11 Determination of bond amount

(a) The standard applied by the Office in determining the amount of performance bond shall be the estimated cost to the Office if it had to perform the reclamation, restoration and abatement work required of a person who conducts surface coal mining and reclamation operations under a permit issued in accordance with this part and such additional work as would be required to achieve compliance with the general standards for revegetation in 30 CFR 910.816–116(b)(3) or 910.817–116(b)(3) in the event the permittee fails to implement an approved alternative postmining land use plan within the two years required by § 910.816–116(b)(3)(ii) or § 910.817–116(b)(3)(ii). This amount shall be based on, but not be limited to—

(1) The estimated costs submitted by the permittee in accordance with 30 CFR 910.780–18 and 910.784–13.

(2) The additional estimated costs to the Office which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work.

(3) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this paragraph.

(4) An additional amount based on factors of cost changes during the preceding 5 years for the types of activities accociated with the reclamation to be performed; and

(5) Such other cost information as may be required by or available to the Office.

§ 910.805-12 Minimum amount.

The amount of the bond for surface coal mining and reclamation operations shall be $10,000 at a minimum, for the entire area under one permit and be sufficient to assure performance of reclamation, restoration and abatement work required of a person who conducts surface coal mining and reclamation operations under the provisions of the permit issued under this part, if the work had to be performed by the Office in the event of forfeiture.

§ 910.805-13 Period of liability.

(a) Liability under performance bond(s) applicable to a permit shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under the provisions of a permit issued under this part has been completed, and the permit terminated by release of the permittee from any further liability in accordance with 30 CFR Subpart 910.807.

(b)(1) In addition to the period necessary to achieve compliance with all requirements of this part and the permit, the period of liability under performance bond shall continue for a minimum period in accordance with paragraph (b)(2) of this section, beginning with the last year of augmented seeding, fertilization, irrigation or other work.

(2) The minimum period of liability shall continue for not less than 5 years in areas with more than 26.0 inches average annual precipitation. The period of liability shall begin again whenever augmented seeding, fertilization, irrigation, or other work is required or conducted on the site prior to bond release, except as noted in paragraph (b)(3) of this section.

(3) The Office may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of bond liability, if the permittee can demonstrate that discontinuance of such measures after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices may include pest and vermin control, pruning, and repair of any rills and gullies and any reseeding and/or transplanting specifically necessitated by such actions, but shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the area covered by the bond.

(c) A portion of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the Office. Before determining that extended liability should apply to only a portion of the original bonded area, the Office shall determine that such portion—

(1) Is not significant in extent in relation to the entire area under the bond; and

(2) Is limited to isolated, distinguishable, and contiguous portions of the bonded area and does not comprise scattered or intermittent occurrences throughout the bonded area.

(d) If the Office approves a long-term intensive agricultural postmining land use, in accordance with 30 CFR Subpart 910.816–133, the applicable 5 year period of liability shall commence at the date of initial planting for such long-term intensive agricultural land use.

(e) If the Office issues a written finding approving a long-term intensive agricultural land use, the operation shall be exempt from the requirements of § 910.816–111(a) or § 910.817–111(a). Such a finding shall not constitute a grant of an exception of the bond-liability periods of this section.

(f) The bond liability of the permittee shall include only those actions which the operator is obliged to take under the permit, including completion of the reclamation plan in such a manner that the land will be capable of supporting a postmining land use approved under 30 CFR 910.816–133(c) or 910.817–133(c). Actions of third parties which are beyond the control and influence of the operator and for which the operator is not responsible under the permit need not be covered by the bond.

(g) If an area is separated under paragraph (c) of this section, that portion shall be bonded separately and the applicable period of liability, in accordance with 30 CFR 910.805–13(b), shall commence anew. The period of liability for the remaining area shall continue in effect without extension. The amount of bond on the original bonded area may be adjusted in accordance with 30 CFR 910.805–14.

§ 910.805-14 Adjustment of amount.

(a) The amount of the performance bond liability applicable to a permit shall be adjusted by the Office as the acreage in the permit area is revised, methods of mining operation change, standards of reclamation change, or when the cost of future reclamation, restoration or abatement work changes. The Office shall notify persons involved in bond coverage of any proposed bond adjustments and provide those persons an opportunity for an informal conference on the adjustment. For purposes of this Section, a person involved in bond coverage shall include the permittee, the surety, and any other person with a property interest in collateral posted under Subparts 910.800 through 910.808 who has in writing to the office requested such notification at the time the collateral is posted or the interest is acquired, whichever occurs later. The Office shall review each outstanding performance bond at the time that permit reviews are conducted under 30 CFR 910.788–11, and reevaluate those performance bonds in accordance with the standards in § 910.805–11.

(b) A permittee, surety, or any person with property interest in collateral offered as bond coverage may request reduction of the required performance bond amount upon submission of

evidence to the Office proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the Office if it has to complete the reclamation and therefore warrants a reduction of the bond amount. The request shall be considered as a request for partial bond release in accordance with the procedures of 30 CFR Subpart 910.807.

Subpart 910.806—Form, Conditions, and Terms of Performance Bonds and Liability Insurance

§ 910.806-11 Form of the performance bond.

The form for the performance bond shall be prescribed by the Office in accordance with the provisions of 30 CFR Subparts 910.805 and 910.806. The Office may allow—

(a) A surety bond,

(b) A collateral bond,

(c) An escrow account,

(d) Self-bonding,

(e) Combined surety/escrow bonding, or

(f) A combination of any of these bonding methods.

§ 910.806-12 Terms and conditions of the bond.

(a) The performance bond shall be in an amount determined by the Office as provided in 30 CFR 910.805-11 and 910.805-12.

(b) The performance bond shall be payable to the Office.

(c) The performance bond shall be conditioned upon faithful performance of all of the requirements of the conditions of the permit issued under this part and shall cover the entire permit area.

(d) The duration of the bond shall be for the time period provided in 30 CFR 910.805-13.

(e) Surety bonds shall be subject to the following conditions:

(1) The Office shall not accept the bond of a surety company unless the bond shall not be cancellable by the surety at any time for any reason including, but not limited to non-payment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed may be cancelled with the consent of the Office; provided, the surety gives at least sixty days notice to both the permittee and the Office of the intent to cancel prior to cancellation. Such notice shall be by certified mail and shall not be effective until received by both the permittee and Office. Cancellation shall not be effective for lands subject to bond coverage which are disturbed after receipt of notice, but prior to approval by the Office. The Office may approve such cancellation only if a replacement bond is filed by the permittee prior to the cancellation date, or the permit is amended so that the surface coal mining operations approved under the permit are reduced to the degree necessary to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with 30 CFR Subpart 910.805 and the remaining performance bond liability.

(2) The Office shall not accept a surety company's bond in excess of 10 percent of the surety company's surplus to policy holders, as provided by Georgia Code Ann. § 56-412.

(3) The Office shall not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation, as provided in paragraph (e)(2) of this section.

(4) The Office may provide in the bond that the amount shall be confessed to judgment upon forfeiture, if this procedure is authorized by State law.

(5) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(6) The bond shall provide that—

(i) The surety will give prompt notice to the permittee and the Office of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business;

(ii) In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the Office;

(iii) Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation of § 910.800-11(b). The Office shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period the Office shall conduct weekly inspections to ensure continuing compliance with other permit requirements and this part. Such notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a "pattern of willful violation" under 30 CFR 910.843-13 and need not be reported as a past violation in permit applications under 30 CFR 910.778-14 or 910.782-14. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

(f) Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(1) The Office shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this subpart.

(2) The Office shall value collateral at their current market value, not face value.

(3) The Office shall require that certificates of deposit be assigned to the Office, in writing, and upon the books of the bank issuing such certificates.

(4) The Office shall not accept an individual certificate for a denomination in excess of $40,000, or maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C.

(5) The Office shall require the banks issuing these certificates to waive all rights of setoff or liens which it has or might have against those certificates.

(6) The Office shall only accept automatically renewable certificates of deposit.

(7) The Office shall require the applicant to deposit sufficient amounts of certificates of deposit, to assure that the Office will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this Subpart.

(g) Letters of credit shall be subject to the following conditions—

(1) The letter may only be issued by a bank organized or authorized to do business in the U.S.

(2) Letters of credit shall be irrevocable during their terms. The Office may approve the use of letters of credit as security in accordance with a schedule approved with the permit. Any bank issuing a letter of credit for the purposes of this paragraph shall notify the Office in writing at least 90 days prior to the maturity date of such letter of credit or the expiration of the letter of credit agreement. Letters of credit utilized as security in areas requiring continuous bond coverage shall be forfeited and collected by the Office if not replaced by other suitable evidence of financial responsibility at least 30 days before the expiration date of the letter of credit agreement.

(3) The letter must be payable to the Office in part or in full upon demand and receipt from the Office of a notice of forfeiture issued in accordance with 30 CFR Subpart 910.808.

(4) The Office shall not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(5) The Office shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided by Georgia Code Ann. § 41A–1306, 1309.

(6) The Office may provide in the indemnity agreement that the amount shall be confessed to judgment upon forfeiture, if this procedure is authorized by State law.

(7) The bond shall provide that—

(i) The bank will give prompt notice to the permittee and the Office of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

(ii) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Office;

(iii) Upon the incapacity of a bank by reason of bankruptcy, insolvency, suspension or revocation of its charter or license, the permittee shall be deemed to be without bond coverage in violation of 30 CFR 910.800–11(b). The Office shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period the Office shall conduct weekly inspections to ensure continuing compliance with other permit requirements and this part. Such notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a "pattern of willful violation" under 30 CFR 910.843–13 and need not be reported as a past violation in permit applications under 30 CFR 910.778–14 and 910.782–14. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

(h) Real and personal property posted as a collateral bond shall meet the following criteria:

(1) The applicant shall grant the Office a mortgage or perfected first-lien security interest in real or personal property.

(2) The instrument creating such mortgage or security interest shall vest such interest in the Office so as to secure the right and power in the Office to immediately attach said property concurrent with the issuance of a notice of forfeiture under 30 CFR Subpart 910.808 and to sell or otherwise dispose of the property by a public or private transaction, and to establish the Office as the whole secured creditor with respect to such property, so as to assure the Office of a preferred claim over all other creditors in case of bankruptcy. For classes of property with respect to which a preferred claim cannot be maintained against subsequent bona fide purchasers for value under the Uniform Commercial Code, the instrument shall require possession of the property by the Office. The property subject to the security interest shall not be subject to any conflicting or prior security interest. The instrument creating the interest in real property shall be recorded as authorized for fee interests. The instrument creating the security interest in personal property shall be recorded in accordance with, and otherwise conform to, the requirements of the Uniform Commercial Code for perfecting a security interest in the State. In order for the Office to evaluate the adequacy of the property offered to satisfy this requirement, the applicant shall submit a schedule of the real or personal property which shall be pledged to secure the obligations under the indemnity agreement. The schedule shall include—

(i) A description of the property;

(ii) The fair market value as determined by at least two independent appraisals conducted by appraisers certified in the State in which the property is located. The reasonable expense of the appraisals shall be borne by the permittee, and final acceptance of the value of property for bonding purposes shall be subject to Office determination and shall be based on findings by appointed appraisers when deemed necessary;

(iii) Proof of the mortgagor's possession of, and title to, the unencumbered real property within the State which is offered to secure the obligations under the bond. Such proof shall include—

(A) If the interest arises under a Federal or State lease, a status report prepared by a non-affiliated attorney competent to evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold can be transferred to the Office upon forfeiture; and

(B) If the title is in fee, a title certificate or similar evidence of title and encombrances prepared by an abstract office authorized to transact business within the State.

(3) The property may include land which is part of the permit area only after reclamation standards of phase II are met on such land. The bonding value of land within a permit area may not exceed 85 percent of the appraised value if reclaimed to standards of phase II reclamation, based on the value of surrounding land less the value for any coal in place and the current uses of the land. Land pledged as security shall not be mined under any permit.

(4) Proof that the person granting the security interest holds possession of, and title to, personal property within the State which is offered to secure the obligation of the permittee under the bond. Evidence of such ownership shall be submitted in a form satisfactory to the Office. The Office may accept a perfected first-lien security interest in negotiable bonds of the U.S. Government, general revenue bonds of the State, municipal bonds, or rated marketable securities, excluding commodity issues, of non-affiliated companies registered under the Federal Securities Act, which are rated at the highest rating offered by a nationally recognized securities rating service. The ratio of bond value to market value of each security or bond shall be determined by the Office on the basis of its marketability and a financial analysis. The personal property offered shall not include—

(i) Property in which a security interest is held by any other person;

(ii) Goods which the operator sells in the ordinary course of his or her business;

(iii) Fixtures;

(iv) Securities which do not meet the standards of § 910.806–12(h)(4); or

(v) Certificates of deposit which are not federally insured or are issued by a depository that is unacceptable to the Office.

(i) The estimated bond value of all collateral posted as bond assurance under 30 CFR 910.806–12(f), (g), and (h) shall be subject to a margin—bond value to market value ratio—determined by the Office. This margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the Office in performing reclamation. The bond value of collateral may be evaluated at any time, but shall be evaluated as part of permit renewal. In no case shall the bond value exceed the market value.

§ 910.806–13 Escrow bonding.

(a) The Office may authorize the operator to supplement a bonding program through the establishment of an escrow account deposited in one or more federally insured accounts payable on demand only to the Office or deposited with the Office directly. Contributions to the account may be based on acres affected or tons of coal produced or any other rate approved by the Office. In all cases, the total bond

including the escrow amount, as determined by the Office in the bonding schedule, shall not be less than the amount required under 30 CFR Subpart 910.805 including any adjustments, less amounts released in accordance with 30 CFR Subpart 910.807.

(b) Escrow funds deposited in federally insured accounts shall not exceed the maximum insured amount under applicable Federal insurance programs such as by FDIC or FSLIC.

(c) Interest paid on and escrow account shall be retained in the escrow account and applied to the bond value of the escrow account unless the Office has approved that the interest be paid to the operator. In order to qualify for interest payment, the operator shall request such action in writing during the permit-application process under 30 CFR 910.800–11.

(d) Certificates of deposit may be substituted for escrow accounts upon approval of the Office. Provisions of 30 CFR 910.806–12(f) shall apply to certificates of deposit as a collateral bond.

§ 910.806–14 Self-bonding.

(a) The Office may accept a self-bond from the applicant under the following conditions:

(1) The applicant shall designate the name and address of a suitable agent to receive service of process in the State where the surface coal mining operation is located.

(2) The applicant, or the applicant's parent organization in the event the applicant is a subsidiary corporation, has a net worth, certified by a certified public accountant, of no less than six times the total amount of self-bond obligations on all permits issued to the applicant in the United States for surface coal mining and reclamation operations.

(3) The applicant grants the Office a mortgage or security interest in real or personal property located in the State which shall have a fair market value equal to or greater than the obligation created under the indemnity agreement.

(4) The instrument creating such mortgage or security interest shall vest such interest in the Office so as to secure the right and power in the Office to immediately attach said property concurrent with the issuance of a notice of forfeiture under 30 CFR Subpart 910.808, and to sell or otherwise dispose of the property by a public or private transaction, and to establish the Office as the sole secured creditor with respect to such property, so as to assure the Office of a preferred claim over all other creditors in case of bankruptcy. For classes of property with respect to which a preferred claim cannot be maintained against subsequent bona fide purchasers for value under the Uniform Commercial Code, the instrument shall require possession of the property by the Office. The property subject to the security interest shall not be subject to any conflicting or prior security interest. The instrument creating the interest in real property shall be recorded as authorized for fee interests.

The instrument creating the security interest in personal property shall be recorded in accordance with, and otherwise conform to, the requirements of the Uniform Commercial Code for perfecting a security interest in the State.

In order for the Office to evaluate the adequacy of the property offered to satisfy this requirement, the applicant shall submit a schedule of the real or personal property which will be pledged to secure the obligations under the indemnity agreement. The schedule shall include—

(i) A description of the property;

(ii) The value of the property. The property shall be valued at fair market value as determined by an appraisal conducted by appraisers appointed by the Office. The appraisal shall be expeditiously made, and a copy thereof furnished to the Office and the permittee. The reasonable expense of the appraisal shall be borne by the permittee; and

(iii) Proof of the mortgagor's possession of, and title to, the unencumbered real property within the State which is offered to secure the obligations under the bond. Such proof shall include—

(A) If the interest arises under a State lease, a status report prepared by an attorney, satisfactory to the Office as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred to the Office upon forfeiture;

(B) If title is in fee, a title certificate or similar evidence of title and encumbrances prepared by an abstract office authorized to transact business within the State and satisfactory to the Office; and

(C) The property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands the bonds for which have been released. In addition, any land used as security shall not be mined while it is security.

(iv) Proof that the person granting the security interest holds possession of, and title to, personal property within the State which is offered to secure the obligation of the permittee under the bond. Evidence of such ownership shall be submitted in a form satisfactory to the Office. The personal property offered shall not include—

(A) Property in which a security interest is held by any person;

(B) Goods which the operator sells in the ordinary course of his or her business;

(C) Fixtures;

(D) Securities which are not negotiable bonds of the U.S. Government or general bonds of the State;

(E) Certificates of deposit which are not federally insured or are issued by a depository that is unacceptable to the Office.

(5) The applicant, or the applicant's parent organization in the event the applicant is a subsidiary corporation, shall have demonstrated to the satisfaction of the Office a history of financial solvency and continuous operation as a business entity for 10 years prior to filing the application. For purposes of this Paragraph, such demonstration shall include a financial statement in sufficient detail to allow the Office to determine whether it is reasonable to predict from the ownership patterns and financial history of the applicant that it will be financially capable of completing all reclamation requirements throughout the life of the surface coal mining and reclamation operation. Such statement shall include, at the minimum—

(i) Identification of operator by—

(A) For corporation, name, address, telephone number, State of incorporation, principal place of business, principal office in the State where the operation is located, the name, title and authority of persons signing the application, and a statement of authority to do business in the State where the operation is located; and

(B) For all other forms of business enterprise, name, address and telephone number and statement of how the enterprise is organized, law of the State under which it is formed, place of business, relationship and authority of the person signing the application, and principal office in the State where the operation is located;

(ii) Estimated amount of bond likely to be required after approval of the permit which will be determined in accordance with 30 CFR Subpart 910.805, and the estimated maximum liability likely to be required during the life of the mine;

(iii) History of other bonds procured by operator for mining operations in any State, including—

(A) Names of sureties, if any, for outstanding bonds;

(B) Amounts of outstanding bonds;

(C) Name of any surety which denied any bond; and

(D) Unsatisfied claims against any bond;

(iv) Brief chronological history of business operations conducted within the last 10 years, including information showing—

(A) Continuous operation for the 10-year period, and

(B) The jurisdiction within which each operation has been conducted;

(v) A financial statement, including—

(A) Audited financial statements prepared and certified by a disinterested independent certified public accountant. All statements shall be prepared following generally accepted principles of accounting and shall include—

(1) A common-size comparative balance sheet which shows assets, liabilities, and owner's equity for the preceding 10-year period. The Office shall have the discretion to increase this length of time to any period which is necessary to show financial solvency and continuous operation. The common-size comparative balance sheet shall be detailed with regard to owner's equity, especially retained earnings, so as to set forth a series of retained-earning statements showing the changes that have occurred in retained earnings during the required period of time;

(2) A common-size comparative income statement which shows all revenues and expenses for the preceding 10-year period or for such longer time as is required for the common-size comparative balance sheet; and

(3) A statement of the operator's working capital and an analysis of assets and liabilities which shall include the following calculation for each year covered by the common-size comparative balance sheet and income statement—

(i) A schedule showing the percentage of each classification of current assets to total current assets;

(ii) The current ratio;

(iii) The acid-test ratio;

(iv) The liquidity ratio;

(v) The asset ratio; and

(vi) The return on investment;

(4) In addition to the above, all ratios must be calculated with the bond amount added to the operator's current or total liabilities; and

(5) A ratio of the operator's capital assets subject to a mortgage or security interest to those liabilities to which the assets are subject. If the offer of real property or collateral for the bond will alter this ratio, this must be illustrated.

(B) A satisfactory basis to compare all ratios submitted pursuant to (A) above.

(C) The Office shall have the right to challenge, prohibit, or prescribe the inclusion of any specific item or the value thereof within any of the above statements or ratios. If the value is challenged, the Office shall appoint an appraiser or appraisers to value the item. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the Office and the permittee. The reasonable expense of the appraisers shall be borne by the operator. The findings of the appraisal shall be final and binding.

(D) A final determination by the independent certified public accountant regarding the operator's ability to satisfactorily meet all obligations and costs under the proposed reclamation plan for the life of the mine; and

(E) If the Office deems necessary, evidence of financial responsibility through letters of credit, or a rating of securities issued to the applicant by a recognized national securities rating company.

(vi) A statement listing any liens filed on the assets of the permittee or applicant in any jurisdiction in the United States, actions pending or judgments rendered within the last 10 years against the permittee or applicant but not satisfied, and petitions or actions in bankruptcy including actions for reorganization. Each such lien, action, petition, or judgment shall be identified by the named parties, the jurisdiction in which the matter was filed, the case, file, and final disposition or current status of any action still pending; and

(vii) A statement listing any notices issued by the Securities and Exchange Commission or proceedings initiated by any party alleging a failure to comply with any public disclosure or reporting requirement under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof.

(6)(i) The indemnity agreement has been executed by the applicant, and said agreement has also been executed by—

(A) If a corporation, then by two corporate officers who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided;

(B) To the extent the history or assets of a parent organization are relied upon to make the showings of this Subpart, then the parent organization and every parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of (A) above;

(C) If the applicant is a partnership, all of its general partners and their parent organization or principal investors; and

(D) If the applicant is a married individual, the applicant's spouse.

(ii) The name of each person who signs the indemnity agreement shall be typed or printed beneath the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the indemnity agreement;

(iii) The indemnity agreement shall be a binding obligation, jointly and severally, on all who execute it;

(iv) For purposes of this paragraph, principal investor or parent-organization means anyone with a 10-percent or more beneficial ownership interest, directly or indirectly, in the applicant.

(7) If at any time the conditions upon which the self-bond was approved no longer prevail, the Office shall require the posting of a surety or collateral bond before mining operations may continue.

§ 910.806-15 Replacement of bonds.

(a) The Office may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds.

(b) The Office may allow the permittee to replace existing surety or collateral bonds with a self-bond, provided that the permittee meets the requirements of self-bonding as provided in 30 CFR Subpart 910.806-14.

(c) The Office shall not release existing performance bonds until the permittee has submitted and the Office has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this section shall not constitute a release of bond under 30 CFR Subpart 910.807.

§ 910.806-16 Terms and conditions for liability insurance.

(a) The Office shall require the applicant to submit at the time of permit application, a certificate certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certificate shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells,

and entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury shall be $300,000 for each occurrence and $500,000 aggregate; and minimum insurance coverage for property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including completion of all reclamation operations under a permit issued under this part.

(c) The policy shall include a rider requiring that the insurer notify the Office whenever substantive changes are made in the policy,including any termination or failure to renew.

(d) The Office may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable State self-insurance requirements.

§ 910.806–17 Combined surety/escrow bonding.

(a) The Office may accept a combined surety/escrow bonding schedule provided that—

(1) A surety bond payable to the Office is posted in the amount determined under 30 CFR 910.805–11 for reclamation of each successive increment, and

(2) An interest-bearing escrow account payable to the Office with a predetermined deposit amount and frequency is established.

(b) Conditions of the combined surety/escrow bonding method shall be as follows: (1) *Surety bond.* (i) The term of the surety bond shall be not less than 2 years.

(ii) The amount of the surety bond shall always be sufficient to cover the difference between the escrow balance and the total reclamation cost.

(iii) The surety bond may be reduced in amount, but the liability remaining shall depend on the escrow-deposit rate which shall be subject to provisions of 30 CFR 910.805–14 and 910.806–15.

(iv) The surety bond shall be noncancellable by the surety during the bond term.

(v) Surety-bond coverage may be released by the Office without applying the bond-release criteria of 30 CFR Subpart 910.807 at any time during the bond term, provided provisions of paragraph (b)(2)(vi) of this section are met or are in accordance with the provisions of bond replacement under 30 CFR 910.806–15.

(vi) The surety bond is subject to the conditions of bond forfeiture of 30 CFR Subpart 910.808, including noncompliance with escrow-account provisions of paragraph (b)(2) of this section.

(2) *Escrow account.* (i) The terms and conditions of the escrow account shall be developed jointly by the operator, surety, and Office. For the purposes of this section, the development of the escrow account shall be based on a production basis in an amount not less than that required to make the escrow account equal to or greater than the bond requirement within the term of the surety bond as agreed on jointly by the operator, the surety, and the Office. Deposits to the escrow account by the operator shall be made monthly and so reported to the Office. Failure to make deposits on schedule shall be just cause for action by the Office.

(ii) A certified escrow-account balance statement shall be provided quarterly to the surety and the Office.

(iii) Provisions of the escrow account shall be in accordance with 30 CFR 910.806–13.

(iv) The deposit amount shall be adjusted to provide for changing reclamation costs in accordance with 30 CFR 910.805–14. However, when the escrow account equals or exceeds the total bonding amount, the monthly payment of the operator shall continue, at the option of the Office, in an amount necessary to provide for any foreseeable adjustments.

(v) The escrow account shall be subject to the bond-forfeiture conditions of 30 CFR Subpart 910.808.

(vi) The escrow-account balance shall equal the initial bond amount, plus any adjustments required by paragraph (b)(2)(i) of this section, 120 days prior to surety-bond termination, unless the total bond amount required has been previously reduced through the bond-release procedures of 30 CFR 910.807.

(c) Release of liability under the escrow account shall be subject to the provisions of 30 CFR Subpart 910.807.

(d) Provisions of 30 CFR Subpart 910.807 may be applied to both surety- and escrow-bond coverage during the bond term.

(a) The surety-escrow combination may be repeated successively or amended during the term by replacing the escrow account with a surety bond, and reestablishing the escrow terms and deposit rate, subject to Office approval.

Subpart 910.807—Procedures, Criteria and Schedule for Release of Performance Bond

§ 910.807–11 Procedures for seeking release of performance bond.

(a) *Bond release application and contents.* The permittee or any person authorized to act on his behalf, may file an application with the Office for release of all or part of the performance bond liability applicable to a particular permit after all reclamation restoration and abatement work in a reclamation phase as defined in 30 CFR 910.807–12(e) has been completed on the entire permit area or on an area approved pursuant to 30 CFR 910.800–11(b)(2) for the incremental filing and release of bond liability. The procedures of this section also apply to requests made pursuant to 30 CFR 910.805–14(b).

(1) Applications may only be filed at times or seasons that allow the Office to evaluate properly the reclamation operations alleged to have been completed. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the operation and reclamation plan required in Subparts 910.770 through 910.795.

(2) The application shall include copies of letters sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s). These letters shall be sent before the permitte files the application for release.

(3) Within 30 days after filing the application for release the permittee shall submit proof of publication of the advertisement required by paragraph (b) of this section. Such proof of publication shall be considered part of the bond release application.

(b) *Newspaper advertisement of application.* At the time of filing an application under this Section, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement shall—

(1) Be placed in the newspaper at least once a week for four (4) consecutive weeks;

(2) Show the name of the permittee, including the number and date of issuance or renewal of the permit;

(3) Show the precise location and the number of acres of the lands subject to the application;

(4) Show to total amount of bond in effect for the permit area and the amount for which release is sought;

(5) Summarize the reclamation, restoration or abatement work done, including, but not limited to, backstowing or mine sealing, if applicable, and give the dates of completion of that work;

(6) Describe the reclamation results achieved, as they relate to compliance with the approved operation and

reclamation plan and permit issued under this Part;

(7) State that written comments, objections, and requests for a public hearing or informal conference may be submitted to the Office, provide the address of the Office, and the closing date by which comments, objections, and requests must be received.

(c) *Objections and requests for hearing.* Written objections to the proposed bond release and requests for an informal conference may be filed with Office by any affected person within thirty (30) days following the last advertisement of the filing of the application. For the purpose of this Section, an affected person is—

(1) Any person with a valid legal interest which might be adversely affected by bond release; and

(2) The responsible officer or head of any Federal, State or local government agency which—

(i) Has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved, or

(ii) Is authorized to develop and enforce environmental standards with respect to surface coal mining and reclamation operations.

(d) *Inspection.* The Office shall inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release, or as soon thereafter as weather conditions permit. The surface owner, or agent, or lessee shall be given notice of such inspection and may participate with the Office in making the bond release inspection.

(e) *Informal conferences.* The Office schedule a conference if written objections are filed and a conference is requested. The conference shall be held in the locality of the permit area for which bond release is sought. The Office may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(1) Notice of an informal conference shall be published in the Federal Register, and in a newspaper of general circulation in the locality of the conference, at least two weeks before the date of the conference.

(2) The informal conference shall be held within 30 days from the date of the notice.

(3) The requirements of Section 5 of the Administrative Procedures Act (5 U.S.C. Sec. 554) shall not apply to the conduct of the informal conference.

(4) An electronic or stenographic record shall be made of the conference and the record maintained for access by the parties, until final release of the bond, unless recording is waived by all of the parties to the conference.

(f) *Review and decision.* (1) The Office shall consider, during inspection, evaluation, hearing and decision—

(i) Whether the permitee has met the criteria for release of the bond under § 910.807–12;

(ii) The degree of difficulty in completing any remaining reclamation, restoration or abatement work; and

(iii) Whether pollution of surface and subsurface water is occurring, the probability of future pollution or the continuance of any present pollution, and the estimated cost of abating any pollution.

(2) If no informal conference has been held under paragraph (e) of this section, the Office shall notify the permittee and any other interested parties in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from the receipt of the completed application, or within thirty (30) days from the close of the public comment period if comments were received, whichever occurs last.

(3) If there has been an informal conference held under paragraph (e) of this section, the notification of the decision shall be made to the permittee and all interested parties within thirty (30) days after conclusion of the conference.

(4) The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee and all interested parties of their right to request a public hearing in accordance with paragraphs (g) and (h) of this section.

(5) The Office shall not release the bond until: (i) The town, city or other municipality nearest to, or the county in which the surface coal mining and reclamation operation is located has received at least thirty (30) days notice of the release by certified mail; and

(ii) The right to request a public hearing pursuant to paragraph (g) of this section has not been exercised, or a final decision by the hearing authority approving the release has been issued pursuant to paragraph (h) of this section.

(g) *Administrative review.* Following receipt of the decision of the Office under paragraph (f) of this section, the permittee or any affected person may request a public hearing conducted by the Office of Hearings and Appeals, Department of the Interior, on the reasons for that decision. Requests for hearings shall be filed within 30 days after the permittee and other parties are notified of the decision under paragraph (f) of this section.

(h) *Public hearings.* Hearings shall be conducted in accordance with 5 U.S.C. Sec. 554 and the rules of the Department's Office of Hearings and Appeals, 43 CFR Part 4.

§ 910.807–12 Criteria and schedule for release of performance bond.

(a) The Office may release portions of the liability under performance bonds applicable to the permit area following the completion of reclamation phases as defined in paragraph (e) of this section.

(b) The maximum liability of performance bonds applicable to an increment or permit area which may be released shall be calculated on the following basis: (1) Release of an amount not to exceed 60 percent of the total bond amount on the increment or permit area upon completion of phase I reclamation.

(2) Release of an additional amount not to exceed 25 percent of the total original bond amount on the permit area or an increment upon completion of phase II reclamation, but in all cases the amount remaining shall be sufficient to reestablish vegetation and reconstruct any drainage structures.

(3) Release of the remaining portion of the total performance bond on the increment or permit area after standards of phase III reclamation have been attained and final inspection and procedures of 30 CFR 910.807–11 have been satisfied.

(c) The Office may choose to release all bond coverage for an increment if the phase III reclamation of the increment is complete. The portion of the permit area being released from bond coverage shall be capable of supporting the proposed postmining land use independent of the successful completion of the reclamation portions of the permit area still under bond or not yet initially disturbed. No increment shall be totally released from the permit area until conditions of phase III reclamation for the last increment of the permit area have been met.

(d) The Office shall require performance-bond liability, applicable to the permit area or an increment, in the amount necessary to—

(1) Allow someone other than the operator to complete the approved reclamation plan, achieving compliance with this Part of the permit;

(2) Allow someone other than the operator to abate any significant environmental harm to air, water, or land resources, or danger to public health and safety prior to release of the land under the terms of the permit;

(3) Achieve the capability of supporting any alternative postmining

land-use plan proposed in the permit, consistent with 30 CFR 910.816–116, 910.816–133, 910.817–133, including such measures as may be necessary in the event the permittee fails to undertake development within the 2 years required by 30 CFR 910.806–116(b)(3)(ii) or 910.817–116(b)(3)(ii); and

(4) Fulfill the minimum bond amount of $10,000 as required by 30 CFR 910.805–12.

(e) For the purposes of this subpart—

(1) Reclamation phase I shall be deemed to have been completed when the permittee completes backfilling, topsoil replacement, regrading, and drainage control in accordance with the approved reclamation plan; and

(2) Reclamation phase II shall be deemed to have been completed when—

(i) Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

(ii) The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of Subparts 910.815 through 910.828; and

(iii) With respect to prime farmlands, soil productivity has been returned to the level of yield as required by 30 CFR 910.785–17 and Subpart 910.823 when compared with non-mined prime farmland in the surrounding area as determined from the soil survey performed under the plan approved under 30 CFR 910.785–17; and

(iv) The provisions of a plan approved by the Office for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the Office; and

(3) Reclamation phase III will be deemed to have been completed when—

(i) The permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan so that the land is capable of supporting any postmining land use approved pursuant to 30 CFR 910.816–133 or 910.817–133;

(ii) The permittee has achieved compliance with the requirements of this Part and the permit; and

(iii) The applicable liability period under Section 515(b)(20) of the Act and 30 CFR 910.805–13(b) has expired.

Subpart 910.808—Performance Bond Forfeiture Criteria and Procedures

§ 910.808–11 General.

(a) The Office shall forfeit all or part of a bond for any permit where required or authorized by § 910.808–13.

(b) The Office may withhold forfeiture, if the permittee and surety, if applicable, agree to a compliance schedule to comply with the violations of the permit or bond conditions.

(c) The Office may allow the surety to complete the reclamation plan if the surety can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the alternative postmining land use approved by the Office. No bond shall be released, except for partial releases authorized under 30 CFR 910.807–11, until successful completion of all reclamation under the terms of the permit, including applicable liability periods of 30 CFR Subpart 910.807.

§ 910.808–12 Procedures.

(a) In the event forfeiture of the bond is required by §§ 910.808–11 and 910.808–13, the Office shall—

(1) Send written notification by certified mail, return receipt requested to the permittee, and the surety on the bond, if applicable, of the Office's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited;

(2) Advise the permittee and surety, if applicable, of any rights of appeal that may be available from that determination under 5 U.S.C. Section 554 and 43 CFR Part 4; and

(3) Proceed in an action for collection on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this section, for the amount forfeited, if an appeal is not filed within a time established by the Office and a stay of collection issued by the hearing authority or such appeal is unsuccessful; and

(4) If an appeal is filed, defend the action.

(b) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the Office.

(c) The Office may forfeit any or all bonds deposited for an entire permit area or any increment thereof in order to satisfy 30 CFR 910.808–11 through 910.808–14. Liability under any bond covering any increment of the permit area shall extend to the entire permit area.

(d) The Office shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area on which bond coverage applies, and to cover associated administrative expenses.

§ 910.808–13 Criteria for forfeiture.

(a) A bond shall be forfeited, if the Office finds that—

(1) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(2) The permittee has failed to conduct the surface mining and reclamation operations in accordance with conditions of this part and the permit within the time required, and the Office has determined that it is necessary in order to fulfill the requirements of the permit and the reclamation plan, to have someone other than the operator correct or complete reclamation;

(3) The permit of the area under bond has been revoked, unless the operator assumes liability for completion of reclamation work and is, in the opinion of the Office, diligently and satisfactorily performing such work; or

(4) The permittee has failed to comply with a compliance schedule approved pursuant to § 910.808–11(b).

(b) A bond may be forfeited, if the Office finds that—

(1) The permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court; or

(2) A creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials, facilities at the permit area or on the collateral pledged to the Office; and

(3) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with the permit.

§ 910.808–14 Determination of forfeiture amount.

The Office shall either—

(a) Determine the amount of the bond to be forfeited on the basis of the estimated cost to the Office or its contractor to complete the reclamation plan and other regulatory requirements in accordance with this part, and the requirements of the permit; or

(b) Forfeiture the entire amount of the bond for which liability is outstanding and deposit the proceeds thereof in an escrow account to offset costs and adminstrative expenses associated with the conduct of reclamation, restoration or abatement activities by the Office.

(c) A bond may be forfeited, if the Office finds that—

(1) The permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court; or

(2) A creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials,

facilities at the permit area or on the collateral pledged to the Office; and

(3) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with the permit.

§ 910.808–14 Determination of forfeiture amount.

The Office shall either—

(a) Determine the amount of the bond to be forfeited on the basis of the estimated cost to the Office or its contractor to complete the reclamation plan and other regulatory requirements in accordance with this part, and the requirements of the permit; or

(b) Forfeit the entire amount of the bond for which liability is outstanding and deposit the proceeds thereof in an escrow account to offset costs and administrative expenses associated with the conduct of reclamation, restoration or abatement activities by the Office. Any remainder amount of the bond in excess of the cost expended to complete the reclamation activities shall be reimbursed to the permittee.

Subpart 910.815—Performance Standards—Coal Exploration

§ 910.815–11 General responsibility of persons conducting coal exploration.

(a) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 30 CFR 910.776–11 and shall comply with § 910.815–15.

(b) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed in the area described by the written approval from the Office, shall comply with the procedures described in the exploration and reclamation operations plan approved under 30 CFR 910.776–12 and shall comply with § 910.815–15.

§ 910.815–13 Required documents.

Each person who conducts coal exploration which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval of the Office for the activities granted under 30 CFR 910.776–12. The written approval shall be available for review by the authorized representative of the Office upon request.

§ 910.815–15 Performance standards for coal exploration.

The performance standards in this Section are applicable to coal exploration which substantially disturbs land surface:

(a) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 30 CFR 910.780–16(b) shall not be disturbed during coal exploration.

(b)The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under Subparts 910.770 through 910.792.

(c)(1) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road in the exploration area which is used less than 6 months shall comply with the provisions of 30 CFR 910.816–170 through 910.816–176. If the road will be used longer than 6 months, it shall comply with the provisions of 30 CFR 910.816–150 through 910.816–166.

(3) Existing roads may be used for exploration in accordance with the following: (i) All applicable Federal, State, and local requirements shall be met.

(ii) If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, them paragraph (g) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

(iii) If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of 30 CFR 910.816–150 through 910.816–166, as appropriate, are met for the design, construction, alteration, and maintenance of the road.

(4) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either—

(i) To a condition equal to or better than their pre-exploration condition; or

(ii) To the condition required for permanent roads under 30 CFR 910.816–150 through 910.816–166, as appropriate.

(d) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(e) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the Office.

(f) Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or his or her agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the Office and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved postexploration land use and in accordance with the following:

(1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the preexploration and postexploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this Paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

(g) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that—

(1) Prevents erosion;

(2) To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area; and

(3) Complies with all other applicable State or Federal requirements.

(h) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 30 CFR 910.816–13, 910.816–14, and 910.816–15.

(i) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the Office determines may remain to—

(1) Provide additional environmental quality data;

(2) Reduce or control the on-and off-site effects of the exploration activities; or

(3) Facilities future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.

(j) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in 30 CFR 910.816–45 or sedimentation ponds which comply with 30 CFR 910.816–46. The Office may specify additional measures which shall be adopted by the person engaged in coal exploration.

(k) Toxic- or acid-forming materials shall be handled and disposed of in accordance with 30 CFR 910.816–48 and 910.816–103. If specified by the Office, additional measures shall be adopted by the person engaged in coal exploration.

§ 910.815–17 Requirement for a permit.

Any person who extracts coal for commercial sale during coal exploration operations must obtain a permit for those operations from the Office under Subparts 910.770 through 910.795. No permit is required if the Office makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.

Subpart 910.816—Performance Standards—Surface Mining Activities

§ 910.816–11 Signs and markers.

(a) Specification. Signs and markers required under this Subpart shall—

(1) Be posed and maintained by the person who conducts the surface mining activities;

(2) Be of a uniform design throughout the operation that can be easily seen and read;

(3) Be made of durable material; and

(4) Conform to local ordinances and codes.

(b) *Duration of maintenance.* Signs and markers shall be maintained during the conduct of all activities to which they pertain.

(c) *Mine and permit identification signs.* (1) Identification signs shall be displayed at each point of access to the permit area from public roads.

(2) Signs shall show the name, business address, and telepone number of the person who conducts the surface mining activities and the identification number of the current permit authorizing surface mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) *Perimeter markers.* The perimeter of a permit area shall be clearly marked before the beginning of surface mining activities.

(e) *Buffer zone markers.* Buffer zones shall be marked along their boundaries as required under § 910.816–57.

(f) *Blasting signs.* If blasting is conducted incident to surface mining activities, the person who conducts these activities shall:

(1) Conspicuously display signs reading, 'Blasting Area' along the edge of any blasting area that comes within 50 feet of any road within the permit area, or within 100 feet of any public road right of way.

(2) Place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning! Explosives in Use', which clearly explain the blast warning and all clear signals that are in use, and which explain the marking of blast areas and charged holes within the permit area.

(g) *Topsoil markers.* Where topsoil or other vegetation supporting material is segregated and stockpiled as required under § 910.816–23, the stockpiled material shall be clearly marked.

§ 910.816–13 Casing and sealing of drilled holes: General requirements.

Each exploration hole, other drill or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the Office, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the Office. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of § 910.816–53. This Section does not apply to holes solely drilled and used for blasting.

§ 910.816–14 Casing and sealing of drilled holes: Temporary.

Each exploration hole, other drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the Office. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities.

§ 910.816–15 Casing and sealing of drilled holes: Permanent.

When no longer needed for monitoring or other use approved by the Office upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under § 910.816–53, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Office, under § 910.816–13 and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

§ 910.816–21 Topsoil: General requirements.

(a) Before disturbance of an area, topsoil and subsoils to be saved under § 910.816.22 shall be separately removed and segregated from other material.

(b) After removal, topsoil shall either be immediately redistributed as required under § 910.816.24 or stockpiled pending distribution as required under § 910.816.23.

§ 910.816–22 Topsoil: Removal.

(a) *Timing.* Topsoil shall be removed after vegetative cover that would interfere with the use of the topsoil is cleared from the areas to be disturbed, but before any drilling, blasting, mining, or other surface disturbance.

(b) *Materials to be removed.* All topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the Office in accordance with paragraph (e) of this section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

(c) *Material to be removed in thin topsoil situations.* If the topsoil is less than 6 inches, a 6-inch layer that includes the A horizon and the unconsolidated materials immediately below the A horizon or the A horizon and all unconsolidated material if the total available is less than 6 inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the Office pursuant to paragraph (e) of this section.

(d) *Subsoil segregation.* The B horizon and portions of the C horizon, or other

underlying layers demonstrated to have qualities for comparable root development shall be segregated and replaced as subsoil, if the Office determines that either of these is necessary or desirable to ensure soil productivity consistent with the approved postmining land use.

(e) *Topsoil substitutes and supplements.* (1) Selected overburden materials may be substituted for or used as a supplement to, topsoil, if the Office determines that the resulting soil medium is equal to or more suitable for sustaining revegetation than is the available topsoil and the substitute material is the best available to support revegetation. This determination shall be based on:

(i) *The results of chemical and physical analyses of overburden and topsoil.* These analyses shall include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the Office. The Office may also require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using these overburden materials.

(ii) Results of analyses, trials, and tests shall be submitted to the Office. Certifications of trials and tests shall be made by a laboratory approved by the Office, stating that:

(A) The proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil;

(B) The substitute material is the best available material to support the vegetation; and

(C) The trials and tests were conducted using standard testing procedures.

(2) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this section.

(f) *Limits on topsoil removal area.* Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution—

(1) The size of the area from which topsoil is removed at any one time shall be limited;

(2) The surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized; and

(3) Such other measures shall be taken as the Office may approve or require to control erosion.

§ 910.816-23 Topsoil: Storage.

(a) Topsoil and other materials removed under § 910.816-22 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(b) Stockpiled materials shall be selectively placed on a stable area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(1) Protection measures shall be accomplished either by—

(i) An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or

(ii) Other methods demonstrated to and approved by the Office to provide equal protection.

(2) Unless approved by the Office, stockpiled topsoil and other materials shall not be moved until required for redistribution on a regraded area.

§ 910.816-24 Topsoil: Redistribution.

(a) After final grading and before the replacement of topsoil and other materials segregated in accordance with § 910.816-23, regraded land shall be scarified or otherwise treated as required by the Office to eliminate slippage surfaces and to promote root penetration. If the person who conducts the surface mining activities shows, through appropriate tests, and the Office approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(b) Topsoil and other materials shall be redistributed in a manner that—

(1) Achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours, and surface water drainage system;

(2) Prevents excess compaction of the topsoil; and

(3) Protects the topsoil from wind and water erosion before and after it is seeded and planted.

§ 910.816-25 Topsoil: Nutrients and soil amendments.

Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer, so that it supports the approved postmining land use and meets the revegetation requirements of §§ 910.816-111 through 910.816-117. All soil tests shall be performed by a qualified laboratory using standard methods approved by the Office.

§ 910.816-41 Hydrologic balance: General requirements.

(a) Surface mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent area, in order to prevent long-term adverse changes in that balance that could result from those activities.

(b) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(c) In no case shall Federal and State water quality statutes, regulations, standards, or effluent limitations be violated.

(d) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(1) Each person who conducts surface mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(2) Acceptable practices to control and minimize water pollution include, but are not limited to—

(i) Stabilizing disturbed areas through land shaping;

(ii) Diverting runoff;

(iii) Achieving quickly germinating and growing stands of temporary vegetation;

(iv) Regulating channel velocity of water;

(v) Lining drainage channels with rock or vegetation;

(vi) Mulching;

(vii) Selectively placing and sealing acid-forming and toxic-forming materials; and

(viii) Selectively placing waste materials in backfill areas.

(3) If the practices listed at paragraph (d)(2) of this section are not adequate to meet the requirements of this Subpart, the person who conducts surface mining activities shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this Subpart.

§ 910.816-42 Hydrologic balance: Water quality standards and effluent limitations.

(a) (1) [Reserved]

(2) Sedimentation ponds and other treatment facilities shall be maintained until the disturbed area has been restored and the vegetation requirements of §§ 910.816-111 through 910.816-117 are met and the quality of the untreated drainage from the

disturbed area meets the applicable State and Federal water quality standards requirements for the receiving stream.

(3) The Office may grant exemptions from these requirements only when:

(i) The disturbed drainage area within the total disturbed area is small; and

(ii) The person who conducts the surface mining activities demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations in the table below and the applicable State and Federal water quality standards for downstream receiving waters.

(4) For the purposes of this section only, *disturbed area* shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this Subpart and the upstream area is not otherwise disturbed by the person who conducts the surface mining activities.

(5) Sedimentation ponds required by this Section shall be constructed in accordance with § 910.816–46, in appropriate locations before beginning any surface mining activities in the drainage area to be affected.

(6) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations set forth below for all of the mixed drainage when it leaves the permit area.

(7) [Reserved]

(b) A discharge from the disturbed areas is not subject to the effluent limitation of this section if any overflow, increase in volume of a discharge or discharge from a by-pass system caused by precipitation or snowmelt shall not be subject to the limitations set forth in paragraph (a) of this section. This exemption shall be available only if the facility is designed, constructed and maintained to contain or treat the volume of water which would fall on the areas covered by this subpart during a 10-year 24-hour or larger precipitation even (or snowmelt of equivalent volume). The operator shall have the burden of demonstrating to the appropriate authority that the prerequisites to an exemption set forth in this subsection have been met.

(c) Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area to that it complies with all Federal and State laws and regulations and the limitations of this Section. If the pH of water to be discharged from the disturbed area is less than 6.0, an automatic lime feeder or other automatic neutralization process approved by the Office shall be installed, operated, and maintained. The Office may authorize the use of a manual system, if it finds that—

(1) flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process; and

(2) Timely and consistent treatment is ensured.

§ 910.816–43 Hydrologic balance: Diversions and conveyance of overland flow and shallow ground water flow, and ephemeral streams.

Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the Office as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. The following requirements shall be met for all diversions and for all collection drains that are used to transport water into water-treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams—

(a) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 2-year recurrence interval, or a larger event as specified by the Office.

(b) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 10-year recurrence interval, or a larger event as specified by the Office. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the Office to prevent seepage or to provide stability.

(c) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to steamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(d) No diversion shall be located so as to increase the potential for land slides. No diversion shall be constructed on existing land slides, unless approved by the Office.

(e) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with §§ 910.816–24, 910.816–25, 910.816–101 through 910.816–106, and 910.816–111 through 910.816–117.

(f) Diversion design shall incorporate the following:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of § 910.816–72(b)(4), except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 30 CFR 910.816–71 through 910.816–74.

(5) Topsoil shall be handled in compliance with 30 CFR 910.816–21 through 910.816–25.

(g) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the Office under § 910.816–55.

§ 910.816–44 Hydrologic balance: Stream channel diversions.

(a) Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions—

(1) Are approved by the Office after making the findings called for in § 910.816–57(a).

(2) Comply with other requirements of this subpart; and

(3) Comply with local, State, and Federal statutes and regulations.

(b) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(1) The longitudinal profile of the stream, the channel, and the flood plain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available,

additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of State or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the Office as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(2) The combination of channel, bank, and flood plain configurations shall be adequate to pass safely the peak runoff of a 10-year, 24-hour precipitation event for temporary diversions, a 100-year, 24-hour precipitation event for permanent diversions, or larger events specified by the Office. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(c) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with §§ 910.816–24, 910.816–25, 910.816–101 through 910.816–105, and 910.816–111 through 910.816–117. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the person who conducts the surface mining activities from maintenance of a water treatment facility otherwise required under this Subpart or the permit.

(d) When permanent diversions are constructed or stream channels restored, after temporary divisions, the operator shall:

(1) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;

(2) Establish or restore the stream to its natural meandering shape of an environmentally acceptable gradient, as determined by the Office;

(3) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

§ 910.816–45 Hydrologic balance: Sediment control measures.

(a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(1) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area,

(2) Meet the more stringent of applicable State or Federal effluent limitations,

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to—

(1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in § 910.816–111(b);

(2) Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of § 910.816–101;

(3) Retaining sediment within disturbed areas;

(4) Diverting runoff away from disturbed areas;

(5) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and

(7) Treating with chemicals.

§ 910.816–46 Hydrologic balance: Sedimentation ponds.

(a) *General requirements.* Sedimentation ponds shall be used individually or in series and shall—

(1) Be constructed before any disturbance of the undisturbed area to be drained into the pond;

(2) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the Office.

(3) Meet all the criteria of this section.

(b) *Sediment Storage Volume.* Sedimentation ponds shall provide an adequate minimum sediment storage volume.

(c) *Detention time.* Sedimentation on ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event).

(d) *Dewatering.* The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the Office.

(e) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent shortcircuiting to the extent possible.

(f) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations as contained in 30 CFR 910.816–42.

(g) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.

(h) Sediment shall be removed from sedimentation ponds.

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the Office. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the Office.

(j) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(k) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement, unless it has been demonstrated to the Office that the material used and the design will ensure against all settlement.

(l) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(m) The combined upstream and downstream side slopes of the settled embankment shall not be less than $1v{:}5h$, with neither slope steeper than $1v{:}2h$. Slopes shall be designed to be

stable in all cases, even if flatter side slopes are required.

(n) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1*v*:1*h*, and the entire foundation surface scarified.

(o) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(p) the placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the Office.

(q) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(1) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the Office.

(2) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the Office to ensure stability.

(3) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(4) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(r) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(s) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with § 910.816–106.

(t) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made to the Office, in accordance with 30 CFR 77.216–3. With the approval of the Office, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(u) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the vegetation requirements of §§ 910.816–111 through 910.816–117 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with §§ 910.816–100 through 910.816–106, and 910.816–111 through 910.816–117, unless the pond has been approved by the Office for retention as being compatible with the approved postmining land use under § 910.816–133. If the Office approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of §§ 910.816–49 and 910.816–56.

§ 910.816–47 Hydrologic balance: Discharge structures.

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

§ 910.816–48 Hydrologic balance: Acid-forming and toxic-forming spoil.

Drainage from acid-forming and toxic-forming spoil into ground and surface water shall be avoided by—

(a) Identifying, burying, and treating where necessary, spoil which, in the judgment of the Office, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(b) Preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with § 910.86–103, and other measures as required by the Office; and

(c) Burying or otherwise treating all acid-forming or toxic-forming spoil within 30 days after it is first exposed on the mine site, or within a lesser period required by the Office. Temporary storage of the spoil may be approved by the Office upon a finding that burial or treatment within 30 days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

§ 910.816–49 Hydrologic balance: Permanent and temporary impoundments.

(a) Permanent impoundments are prohibited unless authorized by the Office, upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable on a permanent basis for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water-quality standards established pursuant to applicable State and Federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Adequate safety and access to the impounded water shall be provided for proposed water users.

(4) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(5) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, Pub. L. 83–566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77–216(a) are contained in U.S. Soil Conservation Service Technical Release No. 60, 'Earth Dams and Reservoirs,' June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, 'Ponds,' October 1978. The technical release and practice standard are hereby incorporated by reference as they exist on the date of adoption of this Subpart. Notices of changes made in these publications will be periodically published by OSM in the Federal Register. Technical Release No. 60 and Practice Standard 378 are on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, South Interior Bldg., 1951 Constitution Ave., NW., Washington, D.C. 20240, at each OSM Regional

Office, District Office, and Field Office. Copies of these publications may also be obtained by writing to the above locations. Copies of these publications will also be on file for public inspection at the Federal Register Library, 1100 L Street NW., Washington, D.C. Incorporation-by-reference provisions have been approved by the Director of the Federal Register, February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.

(6) The size of the impoundment is adequate for its intended purposes.

(7) The impoundment will be suitable for the approved postmining land use.

(8) A permit is obtained for the dam pursuant to the Georgia State Safe Dams Act of 1978 and Rules for Dam Safety promulgated by the Georgia Department of Natural Resources, Environmental Protection Division.

(b) Temporary impoundments of water in which the water is impounded by a dam shall meet the requirements of 30 CFR 910.816-46(e)-(u).

(c) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1*v*:2*h*. Where surface runoff enters the impountment area, the side slope shall be protected against erosion.

(d) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to produce the sediment leaving the site.

(e) All embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of 30 CFR 910.816-111 through 910.816-117 immediately after the embankment is completed, provided that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of 30 CFR 910.816-106 and 30 CFR 910.816.111 through 910.816-117.

(f) All dams and embankments meeting the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected by a qualified registered professional engineer, or by someone under the supervision of a qualified registered professional engineer, in accordance with 30 CFR 77.216-3.

(g) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.

(h) All dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.216(a) shall be certified to the Office by a qualified registered professional engineer, immediately after construction and annually thereafter, as having been constructed and/or maintained to comply with the requirements of this section. All dams and embankments that do not meet the size or other criteria of 30 CFR 77.216(a) shall be certified by either a qualified registered professional engineer or a registered land surveyor, except that all coal processing waste dams and embankments covered by 30 CFR 910.816-91 through 910.816-93 shall be certified by a qualified registered professional engineer. Certification reports shall include statements on—

(1) Existing and required monitoring procedures and instrumentation;

(2) The design depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;

(3) Existing storage capacity of the dam or embankment;

(4) Any fires occurring in the construction material up to the date of the initial certification or over the past year for the annual certification reports; and

(5) Any other aspects of the dam or embankment affecting stability.

(i) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the Office and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the Office shall approve the plans before modification begins.

§ 910.816-50 Hydrologic balance: Ground water protection.

(a) Backfilled materials shall be placed so as to minimize contamination of ground water systems with acid, toxic, or otherwise harmful mine drainage, to minimize adverse effects of mining on ground water systems outside the permit area, and to support approved postmining land uses.

(b) To control the effects of mine drainage, pits, cuts, and other mine excavation or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water systems and to prevent adverse impacts on such ground water systems or on approved postmining land uses.

§ 910.816-51 Hydrologic balance: Protection of ground water recharge capacity.

Surface mining activities shall be conducted in a manner that facilitates reclamation which will restore approximate pre-mining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system. The recharge capacity shall be restored to a condition which—

(a) Supports the approved postmining land use;

(b) Minimizes disturbances to the prevailing hydrologic balance in the permit area and in adjacent area; and

(c) Provides a rate of recharge that approximates the pre-mining recharge rate.

§ 910.816-52 Hydrologic balance: Surface and ground water monitoring.

(a) *Ground water.* Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the Office, to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the permit area and adjacent areas.

(2) When surface mining activities may affect the ground water systems which serve as aquifers which significantly ensure the hydrologic balance of water use in the permit area and adjacent area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) As specified and approved by the Office, the person who conducts surface mining activities shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall submit the results to the Office, to demonstrate compliance with §§ 910.816–50 through 910.816–52.

(b) *Surface water.* (1) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under 30 CFR 910.780–21(b)(4) and approved by the Office. The Office shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall—

(i) Be adequate to measure accurately and record water quantity and quality of the discharges from the permit area;

(ii) In all cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred, shall result in the person who conducts the surface mining activities notifying the Office within 5 days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the person who conducts surface mining activities shall forward the analytical results concurrently with the written notice of noncompliance.

(iii) Result in quarterly reports to the Office to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the Office. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 U.S.C. Sec. 1251–1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within 90 days or less of sample collection, the following alternative procedure shall be used. The person who conducts the surface mining activities shall submit to the Office on the same time schedule as required by the NPDES permit or within 90 days following sample collection, whichever is earlier, either—

(A) A copy of the completed reporting form filed to meet NPDES permit requirements; or

(B) A letter identifying the State government official with whom the reporting form was filed to meet NPDES permit requirements and the date of filing.

(2) After disturbed areas have been regraded and stabilized according to this subpart, the person who conducts surface mining activities shall monitor surface water flow and quality. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements of this subpart to minimize disturbance to the prevailing hydrologic balance and attain the approved postmining land use. These data may also provide a basis for approval by the Office for removal of water quality or flow control systems.

(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

§ 910.816–53 Hydrologic balance: Transfer of wells.

(a) An exploratory or monitoring well may only be transferred by the person who conducts surface mining activities for further use as a water well with the prior approval of the Office. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the Office for that approval.

(b) Upon an approved transfer of a well, the transferee shall—

(1) Assume primary liability for damages to persons or property from the well;

(2) Plug the well when necessary, but in no case later than abandonment of the well; and

(3) Assume primary responsibility for compliance with §§ 910.816–13 through 910.816–15 with respect to the well.

(c) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under paragraph (b) of this section, until release of the bond or other equivalent guarantee required by Subparts 910.800 through 910.808 for the area in which the well is located.

§ 910.816–54 Hydrologic balance: Water rights and replacement.

Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities.

§ 910.816–55 Hydrologic balance: Discharge of water into an underground mine.

Surface water shall not be diverted or otherwise discharged into underground mine workings, unless the person who conducts the surface mining activities demonstrates to the Office that this will—

(a) Abate water pollution or otherwise eliminate public hazards resulting from surface mining activities; and

(b) Be discharged as a controlled flow, meeting the effluent limitations of § 910.816–42 for pH and total suspended solids, except that the pH and total suspended solid limitations may be exceeded, if approved by the Office, and the discharge is limited to—

(1) Coal processing waste;

(2) Fly ash from a coal-fired facility;

(3) Sludge from an acid mine drainage treatment facility;

(4) Flue gas desulfurization sludge;

(5) Inert materials used for stabilizing underground mines or;

(6) Underground mine development wastes;

(c) In any event, the discharge from underground mines to surfacewaters will not cause, result in or contribute to a violation of applicable water quality standards or effluent limitations;

(d) Minimizes disturbance to the hydrologic balance; and

(e) Meets with the approval of the Mine Safety and Health Administration.

§ 910.816–56 Hydrologic balance: Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities.

Before abandoning the permit area, the person who conducts the surface mining activities shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

§ 910.816–57 Hydrologic balance: Stream buffer zones.

(a) No land within 100 feet of a perennial stream or a stream with a biological community determined according to paragraph (c) of this section shall be disturbed by surface mining activities, except in accordance with §§ 910.816–43 through 910.816–44, unless the Office specifically authorizes surface mining activities closer to or through such a stream upon finding—

(1) That the original stream channel will be restored; and

(2) During and after the mining, the water quantity and quality from the stream section within 100 feet of the surface mining activities shall not be adversely affected.

(b) The area not to be disturbed shall be designated a buffer zone and marked as specified in Section 910.816–11.

(c) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two or more species of arthropods or mulluscan animals which are—

(1) Adapted to flowing water for all or part of their life cycle;

(2) Dependent upon a flowing water habitat;

(3) Reproducing or can reasonably be expected to reproduce in the water body where they are found; and

(4) Longer than 2 millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

§ 910.816-59 Coal recovery.

Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

§ 910.816-61 Use of explosives: General requirements.

(a) Each person who conducts surface mining activities shall comply with all applicable State and Federal laws in the use of explosives.

(b) Blasts that use more than 5 pounds of explosive or blasting agent shall be conducted according to the schedule required by § 910.816-64.

(c) All blasting operation shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Each person responsible for blasting operations shall possess a valid certification as required by 30 CFR Subpart 910.850 when promulgated.

§ 910.816-62 Use of explosives: Pre-blasting survey.

(a) On the request to the Office by a resident or owner of a dwelling or structure that is located within one-half mile of any part of the permit area, the person who conducts the surface mining activities shall promptly conduct a pre-blasting survey of the dwelling or structure and promptly submit a report of the survey to the Office and to the person requesting the survey. If a structure is renovated or added to, subsequent to a pre-blast survey, then upon request to the Office a survey of such additions and renovations shall be performed in accordance with this Section.

(b) The survey shall determine the condition of the dwelling or structure and document any pre-blasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and readily available data. Special attention shall be given to the pre-blasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(c) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the Office. If the person requesting the survey disagrees with the results of the survey, he or she may notify, in writing, both the permittee and the Office of the specific areas of disagreement.

§ 910.816-64 Use of explosives: Public notice of blasting schedule.

(a) *Blasting schedule publication.* (1) Each person who conducts surface mining activities shall publish a blasting schedule at least 10 days, but not more than 20 days, before beginning a blasting program in which blasts that use more than 5 pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(2) Copies of the schedule shall be distributed by mail to local governments and public utilities and by mail or delivered to each residence within one-half mile of the permit area described in the schedule. For the purposes of this section, the permit area does not include haul or access roads, coal preparation and loading facilities, and transportation facilities between coal excavation areas and coal preparation or loading facilities, if blasting is not conducted in these areas. Copies sent to residences shall be accompanied by information advising the owner or resident how to request a pre-blasting survey.

(3) The person who conducts the surface mining activities shall republish and redistribute the schedule by mail at least every 12 months.

(b) *Blasting schedule contents.* (1) A blasting schedule shall not be so general as to cover the entire permit area or all working hours, but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

(2) The blasting schedule shall contain at a minimum—

(i) Identification of the specific areas in which blasting will take place. Each specific blasting area described shall be reasonably compact and not larger than 300 acres;

(ii) Dates and time periods when explosives are to be detonated. These periods shall not exceed an aggregate of 4 hours in any one day;

(iii) Methods to be used to control access to the blasting area;

(iv) Types of audible warnings and all-clear signals to be used before and after blasting; and

(v) A description of unavoidable hazardous situations referred to in § 910.816-65(b) which have been approved by the Office for blasting at times other than those described in the schedule.

(c) *Public notice of changes to blasting schedules.* (1) Before blasting in areas or at times not in a previous schedule, the person who conducts the surface mining activities shall prepare a revised blasting schedule according to the procedures in paragraphs (a) and (b) of this section. Where notice has previously been mailed to the owner or residents under paragraph (a)(2) of this section with advice on requesting a pre-blast survey, the notice of change need not include information regarding pre-blast surveys.

(2) If there is a substantial pattern of non-adherence to the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the Office may require that the person who conducts the surface mining activities prepare a revised blasting schedule according to the procedures in paragraph (c)(1) of this section.

§ 910.816-65 Use of explosives: Surface blasting requirements.

(a) All blasting shall be conducted between sunrise and sunset.

(1) the Office may specify more restrictive time periods, based on public requests or other relevant information, according to the need to adequately protect the public from adverse noise.

(2) Blasting may, however, be conducted between sunset and sunrise if:

(i) A blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated.

(ii) In addition to the required warning signals, oral notices are provided to persons within one-half mile of the blasting site; and

(iii) A complete written report of blasting at night is filed by the person

conducting the surface mining activities with the Office not later than 30 days after the night blasting. The report shall include a description in detail of the reasons for the delay in blasting including why the blast could not be held over to the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast report required by § 910.816–68.

(b) Blasting shall be conducted at times announced in the blasting schedule, except in those unavoidable hazardous situations, previously approved by the Office in the permit application, where operator or public safety require unscheduled detonation.

(c) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half mile of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can be reasonably expected to inform such persons of the meaning of the signals. Each person who conducts surface mining activities shall maintain signs in accordance with § 910.816–11(f).

(d) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the surface mining activities has reasonably determined—

(1) That no unusual circumstances, such as imminent slides or undetonated charges, exist; and

(2) That access to and travel in or through the area can be safely resumed

(e)(1) airblast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school church, or commercial or institutional structure, unless such structure is owned by the person who conducts the surfae mining activities and is not leased to any other person. If a building owned by the person conducting surface mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this Paragraph.

Lower frequency limit of measuring system, H_z (±3dB)	Maximum level in dB
0.1 H_z or lower—flat response	135 peak.
2 H_z or lower—Flat response	132 peak.
6 H_z or lower—flat response	130 peak.
C-weighted, slow response	109 C.

(2) In all cases except the C-weighted, slow-response, the measuring systems used shall have a flat frequency response of at least 200 H_z at the upper end. the C-weighted shall be measured with a type 1 sound level meter that meets the standard American National Standards Institute (ANSI) S1.4–1971 specifications. The ANSI S1.4–1971 is hereby incorporated by reference as it exists on the date of adoption of this subpart. Notices of changes made to this publication will be periodically published by OSM in the Federal Register. ANSI. S1.4–1971 is on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 1000 L Street NW., Washington, D.C. Incorporation by reference provisions approved by the director of the Federal Register February 7, 1979. The director's approval of this incorporation by reference expires on July 1, 1981.

(3) the person who conducts blasting may satisfy the provisions of this Section by meeting any of the four specifications in the chart in paragraph (e)(1) of this section.

(4) the Office may require an airblast measurement of any or all blasts, and may specify the location of such measurements.

(f) Blasting shall not be conducted within—

(1) 300 feet of any building used as a dwelling, school, church, hospital, or nursing facility; and

(2) 300 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(g) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under paragraph (d) of this section.

(h) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(i) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity shall not exceed 1 inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building. Peak particle velocities shall be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity shall be the largest of any of the three measurements. The Office may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(j) If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of paragraph (i) of this section shall not apply at the following locations:

(1) At structures owned by the person conducting the mining activity, and not leased to another party; and

(2) At structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Office prior to blasting.

(k) An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in paragraph (l) of this section. If the blasting is conducted in accordance with this equation, the peak particle velocity shall be deemed to be within the 1-inch-per-second limit.

(l)(1) The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula $W = (D/60)^2$ where W = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D = the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(2) For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance in feet (D), and maximum weight in pound (W)	
300	25
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	336
1,200	400
1,300	469
1,400	544
1,500	625
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,403
4,000	4,444
4,500	5,625
5,000	6,944

§ 910.816-67 Use of explosives: Seismographic measurements.

(a) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of 1 inch per second is not exceeded, the equation in § 910.816-65(1) need not be used. If that equation is not used by the person conducting the surface mining activities, a seismograph record shall be obtained for each shot.

(b) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the Office on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the Office approve the use of a modified equation where the peak particle velocity of 1 inch per second required in § 910.816-65(i) would be exceeded.

(c) The Office may require a seismograph record of any or all blasts and may specify the location at which such measurements are taken.

§ 910.816-68 Use of explosives: Records of blasting operations.

A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the Office and the public on request. The record shall contain the following data:

(a) Name of the operator conducting the blast.

(b) Location, date, and time of blast.

(c) Name, signature, and license number of blaster-in-charge.

(d) Direction and distance, in feet, to the nearest dwelling, school, church, or commercial or insitutional building either—

(1) Not located in the permit area; or

(2) Not owned nor leased by the person who conducts the surface mining activities.

(e) Weather conditions, including termperature, wind direction, and approximate velocity.

(f) Type of material blasted.

(g) Number of holes, burden, and spacing.

(h) Diameter and depth of holes.

(i) Types of explosives used.

(j) Total weight of explosives used.

(k) Maximum weight of explosives detonated within any 8-millisecond period.

(l) Maximum number of holes detonated within any 8-millisecond period.

(m) Initiation system.

(n) Type and length of stemming.

(o) Mats or other protections used.

(p) Type of delay detonator and delay periods used.

(q) Sketch of the delay pattern.

(r) Number of persons in the blasting crew.

(s) Seismographic records, where required, including the calibration signal of the gain setting and—

(1) Seismographic reading, including exact location of seismograph and its distance from the blast;

(2) Name of the person taking the seismograph reading; and

(3) Name of the person and firm analyzing the seismographic record.

§ 910.816-71 Disposal of excess spoil: General requirements.

(a) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with §§ 910.816-71 through 910.816-74. The spoil shall be placed in a controlled manner to ensure—

(1) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of § 910.816-42

(2) Stability of the fill; and

(3) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(b) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the Office.

(c) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under §§ 910.816-21 through 910.816-25. If approved by the Office, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(d) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of § 910.816-43. All disturbed areas, including diversion ditches that are not rip-rapped, shall be vegetated upon completion of construction.

(e) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the Office. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(f) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(g) The final configuration of the fill must be suitable for postmining land uses approved in accordance with § 910.816-133, except that no depressions or impoundments shall be allowed on the completed fill.

(h) Terraces may be utilized to control erosion and enhance stability if approved by the Office and consistent with § 910.816-102(b).

(i) Where the slope in the disposal area exceeds $1v{:}2.8h$ (36 percent), or such lesser slope as may be designated by the Office based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with Section 910.780-35(c) to determine the size of rock toe buttresses and keyway cuts.

(j) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: (1) Removal of all organic material and topsoil, (2) placement of underdrainage systems, (3) installation of surface drainage systems, (4)

placement and compaction of fill materials, and (5) revegetation. The registered engineer or other qualified professional specialist shall provide to the Office a certified report within 2 weeks after each inspection that the fill has been constructed as specified in the design approved by the Office. A copy of the report shall be retained at the minesite.

(k) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is—

(1) Placed in accordance with Section 910.816–85;

(2) Demonstrated to be nontoxic and nonacid forming; and

(3) Demonstrated to be consistent with the design stability of the fill.

(l) If the disposal area contains springs, natural or man-made watercourses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(m) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of fundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(n) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the Office and MSHA upon the basis of a plan submitted under 30 CFR 910.784–25.

§ 910.816–72 Disposal of excess spoil: Valley fills.

Valley fills shall meet all of the requirements of § 910.816–71 and the additional requirements of this Section.

(a) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(b) A subdrainage system for the fill shall be constructed in accordance with the following:

(1) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (b)(4) of this section and:

(i) Be installed along the natural drainage system;

(ii) Extend from the toe to the head of the fill; and

(iii) Contain lateral drains to each area of potential drainage or seepage.

(2) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(3) In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (b)(4) of this section. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd³.	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd.	Sandstone	16	8
Do	Shale	16	16

(4) Underdrains shall consist of non-degradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(c) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the Office, in lifts no greater than 4 feet or less if required by the Office to—

(1) Achieve the densities designed to ensure mass stability;

(2) Prevent mass movement;

(3) Avoid contamination of the rock underdrain or rock core; and

(4) Prevent formation of voids.

(d) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 24-hour precipitation event or larger event specified by the Office. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 910.816–43(f).

(e) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20*h* (5 percent). The vertical distance between terraces shall not exceed 50 feet.

(f) Drainage shall not be directed over the outslope of the fill.

(g) The outslope of the fill shall not exceed 1v:2*h* (50 percent). The Office may require a flatter slope.

§ 910.816–73 Disposal of excess spoil: Head-of-hollow fills.

Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in §§ 910.816–71 and 910.816–72 and the additional requirements of this section.

(a) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in § 910.816–72, with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards may use the rock-core chimney drain.

(b) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of § 910.816–72(b).

(2) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(3) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33*h* (3 percent). Instead of the requirements of § 910.816–71(g), a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3- to 5-percent grade toward the fill

and a 1-percent slope toward the rock core.

(c) The drainage control system shall be capable of passing safely the runoff from a 100-year, 24-hour precipitation event, or larger event specified by the Office.

§ 910.816-74 Disposal of excess spoil: Durable rock fills.

In lieu of the requirements of §§ 910.816-72 and 910.816-73, the Office may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis: *Provided,* The services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and § 910.816-71 are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the Office.

(a) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(1) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this Section.

(2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than 20 percent of the fill volume as determined by tests performed by a registered engineer and approved by the Office.

(b)(1) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(2) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety:

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

(c) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(1) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(2) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(3) The internal drain shall be protected by a properly designed filter system.

(d) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 910.816-43(f).

(e) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1*v*:20*h* (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(f) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 910.816-43(f).

(g) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(1) The slope of the outslope between terrace benches shall not exceed 1*v*:2*h* (50 percent).

(2) To control surface runoff, each terrace bench shall be graded to a slope of 1*v*:20*h* (5 percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(3) Terrace ditches shall have a 5-percent slope toward the channels specified in paragraph (f) of this section, unless steeper slopes are necessary in conjunction with approved roads.

§ 910.816-79 Protection of underground mining.

(a) No surface coal mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that—

(1) The nature, timing, and sequence of the operations are jointly approved by the Office, the Mine Safety and Health Administration,

(2) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(b) Surface mining activities shall be designed to protect distributed surface areas, including spoil disposal sites, so as not to endanger any present or future operations of either surface or underground mining activities.

§ 910.816-81 Coal processing waste banks: General requirements.

(a) All coal processing waste shall be hauled or conveyed and placed in new and existing disposal areas approved by the Office for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed, and maintained—

(1) In accordance with §§ 910.816-71 and 910.816-72, this section, and §§ 910.816-82 through 910.816-88; and

(2) To prevent combustion.

(b) Coal processing waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles may be disposed of in the permit area only if approved by the Office. Approval shall be based on a showing by the person who conducts surface mining activities in the permit area, using hydrologic, geotechnical, physical, and chemical analysis, that disposal of these materials does not—

(1) Adversely affect water quality, water flow, or vegetation;

(2) Create public health hazards; or

(3) Cause instability in the disposal areas.

§ 910.816-82 Coal processing waste banks: Site inspection.

(a) All coal processing waste banks shall be inspected, on behalf of the person conducting surface mining activities, by a qualified registered engineer or other person approved by the Office.

(1) Inspection shall occur at least quarterly, beginning within 7 days after preparation of the disposal area begins. The Office may require more frequent inspection based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with § 910.816–85, topsoil has been distributed on the bank in accordance with § 910.816–24, or at such a later time as the Office may require.

(2) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, to ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under 30 CFR 910.780–25 and approved by the Office.

(3) The engineer or other approved inspector shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(4) Copies of the inspection findings shall be maintained at the mine site.

(b) If any inspection discloses that a potential hazard exists, the Office shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Office shall be notified immediately. The Office shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

§ 910.816–83 Coal processing waste banks: Water control measures.

(a) Unless the operator demonstrates that a subdrain system is not required to ensure structural integrity and protection of the surface and ground water quality, a properly designed subdrainage system shall be provided, which shall—

(1) Intercept all ground water sources;

(2) Be protected by an adequate filer; and

(3) Be covered so as to protect against the entrance of surface water *or* leachate from the coal processing waste.

(b) All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with § 910.816–72(d).

(c) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(d) All water discharged from a coal processing waste bank shall comply with 30 CFR 910.816–41, 910.816–42, 910.816–45 through 910.816–46, 910.816–52, and 910.816–55.

§ 910.816–85 Coal processing waste banks: Construction requirements.

(a) Coal processing waste banks shall be constructed in compliance with §§ 910.816–71 and 910.816–72, except to the extent that the requirements of those Sections are varied in this section.

(b) Coal processing waste banks shall have a minimum static safety factor of 1.5.

(c) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this paragraph, instead of those specified in § 910.816–72(c). The coal processing waste shall be—

(1) Spread in layers no more than 24 inches in thickness; and

(2) Compacted to attain 90 percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specification T99–74 (Twelfth Edition) (July 1978) or an equivalent method. AASHTO T99–74 is hereby incorporated by reference as it exists on the date of adoption of this subpart. Notices of changes made to this publication will be periodically published by OSM in the Federal Register. AASHTO T99–74 is on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 1100 L Street, NW., Washington, D.C. Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.

(3) Variations may be allowed in these requirements for the disposal of dewatered fine coal waste (minus 28 sieve size) with approval of the Office.

(d) Following grading of the coal processing waste bank, the site shall be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material, in accordance with 30 CFR 910.816–22(e), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with §§ 910.816–111 through 910.816–117. The Office may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of §§ 910.816–111 through 910.816–117 will be met.

§ 910.816–86 Coal processing waste: Burning.

Coal processing waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the Office and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

§ 910.816–87 Coal processing waste: Burned waste utilization.

Before any burned coal processing waste, other materials, or refuse is removed from a disposal area, approval shall be obtained from the Office. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and method of compliance with this subpart, shall be submitted to the Office. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified engineer.

§ 910.816–88 Coal processing waste: Return to underground workings.

Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the Office and MSHA under 30 CFR 910.784–25.

§ 910.816–89 Disposal of noncoal wastes.

(a) Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during surface mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not

degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-born waste. When the disposal is completed a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 30 CFR 910.816–111–910.816–117. Operation of the disposal site shall be conducted in accordance with all local, State, and Federal requirements, including Chapter 391–3–4, Solid Waste Management Rules of the Georgia Department of Natural Resources, Environmental Protection Division.

(c) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within 8 feet of any coal outcrop or coal storage area.

§ 910.816–91 Coal processing waste: Dams and embankments: General requirements.

(a) Sections 910.816–91 through 910.816–93 apply to dams and embankments, constructed of coal processing waste or intended to impound coal processing waste, whether they were completed before adoption of this part or are intended to be completed thereafter.

(b) Waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the Office that the stability of such a structure conforms with the requirements of 30 CFR 910.816–93(a). It shall also be demonstrated that the use of waste material shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or embankment. All demonstrations shall be submitted to and approved by the Office.

§ 910.816–92 Coal processing waste: Dams and embankments: Site preparation.

Before coal processing waste is placed at a dam or embankment site—

(a) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with the requirements of this subpart; and

(b) Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with the requirements of 30 CFR 910.816–43. Adequate outlets for discharge from these diversions shall be in accordance with 30 CFR 910.816–47. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak runoff from a 100-year, 24-hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with 30 CFR 910.816–47. Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with 30 CFR 910.816–41 through 910.816–46.

§ 910.816–93 Coal processing waste: Dams and embankments: Design and construction.

(a) The design of each dam and embankment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of 30 CFR 910.816–49(a)(5), (e), (f), (g), (h), and (i), modified as follows:

(1) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet. The maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the U.S. Soil Conservation Service criteria referenced in 30 CFR 910.816–49.

(2) The dam and embankment shall have a minimum safety factor of 1.5 for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least 1.2.

(3) The dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in paragraph (a)(2) of this section or the publications referred to in 30 CFR 910.816–49 and for all increments of construction.

(b) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(c) Dams or embankments constructed of or impounding waste materials shall be designed so that at least 90 percent of the water stored during the design precipitation event shall be removed within a 10-day period.

§ 910.816–95 Air resources protection. [Reserved]

§ 910.816–97 Protection of fish, wildlife, and related environmental values.

(a) Any person conducting surface mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

(b) A person who conducts surface mining activities shall promptly report to the Office the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary, any plant or animal listed as threatened or endangered by the State, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the Office by that person.

(c) A person who conducts surface mining activities shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission System (USDI, USDA (1970)), or in alternative guidance manuals approved by the Office. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61–10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the Office. For informational purposes, these two documents are available at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office.

(d) Each person who conducts surface mining activities shall, to the extent possible using the best technology currently available—

(1) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by State or Federal law;

(2) Fence roadways where specified by the Office to guide locally important wildlife to roadway underpasses or overpasses and construct the necessary passages. No new barrier shall be created in known and important wildlife migration routes;

(3) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

(4) Restore, enhance where practicable or avoid disturbance to habitats of unusually high value for fish and wildlife;

(5) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas;

(6) Afford protection to aquatic communities by avoiding stream channels as required in § 910.816–57 or restoring stream channels as required in § 910.816–44.

(7) Not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the Office.

(8) To the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the Office as part of a management plan.

(9) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of 30 CFR 910.816–111 through 910.816–117—

(i) Select plant species to be used on reclaimed areas, based on the following criteria—

(A) Their proven nutritional value for fish and wildlife,

(B) Their uses as cover for fish and wildlife, and

(C) Their ability to support and enhance fish and wildlife habitat after release of bonds; and

(ii) Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a maner which optimizes edge effect, cover, and other benefits for fish and wildlife;

(10) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished; and

(11) Where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such green belts are inconsistent with the approved postmining land use.

§ 910.816–99 Slides and other damage.

(a) An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the Office as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.

(b) At any time a slide occurs which may have a potential adverse affect on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the Office by the fastest available means and comply with any remedial measures required by the Office.

§ 910.816–100 Contemporaneous reclamation.

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.

§ 910.816–101 Backfilling and grading: General requirements.

(a) *Timing of backfilling and grading*—(1) *Contour mining.* Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under 30 CFR 910.780–18(b)(3), that additional time is necessary.

(2) *Open pit mining with thin overburden.* Rough backfilling and grading shall occur in accordance with the time schedule approved by the Office, on the basis of the materials submitted under 30 CFR 910.780–18(b)(3), which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(3) *Area strip mining.* Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under 30 CFR 910.780–18(b)(3), that additional time is necessary.

(b) *Method for backfilling and grading.* (1) Except as specifically exempted in Subparts 910.815 through 910.828, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted (where advisable to insure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions.

(2) Backfilled material shall be placed to minimize adverse effects on ground water, minimize off-site effects, and to support the approved postmining land use.

(3) The postmining graded slopes need not be of uniform slope.

(4) Cut-and-fill terraces may be used only in those situations expressly identified in § 910.816–102.

§ 910.816–102 Backfilling and grading: General grading requirements.

(a) The final graded slopes shall not exceed in grade either the approximate premining slopes, or any lesser slopes approved by the Office based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. The requirements of this Section may be modified by the Office where the surface mining activities are reaffecting previously mined lands that have not been restored to the standards of this Subpart and sufficient spoil is not available to otherwise comply with this Section. The person who conducts surface mining activities shall, at a minimum—

(1) Retain all overburden and spoil on the solid portion of existing or new benches; and

(2) Backfill and grade to the most moderate slope possible, to eliminate the highwall which does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum static safety factor of 1.3. In all cases the highwall shall be eliminated.

(b) On approval by the Office in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1) The width of the individual terrace bench shall not exceed 20 feet, unless specifically approved by the Office as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(2) The vertical distance between terraces shall be as specified by the

Office, to prevent excessive erosion and to provide long-term stability.

(3) The slope of the terrace outslope shall not exceed 1*v*:2*h* (50 percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(4) Culverts and underground rock drains shall be used on the terrace only when approved by the Office.

(c) Small depressions may be constructed, if they—

(1) Are approved by the Office to minimize erosion, conserve soil moisture, or promote vegetation;

(2) Do not restrict normal access; and

(3) Are not inappropriate substitutes for lower grades on the reclaimed lands.

(d) All surface mining activities on slopes above 20 degrees shall meet the provisions of 30 CFR Subpart 910.826.

(e) All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

§ 910.816–103 Backfilling and grading: Covering coal and acid- and toxic-forming materials.

(a) *Cover.* (1) A person who conducts surface mining activities shall either cover, with a minimum of 4 feet of the best available nontoxic and noncombustible material, or, treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, or other materials identified by the Office as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility in order to prevent water pollution and sustained combustion and to minimize adverse effects on plant growth and land uses.

(2) Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the Office shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from ground water contact.

(3) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(b) *Stabilization.* Backfilled materials shall be selectively hauled or conveyed, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to insure stability of the backfilled materials. The method and design specifications of compacting material shall be approved by the Office before acid-forming or toxic-forming materials are covered.

§ 910.816–104 Backfilling and grading: Thin overburden.

(a) The provisions of this section apply only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit area. The provisions of this Section apply only when surface mining activities cannot be carried out to comply with Section 910.816–101 to achieve the approximate original contour.

(b) In surface mining activities carried out continuously in the same limited pit area for more than 1 year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials over the permit area is demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards—

(1) Haul or convey, backfill, and grade, using all available spoil and suitable waste materials from the entire permit area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials.

(2) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1*v*:2*h* (50 percent), or such lesser slopes as the Office may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) Haul or convey, backfill, grade, and revegetate in accordance with §§ 910.816–111 through 910.816–117, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas in the permit area and adjacent area; and

(4) Haul or convey, backfill, and grade, to ensure impoundments are constructed only where—

(i) It has been demonstrated to the Office's satisfaction that all requirements of §§ 910.816–41 through 910.816–56 have been met; and

(ii) The impoundments have been approved by the Office as suitable for the approved postmining land use and as meeting the requirements of this subpart and all other applicable Federal and State laws and regulations.

§ 910.816–105 Backfilling and grading: Thick overburden.

(a) The provisions of this Section apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit area. The provisions of this Section apply only when surface mining activities cannot be carried out to comply with § 910.816–101 to achieve the approximate original contour.

(b) In surface mining activities where the volume of spoil over the permit area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards—

(1) Haul or convey, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the permit area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials;

(2) Haul or convey, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in accordance with §§ 910.816–71 through 910.816–74

(3) Haul or convey, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with §§ 910.816–41 through 910.816–57 and to provide long-term stability by preventing slides, erosion and water pollution.

(4) Haul or convey, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the Office as compatible with the prevailing land uses in unmined areas in the permit area and adjacent area.

(5) Eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(6) Meet the revegetation requirements of §§ 910.816–111 through 910.816–117 for all disturbed areas.

§ 910.816–106 Regarding or stabilizing rills and gullies.

When rills or gullies deeper than 9 inches form in areas that have been regarded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to §§ 910.816–111 through 910.816–117. The Office shall specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

§ 910.816–111 Revegetation: General requirements.

(a) Each person who conducts surface mining activities shall establish on all affected land a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of disturbed land or species that supports the approved postmining land use. For areas designated as prime farmland, the requirements of 30 CFR 910.823 shall apply.

(b) All revegetation shall be in compliance with the plans submitted under 30 CFR 910.780–18 and 910.780–23, as approved by the Office in the permit, and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(1) All disturbed land, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the area of disturbed land.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(3) Vegetative cover shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally-occurring vegetation during each season of the year.

(4) If both the premining and postmining land uses are cropland, planting of the crops normally grown will meet the requirements of paragraph (b)(1) of this section.

§ 910.816–112 Revegetation: Use of introduced species.

Introduced species, may be substituted for native species only if approved by the Office under the following conditions:

(a) After appropriate field trails have demonstrated that the introduced species are desirable and necessary to achieve the approved postmining land use;

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan submitted under §§ 910.780–18(b)(3) and 910.780–23;

(c) The species are compatible with the plant and animal species of the region; and

(d) The species meet the requirements of applicable State and Federal seed or introduced species statutes, that the noxious weed seed per pound of pure seed does not exceed the limitations set forth in regulation 4 of the Georgia Seed Laws and Rules and Regulations, and that the species are not poisonous or noxious.

§ 910.816–113 Revegetation: Timing.

Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

§ 910.816–114 Revegetation: Mulching and other solid stabilizing practices.

(a) Suitable mulch and other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, promote germination of seeds, or increase the moisture-retention capacity of the soil. The Office may, on a case-by-case basis, suspend the requirement for mulch, if the permittee can demonstrate that alternative procedures will achieve the requirements of 910.816–116 and do not cause or contribute to air or water pollution.

(b) When required by the Office, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

(c) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the Office determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(d) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

§ 910.816–115 Revegetation: Grazing.

When the approved postmining land use in range or pasture land, grazing use of such land during the period of operator responsibility is allowed. If actual grazing occurs after mining, the performance of the area in such use may be used to demonstrate the self-regeneration capability of the planted species and their utility to the postmining land use. The type and extent of use (season of use and grazing capacity) shall demonstrate that ordinary grazing use does not endanger the survival coverage (ground cover) and productivity of the postmining vegetation, and that the premined capability has been restored.

§ 910.816–116 Revegetation: Standards for success.

(a) Success of revegetation shall be measured by techniques approved by the Office after consultation with appropriate State and Federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas or through the use of technical guidance procedures published by USDA or USDI for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.

(b)(1) Ground cover and productivity of living plants on the revegetated area within the permit area shall be equal to the ground cover and productivity of living plants on the approved reference area or to the standards in other technical guides approved by the Office, from among those published by USDA or USDI, for use in this part. The period of extended responsibility under the performance bond requirements of Subparts 910.800 through 910.808 initiates after the last year of augmented seeding, fertilizing, irrigation or otherwork which ensures success and continues for not less than five years. Ground cover and productivity shall equal the approved standard for the last two consecutive years of the responsibility period.

(2) The ground cover and productivity of the revegetated area shall be considered equal if they are at least 90 percent of the ground cover and productivity of the reference area with 90 percent statistical confidence, or with 80 percent statistical confidence on shrublands, or ground cover and productivity are at least 90 percent of the standards in a technical guide approved pursuant to 30 CFR 910.816–116(b)(1). Exceptions may be authorized by the Office under the following standards:

(i) For previously mined areas that were not reclaimed to the requirements of Subparts 910.815 through 910.828, as a minimum the ground cover of living plants shall not be less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall not be less than the ground cover existing before redisturbance, and shall be adequate to control erosion;

(ii) For areas to be developed for industrial or residential use less than 2 years after regrading is completed, the ground cover of living plants shall not be less than required to control erosion; and

(iii) For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined areas as compared to approved reference areas or other technical guidance procedures. Crop production from the mined area shall be equal to or greater than that of the approved standard for the last two consecutive growing seasons of the 5 or 10 year liability period established in paragraph (b)(1) of this section. The applicable 5 or 10 year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Production shall not be considered equal if it is less than 90 percent of the production of the approved standard with 90 percent statistical confidence.

(iv) On areas to be developed for fish and wildlife management or forestland, success of vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub, or half-shrub stocking shall meet the standards described in § 910.816–117. The area seeded to a ground cover shall be considered acceptable if it is at least 70 percent of the ground cover of the reference areas with 90 percent statistical confidence or if the ground cover is determined to be adequate to control erosion by the Office. Section 910.816–116(b) shall determine the responsibility period and the frequency of ground cover measurement.

(c) The person who conducts surface mining activities shall—

(1) Maintain any necessary fences and proper management practices; and

(2) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the Office, to identify conditions during the applicable period of liability specified in paragraph (b) of this section.

(d) For permit areas 40 acres or less in size, in locations with an average annual precipitation of more than 26 inches, the following performance standards, if approved by the Office, may be used instead of reference areas to measure success of revegetation on sites that are disturbed. These standards shall be met for a minimum of 5 full consecutive years.

(1) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 70 percent for 5 full consecutive years.

(2) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of 70 percent for 5 full consecutive years and 400 woody plants per acre after 5 years. On steep slopes, the minimum number of woody plants shall be 600 per acre.

(3) For purposes of this section, herbaceous species means grasses, legumes, and nonleguminous forbs; woody plants means woody shrubs, trees and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

§ 910.816–117 Revegetation: Tree and shrub stocking for forest land.

This section sets forth forest resource conservation standards for reforestation operations to ensure that a cover of commercial tree species, non-commercial tree species, shrubs or half shrubs, sufficient for adequate use of the available growing space, is established after surface mining activities.

(a) Stocking, i.e. the number of stems per unit area, will be used to determine the degree to which space is occupied by well-distributed, countable trees, shrubs or half-shrubs.

(1) Root crown or root sprouts over 1 foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur only the tallest stem will be counted.

(2) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

(i) the tree or shrub shall be in place at least 2 growing seasons,

(ii) the tree or shrub shall be alive and healthy, and

(iii) the tree or shrub shall have at least one third of its length in live crown.

(3) Rock areas, permanent road and surface water drainage ways on the revegetated area shall not require stocking.

(b) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:

(1) The area shall have a minimum stocking of 450 trees or shrubs per acre;

(2) A minimum of 75 percent of countable trees or shrubs shall be commercial trees species;

(3) The number of trees or shrubs and the ground cover shall be determined using procedures described in §§ 910.816–116(b)(3)(iv) and 910.816–117(a) and the sampling method approved by the Office; when the stocking is equal to or greater than 450 trees or shrubs per acre and there is acceptable ground cover, the 5 year responsibility period required in § 910.816–116(b) shall begin;

(4) Upon expiration of the 5-year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfy §§ 910.816–116(b)(3)(iv) and 910.816–117(b)(i).

(c) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(1) An inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the Office; this inventory shall contain but not be limited to—

(i) Site quality;

(ii) Stand size;

(iii) Stand condition;

(iv) Site and species relations; and

(v) Appropriate forest land utilization considerations.

(2) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the reference area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement. The stocking of live woody plants shall be equal to or greater than 90 percent of the stocking of woody plants of the same life form on the reference area. When this requirement is met and acceptable ground cover is

achieved, the 5 year responsibility period required in § 910.816–116(b) shall begin.

(3) Upon expiration of the 5-year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that:

(i) The woody plants established on the revegetated site are equal to or greater than 90 percent of the stocking of live woody plants of the same life form of the approved reference areas with 80 percent statistical confidence and

(ii) The ground cover on the revegetated area satisfies § 910.816–116(b)(3)(iv). Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the operation and reclamation plan.

§ 910.816–131 Cessation of operations: Temporary.

(a) Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandoment shall not relieve a person of their obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct surface mining activities shall submit to the Office a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

§ 910.816–132 Cessation of operations: Permanent.

(a) Persons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this part and the permit approved by the Office.

(b) All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the Office as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

§ 910.816–133 Postmining land use.

(a) *General.* All affected areas shall be restored in a timely manner—

(1) To conditions that are capable of supporting the uses which they were capable of supporting before any mining; or

(2) To higher or better uses achievable under criteria and procedures of this Section.

(b) *Determining pre-mining use of land.* The pre-mining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land had not been previously mined and had been properly managed.

(1) The postmining land use for land that has been previously mined and not reclaimed shall be restored to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood, at the option of the operator.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the pre-mining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) Prior to the release of lands from the permit area in accordance with 30 CFR 910.807–12(c), the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved by the Office after consultation with the landowner or the land-management agency having jurisdiction over the lands, if the following criteria are met:

(1) The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local, State, or Federal land use policies and plans: A written statement of the views of the authorities with statutory responsibilities for land use policies and plans is submitted to the Office within 60 days of notice by the Office and before surface mining activities begin. Any required approval, including any necessary zoning or other changes required for land use by local, State, or Federal land management agencies, is obtained and remains valid throughout the surface mining activities.

(2) Specific plans are prepared and submitted to the Office which show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and will be sustained. The Office may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts surface mining activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under 30 CFR 910.780–23. The letters shall be submitted to the Office before surface mining activities begin.

(4) Specific and feasible plans are submitted to the Office which show that financing, attainment and maintenance of the postmining land use are feasible.

(5) Plans for the postmining land use are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the postmining use of the site.

(6) The proposed use will neither present actual or probable hazard to public health or safety nor will it pose any actual or probable threat of water flow diminution or pollution.

(7) The use will not involve reasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife,and related environmental values and threatened or endangered plants is obtained from the Office and appropriate State and Federal fish and wildlife management agencies have been provided a 60 day period in which to review the plan before surface mining activities begin.

(9) Proposals to change pre-mining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable Federal, State, and local

laws, are reviewed by the Office to ensure that—

(i) The proposed postmining cropland use remains practical and reasonable;

(ii) There is sufficient water available and committed to maintain crop production; and

(iii) Topsoil quality and depth are sufficient to support the proposed use.

§ 910.816–150 Roads: Class I: General.

(a) Each person who conducts surface mining activities shall design, construct or reconstruct, utilize, and maintain Class I Roads and restore the area to meet the requirements of 30 CFR 910.816–151 through 910.816–156 and to control or minimize erosion and siltation, air and water polution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, Class I Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

(c) All Class I roads shall be removed and the land affected regraded and revegetated in accordance with the requirements of 30 CFR 910.816–156 unless—

(1) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(2) The necessary maintenance is assured; and

(3) All drainage is controlled according to 30 CFR 910.817–153.

(d)(1) The design and construction or reconstruction of Class I Roads shall be certified by a registered qualified professional engineer in accordance with 30 CFR 910.816–151 through 910.816–154, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the Office upon a demonstration by a registered qualified professional engineer that they will result in performance equal to or better than that resulting from Class I Roads complying with 30 CFR 910.816–151 through 910.816–156.

(2) The design shall incorporate the demand for mobility and travel efficiency, based on geometric criteria, both horizontal and vertical, appropriate for the anticipated volume of traffic and weight and speed of vehicles to be used.

§ 910.816–151 Roads: Class I: Location.

(a) Class I roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any Class I road shall be located in the channel of an intermittrent or perennial stream unless specifically approved by the Office.

(c) Stream fords are prohibited unless they are specifically approved by the Office as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of 30 CFR 910.816–153.

(d) Class I Roads shall be located to minimize downstream sedimentation and flooding.

§ 910.816–152 Roads: Class I: Design and construction.

Class I Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and distrubance of the hydrologic balance:

(a) *Vertical alinement.* Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(1) the overall grade shall not exceed 1*v*:10*h* (10 percent).

(2) The maximum pitch grade shall not exceed 1*v*:6.5*h* (15 percent).

(3) there shall be not more than 300 feet of pitch grade exceeding 10 percent within any consecutive 1,000 feet of Class I Roads, but in no case shall there be any pitch grade over 15 percent.

(b) *Horizontal alinement.* Class I roads shall have horizontal alinement as consistent with the existing topography as possible, and shall provide the alinement required to meet the performande standards of 30 CFR 910.816–150 through 910.816–156. The alinement shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and verticl alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(c) *Road cuts.* (1) cut slopes shall not be steeper than specifically authorized by the Office which shall not authorize slopes steeper than 1*v*: 1.5*h* in unconsolidated materials or 1*v*:0.25*h* in rock except that steeper slopes may be specifically authorized by the Office if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(2) topsoil or other materials suitable under 30 CFR 910.816–22 shall be placed on all cut slopes of 1*v*:1.5*h* or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to control erosion.

(3) Temporary erosion-control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(d) *Road embankments.* Embankment sections shall be constructed in accordance with the following provisions:

(1) all vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be placed beneath or in any Class I Road embankment.

(2) Where an embankment is to be placed on side slopes exceeding 1*v*:5*h* (20 percent), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of 10 feet in width and shall extend a minimum of 2 feet below the toe of the fill.

(3) Material containing by volume less than 25 percent of rock larger than 6 inches in greatest dimension shall be spread in successive uniform layers not exceeding 12 inches in thickness before compaction.

(4) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing it in 12-inch layers impossible under paragraph (d)(3) of this section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed 36 inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of paragraph (d)(3) of this section.

(5) Each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed. Loads of material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(6) Embankment layers shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used. In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used. A structural and foundation analysis shall be performed to establish design standards for embankment stability appropriate to the site. Publications of the American Association of State Highway and Transportation Officials (AASHTO), including AASHTO T–99, T–180, T–91, and the modified AASHTO test, or other specifications generally recognized by transportation engineers as adequate for design of highway embankments, shall be used to determine the degree of compaction required, on the basis of soil type and the anticipated volume of traffic and weight and speed vehicles to be used. Compaction effort shall be adequate to achieve the degree of compaction required. No lift shall be placed on a layer until the design density is achieved throughout the layer. AASHTO specifications such as T–99, T–180, the modified AASHTO test, or other comparable specifications approved by the Office shall be used as guidelines for the determination of the maximum dry density for granular materials.

(7) Material shall be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction.

(8) Embankment slopes shall not be steeper than 1*v*:2*h*, except that where the embankment material is a minimum of 85 percent rock, slopes shall not be steeper than 1*v*:1.35*h*, if it has been demonstrated to the Office that embankment stability will result. Where rock embankments are constructed, they shall meet the requirements of paragraph (d)(4) of this section.

(9) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the Office may specify.

(10) The road surface shall be sloped toward the ditch line at a minimum rate of one-quarter inch per foot of surface width, or crowned at a minimum rate of one-quarter inch per foot of surface width as measured from the centerline of the road.

(11) All material used in embankments shall be suitable for use under paragraphs (d)(1)–(8) of this section. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material, natural soils containing organic matter, or any other material considered unsuitable by the Office for use in embankment construction.

(12) Excess or unsuitable material from excavations, as defined in paragraph (d)(11) of this section, shall be disposed of in accordance with 30 CFR 910.816–71. Acid- and toxic-forming material shall be disposed of in accordance with 30 CFR 910.816–48, 910.816–81, and 910.816–103.

(13) Acid-producing materials shall be permitted for constructing embankments for only those Class I Roads constructed or reconstructed on coal processing waste banks and only if it has been demonstrated to the Office that no additional acid will leave the confines of the coal processing waste bank. In no case shall acid-bearing refuse material be used outside the confines of the coal processing waste bank. Restoration of the road shall be in accordance with the requirements of 30 CFR 910.816–103 through 910.816–117.

(14) Topsoil or other material suitable under 30 CFR 910.816–22 shall be placed on all embankment slopes of 1*v*:1.5*h* or flatter to aid in establishing vegetation and to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to prevent erosion.

(15) Temporary erosion-control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(e) *Topsoil removal.* Before initiation of construction or reconstruction of a Class I Road, topsoil and other materials, as determined under 30 CFR 910.816–22, shall be removed from the design roadbed, shoulders, and surfaces where associated structures will be placed, and shall be stored in accordance with 30 CFR 910.816–23.

§ 910.816–153 Roads: Class I: Drainage.

(a) *General.* (1) Each Class I Road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water-control system shall be designed to safely pass the peak runoff from a 10-year, 24-hour precipitation event or a greater event if required by the Office.

(2) Sediment control shall comply with 30 CFR 910.816–42 and 910.816–45.

(3) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

(b) *Ditches.* (1) A ditch shall be provided on both sides of a through-cut and on the inside shoulder of a cut-and-fill section, with ditch relief cross drains spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and drained safely away in accordance with this section. Water from a fill or switchback shall be released below the fill, through conduits or in riprapped channels, and shall not be discharged onto the fill. Drainage ditches shall be placed at the toe of all cut slopes formed by the construction of roads.

(2) On flat sections of Class I Roads where rolling topography is insufficient to provide natural ditch drainage, the road grade shall be undulated to provide for free flow of water in the ditch section. Road sections may be constructed to elevate the road surface above the original ground surface to facilitate drainage.

(c) *Culverts and bridges.*

(1)(i) Culverts with an end area of 35 square feet or less shall be designed to safely pass the 10-year, 24-hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than 35 square feet, and bridges with spans of 30 feet or less, shall be designed to safely pass the 20-year, 24-hour precipitation event. Bridges with spans of more than 30 feet shall be designed to safely pass the 100-year, 24-hour precipitation event or a larger event as specified by the Office.

(ii) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(iii) Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment-control structures.

(iv) All culverts shall be covered by compacted fill to a minimum depth of 1 foot.

(v) Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles to be used.

(2) Culverts for road-surface drainage only shall be constructed in accordance with the following:

(i) Unless otherwise authorized or required under paragraphs (c)(2) (ii) or (iii) of this section, culverts shall be spaced as follows:

(A) Spacing shall not exceed 1,000 feet on grades of 0 to 3 percent.

(B) Spacing shall not exceed 800 feet on grades of 3 to 6 percent.

(C) Spacing shall not exceed 500 feet on grades of 6 to 10 percent.

(D) Spacing shall not exceed 300 feet on grades of 10 percent or greater.

(ii) Culverts at closer intervals than the maximum in paragraph (c)(2)(i) of this section shall be installed if required

by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

(iii) Culverts may be constructed at greater intervals than the maximum indicated in paragraph (c)(2)(i) of this section if authorized by the Office upon a finding that greater spacing will not increase erosion.

(iv) Culverts shall cross the road at not less than a 30 degree angle downgrade.

(v) Culverts may be designed to carry less than the peak runoff from a 10-year, 24-hour precipitation event if the ditch will not overtop and will remain stable.

(vi) The inlet end shall be protected by a rock headwall or other material approved by the Office as adequate protection against erosion of the headwall. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

(d) *Natural drainage.* Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Office in accordance with 30 CFR 910.816–43 and 910.816–44. The Office may approve alterations and relocations only if—

(1) The natural-channel drainage is not blocked;

(2) No significant damage occurs to the hydrologic balance; and

(3) There is no adverse impact on adjoining landowners.

(e) *Stream crossings.* Drainage structures are required for stream channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely affect fish migration and aquatic habitat or related environmental values.

§ 910.816–154 Roads: Class I: Surfacing.

(a) Class I Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Office as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(b) Acid- or toxic-forming substances shall not be used in road surfacing.

§ 910.816–155 Roads: Class I: Maintenance.

(a) Class I Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the entire transportation facility including surface, shoulders, pathing and side areas, approach structures, erosion control devices, cut-and-fill sections, and such traffic-control devices as are necessary for safe and efficient utilization of the road.

(b) Class I Road maintenance shall include repairs to the road surface, blading, filling of potholes, and replacement of gravel or asphalt. It shall include revegetating, brush removal, watering for dust control, and minor reconstruction of road segments as necessary.

(c) Class I Road damaged by catastrophic events such as floods or earthquakes shall not be used until reconstruction of damaged road elements. The reconstruction shall be completed as soon as practicable after the damage has occurred.

§ 910.816–156 Roads: Class I: Restoration.

(a) Unless the Office approves retention of a Class I Road as suitable for the approved postmining land use, immediately after the road is no longer needed for operations, reclamation, or monitoring—

(1) The road shall be closed to vehicular traffic;

(2) The natural-drainage patterns shall be restored;

(3) All bridges and culverts shall be removed;

(4) Roadbeds shall be ripped, plowed, and scarified;

(5) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural-drainage restoration standards;

(6) Cut slopes shall be shaped to blend with the natural contour;

(7) Cross drains, dikes, and water bars shall be constructed to minimize erosion;

(8) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(9) Road surfaces shall be covered with topsoil in accordance with 30 CFR 910.816–24(b) and revegetated in accordance with 30 CFR 910.816–111 through 910.816–116.

(b) Unless otherwise authorized by the Office, all road-surfacing materials shall be removed, hauled or conveyed, and disposed of under 30 CFR 910.816–89.

§ 910.816–160 Roads: Class II: General.

(a) Each person who conducts surface mining activities shall design, construct or reconstruct, utilize, and maintain Class II Roads and restore the area to meet the requirements of 30 CFR 910.816–161 through 910.816–166 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, Class II Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to run off outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

(c) All Class II Roads shall be removed and the land affected regraded and revegetated in accordance with the requirements of 30 CFR 910.816–166, unless—

(1) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(2) The necessary maintenance is assured; and

(3) All drainage is controlled according to 30 CFR 910.816–163.

(d)(1) Class II Roads shall be designed and constructed in accordance with 30 CFR 910.816–161 through 910.816–164, except to the extent that alternative specifications are used. Alternative specifications may only be used after approval by the Office upon a demonstration by a qualified professional engineer that they will result in performance equal to or better than that resulting from Class II Roads complying with 30 CFR 910.816–161 through 910.816–166.

(2) The design shall incorporate consideration of the needs of the specific uses of the road in addition to travel efficiency. To the extent that the anticipated volume of traffic or weight or speed of vehicles to be used requires higher standards than those set forth in 30 CFR 910.816–161 through 910.816–166, such higher standards shall be incorporated in the design, construction or reconstruction, and maintenance of Class II Roads.

§ 910.816–161 Roads: Class II: Location.

(a) Class II Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any Class II Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Office.

(c) Stream fords are prohibited unless they are specifically approved by the Office as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures, designed, constructed, and maintained to meet the requirements of 30 CFR 910.816–163.

(d) Class II Roads shall be located to minimize downstream sedimentation, and flooding.

§ 910.816–162 Roads: Class II: Design and construction.

Class II Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(a) *Vertical alinement.* A continuous grade with excessive cuts or embankments shall be avoided. Changes of grade shall be made to conform as closely as possible to the existing terrain, and maximum road grades shall be as follows:

(1) The overall grade shall not exceed 1*v*:10*h* (10 percent).

(2) The pitch grade shall not exceed 1*v*:6.5*h* (15 percent), for any consecutive 1,000 feet.

(3) The pitch grade exceeding 15 percent shall not be longer than 300 feet within any consecutive 1,000 feet of Class II Roads.

(b) *Horizontal alinement.* Class II Roads shall have horizontal alinement as consistent with the existing natural topography as possible, and shall provide the alinement required for the performance standards of 30 CFR 910.816–160 through 910.816–166. The alinement shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. horizontal and vertical alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(c) *Road cuts.* Cut slopes shall not be steeper than specifically authorized by the Office, which shall not authorize slopes steeper than 1*v*:1.5*h* in unconsolidated materials or 1*v*:0.25*h* in rock, except that steeper slopes may be specifically authorized by the Office if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(1) Topsoil or other materials suitable under 30 CFR 910.816–22 shall be placed on all cut slopes of 1*v*:1.5*h* or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to minimize erosion.

(2) Temporary erosion-control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(d) *Road embankments.* Embankment sections shall be constructed in accordance with the following provisions:

(1) All vegetative material and topsoil shall be removed from the embankment foundation to increase stability, and no vegetative material or topsoil shall be placed beneath or in any Class II Road embankment.

(2) Where an embankment is to be placed on side slopes exceeding 1*v*:3*h* (33 percent), the existing ground shall be plowed, stepped, or if in rock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of 10 feet in width and shall begin at the toe of fill. No material shall be placed below the toe or be allowed to slide below the toe. For slopes of less than 1*v*:3*h* (33 percent), the slopes shall be scarified to ensure bonding of the embankment and natural material.

(3) Material containing by volume less than 25 percent of rock larger than 6 inches in greatest dimension shall be spread in successive uniform layers not exceeding 12 inches in thickness before compaction.

(4) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing in 12-inch layers impossible under paragraph (d)(3) of this section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed 36 inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. the final layer of the embankment shall meet the requirements of paragraph (d)(3) of this section.

(5) Each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed. Embankment material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(6) Compaction greater than that specified in Paragraph (d)(5) of this Section shall be performed to the extent necessary to ensure stability.

(7) Material shall be placed in an embankment under moisture content conditions which will permit compaction and ensure proper soil cohesion.

(8) Embankment slopes shall not be steeper than 1*v*:1.5*h*, except that if the embankment material is a minimum of 85 percent rock, slopes shall not be steeper than 1*v*:1.35*h* if it has been demonstrated to the Office that embankment stability will result. Where rock embankments are constructed, they shall meet the requirements of paragraph (d)(4) of this section.

(9) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the Office may specify.

(10) The road surface shall be sloped sufficiently to prevent ponding of water on the surface.

(11) All material used in embankments shall be suitable for use under paragraphs (d) (1)–(8) of this section. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material or natural soils containing organic matter, or any other material considered unsuitable for use in embankment construction by the Office.

(12) Excess or unsuitable material from excavations, as defined in paragraph (d)(11) of this section, shall be disposed of in accordance with 30 CFR 910.816–71. Acid- and toxic-forming material shall be disposed of in accordance with 30 CFR 910.816–48, 910.816–81, and 910.816–103.

(13) Topsoil or other material suitable under 30 CFR 910.816–22 shall be placed on all embankment slopes of 1*v*:1.5*h* or flatter, to aid in establishing vegetation to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to minimize erosion.

(14) Temporary erosion-control measures shall be incorporated during construction to control sedimentation and minimized erosion until permanent control measures can be established.

(e) *Topsoil removal.* Before initiation of construction or reconstruction of a Class II Road, topsoil and other materials, as determined under 30 CFR 910.816–22, shall be removed from the design roadbed, shoulders, and surfaces where associated structures will be placed, and shall be stored in accordance with 30 CFR 910.816–23.

§ 910.816–163 Roads: Class II: Drainage.

(a) *General.* (1) Each Class II road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as ditches in wet areas, cross drains in natural drainageways, surface dips, and stream crossings. The water-control system shall be designed to safely pass the peak runoff from a 10-year, 24-hour precipitation event or a greater event if required by the Office.

(2) Sediment control shall comply with 30 CFR 910.816–42.

(b) *ditches and alternative measures for roadbed erosion control.* Where

required to minimize erosion on the roadbed, ditches shall be designed and constructed in accordance with 30 CFR 910.816–153(b). In wet areas or where there is free water, such ditch sections shall be required. For every segment of a Class II road without drainage ditches which comply with 30 CFR 910.816–153(b), drainage shall be provided by surface dips. These drainage dips shall be constructed as undulations in the roadway of sufficient height from the hydraulic bottom to the top of the dip to prevent water from running down the surface of the road. Insloped dips shall discharge into a culvert or drop inlet. Outsloped dips shall discharge either onto the natural ground or onto embankments if a drain is provided. The bottom of the dip shall be rock surfaced to prevent erosion. Dip spacing shall be sufficient to minimize erosion of the road surface.

(c) *Culverts and bridges.* (1)(i) Culverts with an end area of 35 square feet or less shall be designed to safely pass the 10-year, 24-hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than 35 square feet, and bridges with spans of 30 feet or less, shall be designed to safely pass the 20-year, 24-hour precipitation event. Bridges with spans of more than 30 feet shall be designed to safely pass the 100-year, 24-hour precipitation event or larger event as specified by the Office.

(ii) Drainage pipes and culverts shall be constructed to avoid plugging or collapse, and erosion at inlets and outlets.

(iii) Culverts shall be covered by compacted fill to a minimum depth of 1 foot.

(iv) Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the road foundation, and the weight of vehicles to be used.

(2) Culverts or dips for road-surface drainage only, shall be constructed in accordance with the following:

(i) Unless otherwise authorized or required under paragraph (c)(2) (ii) or (iii) of this section, culverts and dips shall be spaced as follows:

(A) Spacing shall not exceed 1,000 feet on grades of 0 to 3 percent.

(B) Spacing shall not exceed 600 feet on grades of 3 to 6 percent.

(C) Spacing shall not exceed 400 feet on grades of 6 to 10 percent.

(D) Spacing shall not exceed 200 feet on grades of 10 percent or greater.

(ii) Surface dips or culverts at closer intervals than the maximum indicated in paragraph (c)(2)(i) of this section shall be installed if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

(iii) Surface dips or culverts may be constructed at greater intervals than the maximum indicated in paragraph (c)(2)(i) of this section if authorized by the Office upon a finding that greater spacing will not increase erosion.

(iv) Culverts and the bottoms of drainage dips shall cross the road at not less than a 30 degree angle downgrade.

(v) A culvert may be designed to carry less than the peak runoff from a 10-year, 24-hour precipitation event if the ditch will not overtop and will remain stable.

(vi) The inlet end of all culverts shall be protected by a rock headwall or other material approved by the Office as adequate protection against erosion of the headwall. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

(D) *Natural drainage.* Natural-channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Office in accordance with 30 CFR 910.816–43 and 910.816–44. The Office may approve alterations and relocations only if—

(1) The natural-channel drainage is not blocked;

(2) No significant degradation occurs to the hydrologic balance; and

(3) There is no adverse impact on adjoining landowners.

(E) *Stream crossings.* Drainage structures are required for stream-channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely affect fish migration or aquatic habitat or related environmental values.

§ 910.816–164 Roads: Class II: Surfacing.

(a) Class II Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Office as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(b) Acid- or toxic-forming substances shall not be used in road surfacing.

(c) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

§ 910.816–165 Roads: Class II: Maintenance.

(a) Class II Roads shall be maintained in such a manner that the required or approved design criteria are met throughout the life of the facility including surface and shoulders, parking, side areas, approach structures, erosion-control devices, and such traffic-control devices as are necessary for safe and efficient utilization.

(b) Class II Road maintenance shall include basic custodial care as required to protect the road investment and to prevent damage to adjacent resources. This includes maintenance to control erosion, repair of structures and drainage systems, removal of rocks and debris, replacement of surface, and restoration of the road prism.

§ 910.816–166 Roads: Class II: Restoration.

(a) Unless the Office approves retention of a Class II Road as suitable for the approved postmining land use, immediately after the road is no longer needed for operations, reclamation, or monitoring—

(1) The road shall be closed to vehicular traffic;

(2) The natural drainage patterns shall be restored;

(3) All bridges and culverts shall be removed;

(4) Roadbeds shall be ripped, plowed, and scarified;

(5) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural-drainage restoration standards;

(6) Cut slopes shall be reshaped to blend with the natural contour;

(7) Cross drains, dikes, and water bars shall be constructed to minimize erosion;

(8) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(9) Road surfaces shall be covered with topsoil in accordance with 30 CFR 910.816–24(b) and revegetated in accordance with 30 CFR 910.816–111 through 910.816–116.

(b) Unless otherwise authorized by the Office, all road surfacing materials shall be removed, hauled or conveyed, and disposed of under 30 CFR 910.816–89.

§ 910.816–170 Roads: Class III: General.

(a) Each person who conducts surface mining activities shall design, construct or reconstruct, utilize, and maintain Class III Roads and restore the area to meet the requirements of 30 CFR 910.816–171 through 910.816–176 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, Class III Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to

runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

(c) All Class III Roads shall be completely removed and the land affected regraded to the approximate original contour and revegetated in accordance with the requirements of 30 CFR 910.816–176 except where 30 CFR 910.816–171(g) shall apply.

(d) To the extent that the anticipated volume or weight or speed of vehicles to be used requires higher standards than those set forth in 30 CFR 910.816–171 through 910.816–175, such higher standards shall be incorporated in the design, construction, and reconstruction of maintenance of Class III Roads.

§ 910.816–171 Roads: Class III: Location.

(a) Class III Roads shall be located on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any Class III Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Office.

(c) Stream fords are prohibited unless they are approved by the Office as temporary routes across ephemeral or intermittent streams that will not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using temporary bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of 30 CFR 910.816–173.

(d) Class III Roads shall be located to minimize downstream sedimentation and flooding.

(e) Not later than the date a permit application is submitted to the Office for surface mining activities for which a Class III Road is proposed, the location of the proposed road shall be clearly marked in the field by flags or stakes to enable the Office to perform onsite review.

(f) Class III Roads shall not be located in wet, steep, or unstable areas where complete restoration under 30 CFR 910.816–176 cannot be accomplished.

(g) A Class III Road may be constructed in the same alinement as a Class I or Class II Road that is to be constructed on the same location at a later date. This may be permitted if the requirements for the location of the Class I or Class II Road are met, and the construction begins within 6 months from the time the Class III Road is constructed.

§ 910.816–172 Roads: Class III: Design and construction.

Field-design methods shall be utilized for Class III Roads.

(a) *Vertical alinement.* Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(1) The overall grade shall not exceed 1*v*:10*h* (10 percent).

(2) The pitch grade shall not exceed 1*v*:5*h* (20 percent).

(3) There shall not be more than 1,000 consecutive feet of maximum pitch grade.

(b) *Horizontal alinement.* Class III Roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(c) *Road cuts.* Sidecast construction may be used.

(d) *Road embankments.* Compaction on embankments shall be required only to the extent necessary to control erosion and maintain the road.

(e) *Topsoil removal.* Topsoil shall be removed and stockpiled only where excavation would require replacement of material and redistribution of topsoil for proper revegetation.

§ 910.816–173 Roads: Class III: Drainage.

(a) *General.* (1) Class III Road drainage shall consist of temporary culverts in flowing streams, wet areas, and in ephemeral channels as necessary to protect the facility during its life and to minimize disturbance of the hydrologic balance.

(2) Sediment control shall comply with 30 CFR 910.816–42 and 910.816–45.

(b) *Culverts and bridges.* Temporary culverts shall be installed for all flowing drainages and stream crossings. Temporary culverts and bridges shall be sized to safely pass the 1-year, 6-hour precipitation event.

(c) *Natural drainage.* Natural channel drainageways shall not be altered or relocated for the purposes of Class III Road construction.

(d) *Stream crossings.* Temporary drainage structures are required for crossing permanent streams. Drainage structures shall not affect the normal flow or gradient of the stream, adversely affect fish migration and aquatic habitat or related environmental values.

§ 910.816–174 Roads: Class III: Surfacing.

(a) Class III Road surfaces shall be adequate for the use of the road.

(b) Acid- or toxic-forming substances shall not be used in road surfacing.

(c) Vegetation shall not be cleared for more than the width necessary to serve traffic needs and for utilities.

§ 910.816–175 Roads: Class III: Maintenance.

(a) Class III Road Maintenance shall be sufficient to ensure minimization of erosion for the life of the road.

(b) Class III Roads shall not be used if climatic conditions are such that usage may cause degradation of water quality.

§ 910.816–176 Roads: Class III: Restoration.

Immediately after a Class III Road is no longer needed for operations, reclamation, or monitoring—

(a) The road shall be closed to vehicular traffic;

(b) The natural drainage patterns shall be restored;

(c) All bridges and culverts shall be removed;

(d) Roadbeds shall be ripped, plowed, and scarified;

(e) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and meet natural-drainage restoration standards;

(f) Cut slopes shall be reshaped to blend with the natural contour;

(g) Cross drains, dikes, and water bars shall be constructed to control erosion; and

(h) Road surfaces from which topsoil has been removed shall be covered with topsoil in accordance with 30 CFR 910.816–24(b), and the surface shall be revegetated in accordance with 30 CFR 910.816–111 through 910.816–116.

§ 910.816–180 Other transportation facilities.

Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall be designed, constructed or reconstructed, and maintained, and the area restored, to—

(a) Prevent, to the extent possible using the best technology currently available—

(1) Damage to fish, wildlife, and related environmental values; and

(2) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law;

(b) Control and minimize diminution or degradation of water quality and quantity;

(c) Control and minimize erosion and siltation;

(d) Control and minimize air pollution; and

(e) Prevent damage to public or private property.

§ 910.816–181 Support facilities and utility installations.

(a) Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, coal loading facilities at or near the minesite, coal storage, facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation

plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner which prevents, to the extent possible using the best technology currently available—

(1) Damage to fish, wildlife, and related environmental values; and

(2) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

(b) All surface mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads, electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Office.

§ 910.816-200 Interpretative rules related to general performance standards.

(a) Interpretations of § 910.816-74—Disposal of excess spoil: Durable rock fills.

(1) The term "rock" as used in 30 CFR 910.816-74 is interpreted to mean minerals or mineral aggregates 80% or more of which when subjected to a grain size analysis will not pass a ¼ inch sieve (¼ inch mesh).

(2) The term "hard rock spoil" as used in 30 CFR 910.816-74 is interpreted to mean rock consisting of at least 80 percent by volume of sandstone, limestone or other rocks that will not pass ¼ inch sieve and do not slake in water.

(3) The terms "slake durability" and "slake index tests" identified in 30 CFR 910.816-74 and used as the basis for determining "durability" of hard rock spoil, are interpreted to be applicable to rock placed in the fill and not only to rock obtained either from inplace strata prior to excavation or from the spoil source prior to placement in the fill.

(b) [Reserved]

(c) Interpretation of § 910.816-22(e)—Topsoil Removal.

(1) Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil provided that trials and test are certified by an approved laboratory in accordance with 30 CFR 910.816-22(e)(1)(ii) may be obtained from any one or a combination of the following sources:

(i) U.S. Department of Agriculture Soil Conservation Service published date based on established soil series.

(ii) U.S. Department of Agriculture Soil Conservation Service Technical Guides:

(iii) State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture-Forest Service published data based on soil series properties and behavior; or

(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(2) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 910.816-22(e)(i).

Subpart 910.817—Performance Standards—Underground Mining Activities

§ 910.817-11 Signs and markers.

(a) *Specifications.* Signs and markers required under this Subpart shall—

(1) Be posted, maintained, and removed by the person who conducts the underground mining activities;

(2) Be of a uniform design throughout the activities that can be easily seen and read;

(3) Be made of durable material; and

(4) Conform to local laws and regulations.

(b) *Duration of maintenance.* Signs and markers shall be maintained during all activities to which they pertain.

(c) *Mine and permit identification signs.* (1) Identification signs shall be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas for underground mining activities.

(2) Signs will show the name, business address, and telephone number of the person who conducts underground mining activities and the identification number of the current regulatory program permit authorizing underground mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) *Perimeter markers.* Each person who conducts underground mining activities shall clearly mark the perimeter of all areas affected by surface operations or facilities before beginning mining activities.

(e) *Buffer zone markers.* Buffers zones required by Section 910 817-57 shall be clearly marked to prevent disturbance by surface operations and facilities.

(f) *Blasting signs.* Persons who conduct surface blasting incidental to underground mining activities shall place at all entrances to areas of surface operations and facilities in the permit area, from public roads or highways, conspicious signs which state-'Warning: Explosives in Use.'

(9) *Topsoil markers.* Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under § 910.817-23, the stockpiled material shall be clearly marked.

§ 910.817-13 Casing and sealing of exposed underground openings: General requirements.

Each exploration hole, other drillhole or borehole, shaft, well, or other exposed underground opening shall be cased, lined, or otherwise managed as approved by the Office to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. Each exploration hole, drill hole or borehole or well that is uncovered or exposed by mining activities wihin the permit area shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Office. Use of a drilled hole or monitoring well as a water well must meet the provisions of Section 910.817-53. This Section does not apply to holes drilled and used for blasting in the area affected by surface operations.

§ 910.817-14 Casing and sealing of underground openings: Temporary.

(a) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(b) Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved

permit application for use to return underground development waste, coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed until actual use.

§ 910.817-15 Casing and sealing of underground openings: Permanent.

When no longer needed for monitoring or other use approved by the Office upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under § 910.817-53, each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Office in accordance with § 910.817-13 and 910.817-50 and consistent with 30 CFR 75.1771. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

§ 910.817-21 Topsoil: General requirements.

(a) Before disturbance of areas affected by surface operations, topsoil and subsoils to be saved under § 910.817-22 shall be separately removed and segregated from other material.

(b) After removal, topsoil shall be immediately redistributed in accordance with § 910.817-24, stockpiled pending redistribution under § 910.817-23, or if the permittee can demonstrate that an alternative procedure will provide equal or more protection for the topsoil, the Office, may, on a case by case basis, approve an alternative.

§ 910.817-22 Topsoil: Removal.

(a) *Timing.* Topsoil shall be removed from areas to be affected by surface operations or major structures, after vegetative cover that would interfere with the use of the topsoil is cleared from portions of those areas that will be disturbed, but before any drilling for blasting, mining, or other surface disturbance of surface lands.

(b) *Materials to be removed.* Topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the Office in accordance with paragraph (e) of this section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

(c) *Material to be removed in thin topsoil situations.* If the topsoil is less than 6 inches, a 6-inch layer that includes the A horizon and the unconsolidated materials immediately below the A horizon or the A horizon and all unconsolidated material if the total available is less than 6 inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the Office pursuant to paragraph (e) of this section.

(d) *Subsoil segregation.* The B horizon and portions of the C horizon, or other underlying layers demonstrated to have qualities for comparable root development shall be segregated and replaced as subsoil, if the Office determines that either of these is necessary or desirable to ensure soil productivity consistent with the approved postmining land use.

(e) *Topsoil substitutes and supplements.* (1) Selected overburden materials may be substituted for, or used as a supplement to, topsoil, if the Office determines that the resulting soil medium is equal to or more suitable for sustaining the vegetation than is the available topsoil and the substitute material is the best available to support the vegetation. This determination shall be based on: (i) The results of chemical and physical analyses of overburden and topsoil. These analyses shall include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the Office. The Office may also require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using these overburden materials.

(ii) Results of analyses, trials, and tests shall be submitted to the Office. Certification of trials and tests shall be made by a laboratory approved by the Office stating that: (A) The proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil;

(B) The substitute material is the best available material to support the vegetation; and

(C) The trials and tests were conducted using standard testing procedures.

(2) Substituted or supplemented material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this section.

(f) *Limits on topsoil removal area.* Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution—

(1) The size of the area from which topsoil is removed at any one time shall be limited;

(2) The surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized; and

(3) Such other measures shall be taken as the Office may approve or require to control erosion.

§ 910.817-23 Topsoil: Storage.

(a) Topsoil and other materials removed under § 910.817-22 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(b) Stockpiled materials shall be selectively placed on a stable surface area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(1) Protection measures shall be accomplished either by—

(i) An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or

(ii) Other methods demonstrated to and approved by the Office to provide equal protection.

(2) Unless approved by the Office, stockpiled topsoil and other materials shall not be moved until required for redistribution on a disturbed area.

§ 910.817-24 Topsoil: Redistribution.

(a) After final grading and before the replacement of topsoil and other materials segregated in accordance with § 910.817-23, regraded land shall be scarified or otherwise treated as required by the Office to eliminate slippage surfaces and to promote root penetration. If the person who conducts underground mining activities shows, through appropriate tests, and the Office approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(b) Topsoil and other materials shall be redistributed in a manner that—

(1) Achieves an approximate uniform, stable thickness consistent with the postmining land uses, slopes, and surface drainage system;

(2) Prevents excess compaction of the topsoil; and

(3) Protects the topsoil from wind and water erosion before and after it is seeded and planted.

§ 910.817-25 Topsoil: Nutrients and soil amendments.

Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface

soil layer so that it supports the postmining land use approved by the Office and meets the revegetation requirements of §§ 910.817–111 through 910.817–117. All soil tests shall be performed by a qualified laboratory using standard methods approved by the Office.

§ 910.817–41 Hydrologic balance: General requirements.

(a) Underground mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit and adjacent areas, in order to prevent long-term adverse changes in that balance that could result from those activities.

(b) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(c) In no case shall Federal and State water quality statutes, regulations, standards or effluent limitations be violated.

(d) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(1) Each person who conducts underground mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow shall be used in preference to the use of water treatment facilities.

(2) Acceptable practices to control and minimize water pollution include, but are not limited to—

(i) Stabilizing disturbed areas through land shaping;

(ii) Diverting runoff;

(iii) Achieving quickly germinating and growing stands of temporary vegetation;

(iv) Regulating channel velocity of water;

(v) Lining drainage channels with rock or vegetation;

(vi) Mulching;

(vii) Selectively placing and sealing acid-forming and toxic-forming materials;

(viii) Designing mines to prevent gravity drainage of acid waters;

(ix) Sealing;

(x) Controlling subsidence; and

(xi) Preventing acid mine drainage.

(3) If the practices listed at paragraph (d)(2) of this section are not adequate to meet the requirements of this subpart, the person who conducts underground mining activities shall operate and maintain the necessary water-treatment facilities for as long as treatment is required under this Subpart.

§ 910.817–42 Hydrologic balance: Water quality standards and effluent limitations.

(a)(1) [Reserved.]

(2) Sedimentation ponds and treatment facilities for surface drainage from the disturbed area shall be maintained until the disturbed area has been restored and the vegetation requirements of §§ 910.817–111 through 910.817–117 are met and the quality of the untreated drainage from the disturbed area meets the applicable State and Federal water quality standards requirements for the receiving stream. Sedimentation ponds and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the effluent limitations of this Section without treatment or until the discharge has permanently ceased.

(3) The Office may grant exemptions from these requirements only in accordance with the following—

(i) The person who conducts the underground mining activities demonstrates that sedimentation ponds and treatment facilities are not necessary for the drainage to be exempted to meet the effluent limitations of this Section or the applicable State and Federal water quality requirements for downstream receiving waters; and

(ii) (A) For drainage from areas affected by surface operations and facilities, an exemption may be authorized only if the disturbed surface drainage area within the total disturbed surface area is small and there is no mixture of surface drainage with a discharge from underground mine workings; or,

(B) For drainage from underground mine workings, exemption may be authorized only if there is no mixture of that drainage with drainage from surface areas.

(4) For the purposes of this Section only, disturbed area shall not include those areas affected by surface operations in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this Subpart and the upstream area is not otherwise disturbed by the person who conducts the underground mining activities.

(5) Sedimentation ponds required by this Section shall be constructed in accordance with Section 910.817–46, in appropriate locations before beginning any underground mining activities in the affected drainage area.

(6) Where the sedimentation ponds or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations below for all of the mixed drainage when it leaves the permit area.

(7) [Reserved]

(b) A discharge from the disturbed areas is not subject to the effluent limitations of this Section, if any overflow, increase in volume of a discharge or discharge from a by-pass system caused by precipitation or snowmelt shall not be subject to the limitations set forth in paragraph (a) of this section. This exemption shall be available only if the facility is designed, constructed and maintained to contain or treat the volume of water which would fall on the areas covered by this subpart during a 10-year 24-hour or larger precipitation event (or snowmelt of equivalent volume). The operator shall have the burden of demonstrating to the appropriate authority that the prerequisites to an exemption set forth in this subsection have been met.

(c) Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area or discharged from the underground mine, so that it complies with all Federal and State laws and regulations and the limitations of this Section. If the pH of water to be discharged from the disturbed area or mine is less than 6.0, an automatic lime feeder or other automatic neutralization process approved by the Office shall be installed, operated, and maintained. The Office may authorize the use of a manual system, if it finds that—

(1) Flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process; and

(2) Timely and consistent treatment is ensured.

§ 910.817–43 Hydrologic balance: Diversions and conveyance of overland flow, shallow ground water flow, and ephemeral streams.

Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the Office as necessary to minimize erosion, to reduce volume of water to be treated, and to prevent or remove water from contact with acid-forming and toxic-forming

materials. The following requirements shall be met for all diversions and all collection drains that are used to transport waters into water-treatment facilities and all diversions of overland and shallow ground water flow and ephemeral streams.

(a) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 2-year recurrence interval, or a larger event as specified by the Office.

(b) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 10-year recurrence interval, or a larger event as specified by the Office. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used, only when approved by the Office to prevent seepage or to provide stability.

(c) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(d) No diversion shall be located so as to increase the potential for land slides and no diversion shall be constructed on existing slides unless approved by the Office.

(e) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with §§ 910.817–24, 910.817–25, 910.817–101 through 910.817–106 and 910.817–111 through 910.817–117.

(f) Diversion design shall incorporate the following: (1) Channel linings shall be designed using standard engineering practices to safely pass the design velocities. Riprap shall comply with the requirements of Paragraph 910.817–72(b)(4), except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed, when necessary, at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 30 CFR 910.817–71 through 910.817–74.

(5) Topsoil removed from the diversion excavations shall be handled in accordance with 30 CFR 910.817–21 through 910.817–25.

(g) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the Office under § 910.817–55.

§ 190.817–44 Hydrologic balance: Stream channel diversions.

(a) Flow from perennial and intermittent streams within the permit area may be diverted if the diversions—

(1) Are approved by the Office after making the findings called for in § 910.817–57;

(2) Comply with other requirements of Subparts 910.815 through 910.828; and

(3) Comply with local, State, and Federal statutes and regulations.

(b) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following: (1) The longitudinal profile of the stream, the channel, and the flood plain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of State or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the Office as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(2) The combination of channel, bank, and flood-plain configurations shall be adequate to pass safely the peak runoff of a 10-year, 24-hour precipitation event for temporary diversions, a 100-year, 24-hour precipitation event for permanent diversions, or larger events, as specified by the Office. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(c) When no longer needed to achieve the purpose for which they are authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with the §§ 910.817–24, 910.817–25, 910.817–101 through 910.817–106 and 910.817–111 through 910.817–117. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the person who conducts the underground mining activities from maintenance of a water treatment facility otherwise required under this Subpart or the permit.

(d) When permanent diversions are constructed or stream channels restored after temporary diversions, the operator shall:

(1) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;

(2) Establish or restore the stream to its natural meandering shape of an environmentally acceptable gradient; as determined by the Office; and

(3) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

§ 190.817–45 Hydrologic balance: Sediment control measures.

(a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to: (1) Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area,

(2) Meet the more stringent of applicable State or Federal effluent limitations,

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to—

(1) Disturbing the smallest practicable area at any one time during the mining operation through progressive

backfilling, grading, and prompt revegetation as required in § 910.817–111(b);

(2) Stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of § 910.817–101;

(3) Retaining sediment within disturbed areas;

(4) Diverting runoff away from disturbed areas;

(5) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment;

(7) Treating with chemicals; and

(8) Treating mine drainage in underground sumps.

§ 910.817–46 Hydrologic balance: Sedimentation ponds.

(a) General requirements. Sedimentation ponds shall be used individually or in series and shall—

(1) Be constructed before any disturbance of the undisturbed area to be drained into the pond and prior to any discharge of water to surface waters from underground mine workings;

(2) Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the Office.

(3) Meet all the criteria of this Section.

(b) *Sediment storage volume.* Sedimentation ponds shall provide an adequate minimum sediment storage volume.

(c) *Detention time.* Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event).

(d) *Dewatering.* The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the Office.

(e) Each person who conducts underground mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(f) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this Section shall not relieve the person from compliance with applicable effluent limitations as contained in 30 CFR 910.816–42.

(g) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation events and lesser events through the sedimentation pond, regardless of the volume of water and sediment present from the underground mine during the runoff.

(h) Sediment shall be removed from sedimentation ponds.

(i) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the Office, plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the Office.

(j) The minimum elevation of the top of the settled embankment shall be 1.0 foot above the water surface in the reservoir with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(k) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement, unless it has been demonstrated to the Office that the material used and the design will ensure against all settlement.

(l) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H, in feet, is the height of the embankment as measured from the upstream toe of the embankment.

(m) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1*v*:5*h*, with neither slope steeper than 1*v*:2*h*. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(n) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1*v*:1*h*, and the entire foundation surface scarified.

(o) The fill materials shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(p) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this Section. Compaction shall be conducted as specified in the design approved by the Office.

(q) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met: (1) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the Office, plus an in-flow from the underground mine.

(2) The embankment shall be designed and constructed with an acceptable static safety factor of at least 1.5, or a higher safety factor as designated by the Office to ensure stability.

(3) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(4) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(r) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(s) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated, in accordance with § 910.817–106.

(t) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions and reports and notifications shall be made to the Office, in accordance with 30 CFR 77.216–3. With the approval of the Office, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(u) Sedimentation ponds shall not be removed until the disturbed area has been restored and the vegetation requirements of §§ 910.816–111 through 910.816–117 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with §§ 910.817–101 through 910.817–106, and 910.817–111 through 910.817–117, unless the pond has been approved by

the Office for retention as compatible with the approved postmining land use under § 910.817–133. If the Office approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of §§ 910.817–49 and 910.817–56.

§ 910.817–47 Hydrologic balance: Discharge structures.

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

§ 910.817–48 Hydrologic balance: Acid-forming and toxic-forming materials.

Drainage from acid-forming and toxic-forming underground development waste and spoil, if any, into ground and surface water shall be avoided by—

(a) Identifying, burying, and treating, where necessary, waste and spoil which, in the judgment of the Office, may be detrimental to vegetation or may adversely affect water quality, if not treated or buried;

(b) Preventing water from coming into contact with acid-forming and toxic-forming materials in accordance with § 910.817–103, and other measures required by the Office; and

(c) Burying or otherwise treating all acid-forming or toxic-forming underground development waste and spoil within 30 days after they are first exposed on the mine site, or within a lesser period required by the Office. Temporary storage of such materials may be approved by the Office upon a finding that burial or treatment within 30 days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming and toxic-forming underground development waste and spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

§ 910.817–49 Hydrologic balance: Permanent and temporary impoundments.

(a) Permanent impoundments are prohibited unless authorized by the Office, upon the basis of the following demonstration: (1) The quality of the impounded water shall be suitable, on a permanent basis, for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water-quality standards established pursuant to applicable State and Federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Adequate safety and access to the impounded water shall be provided for proposed water users.

(4) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(5) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, Pub. L. 83–566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs", June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds", October 1978. The technical release and practice standard are hereby incorporated by reference as they exist on the date of adoption of this Subpart. Notices of changes made in these publications will be periodically published by OSM in the Federal Register. Technical Release No. 60 and Practice Standard 378 are on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, South Interior Bldg., 1951 Constitution Ave., NW., Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office. Copies of the publications may also be obtained by writing to the above locations. Copies of these publications will also be on file for public inspection at the Federal Register Library, 1100 L St., NW., Washington, D.C. Incorporation-by-reference provisions have been approved by the Director of the Federal Register, February 7, 1979. The Director's approval of this Incorporation by reference expires on July 1, 1981.

(6) The size of the impoundment is adequate for its intended purposes.

(7) The impoundment will be suitable for the approved postmining land use.

(8) A permit is obtained for the dam pursuant to the Georgia Safe Dams Act of 1978 and Rules for Dam Safety (Chapter 391–3–8) promulgated by the Georgia Department of Natural Resources, Environmental Protection Division.

(b) Temporary impoundments of water in which the water is impounded in a dam shall meet the requirements of 30 CFR 910.817–46 (e)–(u).

(c) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1*v*:2*h*. Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

(d) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.

(e) All embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of 30 CFR 910.817–111 through 910.817–117 immediately after the embankment is completed, provided that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of 30 CFR 910.817–106 and 30 CFR 910.817–111 through 910.817–117.

(f) All dams and embankments meeting the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected by a qualified registered professional engineer, or by someone under the supervision of a qualified registered professional engineer, in accordance with 30 CFR 77.216–3.

(g) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.

(h) All dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.216(a) shall be certified to the Office by a qualified registered professional engineer, immediately after construction and annually thereafter, as

having been constructed and/or maintained to comply with the requirements of this Section. All dams and embankmentts that do not meet the size or other criteria of 30 CFR 77.216(a) shall be certified by either a qualified registered professional engineer or a registered land surveyor, except that all coal processing waste dams and embankments covered by 30 CFR 910.817–91 through 910.817–93 shall be certified by a qualified registered professional engineer. Certification reports shall include statements on—

(1) Existing and required monitoring procedures and instrumentation;

(2) The design depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;

(3) Existing storage capacity of the dam or embankment;

(4) Any fires occurring in the construction material up to the date of the initial certification or over the past year for the annual certification reports; and

(5) Any other aspects of the dam or embankment affecting stability.

(i) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the Office and shall comply with the requirements of this Section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the Office shall approve the plans before modification begins.

§ 910.817–50 Hydrologic balance: Underground Mine Entry and Access Discharges.

(a) Surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.

(b) Gravity discharge of water from an underground mine, other than a drift mine subject to paragraph (c) of this section, may be allowed by the Office, if it is demonstrated that—

(1)(i) The discharge, without treatment, satisfies the water effluent limitations of 30 CFR 910.817–42 and all applicable State and Federal water quality standards; and

(ii) That discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or

(2)(i) The discharge is conveyed to a treatment facility in the permit area in accordance with § 910.817–42(a);

(ii) All water from the underground mine discharged from the treatment facility meets the effluent limitations of § 910.817–42 and all other applicable State and Federal statutes and regulations; and

(iii) Consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.

(c) Notwithstanding anything to the contrary in paragraphs (a) and (b) of this section, for a draft mine first used after the implementation of this part and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine.

§ 910.817–52 Hydrologic balance: Surface and ground water monitoring.

(a) *Surface water.* (1) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under 30 CFR 910.784–14(b)(3) and approved by the Office. The Office shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall—

(i) Be adequate to measure accurately and record water quantity and quality of discharges from the permit area;

(ii) All cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred shall result in the person who conducts underground mining activities notifying the Office within 5 days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the person who conducts the underground mining activities shall forward the analytic results concurrently with the written notice of noncompliance.

(iii) Result in quarterly reports to the Office, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the Office. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Clean Water Act of 1977 (30 U.S.C. Sec. 1251–1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within 90 days or less of sample collection, the following alternative procedure shall be used. The person who conducts the underground mining activities shall submit to the Office on the same time schedule as required by the UPDES permit, or within 90 days following sample collection, whichever is earlier, either—

(A) A copy of the completed reporting form filed to meet UPDES permit requirements; or

(B) A letter identifying the State or Federal government official with whom the reporting form was filed to meet NPDES permit requirements and the date of filing.

(2) Surface water flow and quality, including discharges to surface waters from the permit area, and receiving waters, shall continue to be monitored after both the cessation of use of underground mine workings and after surface disturbed areas have been regraded and stabilized according to this subpart. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirement of this Subpart to minimize disturbance to the prevailing hydrologic balance and to attain the approved postmining land use. These data may also provide a basis for approval by the Office for removal of water quality or flow control systems.

(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the surface disturbed area and from underground mine workings shall be properly installed, maintained, and operated and shall be removed when no longer required.

§ 910.817–53 Hydrologic balance: Transfer of wells.

(a) An exploratory or monitoring well may only be transferred by the person who conducts underground mining activities for further use as water well with the prior approval of the Office. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the Office for that approval.

(b) Upon an approved transfer of a well, the transferee shall—

(1) Assume primary liability for damages to persons or property from the well;

(2) Plug the well when necessary, but in no case later then abandonment of the well; and

(3) Assume primary responsibility for compliance with §§ 910.817–13 through 910.817–15 with respect to the well.

(c) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under paragraph (b) of this section, until release of the bond or other equivalent

guarantee required by Subparts 910.800 through 910.808 for the area in which the well is located.

§ 910.817-54 [Reserved]

§ 910.817-55 Hydrologic balance: Discharge of water into an underground mine.

Water from the surface or from an underground mine shall not be diverted or discharged into other underground mine workings, unless the person who conducts the underground mining activities demonstrates to the Office that the discharge will—

(a) Abate water pollution or otherwise eliminate public hazards resulting from underground mining activities;

(b) Be discharged as a controlled flow;

(c) Meets the effluent limitations of § 910.817-42 for pH and total suspended solids, except that the pH and total suspended solid limitations may be exceeded, if approved by the Office and is limited to—

(1) Coal processing waste;

(2) Underground mine development waste;

(3) Fly ash from a coal-fired facility;

(4) Sludge from an acid mine drainage treatment facility;

(5) Flue gas desulfurization sludge; or

(6) Inert materials used for stabilizing underground mines;

(d) Continue as a controlled and identifiable flow and is ultimately treated by an existing treatment facility;

(e) In any event, the discharge from underground mines to surface waters will not cause, result in, or contribute to a violation of applicable water quality standards or effluent limitations;

(f) Minimizes disturbance to the hydrologic balance; and

(g) Meets with the approval of the Mine Safety and Health Administration.

§ 910.817-56 Hydrologic balance: Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities.

Before abandoning the permit area, the person who conducts the underground mining activities shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

§ 910.817-57 Hydrologic balance: Stream buffer zones.

(a) No surface area within 100 feet of a perennial stream or a stream with biological community determined according to paragraph (c) of this section shall be disturbed by surface operations and facilities, except in accordance with §§ 910.817-43 through 910.817-44, unless the Office specifically authorizes underground mining activities closer to or through such a stream upon finding—

(1) That the original stream channel will be restored; and

(2) During and after the mining, the water quantity and quality from the stream section within 100 feet of the underground mining activities shall not be adversely affected.

(b) The area not be disturbed shall be designated a buffer zone and marked as specified in § 910.817-11.

(c) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two or more species of arthropods or mulluscan animals which are—

(1) Adapted to flowing water for all or part of their life cycle;

(2) Dependent upon a flowing water habitat;

(3) Reproducing or can reasonably be expected to reproduce in the water body where they are found; and

(4) Longer than 2 millimeters at some stage or part of their life cycle spent in the flowing water habitat.

§ 910.817-59 Coal recovery.

Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

§ 910.817-61 Use of explosives: General requirements.

(a) Sections 910.817-61 through 910.817-68 apply only to surface blasting activities incident to underground mining, including, but not limited to, initial rounds of slopes and shafts.

(b) Each person who conducts underground mining activities shall comply with all applicable State and Federal laws in the use of explosives.

(c) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Each person responsible for blasting operations shall possess a valid certification as required by Subpart 910.850 when it is promulgated.

§ 910.817-62 Use of explosives: Preblasting survey.

(a) On the request to the Office by a resident or owner of a dwelling or structure that is located within one-half mile of any surface blasting activity covered by §§ 910.817-61 through 910.817-68, the person who conducts the underground mining activities shall promptly conduct a preblasting survey of the dwelling or structure and promptly submit a report of the survey to the Office and to the person requesting the survey. If a structure is renovated or added to, subsequent to a preblast survey, then upon request to the Office a survey of such additions and renovations shall be performed in accordance with this Section.

(b) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(c) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the Office. If the person requesting the survey disagrees with the results of the survey, he or she may notify, in writing, both the permittee and the Office of the specific areas of disagreement.

§ 910.817-65 Use of explosives: Surface blasting requirements.

(a) A resident or owner of a dwelling or structure that is located within one-half mile of any area affected by surface blasting activities shall be notified approximately 24 hours prior to any surface blasting event.

(b) All blasting shall be conducted between sunrise and sunset.

(1) The Office may specify more restrictive time periods, based on public requests or other relevant information according to the need to adequately protect the public from adverse noise.

(2) Blasting may, however, be conducted between sunset and sunrise if:

(i) A blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard would result that cannot be adequately mitigated;

(ii) In addition to the required warning signals, oral notices are provided to persons within one-half mile of the blasting site; and

(iii) A complete written report of blasting at night is filed by the person conducting the surface blasting activities with the Office not later than 3 days after the night blasting. The report shall include a description in detail of the reason for the delay in blasting including why the blasting could not be held over the the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast report required by § 910.817–68.

(c) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half mile of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can reasonably be expected to inform such persons of the meaning of the signals. Each person who conducts surface blasting incident to underground mining activities shall maintain signs in accordance with § 910.817–11(f).

(d) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting until an authorized representative of the person who conducts the underground mining activities has reasonably determined—

(1) That no unusual circumstances, such as imminent slides or undetonated charges, exist; and

(2) That access to and travel in or through the area can be safely resumed.

(e)(1) Airblast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial or institutional building, unless such structure is owned or leased by the person who conducts the underground mining activities and is not leased to any other person. If a building owned by the person conducting the underground mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this Paragraph.

Lower frequency limit of measuring system, Hz(± 3 dB)	Maximum level in dB
0.1 Hz or lower—flat response	135 peak.
2 Hz or lower—flat response	132 peak.
6 Hz lower—flat response	130 peak.
C-weighted, slow response	109C.

(2) In all cases except the C-weighted, slow response, the measuring systems used must have a flat frequency response of at least 200 Hz at the upper end. The C-weighted shall be measured with a Type 1 sound level meter that meets the standard ANSI SI.4–1971 specifications. The ANSI S1.4–1971 is hereby incorporated by reference as it exists on the date of adoption of this Subpart. Notices of changes made to this publication will be periodically published by OSM in the Federal Register. ANSI S1.4–1971 is on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 1100 L St., N.W., Washington, D.C. Incorporation by reference provisions approved by the Federal Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.

(3) The person who conducts blasting may satisfy the provisions of this section by meeting any one of the four specifications in the chart in paragraph (e)(1) of this section.

(4) The Office may require an airblast measurement of any or all blasts, and may specify the location of such measurements.

(f) Except where lesser distances are approved by the Office based upon a preblasting survey, seismic investigations, or other appropriate investigations, blasting shall not be conducted within—

(1) 300 feet of any building used as a dwelling, school, church, hospital, or nursing facility; and

(2) 300 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(g) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under paragraph (d) of this section.

(h) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(i) In all blasting operations, except as otherwise authorized in this Section, the maximum peak particle velocity shall not exceed 1 inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building. Peak particle velocities shall be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity shall be the largest of any of the three measurements. The Office may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(j) If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of Paragraph (i) of this Section shall not apply at the following locations.

(1) At structures owned by the person conducting the mining activity, and not leased to another party.

(2) At structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Office prior to blasting.

(k) An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in paragraph (l) of this section. If the blasting is conducted in accordance with this equation, the peak particle velocity shall be deemed to be within the 1-inch-per-second limit.

(l)(1) The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula $W=(D/60)^2$ where W = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D = the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(2) For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance, in feet (D):	Maximum weight, in pounds (W)
300	25
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,110	336
1,200	400
1,300	469
1,400	544
1,500	625
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,403
4,000	4,444
4,500	5,625
5,000	6,944

§ 910.817-67 Use of explosives: Seismographic measurements.

(a) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of 1 inch per second is not exceeded, the equation in § 910.817-65(1) need not be used. If that equation is not used by the person conducting underground mining activities, a seismographic record shall be obtained for each shot.

(b) The use of a modified equation from that specified in Section 910.817-65(1), to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the Office on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the Office approve the use of a modified equation where the peak particle velocity of 1 inch per second required in § 910.817-65(i) would be exceeded.

(c) The Office may require a seismograph record of any or all blasts and may specify the location at which such measurements are taken.

§ 910.817-68 Use of explosives: Records of blasting operations.

A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the Office and public on request. The record shall contain the following data:

(a) Name of the operator conducting the blast.

(b) Location, date, and time of blast.

(c) Name, signature, and license number of blaster-in-charge.

(d) Direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building either—

(1) Not located in the permit area; or

(2) Not owned nor leased by the person who conducts the underground mining activities.

(e) Weather conditions, including temperature, wind direction, and approximate velocity.

(f) Type of material blasted.

(g) Number of holes, burden, and spacing.

(h) Diameter and depth of holes.

(i) Types of explosives used.

(j) Total weight of explosives used.

(k) Maximum weight of explosives detonated within any 8-millisecond period.

(l) Maximum number of holes detonated within any 8-millisecond period.

(m) Initiation system.

(n) Type and length of stemming.

(o) Mats or other protections used.

(p) Type of delay detonator and delay periods used.

(q) Sketch of the delay pattern.

(r) Number of persons in the blasting crew.

(s) Seismographic records, where required, including the calibration signal of the gain setting and—

(1) Seismograph reading, including exact location of seismograph and its distance from the blast;

(2) Name of the person taking the seismograph reading; and

(3) Name of person and firm analyzing the seismograph record.

§ 910.817-71 Disposal of underground development waste and excess spoil: General requirements.

(a) Underground development waste and spoil not required to achieve the approximate original contour and which is not used as backfill shall be hauled or conveyed to and placed in designated disposal areas within a permit area if the disposal areas are authorized for such purposes in the approved permit application in accordance with §§ 910.817-71 through 910.817-74. The material shall be placed in a controlled manner to ensure—

(1) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of § 910.817-42;

(2) Stability of the fill; and

(3) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(b) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the Office.

(c) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated and stored or replaced in accordance with §§ 910.817-21 through 910.817-25. If approved by the Office organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(d) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of § 910.816-43. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(e) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the Office. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(f) The fill materials shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and sub-surface drainage to be compatible with the natural surroundings and ensure a long term static safety factor of 1.5.

(g) The final configuration of the fill must be suitable for postmining land uses approved in accordance with § 910.817-133, except that no depressions or impoundments shall be allowed on the completed fill.

(h) Terraces may be utilized to control erosion and enhance stability if approved by the Office and consistent with § 910.817-102(b).

(i) Where the slope in the disposal area exceeds 1*v*:2.8*h* (36 percent), or such lesser slope as may be designated by the Office based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with Section 910.784-19 to determine the size of the rock toe buttresses or keyway cuts.

(j) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction, and during the following critical construction

periods: (1) Removal of all organic material and topsoil, (2) placement of underdrainage systems, (3) installation of surface drainage systems, (4) placement and compaction of fill materials, and (5) revegetation. The registered engineer or other qualified professional specialist shall provide to the Office a certified report within 2 weeks after each inspection that the fill has been constructed as specified in the design approved by the Office. A copy of the report shall be retained at the minesite.

(k) Coal processing waste shall not be disposed of in valley or head-of-hollow fills and may only be disposed of with underground development waste, or in other excess spoil fills, if such waste is—

(1) Placed in accordance with § 910.817–85;

(2) Demonstrated to be non-toxic and non-acid forming; and

(3) Demonstrated to be consistent with the design stability of the fill.

(l) If the disposal area contains springs, natural or manmade watercourses, or wet weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(m) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigations and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(n) Underground development waste and excess spoil may be returned to underground workings only in accordance with the disposal plans submitted under 30 CFR 910.784–25 and approved by the Office and MSHA.

§ 910.817–72 Disposal of underground development waste and excess spoil: Valley fills.

Valley fills shall meet all of the requirements of § 910.817–71 and the additional requirements of this section.

(a) The fill shall be designed to attain a long term static factor of safety of 1.5, based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(b) A sub-drainage system for the fill shall be constructed in accordance with the following:

(1) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (b)(4) of this section and:

(i) Be installed along the natural drainage system;

(ii) Extend from the toe to the head of the fill; and

(iii) Contain lateral drains to each area of potential drainage or seepage.

(2) A filter system to ensure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(3) In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (b)(4) of this section. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd³.	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd³.	Sandstone	16	8
Do	Shale	16	16

(4) Underdrains shall consist of non-degradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay, or shale.

(c) Underground development waste and excess spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the Office in lifts no greater than four feet or less if required by the Office to—

(1) Achieve the densities designed to ensure mass stability;

(2) Prevent mass movement;

(3) Avoid contamination of the rock underdrain or rock core; and

(4) Prevent formation of voids.

(d) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from the 100-year, 24-hour precipitation event or larger event specified by the Office. Surface runoff from the fill surface shall be diverted to stabilized channels of the fill which will safely pass runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 910.817–43(f).

(e) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1*v*:20*h* (5 percent). The vertical distance between terraces shall not exceed 50 feet.

(f) Drainage shall not be directed over the outslope of the fill.

(g) The outslope of the fill shall not exceed 1*v*:2*h* (50 percent). The Office may require a flatter slope.

§ 910.817–73 Disposal of underground development waste and excess spoil: Head-of-hollow fills.

Disposal of underground development waste and excess spoil in the head-of-hollow fill shall meet all standards set forth in Sections 910.817–71 and 910.817–72 and the additional requirements of this Section.

(a) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in Section 910.817–72, with diversion of runoff around the fill.

(b) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of § 910.817–72(b).

(2) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(3) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1*v*:33*h* (3 percent). Instead of the requirements of § 910.817–71(g), a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or

sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3- to 5-percent grade toward the fill and a 1-percent slope toward the rock core.

(c) The drainage control system shall be capable of safely passing the runoff from a 100-year, 24-hour precipitation event or larger event specified by the Office.

§ 910.817–74 Disposal of underground development waste and excess spoil: Durable rock fills.

In lieu of the requirements of §§ 910.817–72 and 910.817–73, the Office may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and § 910.817–71 are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock waste or spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the Office.

(a) Waste or spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(1) The method of waste spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock waste spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials will comprise no more than 20% of the fill volume as determined by tests performed by a registered engineer and approved by the Office.

(b)(1) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(2) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety:

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

(c) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(1) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(2) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(3) The internal drain shall be protected by properly designed filter system.

(d) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass the runoff safely from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 910.817–43(f).

(e) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1*v*:20*h* (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(f) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will safely pass a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 910.817–43(f).

(g) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(1) The slope of the outslope between terrace benches shall not exceed 1*v*:2*h* (50 percent).

(2) To control surface runoff, each terrace bench shall be graded to a slope 1*v*:20*h* (5 percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(3) Terrace ditches shall have a 5 percent slope toward the channels specified in paragraph (f) of this section, unless steeper slopes are necessary in conjunction with approved roads.

§ 910.817–81 Coal processing waste banks: General requirements.

(a) All coal processing waste shall be hauled or conveyed and placed in new and existing disposal areas approved by the regulatory authority for this purposes. These areas shall be within a permit area. The disposal area shall be designed, constructed and maintained.

(1) In accordance with §§ 910.817–71 and 910.817–72, this section, and § 910.817–82 through 910.817–88; and

(2) To prevent combustion.

(b) Coal processing waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles, may be disposed of in the permit area only if approved by the Office. Approval shall be based on a showing by the person who conducts undergound mining activities in the permit area, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal of these materials does not—

(1) Adversely affect water quality, water flow, or vegetation;

(2) Create public health hazards; or

(3) Cause instability in the disposal areas.

§ 910.817–82 Coal processing waste banks: Site inspection.

(a) All coal processing waste banks shall be inspected, on behalf of the person conducting underground mining activities, by a qualified registered engineer or other person approved by the Office.

(1) Inspections shall occur at least quarterly, beginning within 7 days after preparation of the disposal area begins. The Office may require more frequent inspections based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with § 910.817–85, topsoil has been distributed on the bank in accordance with § 910.817–24, or at such a later time as the Office may require.

(2) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, ensure that all organic material and topsoil have been removed and that proper construction and maintenance

are occurring in accordance with the plan submittted under 30 CFR 910.784–16 through 910.784–19 and approved by the Office.

(3) The engineer or other approved inspector shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(4) Copies of the inspection findings shall be maintained at the mine site.

(b) If any inspection discloses that a potential hazard exists, the Office shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Office shall be notified immediately. The Office shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

§ 910.817–83 Coal process waste banks: Water control measures.

(a) Unless the operator demonstrates that a subdrain system is not required to ensure structural integrity and protection of the surface and ground water quality, a properly desinged subdrainage system shall be provided, which shall—

(1) Intercept all ground water sources;

(2) Be protected by an adequate filter; and

(3) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

(b) All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with § 910.817–72(d).

(c) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(d) Discharges of all water from a coal processing waste bank shall comply with the 30 CFR 910.817–41, 910.817–42, 910.817–45 through 910.817–46, 910.817–52, and 910.817–55.

§ 910.817–85 Coal processing waste banks: Construction requirements.

(a) Coal processing waste banks shall be constructed in compliance with 30 CFR 910.817–71 and 910.817–72, except to the extent the requirements of those Sections are specifically varied in this Section.

(b) Coal processing waste banks shall have a minimum static factor of safety of 1.5.

(c) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this Paragraph, instead of those specified in § 910.817–72(c). The coal processing waste shall be—

(1) Spread in layers no more than 24 inches in thickness; and

(2) Compacted to attain 90 percent of the maximum dry density in order to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specification T99–74 [Twelfth Edition] [July 1978], or an equivalent method. AASHTO T–99–74 is hereby incorporated by reference as it exists on the date of adoption of this Subpart. Notices of changes made to this publication will be periodically published by OSM in the Federal Register. AASHTO T99–74 is on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 1100 L St., N.W., Washington, D.C. Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.

(3) Variations may be allowed in these requirements for the disposal of dewatered fine coal waste (minus 28 sieve size) with approval of the Office.

(d) Following grading of the coal processing waste bank, the site shall be covered with a minimum of 4 feet of the best available nontoxic and noncombustible material, in accordance with 30 CFR 910.817–22(e), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with §§ 910.817–111 through 919.817–117. The Office may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of §§ 910.817–111 through 910.817–117 will be met.

§ 910.817–86 Coal processing waste: Burning.

Coal processing waste fires shall be extinguished by the person who conducts the underground mining activities, in accordance with a plan approved by the Office and the Mine Safety and Health Administration. The plan shall contain, as a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedure to be used, shall be involved in the extinguishing operations.

§ 910.817–87 Coal processing waste: Burned waste utilization.

Before any burned coal processing waste or other materials or refuse is removed from a disposal area, approval shall be obtained from the Office. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and methods of compliance with this subpart, shall be submitted to the Office. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified engineer.

§ 910.817–88 Coal processing waste: Return to underground workings.

Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the Office and MSHA under 30 CFR 910.784–19 and 910.784–25.

§ 910.817–89 Disposal of noncoal wastes.

(a) Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, timber and other combustibles generated during underground mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-born waste. When disposal is completed, a minimum of 2 feet of soil

cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 30 CFR 910.817–111 through 910.817–117. Operation of the disposal site shall be conducted in accordance with all local, State, and Federal requirements, including Chapter 391–3–4 Solid Waste Management Rules of Georgia Department of Natural Resources.

(c) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any solid waste disposal excavation be placed within 8 feet of any coal outcrop or coal storage area.

§ 910.817–91 Coal processing waste: Dams and embankments: General requirements.

(a) Sections 910.817–91 through 910.817–93 apply to dams and embankments, constructed of coal processing waste or intended to impound coal processing waste, whether they were completed before adoption of this Part.

(b) Waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the Office that the stability of such a structure conforms with the requirements of 30 CFR 910.817–93(a). It shall also be demonstrated that the use of waste material shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or embankment. All demonstrations shall be submitted to and approved by the Office.

§ 910.817–92 Coal processing waste: Dams and embankments: Site preparation.

Before coal processing waste is placed at a dam or embankment site—

(a) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with the requirements of this subpart; and

(b) Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with the requirements of 30 CFR 910.817–43. Adequate outlets for discharge from these diversions shall be in accordance with 30 CFR 910.817–47. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak runoff from a 100-year, 24-hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharges shall be in accordance with 30 CFR 910.817–47. Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with 30 CFR 910.817–41 through 910.817–46.

§ 910.817–93 Coal processing waste: Dams and embankments: Design and construction.

(a) The design of each dam and embankment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of 30 CFR 910.817–49(a)(5), (e), (f), (g), (h), and (i) modified as follows.

(1) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet. The maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the U.S. Soil Conservation Service criteria referenced in 30 CFR 910.817–49.

(2) The dam and embankment shall have a minimum safety factor of 1.5 for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least 1.2.

(3) The dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in paragraph (a)(2) of this section or the publications referred to in 30 CFR 910.817–49, and for all increments of construction.

(b) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(c) Dams or embankments constructed of or impounding waste materials shall be designed so that at least 90 percent of the water stored during the design precipitation event shall be removed within a 10-day period.

§ 910.817–95 Air resources protection [Reserved]

§ 910.817–97 Protection of fish, wildlife, and related environmental values.

(a) Any person conducting underground mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

(b) A person who conducts underground mining activities shall promptly report to the Office the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary, any plant or animal listed as threatened or endangered by the State, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the Office by that person.

(c) A person who conducts underground mining activities shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the underground mining activities on the permit area shall be designed and constructed in accordance with the guidelines set forth in the "Environmental Criteria for Electric Transmission Systems" (USDI, USDA (1970)), or in alternative guidance manuals approved by the Office. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61–10 "Powerline Contacts by Eagles and Other Large Birds" or in alternative guidance manuals approved by the Office. For informational purposes, these two documents are available at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, and at each OSM Regional Office, District Office and Field Office.

(d) Each person who conducts underground mining activities shall to the extent possible using the best technology currently available—

(1) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by State or Federal law;

(2) Fence roadways where specified by the Office to guide locally important wildlife to roadway underpasses or overpasses and construct the necessary passages. No new barrier shall be located in known and important wildlife migration routes.

(3) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

(4) Restore, enhance where practicable, or avoid disturbances to habitats of unusually high value for fish and wildlife;

(5) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas;

(6) Afford protection to aquatic communities by avoiding stream channels as required in §§ 910.817–57

and 910.817–126 or restoring stream channels as required in Section 910.817–44.

(7) Not use persistent pesticides on the area during underground mining and reclamation activities unless approved by the Office;

(8) To the extent possible prevent, control, and suppress range forest and coal fires which are not approved by the Office as part of a management plan.

(9) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall, in addition to the requirements of 30 CFR 910.816–111 through 910.816–117—

(i) Select plant species to be used on reclaimed areas, based on the following criteria—

(A) Their proven nutritional value for fish and wildlife;

(B) Their uses as cover for fish and wildlife; and

(C) Their ability to support and enhance fish and wildlife habitat after release of bonds; and

(ii) Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife;

(10) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use, and crop management practices, intersperse the fields with trees, hedges of fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals; and

(11) Where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts, utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals.

§ 910.817–99 Slides and other damage.

At any time a slide occurs which may have a potential adverse effect on public, property, health, safety, or the environment, the person who conducts the underground mining activities shall notify the Office by the fastest available means and comply with any remedial measures required by the Office.

§ 910.817–100 Contemporaneous reclamation.

Reclamation efforts, including, but not limited to, backfilling, grading, topsoil replacement and revegetation, of all areas affected by surface operations shall occur as contemporaneously as practicable with mining operations.

910.817–101 Backfilling and grading: General requirements.

(a) Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with the time schedule approved by the Office as a condition of the permit.

(b) *Backfilling and grading.* (1) Except for those areas where the Office determines that 910.817–102(a)(3) applies, all surface areas affected by underground mine operations shall be returned to the approximate original contour. All spoil shall be transported, backfilled, and compacted (where advisable to ensure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions. The final graded slopes shall not exceed in grade either the approximate premining slopes, or any lesser slopes as approved by the Office based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography.

(2) Backfilled material shall be placed to minimize adverse effects on ground water, minimize off-site effects, and support the approved postmining land use.

(3) The postmining graded slopes need not be uniform.

(4) Cut-and-fill terraces may be used only in those situations expressly identified in § 910.817–102.

§ 910.817–102 Backfilling and grading: General grading requirements.

(a) For existing underground mining activities and for underground mining activities affecting previously mined lands that have not been restored to the standards of this Part and that lack sufficient spoil to otherwise comply with this Section, the person who conducts underground mining activities shall—

(1) Retain all spoil and underground development waste on the solid portion of existing or new benches; and

(2) Backfill and grade all spoil and underground development waste to the moderate slop possible and to acheive a result as close to approximate original contour as possible; or

(3) Where spoil or non-toxic or non-acidic mine waste materials have become settled, revegetated and can be shown to meet the criteria outlined in paragraph (a)(3) (i) through (iii), then regrading of the settled and revegetated areas will not be required to achieve approximate original contour.

(i) The spoil or mine development waste is not located such that it is detimental to the environment, or to the health and safety of the public;

(ii) The spoil or mine development waste stability is demonstrated through standard geotechnical analysis to be consistent with backfill and grading requirements (1.3 safety factor) for material on the solid bench or fill requirements (1.5 safety factor) for material on the outslope;

(iii) The spoil or mine development waste surface is sufficiently vegetated to prevent erosion and contribution of suspended solids from normal runoff;

(iv) If Paragraphs (a)(3) (i),(ii), and (iii) of this section cannot be achieved, and if the Office determines that disturbance of the existing spoil or mine development waste would increase environmental harm or reduce the health and safety of the public, then the existing spoil or mine development waste pile shall remain in place;

(v) The Office may require stabilization of the spoil or mine development waste in Paragraph (iv) above to meet the requirements of Paragraphs (i), (i) and (iii) above.

(4) Backfill and grade so that any mine entry is properly sealed and covered in accordance with other applicable requirements of this regulatory program.

(b) On approval by the Office and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirement:

(1) The width of the individual terrace bench shall not exceed 20 feet, unless specifically approved by the Office, as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(2) The vertical distance between terraces shall be as specified by the Office, to prevent excessive erosion and to provide long-term stability.

(3) The slope of the terrace outslope shall not exceed $1v:2h$ (50 percent). Outslope which exceed $1v:2h$ (50 percent) may be approved, if they have a minimum static safety factor or more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(4) Culverts and underground rock drains shall be used on the terrace only when approved by the Office.

(c) Small depressions may be constructed, if they—

(1) Are approved by the Office to minimize erosion, conserve soil moisture or promote vegetation:

(2) Do not restrict normal access; and
(3) Are not inappropriate substitutes for lower grades on the reclaimed lands.
(d) All underground mining activities on slopes above 20 degrees shall meet the provisions of 30 CFR Subpart 910.826.
(e) All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour is hazardous to equipment operators, then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

§ 910.817-103 Backfilling and grading: Covering coal and acid- and toxic-forming materials.

(a) *Cover.* (1) A person who conducts surface mining activities shall either cover, with a minimun of 4 feet of the best available nontoxic and noncombustible material, or, treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible or other materials identified by the Office as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility in order to prevent waste pollution and sustained combustion and to minimize adverse effects on plant growth and land uses.
(2) Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid of toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the Office shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from ground water contact.
(3) Acid-forming or toxic-forming material shall be buried or stored in proximity to a drainage course so as to couse or pose a threat of water pollution.
(b) *Stabilization.* Backfilled materials shall be selectively hauled or conveyed, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to ensure the stability of backfilled materials. The method and design specifications of compacting material shall be approved by the Office before acid-forming and toxic-forming materials are covered.

§ 910.817-106 Regrading or stabilizing rills and gullies.

When rills or gullies deeper than 9 inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to §§ 910.917-111 through 910.817-117. The Office shall specify that rills or gullies of lesser size be stabilized, and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

§ 910.817-111 Revegetation: General requirements.

(a) Each person who conducts underground mining activities shall establish on all areas disturbed by surface operations and facilities diverse effective and permanent vegetative cover. For areas designated as prime farmland, the requirements of 30 CFR 910.823 shall apply.
(b) All revegetation shall be in compliance with the plan submitted under 30 CFR 910.784-13 and 910.784-15, as approved by the Office in the permit, and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.
(1) All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the area of disturbed land.
(2) The vegetative cover shall be capable of self-regeneration and plant succession.
(3) Vegetative cover shall be at least equal in extend of cover to the natural vegetation of the area.
(4) If both the premining and the postmining land uses are cropland, planting of the crops normally grown will meet the requirements of paragraph (b)(1) of this section.

§ 910.817-112 Revegetation: Use of introduced species.

Introduced species may be used if approved by the Office under the following conditions:
(a) After appropriate field trials have demonstrated that the introduced species can establish a diverse, effective, and permanent cover capable of achieving the approved postmining land use;
(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan;
(c) The species are compatible with the plant and animal species of the region; and
(d) The species meet the requirements of applicable State and Federal seed or introduced species statutes, that the noxious weed seed per pound of pure seed do not exceed the limitations set forth in regulation H of the Georgia Seed Laws and Rules and Regulations, and that the species are not poisonous or noxious.

§ 910.817-113 Revegetation: Timing.

Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded, as contemporaneously as practicable, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

§ 910.817-114 Revegetation: Mulching and other soil stabilizing practices.

(a) Suitable mulch or other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, or to increase the moisture retention of the soil. The Office may, on a case-by-case basis, suspend the requirement for mulch if the permittee can demonstrate that alternative procedures will achieve the requirements of 910.817-116 and do not cause or contribute to air or water pollution.
(b) Mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation when required by the Office.
(c) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch when the Office determines they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.
(d) Chemical soil stabilizers alone or in combination with appropriate mulches may be used in conjunction with vegetative covers approved for the postmining land use.

§ 910.817-115 Revegetation: Grazing.

When the approved postmining land use is range or pasture land, grazing use of such lands during the period of operator responsibility is allowed. If

actual grazing occurs after mining, the performance of the area in such use may be used to demonstrate the self-regeneration capability of the planted species and their utility to the postmining land use. The type and extend of use (season of use and grazing capacity) should demonstrate that ordinary grazing use does not endanger the survival coverage (ground cover) and productivity of the postmining vegetation, and that the premined capability has been restored.

§ 910.817-116 Revegetation: Standards for success.

(a) Success of revegetation shall be measured by techniques approved by the Office after consultation with appropriate State and Federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas or through the use of technical guidance procedures published by USDA or USDI for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.

(b)(1) The ground cover and productivity of living plants on the revegetated area shall be equal to the ground cover and productivity of living plants on the approved reference area or to the standards in technical guides approved by the Office, from among those published by USDA or USDI for use in this part. The period of extended responsibility under the performance bond requirements of Subparts 910.800 through 910.808 begins after the last year of augmented seeding, fertilizing, irrigation or other work which ensures success and continues for not less than five years. Ground cover and productivity shall equal the approved standard for the last two consecutive years of the responsibility period.

(2) The ground cover and productivity of the revegetated area shall be considered equal, if they are at least 90 percent of the ground cover and productivity of the reference area with 90 percent statistical confidence, or with 80 percent statistical confidence on shrublands or ground cover and productivity are at least 90 percent of the technical guide approved pursuant to 30 CFR 910.817-116(b)(1). Exceptions may be authorized by the Office under the following standards:

(i) For previously mined areas that were not reclaimed to the requirements of Subparts 910.815 through 910.828, as a minimum the ground cover of living plants shall not be less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion;

(ii) For areas to be developed for industrial or residential use less than 2 years after regrading is completed, the ground cover of living plants shall not be less than required to control erosion; and

(iii) For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to the approved reference areas or other technical guidance procedures. Crop production from the mined area shall be equal to or greater than that of the approved standard for the last two consecutive growing seasons of the 5 or 10 year liability period established in paragraph (b)(1) of this Section. The applicable 5 year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Production shall not be considered equal if it is less than 90 percent of the production of the approved standard with 90 percent statistical confidence.

(iv) On areas to be developed for fish and wildlife management or forestland, successful vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub or half-shrub, stocking shall meet the standards described in § 910.817-117. The area seeded to a ground cover shall be considered acceptable if it is at least 70 percent of the ground cover of the reference areas with 90 percent statistical confidence or if the ground cover is determined to be adequate to control erosion by the Office. Section 910.817-116(b) shall determine the responsibility period and the frequency of ground cover measurement.

(c) The person who conducts underground mining activities shall:

(1) Maintain any necessary fences and proper management practices; and

(2) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the Office, to identify conditions during the applicable period of liability specified in paragraph (b) of this section.

§ 910.817-117 Revegetation: Tree and shrub stocking for forest land.

This section sets forth forest resource conservation standards for reforestation operations to ensure that a cover of commercial tree species, non-commercial tree species, shrubs or half shrubs, sufficient for adequate use of available growing space, is established after underground mining activities.

(a) Stocking, i.e. the number of stems per unit area, will be used to determine the degree to which space is occupied by well distributed countable trees, shrubs or half shrubs.

(1) Root crown or root sprouts over 1 foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur only the tallest stem will be counted.

(2) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

(i) The tree or shrub shall be in place at least 2 growing seasons.

(ii) The tree or shrub shall be alive and healthy, and

(iii) The tree or shrub shall have at least one third of its length in live crown.

(3) Rock areas, permanent road and surface water drainage ways on the revegetated area shall not require stocking.

(b) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:

(1) The area shall have a minimum stocking of 450 trees or shrubs per acre.

(2) A minimum of 75 percent of countable trees or shrubs shall be commercial trees species.

(3) The number of trees or shrubs and the ground cover shall be determined, using procedures described in §§ 910.817-116(b)(3)(iv) and 910.817-117(a) and the sampling method approved by the Office; when the stocking is equal to or greater than 450 trees or shrubs per acre and there is acceptable groundcover, the 5 year responsibility period required in § 910.816-116(b) shall begin.

(4) Upon expiration of the 5 year responsibility period and at the time of request for bond release each permittee shall provide documentation showing that the stocking of trees and shrubs and the groundcover on the revegetated area satisfy §§ 9.817-116(b)(3)(iv) and 910.817-117(b)(i).

(c) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(1) An inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the Office. This inventory shall contain but not be limited to—

(i) Site quality,

(ii) Stand size,

(iii) Stand condition,

(iv) Site and species relations, and

(v) Appropriate forest land utilization considerations;

(2) The stocking of trees, shrubs, half-shrubs, and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the reference area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement. The stocking of live woody plants shall be equal to or greater than 90 percent of the stocking of wood plants of the same life form on the reference area. When this requirement is met and acceptable ground cover is achieved, the 5 year responsibility period required in § 910.817–116(b) shall begin.

(3) Upon expiration of the 5-year responsibility period and at the time of request for bond release each permittee shall provide documentation showing that (i) the woody plants established on the revegetated site are equal to or greater than 90 percent of the stocking of live woody plants of the same life form of the approved reference areas with 80 percent statistical confidence and (ii) the groundcover on the revegetated area satisfies § 910.817–116(b)(3)(iv). Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the operation and reclamation plan.

§ 910.817–121 Subsidence control: General requirements.

(a) Underground mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to the surface, to the extent technologically and economically feasible, and so as to maintain the value and resonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence. Nothing in the Part shall be construed to prohibit the standard method of room and pillar mining.

(b) The person engaged in underground mining activities shall comply with all provisions of the subsidence control plan prepared pursuant to 30 CFR 910.784–20 and approved by the Office.

§ 910.817–122 Subsidence control: Public notice.

The mining schedule shall be distributed by mail to all owners of property and residents within the area above the underground workings and adjacent areas. Each such person shall be notified by mail at least six months prior to mining beneath his or her property or residence. The notification shall contain, as a minimum:

(a) Identification of specific areas in which mining will take place;

(b) Dates of mining activities that could cause subsidence and affect specific structures; and

(c) Measures to be taken to prevent or control adverse surface effects.

§ 910.817–124 Subsidence control: Surface owner protection.

(a) Each person who conducts underground mining activities shall adopt all measures approved by the Office under 30 CFR 910.784–20 to reduce the likelihood of subsidence, to prevent subsidence causing material damage or reducing the value or reasonably foreseeable use of surface lands, and to mitigate the effects of any such damage or reduction which may occur.

(b) Each person who conducts underground mining which results in subsidence that causes material damage or reduces the value or reasonably foreseeable use of the surface lands shall, with respect to each surface area affected by subsidence—

(1) Restore, rehabilitate, or remove and replace each damaged structure, feature or value, promptly after the damage is suffered, to the condition it would be in if no subsidence had occurred and restore the land to a condition capable of supporting reasonably foreseeable uses it was capable of supporting before subsidence;

(2) Purchase the damaged structure or feature for its fair market, pre-subsidence value and shall promptly after subsidence occurs, to the extent technologically and economically feasible, restore the land surface to a condition capable and appropriate of supporting the purchased structure, and other foreseeable uses it was capable of supporting before mining. Nothing in this paragraph shall be deemed to grant or authorize an exercise of the power of condemnation or the right of eminent domain by any person engaged in underground mining activities; or

(c) Each person who conducts underground mining activities will compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence, by purchase prior to mining of a noncancellable, premium prepaid insurance policy or other means approved by the Office as assuring before mining begins that payment will occur; indemnify every person with an interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restore the land to a condition capable of maintaining reasonable foreseeable uses which it could support before subsidence.

§ 910.817–126 Subsidence control: Buffer zones.

(a) Underground mining activities shall not be conducted beneath or adjacent to any perennial stream, or impoundment having a storage volume of 20 acre-feet or more, unless the Office on the basis of detailed subsurface information, determines that subsidence will not cause material damage to streams, water bodies and associated structures. If subsidence causes material damage, then measures will be taken to the extent technologically and economically feasible to correct the damage and to prevent additional subsidence from occurring.

(b) Underground mining activities beneath any aquifer that serves as a significant source of water supply to any public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata. The Office may prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and water supply.

(c) Underground mining activities shall not be conducted beneath or in close proximity to any public buildings, including but not limited to churches, school, hospitals, courthouses and government offices, unless the Office on the basis of detailed subsurface imformation, determines that subsidence from those activities will not cause material damage to these structures and specifically authorizes the mining activities.

(d) The Office shall suspend underground coal mining under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments or permanent streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or committees.

§ 910.817–131 Cessation of operations: Temporary.

(a) Each person who conducts underground mining activities shall effectively support and maintain all surface access openings to underground operations, and secure surface facilities in areas in which there no current

operations, but operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his or her obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is know that a temporary cessation will extend beyond 30 days, each person who conducts underground mining activities shall submit to the Office a notice of intention to cease or abandon operations. This notice shall include a statement of the exact number of surface acres and the horizontal and vertical extent of sub-surface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of reclamation of surface area which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures and water treatment activities that will continue during the temporary cessation.

§ 910.817-132 Cessation of operations: Permanent.

(a) The person who conducts underground mining activities shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this part and according to the permit approved by the Office.

(b) All surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved by the Office, as suitable for the postmining land use or environmental monitoring, shall be removed and the affected lands reclaimed.

§ 910.817-133 Postmining land use.

(a) *General.* Surface land areas affected by mining activities shall be restored in a timely manner——

(1) To conditions that are capable of supporting the use which they were capable of supporting before any mining;

(2) To higher or better uses achievable under criteria and procedures of this Section.

(b) *Determining pre-mining use of land.* The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land had not been previously mined and had been properly managed.

(1) The postmining land use for land that has been previously mined and not reclaimed shall be restored to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood, at the option of the operator.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) Prior to the release of lands from the permit area in accordance with 30 CFR 910.807—12(c) the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved by the Office after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met:

d(1) The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local, State, or Federal land use policies and plans; a written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall have been submitted to the Office within 60 days of notice by the Office before underground mining activities begin. Any required approval of local, State, or Federal land management agencies, including any necessary zoning or other changes required for the land use, shall have been obtained and shall remain valid throughout the underground mining activities.

(2) Specific plans shall be prepared and submitted to the Office which show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The Office may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities shall be ensured as evidenced by letters of commitment from parties other than the person who conducts underground mining activities, as appropriate, to provide them in a manner compatible with the plans submitted under 30 CFR 910.784-15. The letters shall be submitted to the Office before underground mining activities begin.

(4) Specific and feasible plans are submitted to the Office which show that financing and attainment and maintenance of the postmining land use are feasible.

(5) Plans for the postmining land use shall have been designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants shall have been obtained from the Office and appropriate State and Federal fish and wildlife management agencies have been provided a 60-day period in which to review the plan before underground mining activities begin.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable Federal, State, and local laws, have been reviewed by the Office to ensure that—

(i) The proposed postmining cropland use remains practical and reasonable;

(ii) There is sufficient water available and committed to maintain crop production; and

(iii) Topsoil quality and depth are sufficient to support the proposed use.

§ 910.817-150 Roads: Class I: General.

(a) Each person who conducts underground mining activities shall design, construct or reconstruct, utilize, and maintain Class I Roads and restore the area to meet the requirements of 30 CFR 910.816-151 through 910.816-156 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, Class I Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

(c) All Class I Roads shall be removed and the land affected regraded and revegetated in accordance with the requirements of 30 CFR 910.817–156 unless—

(1) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(2) The necessary maintenance is assured; and

(3) All drainage is controlled according to 30 CFR 910.817–153.

(d)(1) The design and construction or reconstruction of Class I Roads shall be certified by a registered qualified professional engineer in accordance with 30 CFR 910.817–151 through 910.817–154, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the Office upon a demonstration by a registered qualified professional engineer that they will result in performance equal to or better than that resulting from Class I roads complying with 30 CFR 910.817–151 through 910.817–156.

(2) The design shall incorporate the demand for mobility and travel efficiency, based on geometric criteria, both horizontal and vertical, appropriate for the anticipated volume of traffic and weight and speed of vehicles to be used.

§ 910.817–151 Roads: Class I: Location.

(a) Class I Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any Class I Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Office.

(c) Stream fords are prohibited unless they are specifically approved by the Office as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of 30 CFR 910.817–153.

(d) Class I Roads shall be located to minimize downstream sedimentation and flooding.

§ 910.817–152 Roads: Class I: Design and construction.

Class I Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(a) *Vertical alinement.* Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(1) The overall grade shall not exceed 1v:10*h* (10 percent).

(2) The maximum pitch grade shall not exceed 1v:6.5*h* (15 percent).

(3) There shall be not more than 300 feet of pitch grade exceeding 10 percent within any consecutive 1,000 feet of Class I Roads, but in no case shall there be any pitch grade over 15 percent.

(b) *Horizontal alinement.* Class I Roads shall have horizontal alinement as consistent with the existing topography as possible, and shall provide the alinement required to meet the performance standards of 30 CFR 910.817–150 through 910.817–156. The alinement shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(c) *Road cuts.* (1) Cut slopes shall not be steeper than specifically authorized by the Office which shall not authorize slopes steeper than 1v:1.5*h* in unconsolidated materials or 1v:0.25*h* in rock, except that steeper slopes may be specifically authorized by the Office if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(2) Topsoil or other materials suitable under 30 CFR 817.22 shall be placed on all cut slopes of 1v:1.5*h* or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to control erosion.

(3) Temporary erosion-control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(d) *Road embankments.* Embankment sections shall be constructed in accordance with the following provisions:

(1) All vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be placed beneath or in any Class I Road embankment.

(2) Where an embankment is to be placed on side slopes exceeding 1v:5*h* (20 percent), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of 10 feet in width and shall extend a minimum of 2 feet below the toe of the fill.

(3) Material containing by volumes less than 25 percent of rock larger than 6 inches in greatest dimension shall be spread in successive uniform layers not exceeding 12 inches in thickness before compaction.

(4) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing it in 12-inch layers impossible under paragraph (d)[3] of this section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed 36 inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of paragraph (d)(3) of this section.

(5) Each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed. Loads of material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(6) Embankment layers shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used. In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used. A structural and foundation analysis shall be performed to establish design standards for embankment stability appropriate to the site. Publications of the American Association of State Highway and Transportation Officers (AASHTO), including AASHTO T–99, T–180, T–91, and the modified AASHTO test, or other specifications generally recognized by transportation engineers

as adequate for design of highway embankments, shall be used to determine the degree of compaction required, on the basis of soil type and the anticipated volume of traffic and weight and speed of vehicles to be used. Compaction effort shall be adequate to achieve the degree of compaction required. No lift shall be placed on a layer until the design density is achieved throughout the layer. AASHTO specifications such as T–99, T–180, the modified AASHTO test, or other comparable specifications approved by the Office shall be used as guidelines for the determination of the maximum dry density for granular materials.

(7) Material shall be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction.

(8) Embankment slopes shall not be steeper than 1v:2*h* except that where the embankment material is a minimum of 85 percent rock, slopes shall not be steeper than 1*v*:1.35*h* if it has been demonstrated to the Office that embankment stability will result. Where rock embankments are constructed they shall meet the requirements of paragraph (d)(4) of this section.

(9) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the Office may specify.

(10) The road surface shall be sloped toward the ditch line at a minimum rate of one-quarter inch per foot of surface width, or crowned at a minimum rate of one-quarter inch per foot of surface width as measured from the centerline of the road.

(11) All material used in embankments shall be suitable for use under paragraphs (d)(1)–(8) of this section. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material, natural soils containing organic matter, or any other material considered unsuitable by the Office for use in embankment construction.

(12) Excess or unsuitable material from excavations, as defined in paragraph (d)(11) of this section, shall be disposed of in accordance with 30 CFR 910.817–71. Acid- and toxic-forming materials shall be disposed of in accordance with 30 CFR 910.817–48, 910.817–81, and 910.817–103.

(13) Acid-producing materials shall be permitted for constructing embankments for, only those Class I Roads constructed or reconstructed on coal processing waste banks and only if it has been demonstrated to the Office that no additional acid will leave the confines of the coal processing waste bank. In no case shall acid-bearing refuse material be used outside the confines of the coal processing waste bank. Restoration of the road shall be in accordance with the requirements of 30 CFR 910.817–103 through 910.817–117.

(14) Topsoil or other materials suitable under 30 CFR 910.817–22 shall be placed on all embankment slopes of 1*v*:1.5*h* or flatter to aid in establishing vegetation and to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to prevent erosion.

(15) Temporary erosion-control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(e) *Topsoil removal.* Before initiation of construction or reconstruction of a Class I Road, topsoil and other materials, as determined under 30 CFR 910.817–22, shall be removed from the design roadbed, shoulders, and surface where associated structures will be placed, and shall be stored in accordance with 30 CFR 910.817–23.

§ 910.817–153 Roads: Class I: Drainage.

(a) *General.* (1) Each Class I Road shall be designed, constructed, or reconstructed, and maintained to have adequate drainage, using structures, such as, but not limited to, ditches, cross drains, and ditch relief drains. The water-control system shall be designed to safely pass the peak runoff from a 10-year, 24-hour precipitation event or a greater event if required by the Office.

(2) Sediment control shall comply with 30 CFR 910.817–42 and 910.817–45.

(3) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

(b) *Ditches.* (1) A ditch shall be provided on both sides of a through-cut and on the inside shoulder of a cut-and-fill section, with ditch relief cross-drains spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and drained safely away in accordance with this Section. Water from a fill or swtichback shall be released below the fill, through conduits or in riprapped channels, and shall not be discharged onto the fill. Drainage ditches shall be placed at the toe of all cut slopes formed by the construction of roads.

(2) On flat sections of Class I Roads where rolling topography is insufficient to provide natural ditch drainage, the road grade shall be undulated to provide for free flow of water in the ditch section. Road sections may be constructed to elevate the road surface above the original ground surface to facilitate drainage.

(c) *Culverts and bridges.* (1)(i) Culverts with an end area of 35 square feet or less shall be designed to safely pass the 10-year, 24-hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than 35 square feet, and bridges with spans of 30 feet or less, shall be designed to safely pass the 20-year, 24-hour precipitation event. Bridges with spans of more than 30 feet shall be designed to safely pass the 100-year, 24-hour precipitation event, or a larger event as specified by the Office.

(ii) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(iii) Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment-control structures.

(iv) All culverts shall be covered by compacted fill to a minimum depth of 1 foot.

(v) Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles to be used.

(2) Culverts for road surface drainage only, shall be constructed in accordance with the following:

(i) Unless otherwise authorized or required under paragraphs (c)(2) (ii) or (iii) of this section, Culverts shall be spaced as follows:

(A) Spacing shall not exceed 1,000 feet on grades of 0 to 3 percent.

(B) Spacing shall not exceed 800 feet on grades of 3 to 6 percent.

(C) Spacing shall not exceed 500 feet on grades of 6 to 10 percent.

(D) Spacing shall not exceed 300 feet on grades of 10 percent or greater.

(ii) Culverts at closer intervals than the maximum in Paragraph (c)(2)(i) of this Section shall be installed if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

(iii) Culverts may be constructed at greater intervals than the maximum indicated in paragraph (c)(2)(i) of this section if authorized by the Office upon a finding that greater spacing will not increase erosion.

(iv) Culverts shall cross the road at not less than a 30 degree angle downgrade.

(v) Culverts may be designed to carry less than the peak runoff from a 10-year, 24-hour precipitation event if the ditch will not overtop and will remain stable.

(vi) The inlet end shall be protected by a rock headwall or other material approved by the Office as adequate

protection against erosion of the headwall. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

(d) *Natural drainage.* Natural-channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Office in accordance with 30 CFR 910.817–43 and 910.817–44. The Office may approve alterations and relocations only if—

(1) The natural-channel drainage is not blocked;

(2) No significant damage occurs to the hydrologic balance; and

(3) There is no adverse impact on adjoining landowners.

(e) *Stream crossings.* Drainage structures are required for stream channel crossings. Drainage structures shall not affect the normal flow of gradient of the stream, or adversely affect fish migration and aquatic habitat or related environmental values.

910.817–154 Roads: Class I: Surfacing.

(a) Class I Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Office as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(b) Acid- or toxic-forming substances shall not be used in road surfacing.

§ 910.817–155 Roads: Class I: Maintenance.

(a) Class I Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the entire transportation facility including surface, shoulders, parking and side areas, approach structures, erosion control devices, cut-and-fill sections, and such traffic-control devices as are necessary for safe and efficient utilization of the road.

(b) Class I Road maintenance shall include repairs to the road surface, blading, filling of potholes, and replacement of gravel or asphalt. It shall include revegetating, brush removal, watering for dust control, and minor reconstruction of road segments as necessary.

(c) Class I Roads damaged by catastrophic events such as floods or earthquakes shall not be used until reconstruction of damaged road elements. The reconstruction shall be completed as soon as practicable after the damage has occurred.

§ 910.817–156 Roads: Class I: Restoration.

(a) Unless the Office approves retention of a Class I Road as suitable for the approved postmining land use, immediately after the road is no longer needed for operations, reclamation, or monitoring—

(1) The road shall be closed to vehicular traffic;

(2) The natural-drainage patterns shall be restored;

(3) All bridges and culverts shall be removed;

(4) Roadbeds shall be ripped, plowed, and scarified;

(5) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural-drainage restoration standards;

(6) Cut slopes shall be shaped to blend with the natural contour;

(7) Cross drains, dikes, and water bars shall be constructed to minimize erosion;

(8) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(9) Road surfaces shall be covered with topsoil in accordance with 30 CFR 910.817–24(b) and revegetated in accordance with 30 CFR 910.817–111 through 910.817–116.

(b) Unless otherwise authorized by the Office all road-surfacing materials shall be removed, hauled or conveyed, and disposed of under 30 CFR 910.817–89.

§ 910.817–160 Roads: Class II: General.

(a) Each person who conducts underground mining activities shall design, construct or reconstruct, utilize, and maintain Class II Roads and restore the area to meet the requirements of 30 CFR 910.817–161 through 910.817–166 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, Class II Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

(c) All Class II Roads shall be removed and the land affected regraded and revegetated in accordance with the requirements of 30 CFR 910.817–166, unless—

(1) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(2) The necessary maintenance is assured; and

(3) All drainage is controlled according to 30 CFR 910.817–163.

(d)(1) Class II Roads shall be designed and constructed in accordance with 30 CFR 910.817–161 through 910.817–164 except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the Office upon a demonstration by a qualified professional engineer that they will result in performance equal or better than that resulting from Class II Roads complying with 30 CFR 910.817–161 through 910.817–166.

(2) The design shall incorporate consideration of the needs of the specific uses of the road in addition to travel efficiency. To the extent that the anticipated volume of traffic or weight or speed of vehicles to be used requires higher standards than those set forth in 30 CFR 910.817–161 through 910.817–166, such higher standards shall be incorporated in the design, construction or reconstruction, and maintenance of Class II Roads.

§ 910.817–161 Roads: Class II: Location.

(a) Class II Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any Class II Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Office.

(c) Stream fords are prohibited unless they are specifically approved by the Office as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures, designed, constructed, and maintained to meet the requirements of 30 CFR 910.817–163.

(d) Class II Roads shall be located to minimize downstream and flooding.

§ 910.817–162 Roads: Class II: Design and construction.

Class II Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance;

(a) *Vertical alinement.* A continuous grade with excessive cuts or embankments shall be avoided. Changes of grade shall be made to conform as closely as possible to the existing terrain, and maximum road grades shall be as follows:

(1) The overall grade shall not exceed 1*v*:10*h* (10 percent).

(2) The pitch grade shall not exceed 1*v*:6.5*h* (15 percent), for any consecutive 1,000 feet.

(3) The pitch grade exceeding 15 percent shall not be longer than 300 feet within any consecutive 1,000 feet of Class II Road.

(b) *Horizontal alinement.* Class II Roads shall have horizontal alinement as consistent with the existing natural topography as possible, and shall provide the alinement required for the performance standards of 30 CFR 910.817–160 through 910.817–166. The alinement shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(c) *Road cuts.* Cut slopes shall not be steeper than specifically authorized by the Office, which shall not authorize slopes steeper than 1*v*:1.5*h* in unconsolidated materials or 1*v*:0.25*h* in rock, except that steeper slopes may be specifically authorized by the Office if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(1) Topsoil or other materials suitable under 30 CFR 910.817–22 shall be placed on all cut slopes of 1*v*:1.5*h* or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to minimize erosion.

(2) Temporary erosion-control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(d) *Road embankments.* Embankment sections shall be constructed in accordance with the following provisions:

(1) All vegetative material and topsoil shall be removed from the embankment foundation to increase stability, and no vegetative material or topsoil shall be placed beneath or in any Class II Road embankment.

(2) Where an embankment is to be placed on side slopes exceeding 1*v*:3*h* (33 percent), the existing ground shall be plowed, stepped, or if in rock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of 10 feet in width and shall begin at the toe of the fill. No material shall be placed below the toe or be allowed to slide below the toe. For slopes of less than 1*v*:3*h* (33 percent), the slopes shall be scarified to ensure bonding of the embankment and natural material.

(3) Material containing by volume less than 25 percent of rock larger than 6 inches in greatest dimension shall be spread in successive uniform layers not exceeding 12 inches in thickness before compaction.

(4) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing in 12-inch layers impossible under paragraph (d)(3) of this section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed 36 inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of paragraph (d)(3) of this section.

(5) Each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed. Embankment material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(6) Compaction greater than that specified in paragraph (d)(5) of this section shall be performed to the extent necessary to ensure stability.

(7) Material shall be placed in an embankment under moisture content conditions which will permit compaction and ensure proper soil cohesion.

(8) Embankment slopes shall not be steeper than 1*v*:1.5*h* except that if the embankment material is a minimum of 85 percent rock, slopes shall not be steeper than 1*v*:1.35*h* if it has been demonstrated to the office that embankment stability will result. Where rock embankments are constructed they shall meet the requirements of paragraph (d)(4) of this section.

(9) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the Office may specify.

(10) The road surface shall be sloped sufficiently to prevent ponding of water on the surface.

(11)All material used in embankments shall be suitable for use under paragraphs (d)(1)–(8) of this section. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material or natural soils containing organic matter, or any other material considered unsuitable for use in embankment construction by the office.

(12) Excess or unsuitable material from excavations, as defined in paragraph (d)(11) of this section, shall be disposed of in accordance with 30 CFR 910.817–71. Acid- and toxic-forming material shall be disposed of in accordance with 30 CFR 910.817–48, 910.817–81 and 910.817–103.

(13) Topsoil or other material suitable under 30 CFR 910.817–22 shall be placed on all embankment slopes of 1*v*:1.5*h* or flatter, to aid in establishing vegetation and to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to minimize erosion.

(14) Temporary erosion-control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(e) *Topsoil removal.* Before initiation of construction or reconstruction of a Class II road, topsoil and other materials, as determined under 30 CFR 910.817–22, shall be removed from the design roadbed, shoulders, and surfaces where associated structures will be placed, and shall be stored in accordance with 30 CFR 910.817–23.

§ 910.817–163 Roads: Class II: Drainage.

(a) *General.* (1) Each Class II Road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as ditches in wet areas, cross drains in natural drainageways, surface dips, and stream crossings. The water-control system shall be designed to pass the peak runoff safely from a 10-year, 24 hour precipitation event or a greater event if required by the Office.

(2) Sediment control shall comply with 30 CFR 910.817–42 and 910.817–45.

(b) *Ditches and alternative measures for roadbed erosion control.* Where required to minimize erosion on the roadbed, ditches shall be designed and constructed in accordance with 30 CFR 910.817–153(b). In wet areas or where there is free water such ditch sections shall be required. For every segment of a Class II Road without drainage ditches which comply with 30 CFR 910.817–153(b), drainage shall be provided by surface dips. These drainage dips shall be constructed as undulations in the roadway of sufficient height from the hydraulic bottom to the top of the dip to prevent water from running down the surface of the road. Insloped dips shall discharge into a culvert or drop inlet. Outsloped dips shall discharge either onto the natural ground or, onto embankments if a drain is provided. The bottom of the dip shall be rock surfaced

to prevent erosion. Dip spacing shall be sufficient to minimize erosion of the road surface.

(c) *Culverts and bridges.* (1)(i) Culverts with an end area of 35 square feet or less shall be designed to safely pass the 10-year, 24-hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than 35 square feet, and bridges with spans of 30 feet or less, shall be designed to safely pass the 20-year, 24-hour precipitation event. Bridges with spans of more than 30 feet shall be designed to safely pass the 100-year, 24-hour precipitation event or larger event as specified by the Office.

(ii) Drainage pipes and culverts shall be constructed to avoid plugging or collapse, and erosion at inlets and outlets.

(iii) Culverts shall be covered by compacted fill to a minimum depth of 1 foot.

(iv) Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the road foundation, and the weight of vehicles to be used.

(2) Culverts or dips for road surface drainage only shall be constructed in accordance with the following:

(i) Unless otherwise authorized or required under paragraphs (c)(2) (ii) or (iii) of this section, culverts and dips shall be spaced as follows:

(A) Spacing shall not exceed 1,000 feet on grades of 0 to 3 percent.

(B) Spacing shall not exceed 600 feet on grades of 3 to 6 percent.

(C) Spacing shall not exceed 400 feet on grades of 6 to 10 percent.

(D) Spacing shall not exceed 200 feet on grades of 10 percent or greater.

(ii) Surface dips or culverts at closer intervals than the maximum indicated in paragraph (c)(2)(i) of this section shall be installed if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

(iii) Surface dips or culverts may be constructed at greater intervals than the maximum indicated in paragraph (c)(2)(i) of this section if authorized by the Office upon a finding that greater spacing will not increase erosion.

(iv) Culverts and the bottoms of drainage dips shall cross the road at not less than a 30 degree angle downgrade.

(v) A culvert may be designed to carry less than the peak runoff from a 10-year, 24-hour precipitation event if the ditch will not overtop and will remain stable.

(vi) The inlet end of all culverts shall be protected by a rock headwall or other material approved by the Office as adequate protection against erosion of the headwall. The water shall be discharged below the toe of the fill, through conduits or in riprapped channels and shall not be discharged onto the fill.

(d) *Natural drainage.* Natural-channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Office in accordance with 30 CFR 910.817–43 and 910.817–44. The Office may approve alterations and relocations only if—

(i) The natural-channel drainage is not blocked;

(ii) No significant degradation occurs to the hydrologic balance; and

(iii) There is no adverse impact on adjoining landowners.

(e) *Stream crossings.* Drainage structures are required for stream-channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely affect fish migration or aquatic habitat or related environmental values.

§ 910.817–164 Roads: Class II: Surfacing.

(a) Class II Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Office as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(b) Acid- or toxic-forming substances shall not be used in road surfacing.

(c) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

§ 910.817–165 Roads: Class II: Maintenance.

(a) Class II Roads shall be maintained in such a manner that the required or approved design criteria are met throughout the life of the facility including surface and shoulders, parking, side areas, approach structures, erosion-control devices, and such traffic-control devices as are necessary for safe and efficient utilization.

(b) Class II Road maintenance shall include basic custodial care as required to protect the road investment and to prevent damage to adjacent resources. This includes maintenance to control erosion, repair of structures and drainage systems, removal of rocks and debris, replacement of surface and restoration of the road prism.

§ 910.817–166 Roads: Class II: Restoration.

(a) Unless the Office approves retention of a Class II Road as suitable for the approved postmining land use, immediately after a road is no longer needed for operations, reclamation, or monitoring—

(1) The road shall be closed to vehicular traffic;

(2) The natural drainage patterns shall be restored;

(3) All bridges and culverts shall be removed;

(4) Roadbeds shall be ripped, plowed, and scarified;

(5) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural drainage restoration standards;

(6) Cut slopes shall be reshaped to blend with the natural contour;

(7) Cross drains, dikes, and water bars shall be constructed to minimize erosion;

(8) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(9) Road surfaces shall be covered with topsoil in accordance with 30 CFR 910.817–24(b) and revegetated in accordance with 30 CFR 910.817–111 through 910.817.116.

(b) Unless otherwise authorized by the Office, all road surfacing materials shall be removed, hauled or conveyed, and disposed of under 30 CFR 910.817–89.

§ 910.817–170 Roads: Class III: General.

(a) Each person who conducts underground mining activities shall design, construct or reconstruct, utilize, and maintain Class III Roads and restore the area to meet the requirements of 30 CFR 910.817–171 through 910.817–176 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, Class III Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

(c) All Class III Roads shall be completely removed and the land affected regraded to the approximate original contour and revegetated in accordance with the requirements of 30 CFR 910.817–176 except where 30 CFR 910.817–171(g) shall apply.

(d) To the extent the anticipated volume of traffic or weight or speed of vehicles to be used requires higher standards than those set forth in 30 CFR 910.817–171 through 910.817–175, such higher standards shall be incorporated in the design, construction, reconstruction or maintenance of Class III Roads.

§ 910.817-171 Roads: Class III: Location.

(a) Class III Roads shall be located on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any Class III Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Office.

(c) Stream fords are prohibited unless they are approved by the Office as temporary routes across ephemeral or intermittent streams that will not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using temporary bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of 30 CFR 910.817-173.

(d) Class III Roads shall be constructed to minimize downstream sedimentation and flooding.

(e) Not later than the date a permit application is submitted to the Office for underground mining activities for which a Class III Road is proposed, the location of the proposed road shall be clearly marked in the field by flags or stakes to enable the Office to perform onsite review.

(f) Class III Roads shall not be located in wet, steep, or unstable areas where complete restoration under 30 CFR 910.817-176 cannot be accomplished.

(g) A Class III Road may be constructed in the same alinement as a Class I or Class II Road that is to be constructed on the same location at a later date. This may be permitted if the requirements for the location of the Class I or Class II Road are met, and the construction begins within 6 months from the time the Class III Road is constructed.

§ 910.817-172 Roads: Class III: Design and construction.

Field-design methods shall be utilized for Class III Roads.

(a) *Vertical alinement.* Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(i) The overall grade shall not exceed 1*v*:10*h* (10 percent).

(ii) The maximum pitch grade shall not exceed 1*v*:5*h* (20 percent).

(iii) There shall not be more than 1,000 consecutive feet of maximum pitch grade.

(b) *Horizontal alinement.* Class III Roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(c) *Road cuts.* Sidecast construction may be used.

(d) *Road embankments.* Compaction on embankments shall be required only to the extent necessary to control erosion and maintain the road.

(e) *Topsoil removal.* Topsoil shall be removed and stockpiled only where excavation would require replacement of material and redistribution of topsoil for proper revegetation.

§ 910.817-173 Roads: Class III: Drainage.

(a) *General.* (1) Class III Road drainage shall consist of temporary culverts in flowing streams, wet areas, and in ephemeral channels as necessary to protect the facility during its life and to minimize disturbance of the hydrologic balance.

(2) Sediment control shall comply with 30 CFR 910.817-42.

(b) *Culverts and bridges.* Temporary culverts shall be installed for all flowing drainages and stream crossings. Temporary culverts and bridges shall be sized to safety pass the 1-year, 6-hour precipitation event.

(c) *Natural drainage.* Natural channel drainageways shall not be altered or relocated for the purposes of Class III Road construction.

(d) *Stream crossings.* Temporary drainage structures are required for crossing permanent streams. Drainage structures shall not affect the normal flow or gradient of the stream, adversely affect fish migration and aquatic habitat or related environmental values.

§ 910.817-174 Roads: Class III: Surfacing.

(a) Class III Road surfaces shall be adequate for the use of the road.

(b) Acid- or toxic-forming substances shall not be used in road surfacing.

(c) Vegetation shall not be cleared for more than the width necessary to serve traffic needs and for utilities.

§ 910.817-175 Roads: Class III: Maintenance.

(a) Class III Road maintenance shall be sufficient to ensure minimization of erosion for the life of the road.

(b) Class III Roads shall not be used if climatic conditions are such that usage may cause degradation of water quality.

§ 910.817-176 Roads: Class III: Restoration.

Immediately after a Class III Road is no longer needed for operations, reclamation, or monitoring—

(a) The road shall be closed to vehicular traffic;

(b) The natural drainage patterns shall be restored;

(c) All bridges and culverts shall be removed;

(d) Roadbeds shall be ripped, plowed, and scarified;

(e) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and meet natural drainage restoration standards;

(f) Cut slopes shall be reshaped to blend with the natural contour;

(g) Cross drains, dikes, and water bars shall be constructed to control erosion; and

(h) Road surfaces from which topsoil has been removed shall be covered with topsoil in accordance with 30 CFR 910.817-24(b), and the surface shall be revegetated in accordance with 30 CFR 910.817-111 through 910.817-116.

§ 910.817-180 Other transportation facilities.

Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transport facilities shall be designed, constructed or reconstructed, and maintained, and the area restored to—

(a) Prevent, to the extent possible using the best technology currently available—

(1) Damage to fish, wildlife and related environmental values; and

(2) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law;

(b) Control and minimize diminution or degradation of water quality and quantity;

(c) Control and minimize erosion and siltation;

(d) Control and minimize air pollution; and

(e) Prevent damage to public or private property.

§ 910.817-181 Support facilities and utility installations.

(a) Support facilities required for, or used incidentally to, the operation of the underground mine, including, but not limited to, mine buildings, coal-loading facilities at or near the mine-site, coal storage facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner which prevents, to the extent possible using the best technology currently available—

(1) Damage to fish, wildlife, and related environmental values; and

(2) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such

contributions shall not be in excess of limitations of State or Federal law.

(b) All underground mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Office.

§ 910.817-200 Interpretative rules related to general performance standards.

(a) Interpretations of § 910.817-74—Disposal of excess spoil: Durable rock fills.

(1) The term "rock" as used in 30 CFR 910.817-74 is interpreted to mean minerals or mineral aggregates 80% or more of which when subjected to a grain size analysis will not pass a ¼ inch sieve (¼ inch mesh).

(2) The term "hard rock spoil" as used in 30 CFR 910.817-74 is interpreted to mean rock consisting of at least 80 percent by volume of sandstone, limestone or other rocks that will not pass ¼ inch sieve and do not slake in water.

(3) The terms "slake durability" and "slake index tests" identified in 30 CFR 910.817-74 and used as the basis for determining "durability" of hard rock spoil, are interpreted to be applicable to rock placed in the fill and not only to rock obtained either from inplace strata prior to excavation or from the spoil source prior to placement in the fill.

(b) [Reserved]

(c) Interpretation of § 910.817-22(e)—Topsoil Removal.

(1) Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that trials and tests are certified by an approved laboratory in accordance with 30 CFR 910.817-22(e)(1)(ii) may be obtained from any one or a combination of the following sources:

(a) U.S. Department of Agriculture Soil Conservation Service pulished data based on estabished soil series:

(b) U.S. Department of Agriculture Soil Conservation Service Technical Guides:

(c) State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or

(d) Results of physical and chemical analyses, field site trials or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(2) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 910.817-22(e)(1).

Subpart 910.818—Special Performance Standards—Concurrent Surface and Underground Mining

§ 910.818-4 Responsibilities.

(a) The Director or his designee shall review and grant or deny requests for variances from the requirement that reclamation efforts proceed as contemporaneously as practicable, in accordance with 30 CFR 910.785-18 and this subpart.

(b) The person who conducts combined surface and underground mining activities shall comply with the provisions of this subpart

§ 910.818-11 Applicability.

A variance under this Subpart applies only to those specific areas within the permit area that the person conducting combined surface and underground mining activities has shown to be necessary for implementing the proposed concurrent operations and that the Office has approved in the permit under 30 CFR 910.785-18. The variance is effective for any particular portion of the permit area only for the time necessary to facilitate the authorized underground mining activities.

§ 910.818-13 Compliance with variance terms.

(a) Each person who conducts operations under a variance issued under 30 CFR 910.785-18 shall comply with all applicable requirements of this part, except to the extent that—

(1) A delay in compliance with these requirements is specifically authorized by the variance issued under the permit; and

(2) The delay in compliance is necessary to achieve the purposes for which the variance was granted.

(b) Each person who conducts activities under a variance issued under 30 CFR 910.785-18 shall comply with each requirement of the variance as set forth in the permit.

§ 910.818-15 Additional performance standards.

In addition to the requirements of 30 CFR 910.816 and 910.817, each person who conducts combined surface and underground mining activities shall comply with the following:

(a) A 500-foot barrier pillar of coal shall be maintained between the surface and underground mining activities in any one seam. The Office and the Mine Safety and Health Administration, may, however, approve a lesser distance, after a finding by the Office that mining at a lesser distance will result in—

(1) Improved coal resources recovery;

(2) Abatement of water pollution; or

(3) Elimination of hazards to the health and safety of the public.

(b) The vertical distance between combined surface and underground mining activities working separate seams shall be sufficient to provide for the health and safety of the workers and to prevent surface water from entering the underground workings.

(c) No combined activities shall reduce the protection provided public health and safety below the level of protection required for those activities if conducted without a variance.

Subpart 910.819—Special Performance Standards—Auger Mining

§ 910.819-11 Auger mining: Additional performance standards.

(a) Any auger mining associated with surface mining activities shall be conducted to maximize recoverability of mineral reserves remaining after the mining activities are completed. Each person who conducts auger mining operations shall leave areas of undisturbed coal to provide access for removal of those reserves by future underground mining activities, unless the Office determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The Office shall make such determination only upon presentation of appropriate technical evidence by the operator. Undisturbed areas of coal shall be left in unmined sections which—

(1) Are a minimum of 250 feet wide at any point between each group of auger openings to the full depth of the auger hole;

(2) Are not more than 2,500 feet apart, measured from the center of one section to the center of the next section, unless a greater distance is set forth in the permit application under 30 CFR 910.785-20 and approved by the Office; and

(3) For multiple seam mining, shall have a width of at least 250 feet plus 50 feet for each subjacent workable coal seam. The centers of all unmined sections shall be aligned vertically.

(b) No auger hole shall be made closer than 500 feet in horizontal distance to any abandoned or active underground mine workings, except as approved in accordance with 30 CFR 910.816–79.

(c) In order to prevent pollution of surface and ground water and to reduce fire hazards, each auger hole, except as provided in paragraph (d) of this section, shall be plugged so as to prevent the discharge of water from the hole and access of air to the coal, as follows:

(1) Each auger hole discharging water containing toxic-forming or acid-forming material shall be plugged within 72 hours after completion by backfilling and compacting noncombustible and impervious material into the hole to a depth sufficient to form a water-tight seal of the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water quality standards under 30 CFR 910.816–42, until the hole is properly sealed; and

(2) Each auger hole not discharging water shall be sealed as in paragraph (c)(1) of this section, to close the opening within 30 days following completion.

(d) An auger hole need not be plugged, if the Office finds—

(1) Impoundment of the water which would result from plugging the hole may create a hazard to the environment or public health or safety; and

(2) Drainage from the auger hole will not pose a threat of pollution to surface water and will comply with the requirements of 30 CFR 910.816–41 through 910.816–42.

(e) The Office shall prohibit auger mining, if it determines that—

(1) Adverse water quality impacts cannot be prevented or corrected;

(2) Fill stability cannot be achieved;

(3) The prohibition is necessary to maximize the utilization, recoverability or conservation of the solid fuel resources; or

(4) Subsidence resulting from auger mining may disturb or damage powerlines; pipelines, buildings, or other facilities.

Subpart 910.823—Special Performance Standards—Operations on Prime Farmland [Reserved]

Subpart 910.824—Special Performance Standards—Mountaintop Removal

§ 910.824–11 Mountaintop removal: Performance standards.

(a) Surface coal mining activities may be conducted under a variance from the requirement of Subparts 910.815 through 910.828 for restoring affected areas to their approximate original contour, if—

(1) The Office grants the variance under a permit, in accordance with 30 CFR 910.785–14;

(2) The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

(3) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;

(4) The alternative land-use requirements of 30 CFR 910.816–133 are met;

(5) All applicable requirements of this part, other than the requirement to restore affected areas to their approximate original contour, are met;

(6) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the Office may permit an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:

(i) The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

(ii) A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;

(7) The final graded slopes on the mined area are less than 1*v*:5*h*, so as to create a level plateau or gently rolling configuration, and the outslopes of the plateau do not exceed 1*v*:2*h* except where engineering data substantiates, and the Office finds, in writing, and includes in the permit under 30 CFR 910.785–14, that a minimum static safety factor of 1.5 will be attained;

(8) The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage shall not be through or over a valley or head-of-hollow fill.

(9) Natural watercourses below the lowest coal seam mined are not damaged;

(10) All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with non-toxic spoil to prevent pollution and achieve the approved postmining land use; and

(11) Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under paragraphs (a)(3) and (a)(4) of this section. All excess spoil material not retained on the mountaintop shall be placed in accordance with 30 CFR 910.816–52 and 910.816–71 through 910.816–74.

Subpart 910.826—Special Performance Standards—Operations on Steep Slopes

§ 910.826–11 Applicability.

(a) Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this Subpart. Steep slopes, as defined in § 910.701–5 means any slope of 20 degrees or more.

(b) The standards of this subpart do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area, or to operations covered by 30 CFR 910.824.

§ 910.826–12 Steep slopes: Performance standards.

Surface coal mining and reclamation operations on steep slopes shall comply with requirements of Subparts 910.770 through 910.795 and the following, except to the extent a variance is approved under § 910.826–15:

(a)(i) The person engaged in surface coal mining and reclamation operations shall prevent the following materials from being placed or allowed to remain on the downslope:

(A) Spoil;

(B) Waste materials, including waste mineral matter;

(C) Debris, including that from clearing and grubbing of haul road construction; and

(D) Abandoned or disabled equipment;

(ii) Nothing in this Subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements of 30 CFR 910.816–150 through 910.816–180 or 910.817–150 through 910.817–180 and the material is moved and placed in a controlled manner.

(b) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of 30 CFR 910.816–101 through 910.816–106 and 30 CFR 910.817–101 through 910.817–106, including, but not limited to, the return of the site to the approximate original contour. The person who conducts the surface coal mining and reclamation operation must demonstrate to the Office, using standard geotechnical analysis, that the

minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

(c) Land above the highwall shall not be disturbed, unless the Office finds that the disturbance facilitates compliance with the requirements of this subpart.

(d) Material in excess of that required by the grading and backfilling provisions of paragraph (b) of this section shall be disposed of in accordance with the requirements of 30 CFR 910.816–71 through 910.816–74 or 910.817–71 through 910.817–74.

(e) Woody materials shall not be buried in the backfilled area unless the regulatory authority determines that the proposed method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled area as required in § 910.826–12(b). Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the Office.

(f) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the Office as stable and not subject to erosion.

§ 910.826–15 Steep slopes: Limited variances.

Persons may be granted variances from the approximate original contour requirements of § 910.826–12(b) for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under 30 CFR 910.785–16:

(a) The highway shall be completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3 using standard geotechnical analyses.

(b) The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw and reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface or ground water.

(c) Land above the highwall may be distrubed only to the extent that the Office deems appropriate and approves as necessary to facilitate compliance with the provisions of this Subpart and if the Office finds that the disturbance is necessary to——

(1) Blend the solid highwall and the backfilled material;

(2) Control surface runoff; or

(3) Provide access to the area above the highwall.

(d) The landowner of the permit area has requested, in writing, as part of the permit application under 30 CFR 910.785–16, that the variance be granted.

(e) The operations are conducted in full compliance with a permit issued in accordance with 30 CFR 910.785–16.

(f) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this Part shall be placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 30 CFR 910.816–71 through 910.816–74 or 910.817–71 through 910.817–74 and 30 CFR 910.816–101 through 910.816–102 or 910.817–101 through 910.817–102

§ 910.826–16 Steep slopes: Multiple seam.

In multiple-seam steep slope affected areas, spoil not required to reclaim and restore the permit area may be placed on a preexisting bench, if approved by the Office and if the following requirements are met:

(a) All excess spoil must be hauled, placed, and retained on the solid bench.

(b) The spoil must be graded to the most moderate slope so as to eliminate the existing highwall to the extent possible with the available spoil.

(c) The fill must comply with 30 CFR 910.816–71 or 910.817–73 and the other requirements of Subparts 910.815 through 910.828.

(d) The bench on which the spoil is to be placed must have been created and abandoned due to coal mining prior to August 3, 1977.

Subpart 910.827—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

§ 910.827–11 Applicability.

Each person who conducts surface coal mining and reclamation operations, which includes the operation of a coal processing plant or support facility which is not located within the permit area for a specific mine, shall obtain a permit in accordance with 30 CFR 785.816–21 to conduct those operations and comply with § 910.827–12.

§ 910.827–12 Coal processing plants: Performance standards.

Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this subpart shall comply with the following:

(a) Signs and markers for the coal processing plant, coal processsing waste disposal area, and water treatment facilities shall comply with 30 CFR 910.816–11.

(b) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with 30 CFR 910.816–150 through 910.816–181.

(c) Any stream or channel realignment shall comply with 30 CFR 910.816–41.

(d) If required by the Office, any disturbed area related to the coal processing plant or associated facilities shall have sediment control structures, in compliance with 30 CFR 910.816–45 and 910.816–46, and all discharges from these areas shall meet the requirements of 30 CFR 910.816–41 through 910.816–42 and any other applicable State or Federal law.

(e) Permanent impoundments associated with coal processing plants shall meet the requirements of 30 CFR 910.816–49 and 910.816–56. Dams constructed of or impounding coal processing waste shall comply with 30 CFR 910.816–91 through 910.816–93.

(f) Use of water wells shall comply with 30 CFR 910.816–53 and water rights shall be protected in accordance with 30 CFR 910.816–54.

(g) Disposal of coal processing waste, solid waste, and any excavated materials shall comply with 30 CFR 910.816–81 through 910.816–86, 910.816–89, and 910.816–71 through 910.816–74, respectively.

(h) Discharge structures for diversions and sediment control structures shall comply with 30 CFR 910.816–47.

(i) Air pollution control measures associated with fugitive dust emissions shall comply with 30 CFR 910.816–95.

(j) Fish, wildlife and related environmental values shall be protected in accordance with 30 CFR 910.816–97.

(k) Slide areas and other surfaces areas shall comply with 30 CFR 910.816–99.

(l) Adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to compliance with 30 CFR 910.816–55 and 910.816–79.

(m) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment, in accordance with 30 CFR 910.816–56, 910.816–100 through 910.816–106, 910.816–111 through 910.816–117 and 910.816–131 through 910.816–133.

(n) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with 30 CFR 910.816.

Subpart 910.828—Special Performance Standards—In Situ Processing

§ 910.828-11 In situ processing: Performance standards.

(a) The person who conducts in situ processing activities shall comply with 30 CFR 910.817 and this section.

(b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(1) Avoiding discharge of fluids into holes or wells, other than as approved by the Office;

(2) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the Office;

(3) Avoiding annular injection between the wall of the drill hole and the casing; and

(4) Preventing discharge of process fluid into surface waters.

(c) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under 30 CFR 910.735-22, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

(d) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:

(1) Horizontally beyond the affected area indentified in the permit; and

(2) Vertically into overlying or underlying aquifers.

(e) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone, to the aproximnate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

§ 910.828-12 In situ processing: Monitoring.

(a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface water including the surface water flow in a manner approved by the Office under 30 CFR 910.817-52 to measure changes in the quantity and quality of water in the permit area and adjacent areas.

(b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the Office as necessary according to appropriate Federal and State air and water quality standards.

Inspection and Enforcement Procedures

Subpart 910.842—Federal Inspections

§ 910.842-11 Federal inspections.

(a) Authorized representatives of the Secretary shall conduct inspections of surface coal mining and reclamation operations as necessary:

(1) To develop or enforce this Part;

(2) To enforce those requirements and permit conditions imposed under this part of Section 521(b) of the Act, 30 CFR or as provided in this section; and

(3) To determine whether any notice of violation or cessation order issued during an inspection authorized under this Section has been complied with.

(b)(1) An authorized representative of the Secretary shall immediately conduct a Federal inspection to enforce any requirement of the Act, this part, or any condition of a permit or an exploration approval imposed under the Act or, this part. When the authorized representative has reason to believe, on the basis of information available to him or her (other than information resulting from a previous Federal inspection), that there exists a violation of the Act, this part, or any condition of a permit or an exploration approval, or that there exists any condition, practice or violation which createst an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in paragraph (b)(1) of this section.

(c) The Office, as the regulatory authority under this part, shall conduct inspections of all coal exploration and surface coal mining and reclamation operations under its jurisdiction. These inspections shall average at least:

(1) One partial inspection per month of each surface coal mining and reclamation operation. A partial inspection is an onsite review of a person's compliance with some of the permit conditions and requirements imposed under the applicable program, during which the inspector collects evidence with respect to every violation of any such condition or requirement observed;

(2) One complete inspection per calendar quarter of each surface coal mining and reclamation operation. A complete inspection is an onsite review of a person's compliance with all permit conditions and requirements imposed under the applicable program within the entire area disturbed or affected by surface coal mining and reclamation operations, including the collection of evidence with respect to every violation of any such condition or requirement; and

(3) Periodic inspections of all coal exploration operations required to comply in whole or part with the Act or this part including the collection of evidence with respect to every violation on any condition of the exploration approval or requirement of this part.

(a) The inspections required under Paragraph (c) of this section shall—

(1) Be carried out on an irregular basis so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the person being inspected or any of his agents or emloyees, except for necessary onsite meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Part any condition of an exploration approval or permit imposed under this Part and the Act.

§ 910.842-12 Citizens' requests for Federal inspections.

(a) A citizen may request a Federal inspection under 30 CFR 910.842-11(b), by furnishing to an authorized representative of the Secretary a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition, or practice referred to in 30 CFR 910.842-11(b)(1)(i) exists and setting forth a phone number and address where the citizen can be contacted.

(b) The identity of any person supplying information to the Office relating to a possible violation or imminent danger or harm shall remain confidential with the Office, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. Section 552) or other Federal law;

(c) If a Federal inspection is conducted as a result of information provided to the Office by a citizen as described in paragraph (a) of this section, the citizen shall be notified as

far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days of the Federal inspection or, if there is no inspection, within 15 days of receipt of the citizen's written statement, the Office shall send the citizen the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the citizen's right, if any, to informal review of the action or inaction of the Office under 30 CFR 910.842–15.

(e) The Office shall give copies of all materials in paragraphs (d) (1) and (2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under paragraph (b) of this section.

§ 910.842–13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under 30 CFR 910.842–11:

(1) Shall have a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation, without advance notice or a search warrant, upon presentation of appropriate credentials; and

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation, required under the Act, this part, or any condition of an exploration approval or permit imposed under the Act or this Part.

(b) No search warrant shall be required with respect to any activity under paragraph (a) of this section except that a search warrant may be required for entry into a building.

§ 910.842–14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Office in writing of any alleged failure on the part of the Office to make adequate and complete or periodic Federal inspections as provided in 30 CFR 910.842–11(b)(1) (c) and (d). The notification shall include sufficient information to create a reasonable belief that 30 CFR 910.842–11(b)(1) (c) and (d) are not being complied with and to demonstrate that the person is or may be adversely affected. The Office shall within 15 days of receipt of the notification determine whether 30 CFR 910.842–11(b)(1) (c) and (d) are being complied with, and if not, shall immediately order a Federal inspection to remedy the noncompliance. The Office shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

§ 910.842–15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the Office to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under 30 CFR 910.842–12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The Office shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this Section shall not affect any right to formal review under Section 525 of the Act or to a citizen's suit under Section 520 of the Act.

§ 910.842–16 Availability of records.

(a) Copies of all records, reports, inspection materials, or information obtained by the Office under Title V of the Act and this Part of 30 CFR 910.842–11 or 910.842–12 shall be made immediately available to the public at the County Courthouse in the county where the mining is taken place, except that the Office may refuse to make available—

(1) Investigatory records compiled for law enforcement purposes to the extent provided in the Freedom of Information Act (5 U.S.C. Section 552(b)) and

(2) Information not required to be made available under 30 CFR 910.776–17 and 910.876–15.

(b) Copies of documents and information required to be made available under paragraph (a) of this section shall be provided upon request to the Georgia Department of Natural Resources.

Subpart 910.843—Federal Enforcement

§ 910.843–11 Cessation orders.

(a)(1) An authorized representative of the Secretary shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he finds, on the basis of any Federal inspection, any condition or practice, or any violation of the Act, this Part, or any condition of an exploration approval or permit imposed under this Part, which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(2) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the person to whom it is issued to abate the conditions, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(b)(1) An authorized representative of the Secretary shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the relevant portion thereof, when a notice of violation has been issued under 30 CFR 910.843–12(a) and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

(2) A cessation order issued under this paragraph shall require the person to

whom it is issued to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity: (1) The nature of the violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(f) An authorized representative of the Secretary shall terminate a cessation order, by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under 30 CFR Subpart 910.845.

§ 910.843-12 Notices of violation.

(a) An authorized representative of the Secretary shall issue a notice of violation if, on the basis of a Federal inspection carried out during the enforcement of this part, he finds a violation of the Act, this Part, or any condition of a permit or an exploration approval imposed under the Act or this Part, which does not create an imminent danger or harm for which a cessation order must be issued under 30 CFR 910.843.11.

(b) A notice of violation issued under this Section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the violation;

(2) The remedial action required, which may include interim steps;

(3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance.

(d) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under 30 CFR 910.843-11(b).

(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the person to whom it was issued, when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under 30 CFR Subpart 910.845 (civil penalties).

§ 910.843-13 Suspension or revocation of permits.

(a)(1) Except as provided in paragraph (b) of this section, the Director shall issue an order to a permittee requiring him to show cause why his permit and right to mine under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this Part, or any permit condition required by the Act exists or has existed, and that the violations were caused by the willful or unwarranted failure to comply with those requirements or conditions by the permittee. Willful violation means an act or omission which violates the Act, this part, or any permit condition required by the Act, or this Part, committed by a person who intends the result which actually occurs. Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of the Act, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act, due to indifference, lack of diligence, or lack of reasonable care. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The Director may determine that a pattern of violations exists or has existed, based on two or more Federal inspections of the permit area within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this part, or the permit;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this Part, or the permit; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall determine that a pattern of violations exists, if he finds that there were violations of the same or related requirements of the Act, this part, or the permit during three or more Federal inspections of the permit area within any 12-month period.

(4) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out during enforcement of this part.

(b) The Director may decline to issue a show cause order, or may vacate an outstanding show cause order, if he finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of case.

(c) At the same time as the issuance of the order, the Director shall:

(1) File a copy of the order to show cause with the Office of Hearings and Appeals and provide a copy to the Georgia Department of Natural Resources.

(2) If practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations; and

(3) Post the notice at the regional, district or field office closest to the area of the surface coal mining and reclamation operations.

(d) If the permittee files an answer to the show cause order and requests a hearing under 43 CFR Part 4, a public hearing shall be provided as set forth in that Part. The Office of Hearings and Appeals shall give thirty days written

notice of the date, time and place of the hearing to the Director, the permittee, the Georgia Dept. of Natural Resources and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the regional, district or field office closest to those operations.

(e) Within sixty days after the hearing, and within the time limits set forth in 43 CFR Part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

§ 910.843-14 Service of notices of violations, cessation orders, and show cause orders.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy of the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate regional, district or field office of the Office.

(d) The Office shall furnish copies of notices and orders to the Department of Natural Resources upon request. The Office may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area, such as the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company.

§ 910.843-15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the minesite shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Director's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated, or the hearing has been waived. For purposes of this section only, mining means (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than a minesite.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subsection:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after service of the notice of order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to that notice or order; and

(3) The Georgia Department of Natural Resources upon request.

(d) The Office shall also post notice of the hearing at the regional, district or field office closest to the mine site, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to—

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The Georgia Department of Natural Resources upon request.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Sections 518(b), 521(a)(4), or 525, of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

§ 910.843–16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under 30 CFR 910.843–11 or 910.843–12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing, under 43 CFR Part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 910.843–17 Lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated because it is subsequently determined that the Office did not have information sufficient, under 30 CFR 910.842–11(b)(1) and 910.842–11(b)(2), to justify an inspection.

§ 910.843–18 Inability to comply.

(a) No cessation order or notice of violation issued under this subpart may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under 30 CFR Subpart 910.845 and of the duration of the suspension of a permit under 30 CFR 910.843–13(e).

§ 910.843–19 Injunctive relief.

The Office may request the Attorney General of the United States to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court of the United States for the district in which the coal exploration or surface coal mining and reclamation operation is located or in which the person to whom the notice of violation or order has been issued has his principal office, whenever that person or his or her agent, in violation of the Act, this part, or any condition of an exploration approval or permit imposed under the Act, or this part:

(a) Violates or fails or refuses to comply with any order or decision of the Secretary or an authorized representative of the Secretary under the Act or this Part;

(b) Interferes with, hinders or delays the Secretary or an authorized representative of the Secretary in carrying out the provisions of the Act or this part;

(c) Refuses to admit an authorized representative of the Secretary to a mine;

(d) Refuses to permit inspection of a mine by an authorized representative of the Secretary;

(e) Refuses to furnish any required information or report;

(f) Refuses to permit access to or copying of any required records; or

(g) Refuses to permit inspection of monitoring equipment.

Subpart 910.845—Civil Penalties

§ 910.845–11 How assessments are made.

The Office shall review each notice of violation and cessation order issued under Subpart 910.843 in accordance with the assessment procedures described in 30 CFR 910.845–12, 910.845–13, 910.845–14, 910.845–15 and 910.845–16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 910.845–21 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 910.845–13.

§ 910.845–31 Point system for penalties.

(a) The Office shall use the point system described in this Section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in 30 CFR 910.845–12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* The Office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;

(ii) No violation for which the notice or order has been vacated shall counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness.* The Office shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* The Office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence

	Points
None	0
Insignificant	1–4
Unlikely	5–9
Likely	10–14
Occurred	15

(ii) *Extent of potential or actual damage.* The Office shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extent outside the coal exploration or permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(C) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of Paragraphs (b)(2)(ii) (A) and (B) of this section, assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) The Office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follow:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) Negligence means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack or reasonable care.

(C) A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued unless that person establishes that they were acts of deliberate sabotage.

(4) *Good faith in attempting to achieve compliance.* (i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of Good Faith

	Points
Rapid compliance	1–10
Normal compliance	0

(ii) The following definitions shall apply Paragraph (b)(4)(i) of this section:

(A) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) *Normal compliance* means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abate.

§ 910.845–14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 910.845–13 to a dollar amount, according to the following schedule:

Points:	Dollars
1	20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above	5,000

§ 910.845–15 Assessment of separate violations for each day.

(a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in 30 CFR 910.845–13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under 30 CFR 910.845–13(b), the Office shall assess a civil penalty for a minimum of two separate days.

(b) Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than $750 shall be assessed for each day during which such failure continues, except that, if the person to whom the notice or order was issued initiates review proceedings with respect to the violation, the abatement period shall be extended as follows:

(1) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Section 525(c) of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearings and Appeals issues a final order with respect to the violation in question; and

(2) If the person to whom the notice or order was issued initiates review proceedings under Section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

§ 910.845–16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in 30 CFR 910.845–13 to set the civil penalty, if he or she determines

that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this Chapter, this Part, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in 30 CFR 910.845–13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 910.845–17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order. If the mail is tendered at the address of that person set forth in the sign required under 30 CFR 910.816–11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(c) Unless a conference has been requested, the Office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b) of this section, within 30 days after the date the violation is abated.

§ 910.845–18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later.

(2) The Office shall post notice of the time and place of the conference at the regional, district or field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction or a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 30 CFR 910.845–17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) of this section within 30 days from the date of the rescission.

§ 910.845–19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under 30 CFR 910.843–16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 910.845–20.

§ 910.845–20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 30 CFR 910.845–19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subpart, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person.

[FR Doc. 80–27977 Filed 9–12–80; 8:45 am]

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Monday
September 15, 1980

Part III

Federal Emergency Management Agency

Offer To Provide Reinsurance Against Excess Aggregate Loss Resulting From Riots or Civil Disorders

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-MISC-11]

Offer To Provide Reinsurance Against Excess Aggregate Loss Resulting From Riots or Civil Disorders

AGENCY: Federal Emergency Management Agency/Federal Insurance Administration.

ACTION: Notice of offer to provide reinsurance against excess aggregate loss resulting from riots or civil disorders.

SUMMARY: The Federal Insurance Administrator is publishing in this Notice the terms and conditions of the Standard Reinsurance Contract for 1980–81 governing reinsurance under the Federal insurance program reinsuring against excess aggregate losses resulting from riots or civil disorders to eligible insurers for the contract year from October 1, 1980, to September 30, 1981. In addition, this Notice sets forth the offer to provide reinsurance to eligible insurers and the method for accepting the offer. This offer and the contract set forth are authorized by law.

In accordance with the provisions of the Urban Property Protection and Reinsurance Act of 1968, as amended, (the Act) this offer is effective only in a state which has a FAIR Plan in compliance with the statutory or regulatory criteria and in which appropriate State legislation is effective, and in compliance with the act and regulations.

As of the date of this offer, information received by the Administrator indicates that only the States of Connecticut, Delaware, Georgia, Illinois, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, North Carolina, Pennsylvania, Rhode Island, Washington, and Wisconsin, and the District of Columbia have formulated or are formulating revisions of their State FAIR Plans in a manner complying with the statutory requirements.

The most recent examination by the Office of Review and Compliance indicates that Federal Riot Reinsurance will not be available under this offer in the States of California, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Ohio, New York, Oregon, and Virginia, and the Commonwealth of Puerto Rico.

DATES: The offer is effective September 15, 1980. The Contract is effective 12:01 a.m., e.s.t., October 1, 1980 for all acceptances dispatched before 12:00 p.m. (midnight), September 30, 1980. The Contract is effective 12:01 a.m., e.s.t., of the day following dispatch of the acceptance for acceptances dispatched after September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Richard A. Turpin, Federal Riot Reinsurance Program, 451 Seventh Street SW, Washington, D.C. 20410, Telephone number (202) 755–6580.

SUPPLEMENTARY INFORMATION: The purposes of this Notice are:

(1) To offer publicly Federal reinsurance against excess aggregate losses resulting from defined riots or civil disorders to insurers eligible for such reinsurance for the contract year which ends September 30, 1981;

(2) To provide the method by which the offer may be accepted; and

(3) To set forth the terms and conditions of the Standard Reinsurance Contract (1980–81).

Since the offer to provide reinsurance and the terms and conditions of the Standard Reinsurance Contract for the October 1, 1980, to September 30, 1981 contract year must appear in time for acceptance by eligible insurers on or before September 30, 1980, this notice of offer to provide reinsurance against excess aggregate losses resulting from riots or civil disorders is effective upon publication of this Notice in the Federal Register.

The Standard Reinsurance Contract (1980–81) provides for an aggregate basic premium rate of $0.025 per $100 of direct premiums earned on lines reinsured.

Both the aggregate basic premium and the additional premium, if any, are payable on an advance estimated basis as specified in the contract. Interest shall accrue at nine percent (9%) per annum on any portion of any amount due the reinsurer which is not paid to the reinsurer within 30 days from its due date.

The offer to provide reinsurance is as follows:

Offer To Provide Reinsurance

Pursuant to the provisions of the Urban Property Protection and Reinsurance Act of 1968, as amended (12 U.S.C. 1749bbb-1749bbb–21), subject to all regulations promulgated thereunder and, to the terms and conditions set forth in the Standard Reinsurance Contract (1980–81) as printed below, the Federal Insurance Administrator (hereinafter referred to as the "Reinsurer") offers to enter into the Standard Reinsurance Contract (1980–81), the terms and conditions of which are as printed hereinbelow, with any eligible insurer which accepts this offer. This offer is effective only in a State which has in effect a FAIR Plan in compliance with the Reinsurer's statutory or regulatory criteria and in which appropriate State legislation is effective and complies with the Reinsurer's statutory or regulatory criteria. The Reinsurer's offer to provide reinsurance is effective upon publication in the Federal Register.

Method of Acceptance of Offer

(1) Acceptance of this offer shall be by telegraphed or mailed notice of acceptance to the Reinsurer. If the data and time of dispatch of said notice of acceptance are not later than midnight, e.s.t., September 30, 1980, reinsurance coverage shall be in effect from 12:01 a.m., e.s.t., October 1, 1980. If the date and time of dispatch of the notice of acceptance are later than midnight, e.s.t., September 30, 1980, reinsurance coverage shall be in effect from 12:01 a.m., e.s.t., on the day after such notice of acceptance is dispatched. The date and time of dispatch of the notice of acceptance must be clearly shown either by telegraph dispatched notation or postmark, and such notation or postmark shall be conclusive proof of the date and time of dispatch.

(2) The telegram or letter accepting this offer of reinsurance shall indicate the States in which reinsurance on lines of mandatory coverage is to be provided and shall specifically designate for each such State the lines of optional coverage, if any, for which reinsurance is to be provided. The notice of acceptance shall be in substantially the following form:

The (name and insurer or insurers) hereby accpets the offer, as filed with the Office of the Federal Register, of the Standard Reinsurance Contract (1980–81), pursuant to the Urban Property Protection and Reinsurance Act of 1968, as amended, for the mandatory and (specify) optional lines in the following States: (specify).

(3) Any eligible insurer accepting this offer of reinsurance shall be supplied copies of the Standard Reinsurance Contract (1980–81), for execution and return to the Reinsurer.

Terms and Conditions of the Standard Reinsurance Contract (1980–81)

(At this point in the contract, the insurance company or companies reinsured are required to list the names and addresses of the principal company and all property insurance companies under common or related ownership or control as defined in the contract, and space is provided for the execution of the contract by the parties.)

This contract, made by and between the Federal Insurance Administrator

(hereinafter referred to as the "Reinsurer") and the company or companies specified above (hereinafter referred to as the "Company").

Witnesseth:

Subject to the provisions of the Urban Property Protection and Reinsurance Act of 1968, as amended, and to the terms and conditions herein set forth, the Reinsurer hereby obligates itself to pay, as reinsurance of the company, the amount of the Company's excess aggregate losses resulting from riot or civil disorders in such lines of mandatory and optional coverage as are designated separately for each State by the Company in its notice of acceptance and confirmed under section XVII.

Section I Policies Reinsured

This Standard Reinsurance Contract applies to:

(A) All policies or contracts of direct property insurance issued by the Company to any property owner, except for policies for which the business is handled for or through any State pool or any other continuing organization, pool, or association of insurers, and

(B) The Company's participations in State pools and, as may be approved by the Reinsurer, in other continuing organizations, pools, or associations of insurers, which policies, contracts, or participations are in force on the effective date hereof or which commence or are renewed on or after such effective date in all the mandatory and in such optional standard lines of property insurance listed below as are designated separately for each State by the Company in its notice of acceptance and confirmed under section XVII.

Lines of Mandatory Coverage

(A) Fire and extended coverage;
(B) Vandalism and malicious mischief;
(C) Other allied lines of fire insurance;
(D) Burglary and theft; and
(E) Those portions of multiple peril policies covering similar perils to those provided in (A), (B), (C), (D); Lines of Optional Coverage
(F) Inland marine;
(G) Glass;
(H) Boiler and machinery;
(I) Ocean marine;
(J) Aircraft physical damage.

Section II Premiums

The aggregate basic premiun due the reinsurer for the reinsurance coverage provided under this contract shall be computed by applying an annual rate of twenty-five thousands of one per centum (.025%) to an aggregate premiun base consisting of the sum of the products of the company's direct premiums earned in each State for each reinsured line for the calendar year 1980 multiplied by the specified percentage of such earned premium, as defined in section XVI of this contract.

If the total amount of all excess aggregate losses paid by the reinsurer under this contract and all like Standard Reinsurance Contracts issued for the period between October 1, 1980, and September 30, 1981, exceeds the total amount of all aggregate basic premiums paid or payable to the reinsurer under all such contracts, the company shall be obligated to pay the reinsurer, at or subsequent to adjustment, an additional premium determined on the basis of the amount of the remainder derived by subtracting the total amount of all aggregate basic premiums paid or payable to the reinsurer under all such contracts from the total amount of all excess aggregate losses paid by the reinsurer under all such contracts. The amount of the additional premium shall be equal to the product of the company's aggregate basic premium multiplied:

By a factor of one, if the remainder is greater than two times the total amount of all aggregrate basic premiums under all such contracts, but is less than or equal to three times that amount;

By a factor of two, if the remainder is greater than three times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to six times that amount;

By a factor of four, if the remainder is greater than six times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to ten times that amount;

By a factor of six, if the remainder is greater than ten times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to twelve times that amount;

By a factor of eight, if the remainder is greater than twelve times the total amount of all aggregate basic premiums under all such contracts, but it less than or equal to eighteen times that amount;

By a factor of ten, if the remainder is greater than eighteen times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to twenty times that amount; or

By a factor of twelve, if the remainder is greater than twenty times the total amount of all aggregate basic premiums under all such contracts.

An advance premium, which shall be an estimated premium only, shall be computed by the company on the basis of its direct premiums earned in the calendar year 1979 in the manner required for the computation of the aggregate basic premium. If any line of insurance is added during the term of this contract for which the company had no premium writings in 1979, the premium base for the advance premium shall be estimated by State for the period from the date of attachment of coverage to the expiration date of this contract. In no event shall the advance premiun be less than $25.00 for each State in which reinsurance is provided under this contract. The advance premium shall be paid to the reinsurer without demand within 30 days for the effective date of coverage.

At the option of the reinsurer and prior to adjustment, the company shall pay the additional premium on an estimated basis. An estimated additional premium payment equal to the amount of the company's advance premium shall be payable to the reinsurer if the total amount of all excess aggregate losses paid by the reinsurer under this contract and all like Standard Reinsurance Contracts issued by the reinsurer for the period between October 1, 1980, and September 30, 1981, exceeds the total amount of all estimated premiums collected by the reinsurer under all such contracts (the total amount of all advance premiums plus the total amount of estimated additional premium payments). The total amount of estimated additional premium payments, whether required separately or concurrently, shall not exceed twelve times the amount of the company's advance premium. The actual amount of the additional premiums shall subsequently be computed and adjusted in accordance with the provisions of the preceding paragraphs and section VI.

With the exception of the advance premium which is due without demand of the reinsurer within 30 days from the effective date of coverage, premium amounts shall be due 30 days after the demand of the Reinsurer. Interest shall accrue at nine per centum (9%) per annum on any portion of any premium amount which if not received on or before 30 days from its due date.

The aggregate basic premium, together with any additional premium which may be due the reinsurer in accordance with the preceding paragraphs, shall be deemed fully earned on the date that such reinsurance coverage attaches, except as othewise provided in section V.

Section III Claims

The company shall advise the Reinsurer by letter (A) of all losses from a single occurrence which exceed $50,000 and (B) whenever it appears that aggregate losses have been incurred in an amount equal to 90 percent (90%) of the Company's net retention in any

State, on the basis of its direct premiums earned and reported to the Reinsurer for the Calendar year 1979.

When the Company incurs aggregate losses which exceed its net retention in any State, the Company may make claim upon the Reinsurer for the payment of excess aggregate losses in that State by filing a certification of loss and thereafter such supporting documentation of such losses as may be required by the Reinsurer, and following the receipt of such certifications and documentation the Reinsurer shall, as promptly as possible, in such installments and on such conditions as may be determined by the Reinsurer to be appropriate (including advance payments made on the basis of preliminary certifications of loss filed in advance of the final determination of the ultimate amount of losses paid), pay to the Company the amount of such excess aggregate losses subject to adjustments on account of underpayments or overpayments.

If the ultimate amount of losses to be paid by the Company has not been finally determined when the certification of loss is filed, the Company shall, in due course, file one or more supplementary certifications of loss and thereafter the Reinsurer or the Company, as the case may be, shall pay the balance due.

Claims paid pursuant to computations of net retentions based upon the direct premiums earned for the calendar year 1979 shall be recomputed and adjusted at the termination of the coverage provided by this contract on the basis of direct premiums earned in reinsured lines for the calendar year 1980.

Section IV Inception and Expiration Dates

Provided the Company has requested reinsurance by States and lines of coverage on or before September 30, 1980, this Standard Reinsurance Contract shall be in effect from 12:01 a.m., e.s.t. on October 1, 1980, and shall expire at 12:00 p.m., (midnight) e.s.t. on September 30, 1981, unless sooner terminated.

If the Company applies for coverage on or after October 1, 1980, this contract shall be effective from 12:01 a.m., e.s.t. on the day after such acceptance is dispatched, as determined by the date of postmark or telegram, provided the offer is effective in any State for which the Company othewise complies with the eligibility requirements of this contract.

This contract applies only to losses occurring during the term hereof, as follows:

(A) If at the inception of this contract any riot or civil disorder is in progress, no coverage shall be provided for losses resulting therefrom unless this contract is a continuation of coverage from the previous year's contract.

(B) If this contract terminates while a riot or civil disorder covered hereby is in progress, no coverage shall be provided for any losses resulting therefrom which occurred after the date and time of termination of this contract.

Section V Cancellations

Reinsurance under this contract may be cancelled by the Company in its entirely or with respect to any State upon written notice by the Company to the Reinsurer stating that it desires to cancel the reinsurance coverage specified and that it will pay any premium due the Reinsurer in accordance with the provisions of this contract, subject to any adjustments which may be required under section VI; provided, however, that no coverage shall attach under this contract if the Company has willfully concealed or misrepresented any material fact with respect thereto.

Reinsurance under this contract may be cancelled by the Reinsurer in its entirety or with respect to any State upon 30 days written notice by certified mail to the Company of such cancellation, stating one of the following reasons for cancellations: fraud or misrepresentation subsequent to the inception of the contract, nonpayment of premium or any other amount due the Reinsurer, and the grounds set forth in the second paragraph of section XI.

Reinsurance under this contract may be cancelled by Certified mail by the Reinsurer in its entirety or with respect to any State for one of the grounds set forth in the first paragraph of section XI and such cancellation shall be effective immediately upon written notice to the company.

Whenever the Reinsurer determines, in his discretion, that any cancellation of reinsurance is involuntary and without fault on the part of the Company, the premium due the Reinsurer for the coverage afforded under this contract shall be prorated in the ratio of—

(A) The number of days for which coverage was provided prior to the cancellation of such coverage plus thirty, to

(B) The total number of days of coverage provided under this contract from the inception of coverage up to and including September 30, 1981.

In the event of any cancellation of reinsurance coverage under this section, the net retention and assessment of such Company shall be computed, without proration, on the basis of the direct premiums earned for the calendar year 1980. Refunds of premiums, if any, due the Company upon cancellation may, at the discretion of the Reinsurer, be deferred until after final adjustments have been made in accordance with the provisions of section VI hereof.

Section VI Adjustments

The Company shall report to the Reinsurer within 60 days after request its direct premiums earned for the calendar year 1980 in all reinsured lines in all States for which reinsurance was provided under this contract, for the purpose of computing and adjusting the reinsurance premium due to the Reinsurer with respect to the coverage provided. The direct premiums earned to be reported for any line of insurance added during the contract term for any State in which the company had no premium writings in such line in 1980 shall be the direct premiums earned for the first nine months of 1981 as estimated by the Company, subject to audit by the Reinsurer.

In no event shall the adjusted amount of direct premiums earned by the Company result in a basic premium to the Reinsurer in an amount less than $25 for each State during the contract year, which shall constitute the minimum adjusted reinsurance premium for any State under this contract.

On or before December 31, 1981, or such later date as may be permitted at the option of the Reinsurer, the Company shall report to the Reinsurer its aggregate losses.

Any overpayment or underpayment between the Reinsurer and the Company shall be adjusted and paid in accordance with the obligations assumed hereinunder.

Section VII Insolvency

In the event of insolvency of the Company the reinsurance under this contract shall be payable by the Reinsurer to the Company or to its liquidator, receiver, or statutory successor on the basis of the liability of the Company under all policies, contracts, or participation shares reinsured without diminution because of the insolvency of the Company.

It is further agreed that the liquidator, or receiver, or statutory successor of the Company shall give written notice to the Reinsurer of the pendency of any claim against the Company on the policies, contracts, or participation shares reinsured within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim the Reinsurer may investigate such claim and interpose, at its own expense, in the

proceeding where such claim is to be adjudicated, any defense or defenses which may be deemed available to the Company or its liquidator, receiver, or statutory successor. The expense thus incurred by the Reinsurer shall be chargeable, subject to court approval, against the Company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the Company solely as a result of the defense undertaken by the Reinsurer.

Section VIII Errors and Omissions

Inadvertent delays, errors, or omissions made in connection with any transaction under this contract shall not relieve either party from any liability which would have attached had such delay, error, or omission not occurred, provided always that such delay, error or omission is rectified as soon as possible after discovery.

Section IX Restriction of Benefits

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Section X Participation in Statewide Plans

No reinsurance shall be offered or be effective under this contract in any State unless there is in effect in such State, on the date coverage commences, a continuing statewide plan to make essential property insurance more widely available which is in compliance with the Reinsurer's statutory or regulatory criteria, and the Company is fully participating in such plan on a risk-bearing basis and is certified by the State insurance authority as meeting the requirements of this section. Except with respect to its runoff business after ceasing to do business within a State, the Company shall not be eligible for reinsurance under this contract in any State in which it is not engaged in the direct writing of property insurance at the time coverage is requested, or in which it is writing business on a nonadmitted basis, unless it reports such nonadmitted business to the State insurance authority and participates in the statewide plan of such State on the basis of such reported business. The Company shall file and maintain with the State insurance authority in each State in which it is participating in the statewide plan a statement pledging its full participation and cooperation in carrying out the plan and shall file a copy of each such statement with the Reinsurer. The Company shall not direct any agent, broker, or other producer not to solicit business through such plans and shall not penalize in any way any agent, broker, or other producer for submitting applications for insurance under such plans. The Company shall also establish and carry out an education and public information program to encourage agents, brokers, and other producers to utilize the programs and facilities available under such statewide plans.

In the event that the Company after the inception of this contract voluntarily withdraws from any State plan, pool, or other facility required by the provisions of this section, such withdrawal shall be deemed to constitute cancellation by the Company with respect to that State as of the effective date of the withdrawal.

Section XI Limitations on Reinsurance

The Reinsurer shall cancel this contract upon written notice to the company: (A) If legislation to reimburse the Reinsurer, as necessary, for the portion of the aggregate losses specified in section 1223(a)(1) of the National Housing Act, as amended [12 U.S.C. 1749bbb-9(a)), paid by the Reinsurer under this contract, has not been enacted by the State or has expired or been repealed, or has otherwise ceased to be effective; or (B) following a merger, acquisition, consolidation, or reorganization involving the Company and one or more insurers with or without such reinsurance, unless the surviving insurer meets all criteria for eligibility for reinsurance and within 10 days pays any reinsurance premium due. The Reinsurer shall cancel coverage, in accordance with the provisions of this contract, with respect to any State in which—

(A) the Reinsurer has found (after consultation with the State insurance authority) that (1) it is necessary to have a suitable program adopted, in addition to required statewide plans, to make essential property insurance available without regard to environmental hazards and that such a program has not been adopted, or (2) the Company is not fully participating in the Statewide plan; and, where it exists, in a State pool or other facility; and, where it exists, in any other program found necessary to make essential property insurance more readily available in the State; or

(B) the Reinsurer has found (after consultation with the State insurance authority) that a statewide plan is not complying with the Reinsurer's regulatory or statutory criteria, including Sections 1211 and 1223 of the National Housing Act, as amended (12 U.S.C. 1749bbb-3 and 1749bbb-9), or has become inoperative.

Notwithstanding the foregoing provisions, reinsurance may at the election of the Reinsurer be continued, up to and including September 30, 1981, for the term of such policies and contracts reinsured prior to the date of termination of reinsurance under this section, provided the Company pays the reinsurance premiums in such amounts as may be required. For the purposes of this section, the renewal, extension, modification, or other change in a policy or contract for which any additional premium is charged, shall be deemed to be a policy or contract written on the date such change was made effective.

Reinsurance under this contract shall be subject to all of the provisions of the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb-1749bbb-21, as amended, and to all regulations duly promulgated by the Reinsurer pursuant thereto.

Section XII. Arbitration

If any misunderstanding or dispute arises between the Company and the Reinsurer with reference to the amount of premium due, the amount of loss, or to any other factual issue under any provisions of this contract, other than as to legal liability or interpretation of law, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding only upon approval by the Reinsurer. The Company and the Reinsurer may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make his determination. If the Company and the Reinsurer cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the Reinsurer.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the Reinsurer. The Company and the Reinsurer shall bear equally all expenses of the arbitration.

Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section shall, upon objection by the Reinsured or the Company, be inadmissible as evidence in any subsequent proceedings in any court or competent jurisdiction.

Section XIII Access to Books and Records

The Reinsurer and the Comptroller General of the United States, or their

duly authorized representatives, shall have access for the purpose of investigation, audit, and examination to any books, documents, papers; and records of the Company that are pertinent to the business reinsured under this contract. Such audits shall be conducted to the maximum extent feasible in cooperation with the State insurance authorities and through the use of their examining facilities. The Company shall keep records which fully disclose all matters pertinent to the business reinsured, including premiums and claims paid or payable under this contract. Records relating to premiums shall be retained and available for three (3) years after final adjustment of premiums, and to reinsurance claims three (3) years after final adjustment of such claims.

Section XIV Information and Annual Statements

The Company shall furnish to the Reinsurer such summaries and analyses of information in its records as may be necessary to carry out the purposes of the Urban Property Protection and Reinsurance Act of 1968, as amended, in such form as the Reinsurer, in cooperation with the State insurance Authority, shall prescribe; and the Company shall file with the Reinsurer a true and correct copy of the Company's Fire and Casualty annual statement, or amendment thereof, as filed with the State insurance authority of the Company's domiciliary State, at the time it files such statement or amendment with the State insurance authority. The Company shall also file with the Reinsurer an equivalent of page 14 of such annual statement for each State in which reinsurance is provided under this contract.

Section XV Exclusions

Reinsurance under this contract shall not be applicable with respect to any claim for:

(A) All or any part of a loss which is the direct or indirect result of controlled or uncontrolled nuclear reaction, radiation, or radioactive contamination; or

(B) Any loss to any aircraft while the aircraft is in flight, including that period between the time when power is turned on for the purpose of taxiing connected to takeoff until the time when the landing run has ended, taxiing has been completed, and power has been turned off; or

(C) Any loss to any aircraft, or resulting from collision with aircraft, which is precipitated or caused by hijacking of any aircraft or attempt thereat, including loss from wrongful seizure, wrongful diversion from course of flight pattern, or wrongful exercise of command or control, of an aircraft, by any person or persons, through the use of force or violence or the threat of force or violence.

Section XVI Definitions

As used in this contract the term—

(1) "Aggregate losses" means the sum total of losses resulting from riots or civil disorders occurring in a State and allocable to a State in which reinsurance is provided;

(2) "Company" means any company authorized to engage in the insurance business under the laws of any State, except that if there are two or more companies within a State in which reinsurance is to be provided under this contract which, as determined by the Reinsurer:

(A) Are under common ownership and ordinarily operate on a group basis; or

(B) Are under single management direction; or

(C) Are otherwise determined by the Reinsurer to have substantially common or interrelated ownership, direction, management, or control; then all such related, associated, or affiliated companies, excluding nonadmitted companies, which are not specifically included by endorsement to this contract, shall be reinsured only as one aggregate entity;

(3) "Continuing organization, pool, or association of insurers" means an industry pool created to provide direct insurance to meet special problems of insurability, such as for a particular class or type of business;

(4) "Direct premiums earned" means direct premiums earned as reported in column 2 on page 14 of the Company's Fire and Casualty annual statement for the specified calendar year in the form adopted by the National Association of Insurance Commissioners, subject to (A) adjustment as approved by the Reinsurer for cessions to pools, facilities, and associations, and for the inclusion of participations in such pools, facilities, and associations, and (B) such other appropriate adjustments as may be approved or required by the Reinsurer, which shall include adjustments for dividends paid or credited to policyholders and reported in column 3 on page 14, subject ot a maximum credit of 20 percent (20%) of direct premiums earned for any one line of insurance;

(5) "Excess aggregate losses" means that part of aggregate losses which is equal to the sum of—

(A) Ninety percent of the Company's aggregate losses in excess of its net retention, until the Company's 10 percent share of aggregate losses under this provision (A) equals the amount of its net retention;

(B) Ninety-five percent of the Company's remaining aggregate losses (after deducting the Reinsurer's share of aggregate losses under (A)) in excess of twice its net retention, until the Company's 5 percent share of aggregate losses under this provision (B) equals the amount of its net retention; and

(C) Ninety-eight percent of the Company's remaining aggregate losses (after deducting the Reinsurer's share of aggregate losses under (A) and (B)) in excess of an amount equal to three times its net retention;

(6) "Losses" means all claims proved, approved, and paid by the Company under reinsured policies, resulting from riots or civil disorders occurring in a State during the period of this contract after making proper deduction for salvage and for recoveries other than reinsurance, together with an allowance for expense in connection therewith, hereby agreed to equal an amount per claim of 8 percent (8%) of the first $25,000 of any such claim, plus 3 percent (3%) of the amount by which such claim exceeds $25,000 but is less than $100,000, plus 1 percent (1%) of the amount by which the claim exceeds $100,000; it does not means any claim excluded under section XV.

(7) "Net retention" means the amount of aggregate losses that the Company must stand before the Reinsurer's liability hereunder attaches. The net retention shall be one aggregate figure for each State determined by applying a factor of two and one half percent (.025) to the specified percentage of the Company's direct premiums earned in the State for the calendar year 1980 on those lines of insurance hereby reinsured. The retention amount is subject to a minimum figure of $1,000.00 for each State, and to a maximum figure of $1,000,000.00 per State.

(8) "Loss resulting from riot" means loss of or damage to property actually and immediately resulting from an overt and tumultuous disturbance of the public peace by three or more persons mutually assisting one another, or otherwise acting in designed concert, in the execution of a common purpose through the unlawful use of force and violence.

"Loss resuling from civil disorders" means

(A) Loss of or damage to property actually and immediately resulting from any pattern of unlawful incidents taking place within close proximity both as to time and place and involving damage to property intentionally caused by persons apparently having the primary

motivation of disturbing the public peace through civil disruption, civil disobedience, or civil protest; provided that at least two of such related incidents result in property damage in excess of $1,000 each; or

(B) Loss of or damage to property actually and immediately resulting from any occurrence involving property damage in excess of $2,000 cause by persons whose unlawful conduct in so causing the occurrence manifest their primary purpose of disturbing the public peace through civil disruption, civil disobedience, or civil protest.

(9) "Specified percentage" means 100 percent (100%) of the direct premiums earned for each line of insurance reinsured under this contract except that the specified percentage of homeowners multiple peril shall be 85 percent (85%) and that of Commercial multiple peril shall be 65 percent (65%);

(10) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands; and

(11) "State pool" means any State Fair Plan pool or insurance placement facility which is intended to meet the requirements of Part A of the Urban Property Protection and Reinsurance Act of 1968 (82 Stat. 558, 84 Stat, 1791, 12 U.S.C. 1749bbb–3—1749bbb–6a).

Section XVII Schedule of Coverage

The Company shall indicate with an (X) in the appropriate column and line those States in which the mandatory lines are to be reinsured under this contract. Coverage of mandatory line may be designated only for those States in which the Company is eligible for reinsurance in accordance with section X of this contract.

The Company shall also indicate by State with an (X) in the appropriate column and line any optional lines which are to be reinsured under this contract. Coverage of optional lines is available only for those States in which the mandatory lines are reinsured.

(The schedule of mandatory and optional coverage by State and line is set forth at this point in the Contract.)

Issued at Washington, D.C. on September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-28280 Filed 9-12-80; 8:45 am]

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Federal Register

Monday
September 15, 1980

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Initial Regulatory Program: Anthracite Coal Mines

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 716

Surface Coal Mining and Reclamation Operations Initial Regulatory Program: Anthracite Coal Mines

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Department of the Interior.

ACTION: Final rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement has revised one portion of its interim regulations program. This revision clarifies the scope of exemption available for anthracite operations in the Commonwealth of Pennsylvania.

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT:

(1) Lewis M. McNay, Chief, Branch of Applied Research, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Phone: (202) 343-8032.

(2) C. Y. Chen, Mining Engineer, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, South Building, 1951 Constitution Avenue, NW., Room 119, Washington, D.C. 20240. Phone: (202) 343-5244.

SUPPLEMENTARY INFORMATION: On December 13, 1977, the Secretary promulgated initial program regulations as required by Section 501(a) of the Act, 30 U.S.C. 1251 (42 FR 62675 *et seq.*) to be codified in Title 30, Code of Federal Regulations, Chapter VII. Section 716.5 of those regulations implemented the special provisions for anthracite coal mines authorized by Congress in Section 529(a) of the Act. That section of the Act provides that the permittee of anthracite coal mines in States which regulate such activities shall be subject to the State environmental protection standards in effect on the date of the Act (August 3, 1977) rather than Sections 515 and 516 of the Act. The latter section of the Act sets forth environmental performance standards applicable to the surface effects of underground coal mining operations.

In promulgating 30 CFR 716.5 on December 13, 1977, the Secretary exempted anthracite mines in the States which regulate such activities from the general environmental performance standards in 30 CFR Part 715 but failed to exempt such mines from the underground mining general performance standards in 30 CFR Part 717. See 42 FR 62693.

Upon initial reading of Section 529(a) of the Act, it would appear that Congress intended that the Secretary's anthracite regulations apply only to "anthracite coal *surface* mines" and not to underground anthracite mines. However, the reference to section 516 which appears in the second sentence of Section 529(a) of the Act indicates a contrary intent.

The legislative history of the Act confirms that Congress intended that the Secretary adopt the State environmental protection provisions applicable to anthracite surface coal mines and the surface effects of anthracite underground mines. See H.R. Rep. No. 94-1445, 94th Cong., 2nd Sess. 125-126 (1976); H.R. Rept. No. 94-896, 94th Cong., 1st Sess. 207 (1975).

OSM proposed an amendment to 30 CFR 716.5 (a) and (b) to add a reference to 30 CFR Part 717 in order to make it clear that underground anthracite operations in the Commonwealth of Pennsylvania (the only State to which 30 CFR 716.5 now applies) must comply with the anthracite environmental protection provisions of the Pennsylvania regulations as they existed on August 3, 1977, and not the Federal regulations in 30 CFR Part 717. The Pennsylvania regulations currently apply to both underground and surface anthracite mines.

OSM published proposed rules in the Federal Register Vol. 45, No. 92. May 9, 1980 (45 FR 30651), for a 30-day public comment period to amend 30 CFR 716.5 (a), (b) and (c) to change "anthracite coal surface mines" to "anthracite surface coal mining and reclamation operations" in order to clarify that the Secretary adopts Pennsylvania's provisions both as to surface mines and the surface effects of underground mines. The term "surface coal mining and reclamation operations" is defined in 30 CFR 700.5, 44 FR 15315, March 13, 1979.

OSM has received no public comments on this proposed rule change and has determined a public hearing is not warranted. No additional material has been made available to modify the Statements of Significance and Environmental Impact.

Statements of Significance and Environmental Impact

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. A copy of the Department's determination is available upon request to the Director of OSM. Section 501(a) of the Act exempts this action from the environmental impact statement requirement of the National Environmental Policy Act.

Dated: September 3, 1980.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

Based on the above 30 CFR 716.5 is revised as follows:

Part 716—Special Performance Standards

§ 716.5 Anthracite coal mines.

(a) Permittees of anthracite surface coal mining and reclamation operations in those States where the mines are regulated by State environmental protection standards shall be subject to the environmental protection standards of the State regulatory program in existence on August 3, 1977, instead of Part 715 and Part 717 of this chapter.

(b) The environmental protection provisions of Title 25, Rules and Regulations, Part 1, Department of Environmental Resources, Commonwealth of Pennsylvania, shall apply to reclamation of anthracite surface coal mining and reclamation operations in the Commonwealth of Pennsylvania instead of Part 715 and Part 717 of this chapter. In addition, the regulations of the Commonwealth of Pennsylvania pertaining to standards for air and water quality shall apply instead of the regulations of Part 715 and Part 717 of this chapter.

(c) If a State's regulatory program or regulations for anthracite surface coal mining and reclamation operations in force at the time of this Act are amended, the Secretary, upon receipt of a notice of amendment, shall issue additional regulations as necessary to meet the purposes of this Act.

(Secs. 201, 501, 527, 529, Pub. L. 95-87 Stat. 445 (30 U.S.C. 1201))

[FR Doc. 80-28345 Filed 9-12-80; 8:45 am]

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Federal Register

Monday
September 15, 1980

Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner and Office of Assistant Secretary for Policy Development and Research

Solicitation To Submit Pilot Project Applications and Preliminary Guidelines for Implementation of the Existing Multifamily Housing Demonstration

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner and Office of Assistant Secretary for Policy Development and Research

[Docket No. N-80-1022]

Solicitation To Submit Pilot Project Applications and Preliminary Guidelines for Implementation of the Existing Multifamily Housing Demonstration

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice of solicitation for applications.

SUMMARY: The Department of Housing and Urban Development, under its Title V research authorities (12 U.S.C. 1701z-(*et seq.*), is seeking new means to help preserve sound, existing, multifamily housing stock for the continued use of existing tenants. Of special concern is the prevalence of the conversion of such housing to other occupancies and other uses, often with displacement of a majority of existing tenants. Some jurisdictions have passed statutes giving existing tenants, who face such conversions, the right-of-first-refusal and other protections. However, the Department has had few tools with which to assist these communities and tenants to take advantage of these protections.

To help deal with these challenges, the Department has developed and will test new or improved mechanisms for the purchase or refinancing of existing multifamily housing projects in the Existing Multifamily Housing Demonstration. This Notice solicits applications pursuant to the Interim Rule on Cooperative Conversions of existing multifamily housing projects published by HUD in the Federal Register on May 14, 1980.

FOR FURTHER INFORMATION CONTACT: Michael A. Stegman, Deputy Assistant Secretary for Research, Department of Housing and Urban Development, Washington, D.C. 20410 (202)755-5561, or Alex J. Pires, Deputy Assistant Secretary for Multifamily Housing, Department of Housing and Urban Development, Washington, D.C. 20410 (202) 755-6495. The telephone numbers are not toll-free numbers.

DATE: Applications must be submitted on or before thirty (30) calendar days from date of this Notice.

SUPPLEMENTARY INFORMATION: Two broad strategies will be pursued in the Existing Multifamily Housing Demonstration. In one, new mechanisms will be made available to aid existing tenants to acquire their property by forming and financing their own tenant cooperatives or condominiums. In the other, new mechanisms will be made available to aid new owners, including entities such as community groups, neighborhood groups, tenant leagues, or even local governments to acquire and finance such properties and preserve them as rental projects for the existing tenants. In the latter strategy, properties may be acquired on a permanent basis or on an interim arrangement permitting a less hurried transition to some later form of tenant management or tenant ownership.

The program will start with this pilot test of Demonstration requirements for one of the new financing mechanisms (cooperative conversions of existing buildings under Section 221(d)(3) pursuant to Section 223(f), to obtain marketplace reactions to those requirements. Following an assessment of the progress of the pilot Demonstration, applications for the full-scale Demonstration will be invited after adjustments, if any, have been made on the basis of experience gained in the pilot Demonstration.

While the full-scale Demonstration is limited to a total of not more than thirty (30) projects located in not more than six (6) metropolitan areas of the country, up to seven projects will be accepted for this pilot test, and the balance will be reserved for the full-scale Demonstration. Projects will be selected competitively from those which best meet three groups of criteria: (a) The need for comparative testing under varying tenant and project circumstances, and in a variety of locales, having differing market and legislative conditions; (b) the quality and soundness of the project for mortgage insurance; and (c) the comparative merits of the project in meeting the basic objectives of the demonstration, such as protection of existing tenants and preservation of the housing stock.

Overview of Demonstration

Until now, HUD has had few operational programs offering aid to tenants faced with the conversion of their existing rental buildings. With few exceptions, HUD mortgage insurance programs for cooperative ownership have been limited to new construction or substantial rehabilitation projects. Thus, even in communities which have enacted tenant protections, such as right-of-first-refusal and other devices, HUD mortgage insurance and housing assistance programs could not assist these tenants in taking advantage of their rights.

Due to the pressing need, and because there are many untested alternatives within HUD's existing statutes, the Department is not relying on statutory changes to carry out this Demonstration. It is acting within existing statutory authority and is amending program regulations as necessary.

One of the key mechanisms for the Demonstration is Section 223(f) of the National Housing Act of 1934, as amended. It permits the purchase or refinancing of existing buildings, without a requirement for substantial rehabilitation that has been part of the Department's insured mortgage programs for existing buildings. Currently, this section has only been used in conjunction with Section 207 of the Act, for insured rental housing. It is statutorily feasible to use 223(f) with many other sections of the Act, as for example for cooperative housing, in ways which would further the objectives of the Demonstration. There are also combinations of other, existing Departmental programs which might be used when families may need additional assistance in a particular Demonstration project. The Section 8 (Existing), Section 235, and Section 106(b) programs are possible examples.

Other than in the area of underwriting and mortgage processing, this Demonstration calls for limited direct involvement by HUD staff. We will observe the outcomes of the participants' efforts rather than take part directly in project management. The Department will exercise its creativity by opening several new program windows, which it believes will be of assistance to the market in current circumstances. The market's response to those windows, in the form of applications, plus the success, over time, of the refinancing innovations used in the Demonstration, will measure the acceptability, usefulness, and potential for replication of the new alternatives as

operating programs.

The Demonstration is a joint effort by the Office of Housing and the Office of Policy Development and Research. It will be conducted under HUD's research authority, Title V of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1, *et seq.*) and the Secretary's authority to make nonstatutory changes, additions, and waivers to existing housing regulations (Section 7(d) of Department of HUD Act, 42 U.S.C. 3535(d)).

The Department will give preference for its assistance to those applicant projects which are likely to be converted regardless of their participation in the pilot Demonstration. Examples would be projects in which there is already a converter offer, or projects in which the tenants must act swiftly to preserve a right-of-first-refusal. It is not the goal of this pilot Demonstration to stimulate conversions, where no incentives for conversion previously existed. Instead, where buildings are facing conversion, the Department seeks to augment the financial alternatives of existing tenants to acquire their units, when they may not have otherwise been able to do so.

In order to assure that the new financing mechanisms are not used for purposes other than to aid the target groups, eligibility will be limited to those projects having a substantial majority of the existing tenants remain as project occupants after refinancing. A specific definition of "substantial majority" shall be provided in each segment of the Demonstration.

It is recognized that even in a sound, existing building there may be a moderate amount of deferred maintenance and need for equipment replacement. For a project to be eligible for the pilot Demonstration, the cost of such work must be limited to a modest part of the total value of the project, as defined under the requirements for each segment of the Demonstration. It is also recognized that in some existing projects the current rental income may not be fully adequate to provide all needed maintenance, operating services, and also to pay rapidly increasing utility costs. It is further recognized that even with new, longer-term mortgages, the debt service at today's higher interest rates may be greater than before. Any or all of these factors could dictate a rise in monthly costs to the tenants who remain in occupancy after refinancing.

As a protection to existing tenants, eligibility for the new financing will be limited to projects in which the post-financing monthly costs are only moderately increased over existing rents. Because there may be tax advantages which help offset higher costs for some of those who become cooperative owners, the maximum increases permitted in such projects will be slightly higher than those in projects remaining as rentals. The specific limits will be defined in the requirements for each segment of the Demonstration. In any case, projects proposing less than maximum housing cost increases will be given preference over those seeking the maximum.

In order to test the new financing mechanisms over a representative range of conditions, the Department seeks projects which vary as to:

(1) Role of the tenants and the assistance available to them in forming the cooperative organization allowed by valuation procedure 4a, page 16 of this notice;

(2) Nature of the tenant protection measures proposed for households which cannot or will not buy into the projects;

(3) Project size and location (i.e., city versus suburban location), and nature of the state and/or local regulatory environment with respect to conversion activity; and

(4) Structure of resale and equity appreciation limitations for the building as a whole and for individual units within the building.

The Department will select projects from among the applications which best meet the objectives of the pilot Demonstration, which assure reasonable variations in conditions (1) to (4) above, and which meet sound underwriting criteria.

The Department intends to monitor and evaluate the demonstration projects to learn more about: The effectiveness of various financing plans, the costs of conversions and how they vary according to conversion mechanisms employed, and the relative cost-effectiveness of cooperative versus condominium conversions, including their respective federal tax implications for sellers. There is an interest in determining what obstacles exist which prevent greater tenant participation in both the conversion process and the purchasing of their units. These obstacles may include the cost and availability of mortagage financing, the costs of ownership, organizational development, or the lack of available technical assistance

DEMONSTRATION OBJECTIVES: This pilot Demonstration will test the market acceptability and usefulness of a new financing mechanism for cooperative conversion of sound, existing, multifamily properties. The principal aim of the new mechanism will be to offer means to help preserve such properties for the continued occupancy of existing tenants after conversion and to test the usefulness of the new financing mechanism as an anti-displacment tool for those tenants seeking to remain in multifamily properties in neighborhoods experiencing revitalization and increasing property values.

Innovative Cooperative Conversions

A. Authority

45 FR 31896, May 14, 1980, 24 CFR Part 221, Low Cost and Moderate Income Mortgage Insurance, Existing Multifamily Housing Demonstration, An Interim Rule adding a new Section 221.560b, Eligibility of cooperative mortgages for Existing Multifamily Housing Demonstration.

B. Number of Projects Planned for Pilot Test of Innovative Cooperative Conversions

The Department expects to select up to seven projects for this pilot segment of the Demonstration, but reserves the right to select none depending on the quality and suitability of the applications. (In the full-scale Demonstration, for which applications will be invited at a later date, the Department expects to select an additional six to ten projects for innovative cooperative conversions.) The Department reserves the right to negotiate separately and simultaneously with applicants concerning potential changes and improvements to meet the purposes of the Demonstration, and after such negotiations to accept those applications which are in the best interests of the Department and of the Demonstration. The Department also reserves the right to refuse to extend any commitments made at any time prior to initial endorsement (or initial-final endorsement if insured advances are not sought), upon a finding that the applicant's project may be so delayed as to impair the comparisons and evaluations which are the purpose of the Demonstraions. The Department may

also refuse to amend the commitment upon a finding that any stated purpose or condition of the Demonstration is no longer being met by the applicant.

C. Demonstration Timetable for Innovative Cooperative Conversions

(N+30) 1. Applications for the pilot Demonstration must be submitted on or before thirty (30) calendar days from the date of this Notice.

In the event an application does not meet criteria as outlined in this notice, an applicant may be given, upon notification by Headquarters, an additional fifteen (15) days to correct any noted deficiencies (N+30).

(N+60) 2. The initial screening by the Department to determine whether the application is considered potentially acceptable for pilot Demonstration purposes and for further review for mortgage insurance is expected to be completed on or before sixty (60) calendar days from the date of this Notice. This screening will be conducted by the Department's central office in Washington, D.C. (N+60).

(N+90) 3. Applications which have passed the initial screening will be sent to the relevant field office for accelerated processing. Firm Commitment processing is expected to be completed on or before ninety (90) calendar days from date of this Notice (N+90).

(N+120) 4. Initial Endorsement (or initial-final endorsement, if insured advances are not sought) is expected to be made on or before one hundred twenty (120) calendar days from date of this Notice (N+120).

D. Who May Apply

The normal application for this pilot Demonstration will be made by the seller through an FHA approved lender. However, the *initiative* for submission of an application to this pilot Demonstration program may also come from a tenant organization, a local community or non-profit group, a local unit of government, a national or local organization providing assistance to cooperative groups, or any other responsible and concerned group having an interest in preserving existing multifamily housing stock and in assisting the purposes of this pilot Demonstration. Where possible, these groups should work with the seller. In some instances, for example, one in which a tenant group is seeking to exercise its statutory right-of-first-refusal, this may not be possible. In such instances the pilot Demonstration application may be filed through an approved lender by responsible representatives of the tenants or other interested groups.

E. Eligibility Criteria

Applications which do not meet the following criteria will not be accepted for further consideration:

1. The initial application must be accompanied by evidence of substantial interest by the existing tenants. Such interest must be evidenced in the form of "good faith" refundable deposits in the amount of one month's rent or $200.00 per dwelling unit, whichever is less, for at least 51% of the total dwelling units. In cases where it is prohibited by statute, or otherwise infeasible to obtain "good faith" deposits from prospective cooperative members who are existing tenants, the applicant shall deliver a cash deposit or an unconditional, irrevocable letter-of-credit in an amount equal to $200.00 per dwelling unit for at least 51% of the total dwelling units. In the event, the applicant is not selected to participate in the Demonstration, the cash deposit or letter-of-credit will be returned to the applicant. If the applicant is selected and the project is converted, the applicant's deposit will be returned. If the applicant is selected to participate in the Demonstration, but the project is found financially infeasible or 51% of the dwelling units of the project are not purchased by the existing tenants, the deposit is forfeited. An "existing tenant" shall mean a person or persons residing in the building as of the submission date of the application.

2. The total proposed monthly housing expenses of the cooperative shareholders, for share payments, monthly cooperative charges, utilities, and insurance, may not exceed 130% of pre-conversion rents, per shareholder, adjusted to account for: (a) Different cash down payments, by treating all units as though the minimum allowable down payment had been made; (b) the cost of utilities and insurance, which may or may not have been included in prior rents; and (c) the effect of inflation through the date of official cooperative occupancy. This requirement may be modified in special cases which the 130% rule would be insufficient to generate an offer to match a bona fide converter's offer; and the Department determines that the tenant's incomes are sufficient to support the higher level without jeopardizing the cooperative's mortgage.

3. The value of proposed repairs and redecoration for the project may not exceed the greater of $3,000.00 per unit or 15% of the total value of the project after such repairs and after adjustment for expenses for normal engineering and legal services, organization, commitment fees and other settlement costs.

4. There must be a subscription of a minimum of 75% of the units by eligible purchasers before HUD's initial endorsement (or initial-final endorsement, if insured advances are not sought) of the project loan or any individual equity loan, and this must include the minimum of 51% of the project's cooperative purchasers who are to be current tenants. Where pre-sales are sufficiently high so that the cooperative is self-sustaining (90% or more), the cooperative may be permitted to assume responsibility for the remaining unsold units.

5. The project must be feasible at current market interest rates.

6. All projects must meet regular Departmental underwriting and processing standards for mortgage insurance; each project shall be reviewed by local field offices after initial screening at HUD's Washington central office; more projects will be considered for further review after initial screening than are expected to participate in the Demonstration, in order to assure that sufficient viable applications actually are processed for Firm Commitment.

F. Selection Factors

For projects which meet the eligibility criteria, selection will be based on the following selection factors in their order of perference, ranked from most important to least important:

1. Preference will be given to proposals involving the least amount of displacement of existing tenants and which make provisions to assist (e.g., through relocation payments and assistance, long term leases, etc.) those tenants who cannot afford to purchase a share in the cooperative due to inadequate funds.

2. Projects which best meet the pilot Demonstration's need for a representative range of alternatives and test conditions, as described in the Overview of the Demonstration, will be given preference.

3. Projects in which the current tenants are faced with an imminent conversion by the owner or a convertor, and particularly those in which the tenants have a limited time in which to protect their statutory or other rights, will be given preference. There shall be satisfactory evidence of a valid and binding written offer by a responsible, capable, and independent third party.

4. The readiness of projects for immediate processing, will be given preference. This will include the potential viability of the cooperative organization, and the opportunity for the

pilot Demonstration to be concluded in a reasonable time period, so that all projects may have the same external factors affecting them.

5. Preference will be given to proposals in which the occupants' total housing expenses, after conversion, experience the lowest increases.

6. Preference will be given to projects in which energy conservation measures have been taken (or will be taken during repairs and renovations) to reduce operating costs.

7. Preference will be given to projects which have or will have, individual electric metering, and/or individually controlled and billed heating/cooling units.

8. Preference will be given to proposals which can show that participation in this Demonstration will significantly reduce the number of existing tenants who otherwise would have been displaced.

9. Preference will be given to proposals which develop a workable mechanism to limit the equity return on secondary sales of individual units to reasonable levels. These should be levels which will assure the continued availability of the units as a housing resource for families of similiar income levels to the first cooperative owners.

G. Processing Procedures

It is the Department's intention to utilize the greatest amount of flexibility in carrying out the pilot Demonstration, in order to assure its objective of developing new and better alternatives for the purchases or refinancing of existing multifamily housing.

1. The Architectural Analysis and Inspection procedures of HUD Handbook 4565.1 Mortgage Insurance for the Purchase of Refinancing of Existing Multifamily Projects—Section 223(f) shall be followed.

2. Construction Cost processing will be performed in accordance with the Handbook 4565.1.

3. Mortgage Limits: these shall be the statutory mortgage limits for the Section 221(d)(3) program.

4. Valuation for maximum mortgage amount shall be based on the lesser of:

a. Replacement cost,-including the cost of the limited repair and redecoration to be performed and normal expenses for engineering and legal services, organization (including formation of the cooperative and related services), commitment fees and other settlement costs.

b. Value of the project as a continuing cooperative.

c. Value that a willing multifamily converter would pay a willing multifamily owner for the property or for comparable properties for which this may be known, including normal expenses for engineering and legal services, organization, commitment fees, and other settlement costs.

5. Mortgage credit processing shall be performed in accordance with instructions contained in the Handbook 4565.1.

6. The administrative requirements for organizing a cooperative housing corporation shall conform to procedures outlined in HUD Handbook 4550.1, Basic Cooperative Housing Insurance Handbook.

7. In the event of a default on the cooperative's mortgage, the government shall acquire the property under the procedures and terms defined for the Section 221(d)(3) program.

H. Application Procedures and Contents

1. The application shall be submitted directly to Alex J. Pires, Deputy Assistant Secretary for Multifamily Housing, Department of Housing and Urban Development, Washington, D.C. 20410. The application must be submitted on or before thirty (30) calendar days from the date of this Notice, also stated in Section C.1. of this Notice.

2. The application procedure and required exhibits shall be as outlined in HUD Handbook 4565.1, Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects—Section 223(f), paragraph 2.7(b). The application shall be for a Firm Commitment.

3. The application fee of $3.00 per $1,000 of the requested mortgage amount shall be submitted with the application for Firm Commitment. Eighty percent of the fee shall be refunded for applications which are judged not to meet the eligibility or initial screening criteria. Fifty percent of the fee shall be refunded for projects which are judged not to meet the selection factors for the Demonstration and are not issued a Firm Commitment. Firm Commitment shall be subject to the written requirement that the project proceed promptly to initial endorsement in a manner not to delay or impair the comparisons and evaluations which are the purpose of the pilot Demonstration. Commitment terms shall otherwise conform to paragraph 2.9 of Handbook 4565.1.

4. Reference made in Handbook 4565.1 to rental rates shall be applicable, if any, to non-converting individual units only.

5. In addition to the submittal of Form HUD 3201 and other standard application exhibits, the following information shall be provided in narrative form:

a. A description of how the project meets the eligibility criteria and selection factors outlined in Parts E and F above.

b. A description of the proposed method of project financing, and, if applicable, the method of financing the cooperator's equity, including satisfactory evidence of lender commitment for the proposed cooperator equity financing, where appropriate.

c. A description of how the proposed cooperative will be formed, including any assistance the owner will provide the tenants in forming the cooperative organization.

d. A description of the assistance, if any, from national or local cooperative groups which may support the efforts of the applicant.

e. A description of the proposed management structure for operating the cooperative on a day-to-day basis.

f. A description of any special features of the application or differences in treatment required to assure a viable project; in particular, a description of any required differences or waivers from provisions set forth in this Notice and the Handbooks which are referenced.

g. The narrative shall be preceded by an Executive Summary of not more than two pages briefly describing all major points of the application.

I. Reporting and Evaluation Requirements of the Pilot Demonstration

The participants must agree to allow reasonable access to the project, the cooperative's financial records, and other pertinent documents to the Demonstration's evaluation team. A certification which binds the seller, the cooperative, and its individual share owners to such access for at least three years after conversion, shall be included in the application.

(Title V of Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1 *et seq.*); sec. 223(f) of National Housing Act (12 U.S.C. 1715n(f); sec. 7(d) of Department of HUD Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., September 9, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

David E. Garrison,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 80-28098 Filed 9-12-80; 8:45 am]

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Monday
September 15, 1980

Part VI

Department of Energy

Economic Regulatory Administration

Alaska North Slope Crude Oil Entitlement Adjustment

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-80-09A]

Alaska North Slope Crude Oil Entitlement Adjustment

AGENCY: Economic Regulatory Administration. Department of Energy.

ACTION: Further notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) proposes an amendment to the Mandatory Petroleum Allocation Regulations further modifying the treatment of Alaska North Slope (ANS) upper tier crude oil under the entitlements program, 10 CFR 211.67.

ANS crude oil competes with high sulfur crude imports on the Gulf Coast, and the imposition of the recently adopted ANS entitlement obligation appears to be causing the cost to refiners of controlled ANS to exceed that of alternative crude imports on the Gulf Coast, resulting in downward pressure on ANS wellhead prices. ERA proposes a uniform reduction in the entitlement obligation incurred by ANS upper tier crude oil to reduce the amount by which the net refiner acquisition cost of this oil exceeds that of alternative high sulfur crude oil imports on the Gulf Coast. Based on our preliminary analysis, a $2.00 per barrel reduction is proposed, subject to adjustment based on more current data available at the time of promulgation of a final rule.

It is proposed that any final rule that is adopted would be effective with respect to refiners' receipts and runs to stills beginning October 1, 1980, reflected in the Entitlements Notice to be issued in December 1980.

DATES: Written comments by November 12, 1980, 4:30 p.m.

Hearing date: Washington, D.C., October 9, 1980. Requests to speak by 4:30 p.m., October 2, 1980.

ADDRESSES: All comments and requests to speak should be submitted to the Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-80-90A, Department of Energy, Room B-210, 2000 M Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-4055.

Karene Walker (Public Hearing Management), Economic Regulatory Administration, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3971.

David A. Welsh (Office of Petroleum Operations), Economic Regulatory Administration, Room 6128-Q 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3459.

Norman V. Breckner or Daniel J. Thomas (Office of Regulatory Policy), Economic Regulatory Administration, Room 7116, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3263.

Samuel M. Bradley or Christopher M. Was (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-6754 or 252-6744.

SUPPLEMENTARY INFORMATION:

I. Background
II. Rationale Supporting the Proposed Rule
III. Proposed Amendment
IV. The Economic Impact of the Proposed Reduction in the ANS Entitlement Obligation
V. Comments Requested
VI. Procedural Requirements
VII. Written Comment and Public Hearing Procedures

I. Background

On July 3, 1980, ERA adopted a final rule imposing an entitlement obligation on ANS upper tier crude oil. 45 FR 46752 (July 10, 1980). Prior to this rule, ANS upper tier crude oil was treated as imported crude oil for purposes of the entitlements program and thus incurred no entitlement obligation. The July 3 rule was intended to reduce differentials in refiners' crude acquisition costs resulting from the prior entitlement treatment of ANS upper tier crude oil in furtherance of the entitlements program's objective of equitably allocating the benefits of price-controlled crude oil to all refiners.

Refiners of NAS upper tier crude oil now incur an entitlement obligation equal to the difference between all refiners' reported weighted average acquisition costs for all uncontrolled crude oils and all refiners' reported weighted average acquisition cost for ANS upper tier crude oil. The entitlement obligation is uniform for ANS upper tier crude oil delivered to refineries located in PADDs I-IV and PADD V. This entitlement obligation brings the national average refiner acquisition cost of ANS upper tier crude oil up to the national average refiner acquisition cost for all uncontrolled crude oils.

In the Notice (45 FR 31682, May 13, 1980) that initiated the recent ANS rulemaking, we solicited comments concerning whether the entitlement obligation imposed on ANS upper tier crude oil should be reduced to reflect the below average quality of ANS crude oil. In particular, the Notice solicited comments regarding the effect that the lower gravity and higher sulfur content of ANS crude oil might have on the calculation of the entitlement obligation proposed to be imposed on ANS upper tier crude oil, as follows:

> We understand that ANS crude oil may have a lower gravity and a higher sulfur content than the average of other crudes run by refiners. We solicit comments on whether the entitlements obligation on ANS crude oil under any of the alternatives proposed should be adjusted to reflect these quality differences. We solicit comments which provide specific information as to the basis upon which such adjustments might be made, e.g., the types of imported crudes, exempt domestic crudes, or controlled domestic crudes which would provide a basis for comparison.

There was considerable discussion about the necessity for an adjustment in the testimony at the public hearing and in the written comments. As indicated in the preamble accompanying the final rule, the majority of commenters opposed a reduction of the ANS entitlement obligation based on quality differences. The opponents pointed out that, except for the treatment of California heavy crudes, differences in quality of other crudes have not been taken into account under the entitlements program. Some commenters also observed that the quality issue is not unique to ANS crude oil and that an ANS quality adjustment should be considered only if the entire entitlements program were revised to take into account quality differences between all controlled and exempt crudes. According to these commenters, such a revision would represent a modification of the objectves of the entitlements program by attempting to more nearly equalize refiners' crude costs based on considerations other than the category of oil resulting from the imposition of price controls.

Those commenters who favored a reduction of the ANS upper tier entitlement obligation were concerned that imposition of an entitlement obligation based on the averge price of uncontrolled crudes of generally higher quality than ANS crude oil would result in a post-entitlement acquisition cost for controlled ANS in excess of alternative crudes. Specifically, they asserted that because ANS is a lower quality crude than the average of all uncontrolled crudes, if its cost were raised to that average, controlled ANS would become more expensive than comparable high

sulfur uncontrolled (including foreign) crudes.

According to these commenters, to the extent that controlled ANS is more expensive than comparable high sulfur imported crudes, buyers would have an incentive to replace some volumes of ANS crude oil with these imported crudes. This in turn could have the effect of exerting downward pressure on ANS wellhead prices. The ANS producers noted that because the new entitlement tier consists solely of ANS upper tier crude oil, any reduction in the wellhead price of controlled ANS would result in a corresponding reduction of pre-entitlement refiner acquisition costs, and an equal and offsetting *increase* in the ANS entitlement obligation. Thus, there would be no reduction of the *net* post-entitlement cost of ANS upper tier crude oil. Therefore, if the market dictated reduced ANS wellhead prices, the reduction would be taken on uncontrolled ANS crude oil. If wellhead prices of uncontrolled ANS crude oil are depressed, it could act as a disincentive to ANS producers. Furthermore, if controlled ANS is disadvantaged and buyers purchase less expensive alternative high sulfur crude imports, there appears to be some risk that transportation and storage problems could develop that could adversely affect ANS production.

In adopting a final rule that did not incorporate a reduction of the ANS entitlement obligation based on quality, we determined that the record of that rulemaking did not provide a sufficient basis to conclude that controlled ANS would be placed at a significant cost advantage compared with alternative high sulfur crudes, that demand for ANS crude oil would be adversely affected, or that ANS wellhead prices would be unacceptably depressed.

However, we stated that our decision not to act at that time did not dispose of the issue, but that we would monitor the effect of the final rule on delivered costs for controlled ANS crude oil and any resulting impact on ANS wellhead prices. Finally, we announced that we would consider the subject in a subsequent rulemaking as the record evolved concerning the impact of the new ANS upper tier entitlement obligation on the market.

II. Rationale Supporting the Proposed Rule

Among domestic price-controlled crude oils, the entitlement treatment and marketing of ANS upper tier crude oil are unique in two significant respects.

First, controlled ANS crude oil constitutes a separate tier of crude oil under the entitlements program that consists entirely of high sulfur crude that is generally of lower quality than average uncontrolled crudes. The entitlement obligation is based on the national weighted average cost of all uncontrolled crudes, both of high and low sulfur content. The resulting ANS entitlement obligation brings the average controlled ANS cost up to the average cost of *all* uncontrolled crudes, which, as discussed in more detail below, is higher than the average cost of alternative high sulfur uncontrolled crudes that are competitive with ANS crude oil.

Second, ANS is the only domestic price-controlled crude that is sold in two widely separate geographic markets on a large scale. Approximately two-thirds of ANS production is marketed in PADD V and the remaining one-third is marketed in PADDs I–IV. We estimate that the added cost to transport ANS crude oil from PADD V to PADDs I–IV is approximately $3.00 per barrel, which is reflected in the cost of the controlled ANS delivered to each market. The entitlement obligation imposed on ANS crude oil by recent rule, however, is calculated on the basis of refiners' *weighted average* acquisition cost for *all* ANS. As a result of the effects of the two-thirds/one-third market split and weight-averaging, the post-entitlement cost of controlled ANS in PADD V is approximately $1.00 per barrel less than the average cost of all uncontrolled crudes and in PADDs I–IV it is approximately $2.00 per barrel more than the average.[1]

The delivered cost of imported sour crude oils is about the same in the two markets. If upper tier ANS crude oil is placed at a significant cost disadvantage as a result of imposition of the uniform ANS entitlement obligation, the disadvantage will be greater on the Gulf Coast by the amount of the transportation cost differential. The higher post-entitlement cost of ANS upper tier crude oil delivered to the Gulf Coast makes it the reference point for establishing the cost disadvantage of controlled ANS in competition with alternative high sulfur crudes.

We have tentatively determined that the comparable crudes with which ANS is competitive on the Gulf Coast are the high sulfur crudes imported from the Persian Gulf, Venezuela, and Mexico, excluding Saudi Arabian crudes. We excluded Saudi Arabia crudes because we understand they are not available to all purchasers at the official government prices. What remains is to determine the extent to which the post-entitlement cost of ANS upper tier crude oil on the Gulf Coast is greater than the comparable high sulfur crude imports.

On the basis of data reported by refiners for May 1980, the post-entitlement cost (before the runs credit) of ANS upper tier crude oil delivered to PADDs I–IV was estimated to be $36.34 per barrel.[2] This value can be used to compare the costs of the controlled ANS to alternative crude imports, because allowing for the runs credit does not alter this cost relationship.

The following table reflects the estimated delivered costs to the Gulf Coast for high sulfur crude imports. The crudes with gravities from 27°–34° API are generally considered competitive with ANS.

[1] For example, in May 1980 (the first month's runs and receipts affected by the recently adopted ANS entitlement obligation) the weighted averge delivered cost of ANS upper tier crude oil for all refiners was $23.61; the weighted average delivered cost of all uncontrolled crudes nationwide was $34.35. The resulting uniform entitlement obligation on controlled ANS crude oil was the (rounded) difference, or $10.73.

The average acquisition costs for controlled ANS in PADD V and PADDs I–IV can be calculated on the basis of the proportion of ANS crude oil marketed in each region and the estimated $3.00 per barrel average difference between the two regions in the delivered cost of ANS upper tier crude oil. Thus, the average delivered cost of ANS upper tier crude oil for May 1980 in PADD V was approximately $22.61 per barrel and in PADDs I–IV was approximately $25.61 per barrel.

The post-entitlement cost (before the runs credit) of ANS upper tier crude oil is derived by adding the uniform ANS entitlement obligation of $10.73 to the delivered cost in PADD V and PADDs I–IV. The resulting post-entitlement costs of ANS upper tier crude oil for May 1980 was estimated to be $33.34 per barrel in PADD V and $36.34 per barrel in PADDs I–IV.

[2] *See* n. 1.

Table 1.—*Competitive Imported Crude Costs*

Crude oil	Gravity	Official price[1]	Estimated transportation to gulf coast	Estimated gulf coast delivered cost
Oman: Oman blend	34	$30.20	$1.80	$32.00
Iraq:				
Basrah light	34	29.96	1.80	31.76
Basrah Medium	30	29.30	1.80	31.10
Kuwait: Kuwait	31	29.50	1.80	31.30
Neutral zone: Khafji	28	29.20	1.80	31.00
Venezuela:				
T-J light	31	32.40	.54	32.94
Oficina	34	34.25	.54	34.79
Guanipa	30	32.92	.54	33.46
Mexico: Isthmus	32	33.50	.33	33.83

[1] Source: *Platt's Oilgram*, June 13, 1980.

The data reflect that in June 1980, the higher end of the range of the official government prices for alternative high sulfur crude imports, adjusted for delivery to the Gulf Coast, was about $35.00 per barrel. The lower end of the range of comparable sour crude imports was about $31.00 per barrel. Compared with the post-entitlement cost (befoe the runs credit) of controlled ANS delivered to PADDs I–IV ($36.34), a reduction in the ANS entitlement obligation in the range of $1–5 a barrel would appear to be appropriate.

In testimony at the public hearing on June 6, 1980 in the recent rulemaking, The Standard Oil Company of Ohio (SOHIO) noted that competitive Persian Gulf crudes could be bought at the U.S. Gulf Coast for $34 a barrel. If this is so, then the appropriate reduction would appear to be approximately $2 a barrel.

In a petition for rulemaking filed recently, however, SOHIO reported that it has reduced the price of exempt ANS by $4.00 in response to the rule adopted on July 3, 1980. In its petition, SOHIO indicated that its contracts to sell ANS "were negotiated generally on the basis of a composite controlled and decontrolled delivered price." SOHIO maintains that the post-entitlement cost of controlled ANS exceeded its market value, and that it was required to reduce the price of *uncontrolled* ANS by $4.00 per barrel in order to remain competitive.

A reduction in the uncontrolled ANS price affects the composite price for the mix of uncontrolled and controlled ANS in proportion to the fraction of uncontrolled ANS in the composite. Beginning in January 1980, price-controlled ANS crude oil, like all other upper tier crude oil, has been decontrolled at the rate of 4.6 percent per month. In May 1980, 23.0 percent of ANS crude was uncontrolled. For May, the $4.00 reduction in the exempt price by SOHIO reduced the composite price by approximately $0.92 per barrel. Since 77.0 percent of the composite was controlled, the adjustment indicates that the post-entitlement cost of the controlled ANS portion of the composite was approximately $1.19 per barrel above that of competitive crudes.

The preceding discussion suggests a range of values by which it is estimated that the cost of controlled ANS has been placed at a disadvantage compared with alternative high sulfur crude imports. However, there are countervailing considerations that must also be taken into account in determining the amount of the proposed reduction in the ANS entitlement obligation.

First, the comments submitted by the Department of Justice in the recent rulemaking suggested that an obligation that is too low may not provide an incentive for maintaining efficient marketing of ANS crude oil in both geographic markets. The Justice Department pointed out that this efficiency of distribution would exist in a competitive market. Therefore, it urged the imposition of a large enough ANS entitlement obligation to insure efficient market distribution. If the obligation were set too low, incentives that encourage the most efficient marketing of ANS crude oil would be diminished, and the ultimate cost to the consumer would be increased.

In addition, if the ANS entitlement obligation is too low, the benefits of price-controlled ANS crude oil will not be equitably distributed to all refiners. In that case, the problem that we sought to correct in the first place by imposition of an ANS upper tier entitlement obligation could reappear.

On the other hand, if the ANS entitlement obligation is too high, ANS upper tier crude oil will be more costly than alternative high sulfur crudes. The resulting downward pressure on ANS wellhead prices could adversely affect ANS production.

Second, recent changes in market conditions have had the effect of reducing the amount by which the post-entitlement cost of ANS exceeds that of alternative crudes. On August 1, 1980, posted prices of many exempt crudes in PADDS I–IV were reduced by $1 per barrel. These crudes account for approximately 30 percent of all uncontrolled crude used in the United States. This reduction reduces the national average cost of uncontrolled crudes, and the entitlement obligation derived from that average, by about $0.30. The resulting effect on controlled ANS is to reduce its refiner acquisition cost by the same amount.

Furthermore, although official government selling prices for crude imports have not changed since June 1, 1980, we understand that the spot market prices have declined and, in some cases, now may be below the official government selling prices. Although we are currently unable to quantify this reduction in spot market prices, it would have the effect of reducing the average cost of uncontrolled crudes, decreasing the entitlement obligation on controlled ANS by a corresponding amount, and reducing its refiner acquisition cost. However, if only the spot market prices of high sulfur crude imports dropped and they are a measure of the cost of competitive imports, ANS might be further disadvantaged.

Finally, refiners with access to controlled ANS also report that a substantial portion is exchanged for lower sulfur, higher quality crudes, and that the exchange differential is included in the cost of controlled ANS reported for entitlement purposes, as required by the regulations. This increase in the reported cost of controlled ANS reduces the entitlement obligation and lowers the post-entitlement cost of controlled ANS. This reduces any disadvantage between the cost of controlled ANS and alternative crudes.[3]

III. Proposed Amendment

Taking into account all of the considerations noted previously, we are proposing a $2 reduction in the entitlement obligation imposed on each barrel of upper tier ANS crude oil. Under the proposal, the ANS upper tier entitlement obligation would be calculated in effect by taking the difference between refiners' reported weighted average cost per barrel for all uncontrolled oils and refiners' reported weighted average cost per barrel for ANS upper tier crude oil, less $2. We believe an adjustment of this magnitude may be sufficient to insure the competitiveness of controlled ANS with comparable crude imports on the Gulf Coast.

We have initiated the rulemaking at this time to be in a position to make a timely adjustment to the ANS entitlement obligation. The amount of the proposed reduction will be subject to revision based on the comments and data compiled in this proceeding, more current published data that reflect costs of alternative crude oils, and entitlements data that is available at the time of promulgation of a final rule.

We have considered calculating an adjustment each month by using the delivered costs of controlled ANS and

[3] On the other hand, exchange differentials included in the cost of exempt ANS reported by refiners are not significant for purposes of our consideration in this rulemaking, because the volume of exempt ANS is small compared with total volume of uncontrolled oils used in the entitlement calculations.

the comparable imported crudes. Since the appropriate reference point is the Gulf Coast, reporting of costs and volumes of imports and ANS delivered to that market would be required. We believe that reporting of such data would prove cumbersome and require careful selection of the crude shipments whose prices would be included. Therefore, we do not believe that the added reporting burden makes this approach desirable.

Alternatively, a fixed adjustment established in this proceeding could be used until such time as market conditions warranted a change. Inasmuch as the entitlements program will end when the President's authority to control crude oil prices expires on October 1, 1981, we believe it is unlikely that the adjustment would need to be revised. However, we request comments concerning whether periodic review and revision of any adjustment that may be adopted will be necessary. Comments that support periodic review of the ANS entitlement adjustment should address how often and on what basis the adjustment should be revised. Comments should specifically address what pricing data should be relied upon to make a periodic revision. Although we have proposed regulatory language that incorporates the concept of a periodic revision of the adjustment, we have not specified the basis upon which a periodic revision would be made. If we decide to incorporate a periodic revision in any final rule that we may adopt, we will propose specific regulatory language and seek further comments on the manner of implementation and basis for such a provision.

IV. The Economic Impact of the Proposed Reduction in the ANS Entitlement Obligation

The gradual decontrol of crude oil prices reduces the amount of controlled ANS crude oil each month. In September 1980 there will be about 900,000 barrels per day (BPD) of ANS crude oil that will be controlled and incur the entitlement obligation. During the remaining year of the entitlements program, an average of about 450,000 BPD of ANS will incur and entitlement obligation. Total crude runs receiving the entitlement runs credit will average about 15 million BPD.

If we assume a $2.00 per barrel reduction in the ANS entitlement obligation, net entitlement payments by refiners of controlled ANS would be reduced by $1.94 per barrel, or about $880,000 per day. Post-entitlement costs of all other crude oils would be increased by about $0.06 per barrel or 0.14 cents per gallon. For the remaining one year life of the program, costs of controlled ANS crude oil would be reduced by about $320 million and net costs of all other crude oils participating in the entitlements program would be increased by the same amount.

The $320 million increase in refiner costs of all other crude oils and the corresponding reduction in the cost of controlled ANS, however, probably will not benefit refiners of ANS by lowering their acquisition cost for ANS. Rather, adoption of the proposed rule probably will result in an increase in wellhead prices for exempt ANS crude oil that have been depressed because of imposition of the ANS entitlement obligation under the July 3 rule.

If the entitlement obligation on controlled ANS is reduced under this proposal, sellers of ANS probably will be able to raise the wellhead price of exempt ANS and still maintain the composite at a competitive price. The cost to the refiner of the ANS composite mix probably will not be affected by this proposal. However, the total ANS entitlement obligation probably will be reduced, causing a reduction in the runs credit earned by all refiners and an increase in costs for all crudes. Thus, overall refiner crude cost increases probably will be matched by an increase in wellhead prices for exempt ANS crude oil and the revenues realized by ANS producers, subject to taxes and distributions to interest owners.

V. Comments Requested

Comments are specifically requested on the following matters:

1. Is an adjustment needed?

a. Has the entitlement program established a cost for upper tier ANS crude oil such that the composite cost of controlled and uncontrolled ANS has exceeded the cost of alternative high sulfur crude oils and given buyers an incentive to purchase imports instead of ANS?

b. Is the use of the official government prices of competitive oils appropriate for analyzing the current entitlement treatment of upper tier ANS? Would buyers of additional imported crude oils as alternatives to ANS find these oils generally available at these official prices, or at other prices? Should the offical prices of Saudi Arabia be excluded from the prices of comparable crudes used as a basis for comparison?

c. What are the most recent actual costs of comparable imported crudes on the Gulf Coast? What volumes were obtained at these costs? What are the most recent refiner acquisition costs and volumes for upper tier and uncontrolled ANS crude oil?

d. Has downward pressure on the composite price of ANS crude oil developed on the Gulf Coast, the West Coast, or in both markets? What is the magnitude of such pressure?

e. We request comments regarding changes in the marketing of ANS crude oil that may have occurred since adoption of the July 3 rule. In the absence of the proposed rule, ANS producers might be able to avoid any downward pressure on ANS wellhead prices by changing their marketing strategy. For instance, producers could seek to maximize revenues by reducing sales of ANS as a composite mix and increasing sales of controlled ANS on the West Coast and exempt ANS on the Gulf Coast, to the extent they are not constrained by the recently amended supplier/purchaser rule. *See* 10 CFR 211.63. Producers could then realize higher wellhead prices in sales of each tier of ANS. If producers reacted by marketing ANS this way, they could minimize downward pressure on ANS wellhead prices and reductions in revenue resulting from the July 3 rule. Has adoption of the July 3 rule caused any such changes in the distribution of ANS crude oil between the West Coast and the Gulf Coast, or altered the practice of trading only the composite of controlled and exempt ANS?

f. Have there been any changes in total ANS crude oil production or shipments as a result of the July 3 rule?

g. Has the July 3 rule affected California crude oil prices?

2. Did previously low ANS crude oil costs contribute to low prices for bunker fuel and asphalt on the West Coast, and if so, have these prices now risen?

3. Does phased decontrol of crude oil prices affect the need for a reduction in the entitlement obligation on upper tier ANS crude oil?

4. Is a fixed adjustment appropriate or should an adjustment be subject to periodic revision to account for changed conditions? On what basis should the adjustment be calculated? If the adjustment should be periodically revised, how often and on what basis should the revision be made?

5. How should differentials paid or received in exchanges of ANS for other crudes that are reflected in refiners' costs of ANS reported for entitlement purposes be treated when determining the amount of a reduction in the ANS entitlement obligation? If the exchange differentials should be taken into consideration, how should we identify the amount of the exchange differentials and the volumes of ANS to which they apply?

VI. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act (DOE Act), we have referred this proposed rule to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the public comment period to make this determination.

B. Section 7 of the FEA Act and NEPA Considerations

Pursuant to Section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 *et seq.*, Pub. L. No. 93–275, as amended), the requirements of which remain in effect under Section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

A copy of the notice was sent to the EPA Administrator. The Administrator indicated that he does not foresee these actions having an unfavorable impact on the qulaity of the environment as related to the duties and responsibilities of the EPA.

The Assistant Secretary for Environment has determined, after consultation with the Office of the General Counsel, that these amendments would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321, *et seq.*). Therefore, neither an environmental assessment nor an environmental impact statement will be necessary.

C. Executive Order 12044

Executive Order No. 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978) and DOE's implementing Order 2030.1, "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines" (44 FR 1032, January 3, 1979), require that a Regulatory Analysis be prepared that examines the impacts of the proposal set forth above. In this Notice, we have analyzed the potential cost disadvantage placed on controlled ANS crude oil under the present rule and the effects that a reduction in the ANS entitlement obligation would have on the entitlement benefits and burdens on controlled ANS and all other crudes. A Regulatory Analysis, dated July 1, 1980, was prepared as part of the recent ANS rulemaking which resulted in the imposition of an entitlement obligation on ANS upper tier crude oil. That Regulatory analysis, supplemented by the analysis of economic impacts of this proposed rule in this notice, satisfies the requirements of the Executive Order and the DOE Order. Copies of the July 1, 1980 Regulatory Analysis are available to the public in Room B–110 of the Economic Regulatory Administration, 2000 M Street, NW., Washington, D.C. 20461. Copies may be picked up in person between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Copies will also be mailed to interested parties upon request to the Office of Public Information at the above address.

You are invited to submit comments on the Regulatory Analysis and the analysis set forth in this Notice at the same time you submit comments on the proposed rule. All comments will be taken into account before the preparation of any final rule that may be adopted.

VIII. Written Comments and Public Hearings Procedure

A. Written Comments

You are invited to participate in this proceeding by submitting data, views, or arguments with respect to the matters set forth in this notice. All comments should be submitted by 4:30 p.m., e.s.t., on the date set forth in the "Dates" section of this notice. Comments should be submitted to the appropriate address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Alaska North Slope Crude Oil Entitlement Adjustment," Docket No. ERA–R–80–09A. Ten copies should be submitted. All comments received by th ERA will be available for public inspection in the DOE Freedom of Information Office, Room 5B180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., and in the ERA Office of Public Information, Room B–110, 2000 M Street, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearing

1. *Procedure for request to make oral presentation.* The time and place for the hearing is indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present all testimony, the hearing will resume at 9:30 a.m. on the next business day following the scheduled date of the hearing.

You may make a written request for an opportunity to make an oral presentation at the hearing. The requests should contain a telephone number where you may be contacted during the day before the hearing.

If you are selected to be heard at the hearing, we will notify you before 4:30 p.m., October 6, 1980. You will be required to submit 100 copies of your statement to Room B–210, 2000 M Street, NW., Washington, D.C. 20461, by 4:30 p.m., October 8, 1980.

2. *Conduct of the Hearing.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements have been made and will be subject to time limitations.

You may also submit questions, to be asked by the presiding officer of any person making a statement at the hearing, to the addresses indicated above for requests to speak before 4:30 p.m. on the day before the hearing. If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained

by the ERA and made available for inspection in the DOE Freedom of Information Office, Room 5B–180, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., and in the ERA Office of Public Information, Room B–110, 2000 M Street, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

(Emergency Petroleum Allocation Act of 1973, (15 U.S.C. 751 *et seq.*,) Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, (15 US.C. 787 *et seq.*), Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, Pub. L. 95–70, Pub. L. 95–619, and Pub. L. 96–30; Department of Energy Organization Act, (42 U.S.C 7101 *et seq.*, Pub. L. 95–91, Pub. L. 95–509, Pub. L. 95–619, Pub. L. 95–620, and Pub. L. 95–621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., September 8, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

10 CFR Part 211 is amended as follows: 1. Section 211.67 is amended by revising subparagraph (2) of paragraph (b) to read as follows:

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by refiners.* * * *

(2) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of the national domestic crude oil supply ratio in § 211.62, paragraph (b)(1) of this section, and paragraph (c) of this section shall be calculated as follows: (i) Each barrel of old oil shall be equal to one barrel or deemed old oil; (ii) each barrel of upper tier crude oil (except ANS upper tier crude oil) shall constitute that fraction of a barrel of deemed old oil, the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of upper tier crude oil (except ANS upper tier crude oil), and the denominator of which is the entitlement price for that month; (iii) each barrel of ANS upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the sum of the weighted average cost per barrel to refiners of ANS upper tier crude oil and $2.00 (subject to adjustment based on more current data available at the time of promulgation of a final rule), and the denominator of which is the entitlement price for that month. (Beginning ———, the fixed dollar per barrel adjustment to the weighted average cost per barrel to refiners of ANS upper tier crude oil shall be revised by DOE every — months on the basis of ———.)

* * * * *

[FR Doc. 80-28442 Filed 9-12-80; 8:45 am]
BILLING CODE 6450-01-M

Federal Register

Monday
September 15, 1980

Part VII

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals, September 1, 1980

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1980.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fical year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of September 1, 1980 of 59 rescission proposals and 73 deferrals contained in the first twelve special messages of FY 1980. These messages were transmitted to the Congress on October 1, November 15, December 26, 1979, January 28, February 20, March 4, April 16, May 13, May 20, June 18, July 30, and August 27, 1980.

Rescissions (Table A and Attachment A)

Congressional action has been completed on all FY 1980 rescission proposals. Table A summarizes the status of rescissions proposed by the President as of September 1, 1980, while Attachment A shows the history and status of each rescission proposed during FY 1980.

Deferrals (Table B and Attachment B)

As of September 1, 1980, $2,645.0 million in 1980 budget authority was being deferred from obligation and another $10.0 million in 1980 obligations was being deferred from expenditure. Table B summarizes the status of deferrals reported by the President as of September 1, 1980, while Attachment B shows the history and status of each deferral reported during FY 1980.

Information from special messages

The special messages containing information on the rescissions and the deferrals covered by the cumulative report are printed in the Federal Registers of:

Friday, October 5, 1979 (Vol. 44, No. 195, Part IX)
Tuesday, November 20, 1979 (Vol. 44, No. 225, Part III)
Monday, December 31, 1979 (Vol. 44, No. 251, Part VII)
Thursday, January 31, 1980 (Vol. 45, No. 22, Part X)
Tuesday, February 26, 1980 (Vol. 45, No. 39, Part V)
Monday, March 10, 1980 (Vol. 45, No. 48, Part VI)
Wednesday, April 23, 1980 (Vol. 45, No. 80, Part III)
Friday, May 16, 1980 (Vol. 45, No. 97, Part IX)
Friday, May 23, 1980 (Vol. 45, No. 102, Part V)
Friday, June 20, 1980 (Vol. 45, No. 121, Part IX)
Friday, August 1, 1980 (Vol. 45, No. 150, Part XII)
Thursday, September 4, 1980 (Vol. 45, No. 173, Part VII)

James T. McIntyre, Jr.,
Director.

BILLING CODE 3110-01-M

Table A

STATUS OF 1980 RESCISSION PROPOSALS

	Amount (In millions of dollars)
Rescissions proposed by the President	$1,618.1 a
Accepted by the Congress	(550.8)b
Rejected by the Congress	(1,067.3)c

a. This amount is net of a $6.4 million reduction proposed in a Department of Health, Education, and Welfare rescission (R80-2A).

b. Of the $638.1 million identified in attachment A (page 7) as rescinded by the Congress in action on the Administration's proposals, $87.3 million exceeded the amounts proposed for rescission. This amount excludes the $87.3 million not proposed by the Administration.

c. Of the $1,515.9 million identified in attachment A (page 7) as made available, $546.4 million proposed for rescission on April 16, 1980 was subsequently rescinded. (An additional $4.4 million proposed for rescission on May 20, 1980 was also accepted by the Congress.) In addition, funds related to a $97.8 million rescission proposal (R80-36) were not withheld.

* *

Table B

STATUS OF 1980 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$10,523.6
Routine Executive releases (-$1,870.4 million) and adjustments (-$501.6 million) through Sept. 1, 1980	-2,372.0
Overturned by the Congress	-5,496.6
Currently before the Congress	2,655.0 a

a. This amount includes $10.0 million in outlays for a Department of the Treasury deferral (D80-23A) and three Department of Energy deferrals (D80-51A, D80-52A, and D80-53A).

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1980 — AS OF 09/02/80 16:14

AS OF SEPTEMBER 1, 1980 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
DEPARTMENT OF AGRICULTURE							
Science and Education Administration							
Cooperative research							
BA	R80- 5	2,500		4 16 80	3,000	2,500a	6 5 80
Extension activities							
BA	R80- 6	1,500		4 16 80		1,500	6 5 80
Farmers Home Administration							
Rural water and waste disposal grants							
BA	R80- 7	75,000		4 16 80	10,000	75,000b	6 5 80
Rural development planning grants							
BA	R80- 8	2,000		4 16 80	1,000	2,000b	6 5 80
Soil Conservation Service							
Watershed and flood prevention operations							
BA	R80- 9	20,000		4 16 80	2,000	20,000b	6 5 80
Resource conservation and development							
BA	R80-10	4,000		4 16 80		4,000	6 5 80
DEPARTMENT OF AGRICULTURE TOTAL BA		105,000			16,000	105,000	
DEPARTMENT OF COMMERCE							
National Oceanic and Atmospheric Administration							
Coastal energy impact fund							
BA	R80-11	50,000		4 16 80	35,400	50,000b	6 5 80
DEPARTMENT OF ENERGY							
Atomic Energy Defense Activities							
Operating expenses							
BA	R80-12	3,400		4 16 80	6,400	3,400a	6 5 80
Plant and capital equipment							
BA	R80- 4	17,000		3 4 80		17,000	4 30 80
Energy Programs							
Energy supply R&D- operating expenses							
BA	R80-13	5,350		4 16 80	44,350	5,350a	6 5 80
Energy supply R&D- plant and capital equip.							
BA	R80-14	6,150		4 16 80	5,150	6,150b	6 5 80
Uranium enrichment-operating expenses							
BA	R80-15	1,000		4 16 80	4,000	1,000a	6 5 80
Fossil energy research and development							
BA	R80-16	22,000		4 16 80	17,600	22,000b	6 5 80
Energy conservation							
BA	R80-17	4,000		4 16 80	10,000	4,000a	6 5 80
Economic regulation							
BA	R80-18	1,000		4 16 80	1,000	1,000a	6 5 80
Departmental Administration							
Departmental administration							
BA	R80-19	3,000		4 16 80	31,725	3,000a	6 5 80
DEPARTMENT OF ENERGY TOTAL BA		62,900			120,225	62,900	
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE							
Health Services Administration							

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1980 AS OF 09/02/80 16:14

AS OF SEPTEMBER 1, 1980 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
Health services								
	BA	R80-20c	34,900		4 16 80	18,500	34,900b	6 5 80
Indian health facilities								
	BA	R80-21c	18,000		4 16 80		18,000	6 5 80
National Institutes of Health								
National Cancer Institute								
	BA	R80-22c	17,000		4 16 80		17,000	6 5 80
National Heart, Lung, and Blood Institute								
	BA	R80-23c	7,000		4 16 80		7,000	6 5 80
National Institute of Dental Research								
	BA	R80-24c	300		4 16 80		300	6 5 80
Nat. Inst. of Arthr., Metabolism, & Diges. Disease								
	BA	R80-25c	2,500		4 16 80		2,500	6 5 80
Nat. Inst. of Neurol. and Comm. Disord. and Stroke								
	BA	R80-26c	2,000		4 16 80		2,000	6 5 80
Nat. Inst. of Allergy and Infectious Diseases								
	BA	R80-27c	1,500		4 16 80		1,500	6 5 80
Nat. Inst. of General Medical Sciences								
	BA	R80-28c	500		4 16 80		500	6 5 80
Nat. Inst. of Child Health and Human Develop.								
	BA	R80-29c	1,000		4 16 80		1,000	6 5 80
National Eye Institute								
	BA	R80-30c	3,200		4 16 80		3,200	6 5 80
Nat. Inst. of Environmental Health Sciences								
	BA	R80-31c	500		4 16 80		500	6 5 80
National Institute of Aging								
	BA	R80-32c	500		4 16 80		500	6 5 80
Research resources								
	BA	R80-33c	5,000		4 16 80		5,000	6 5 80
National Library of Medicine								
	BA	R80-34c	500		4 16 80		500	6 5 80
Alcohol, Drug Abuse, and Mental Health Administrat								
Alcohol, drug abuse, and mental health								
	BA	R80-35c	4,000		4 16 80	4,000	4,000a	6 5 80
Health Resources Administration								
Health resources								
	BA	R80- 2c	104,218		1 28 80			
	BA	R80- 2A	-6,450		2 20 80		97,768	3 18 80
	BA	R80-36c	149,953d		4 16 80	19,300	52,185b	6 5 80
Office of Assistant Secretary for Health								
Salaries and expenses								
	BA	R80-37c	12,800		4 16 80	18,500	12,800a	6 5 80
Office of Education								
Elementary and secondary education								
	BA	R80-38c	135,750		4 16 80	130,750	135,750b	6 5 80
Emergency school aid								
	BA	R80-39c	25,123		4 16 80	21,052	25,123b	6 5 80
Occupational, vocational, and adult education								
	BA	R80-40c	87,500		4 16 80		87,500	6 5 80
Student assistance								
	BA							

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1980 AS OF 09/02/80 16:14

AS OF SEPTEMBER 1, 1980 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
	R80-41c	108,000		4 16 80		108,000	6 5 80
Higher and continuing education BA	R80-42c	44,275		4 16 80	16,000	44,275b	6 5 80
Library resources BA	R80-43c	18,000		4 16 80	18,000	18,000a	6 5 80
Special projects and training BA	R80-44c	11,000		4 16 80	5,000	11,000b	6 5 80
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE TOTAL BA		788,569			251,102	690,801	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT							
Community Planning and Development							
Community development grants BA	R80-45	153,200		4 16 80	153,200	153,200a	6 5 80
Rehabilitation loan fund BA	R80-46	38,000		4 16 80	25,500	38,000b	6 5 80
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL BA		191,200			178,700	191,200	
DEPARTMENT OF THE INTERIOR							
Heritage Conservation and Recreation Service							
Urban park and recreation grants BA	R80-47	85,000		4 16 80	15,000	85,000b	6 5 80
Land and water conservation fund BA	R80-48	251,000		4 16 80		251,000	6 5 80
Historic preservation fund BA	R80-49	16,500		4 16 80		16,500	6 5 80
Geological Survey							
Exploration of natl petrojeum reserve-Alaska BA	R80- 3	18,000		1 28 80		18,000	3 18 80
DEPARTMENT OF THE INTERIOR TOTAL BA		370,500			15,000	370,500	
DEPARTMENT OF JUSTICE							
Office of Justice Assist., Research, and Statistic							
Law enforcement assistance BA	R80-59	12,439		5 20 80	4,439	8,000	7 25 80
DEPARTMENT OF THE TREASURY							
Bureau of Government Financial Operations							
Salaries and expenses BA	R80-50	322		4 16 80	322	322a	6 5 80
OTHER INDEPENDENT AGENCIES							
Arms Control and Disarmament Agency							
Arms control and disarmament activities BA	R80-51	720		4 16 80	720	720a	6 5 80
Federal Mine Safety and Health Review Commission							
Salaries and expenses BA	R80-52	188		4 16 80	188	188a	6 5 80
International Communication Agency							

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1980 AS OF 09/02/80 16:14

AS OF SEPTEMBER 1, 1980 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
Special international exhibitions BA	R80- 1	114		10 1 79		114	11 15 79
Merit Systems Protection Board							
Office of the special counsel BA	R80-53	1,000		4 16 80	2,000	1,000a	6 5 80
National Alcohol Fuels Commission							
Salaries and expenses BA	R80-58	9		5 13 80		9	7 3 80
National Science Foundation							
Science education activities BA	R80-54	5,000		4 16 80	2,500	5,000b	6 5 80
Occupational, Safety, and Health Review Comm.							
Salaries and expenses BA	R80-55	100		4 16 80	100	100a	6 5 80
Small Business Administration							
Business loan and investment fund BA	R80-56	19,000		4 16 80		19,000	6 5 80
Water Resources Council							
Water resources planning BA	R80-57	11,000		4 16 80	11,431	11,000a	6 5 80
OTHER INDEPENDENT AGENCIES TOTAL BA		37,131			16,939	37,131	
TOTAL BA		1,618,061			638,127	1,515,854	

FOOTNOTES

a. These funds were made available for obligation on June 5, 1980. Subsequently, the funds were rescinded by the 1980 Supplemental Appropriations and Rescission Act (P.L. 96-304), signed into law on July 8, 1980.

b. These funds were made available for obligation on June 5, 1980. Subsequently, the amount listed in the adjacent column was rescinded by P.L. 96-304 resulting in a like decrease in the amount remaining available.

c. This rescission proposal was made prior to the formation of the Department of Health and Human Services and the Department of Education on May 7, 1980. At the time this proposal was transmitted to the Congress, it was reported under the Department of Health, Education, and Welfare.

d. These funds include $97,768,000 previously proposed for rescission in R80-2a which were not withheld pending congressional action on R80-36.

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1980 AS OF 09/03/80 17:02

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 09-01-80
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs	BA	D80-48	14,300		4 16 80				14,300
International Security Assistance									
Economic support fund	BA	D80- 1	100,000		10 1 79				100,000
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL	BA		114,300						114,300
DEPARTMENT OF AGRICULTURE									
Farmers Home Administration									
Mutual self-help housing	BA	D80-46	15,000		2 20 80	-10,000			5,000
Forest Service									
Timber salvage sales	BA	D80- 2	9,298		10 1 79				9,298
Expenses, brush disposal	BA	D80- 3	32,060		10 1 79				
	BA	D80- 3A		20,643	6 18 80				52,703
Restoration of forest lands	BA	D80- 4	38		10 1 79	-4			34
DEPARTMENT OF AGRICULTURE TOTAL	BA		56,396	20,643		-10,004			67,035
DEPARTMENT OF COMMERCE									
General Administration									
Participation in U.S. expositions	BA	D80-73	15,814		8 27 80				15,814
Economic Development Administration									
Local public works program	BA	D80-69	6,447		5 13 80	-6,447			
National Oceanic and Atmospheric Administration									
Construction	BA	D80- 5	7,000		10 1 79				
	BA	D80- 5A		39,459	1 28 80				46,459
Coastal zone management	BA	D80- 6	20,000		10 1 79				
	BA	D80- 6A		a	11 15 79				20,000
Promote and develop fishery products and research	BA	D80- 7	2,400		10 1 79	-2,400			
Fisheries loan fund	BA	D80- 8	5,300		10 1 79				
	BA	D80- 8A		b	1 28 80	-293			5,007
Coastal energy impact fund	BA	D80-49	54,922c		4 16 80				
	BA	D80-49A		500	8 27 80				55,422
DEPARTMENT OF COMMERCE TOTAL	BA		111,883	39,959		-9,140			142,702
DEPARTMENT OF DEFENSE-MILITARY									
Procurement									
Shipbuilding and conversion, Navy	BA	D80-41	997,500		1 28 80	-27,500			970,000
Military Construction									
Military construction, all services	BA	D80- 9	31,386		10 1 79				
	BA	D80- 9A		355,780d	1 28 80				
	BA	D80- 9B		e	7 30 80	-382,645		26,194	30,715
Family Housing, Defense									

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1980 AS OF 08/03/80 17.02

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 08-01-80
Family housing, Defense									
	BA	D80-42	18,651		1 28 80				18,651
Various Activities									
Various accounts									
	BA	D80-50	801,700f		4 16 80				
	BA	D80-50A		112,900	5 20 80	-728,400			186,200
DEPARTMENT OF DEFENSE-MILITARY									
TOTAL	BA		1,849,237	468,680		-1,138,545		26,184	1,205,566
DEPARTMENT OF DEFENSE-CIVIL									
Cemeterial Expenses, Army									
Salaries and expenses									
	BA	D80-71	113		6 18 80				113
Wildlife Conservation, Military Reservations									
Wildlife conservation, all services									
	BA	D80-10	595		10 1 79				
	BA	D80-10A		114	12 26 79	-86			623
DEPARTMENT OF DEFENSE-CIVIL									
TOTAL	BA		708	114		-86			736
DEPARTMENT OF ENERGY									
Atomic Energy Defense Activities									
Operating expenses									
	BA	D80-51			4 16 80				
	O	D80-51A		1,000g	5 20 80				1,000
Energy Programs									
Energy supply R&D-operating expenses									
	BA	D80-52			4 16 80				
	O	D80-52A		2,500g	5 20 80				2,500
Fossil energy construction									
	BA	D80-11	50,000		10 1 79	-50,000			
Departmental Administration									
Departmental administration									
	BA	D80-53			4 16 80				
	O	D80-53A		1,000g	5 20 80				1,000
DEPARTMENT OF ENERGY									
TOTAL	BA		50,000			-50,000			
TOTAL	O			4,500					4,500
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE									
Alcohol, Drug Abuse & Mental Health Administration									
Construction & renovation, St. Elizabeths Hospital									
	BA	D80-12h	23,314		10 1 79				23,314
Office of Assistant Secretary for Health									
Special foreign currency program									
	BA	D80-43h	10,000		1 28 80				10,000
Office of Education									
Student assistance									
	BA	D80-54h	140,000		4 16 80			-140,000l	
Social Security Administration									
Limitation on administrative expenses									
	BA	D80-47h	5,000		2 20 80				5,000
Human Development Services									
White House Conferences - Aging, Families, & Child									
	BA	D80-13h	4,649		10 1 79				
	BA	D80-13A		j	2 20 80	-3,174		-1,604	3,079
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE									
TOTAL	BA		182,963			-3,174		-138,396	41,393
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT									
Housing Programs									

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1980 AS OF 09/03/80 17:02

AMOUNTS IN THOUSANDS OF DOLLARS / AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 09-01-80
Troubled projects operating subsidy	BA	D80-55	10,000		4 16 80				10,000
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Oregon and California grant lands	BA	D80-44	1,134		1 28 80				1,134
Heritage Conservation and Recreation Service									
Land and water conservation fund	BA	D80-14	30,000		10 1 79				30,000
National Park Service									
Construction	BA	D80-56	15,500		4 16 80		-15,500k		
Geological Survey									
Payments from proceeds, sale of water	BA	D80-15	39		10 1 79				39
Bureau of Mines									
Drainage of anthracite mines	BA	D80-16	1,137		10 1 79				
	BA	D80-16A		328	1 28 80	-500			965
DEPARTMENT OF THE INTERIOR TOTAL	BA		47,810	328		-500	-15,500		32,138
DEPARTMENT OF JUSTICE									
Legal Activities									
Fees and expenses of witnesses	BA	D80-45	1,181		1 28 80	-1,181			
Federal Prison System									
Buildings and facilities	BA	D80-17	22,653		10 1 79				
	BA	D80-17A		14,669	11 15 79				
	BA	D80-17B		12,610	1 28 80	-28,214			22,137
Office of Justice Assist., Research, and Statistic									
Law enforcement assistance	BA	D80-70	13,396		5 13 80				
	BA	D80-70A		6,000	5 20 80	-19,396			
DEPARTMENT OF JUSTICE TOTAL	BA		37,430	33,498		-48,791			22,137
DEPARTMENT OF LABOR									
Employment and Training Administration									
Employment and training assistance	BA	D80-57	190,760		4 16 80	-27,500			163,260
Temporary employment assistance	BA	D80-58	203,000		4 16 80				203,000
DEPARTMENT OF STATE									
International Organizations and Conferences									
Contributions to intl peacekeeping activities	BA	D80-32	10,000		11 15 79				
	BA	D80-32A		2,000	1 28 80	-12,000			
Other									
Emergency refugee and migration assistance fund	BA	D80-18	5,650		10 1 79				
	BA	D80-18A		19,350	1 28 80	-25,300		1,194	894
DEPARTMENT OF STATE TOTAL	BA		15,650	21,350		-37,300		1,194	894
DEPARTMENT OF TRANSPORTATION									
Coast Guard									

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1980 AS OF 09/03/80 17 02

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 09-01-80
Acquisition, construction, and improvements	BA	D80-59	33,800		4 16 80				33,800
Federal Aviation Administration									
Construction, Metropolitan Washington Airports	BA	D80-60	4,000		4 16 80				4,000
Civil supersonic aircraft development termination	BA	D80-19	5,004		10 1 79	-5,000			4
Facilities & equip. (Airport & airway trust fund)	BA	D80-20	138,211		10 1 79				
	BA	D80-20A		166,081	1 28 80				304,292
Federal Highway Administration									
Federal aid highways	BA	D80-33	495,789		11 15 79	-495,789			
	BA	D80-61	1,659,000		4 16 80		-1,659,000m		
Federal Railroad Administration									
Railroad research and development	BA	D80-62	3,800		4 16 80				3,800
Northeast corridor improvement program	BA	D80-63	75,000		4 16 80				75,000
Urban Mass Transportation Administration									
Urban mass transportation fund	BA	D80-21	393,076		10 1 79			-393,076n	
	BA	D80-64	7,875		4 16 80		-7,875m		
	BA	D80-72	166,245		6 18 80		-166,245m		
DEPARTMENT OF TRANSPORTATION TOTAL BA			2,981,800	166,081		-500,789	-1,833,120	-393,076	420,896
DEPARTMENT OF THE TREASURY									
Office of the Secretary									
Investment in national consumer cooperative bank	BA	D80-38	12,550		12 26 79				12,550
Office of Revenue Sharing									
State and local government fiscal assistance fund	BA	D80-22	79,548		10 1 79				
	BA	D80-22A		34,245	12 26 79	-2,322		302	111,773
	O	D80-23	2,735		10 1 79				
	O	D80-23A		13,850o	2 20 80	-13,273		2,173	5,485
Bureau of the Mint									
Construction of mint facilities	BA	D80-24	3,230		10 1 79				
	BA	D80-24A		2,500	1 28 80				5,730
DEPARTMENT OF THE TREASURY TOTAL BA			95,328	36,745		-2,322		302	130,053
TOTAL O			2,735	13,850		-13,273		2,173	5,485
ENVIRONMENTAL PROTECTION AGENCY									
Construction grants	BA	D80-65	3,636,254		4 16 80				
	BA	D80-65A		11,694p	5 20 80		-3,647,948q		
OTHER INDEPENDENT AGENCIES									
District of Columbia									
Loans for capital outlay	BA	D80-39	8,130		12 26 79				8,130
Federal Emergency Management Agency									
Emergency planning, preparedness, and mobilization	BA	D80-25	80		10 1 79				80
Foreign Claims Settlement Commission									
Payment of Vietnam prisoner of war claims	BA	D80-26	1,800		10 1 79	-940			860

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1980 AS OF 09/03/80 17:02

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 09-01-80
General Services Administration									
Federal Buildings Fund	BA	D80-66	25,000		4 16 80	-25,000			
International Communication Agency									
Salaries & expenses	BA	D80-34	2,000		11 15 79				2,000
Special foreign currency program	BA	D80-35	1,600		11 15 79				
	BA	D80-35A		137	7 30 80				1,737
Acquisition & construction of radio facilities	BA	D80-27	10,973		10 1 79				10,973
National Consumer Cooperative Bank									
Self-help development fund	BA	D80-40	8,000		12 26 79				8,000
National Science Foundation									
Research and related activities	BA	D80-67	18,000		4 16 80	-2,000			16,000
National Commission on Social Security									
Salaries and expenses	BA	D80-29	250		10 1 79				
	BA	D80-29A		145	12 26 79				395
Navajo & Hopi Indian Relocation Commission									
Salaries and expenses	BA	D80-30	5,300		10 1 79				5,300
Railroad Retirement Board									
Regional rail transportation protective account	BA	D80-36	1,000		11 15 79	-1,000			
Smithsonian Institution									
Construction	BA	D80-68	19,000		4 16 80				19,000
National Alcohol Fuels Commission									
Salaries and expenses	BA	D80-28	250		10 1 79				
	BA	D80-28A		500	1 28 80	-9			741
President s Commission on Pension Policy									
Salaries and expenses	BA	D80-37	700		11 15 79				700
Tennessee Valley Authority									
Tennessee Valley Authority fund	BA	D80-31	17,000		10 1 79				17,000
OTHER INDEPENDENT AGENCIES									
TOTAL	BA		119,083	782		-28,949			90,016
				-o-					
TOTAL	BA		9,702,602	799,874		-1,857,100	-5,496,568	-503,782	2,645,026
TOTAL	O		2,735	18,350		-13,273		2,173	9,985

FOOTNOTES

a. This supplementary report was transmitted solely to expand the application of this deferral to include funds appropriated in FY 1980 as well as balances carried forward from previous years.

b. This supplementary report was transmitted solely to change the justification for deferring the funds.

c. This deferral action was taken in conjunction with a rescission proposal (R80-11).

d. This amount includes the effect of releases totalling $18,270 thousand made prior to the transmittal of the supplementary report.

e. This supplementary report was transmitted solely to reflect a change in justification involving the delay of an additional construction project.

f. These deferral items were transmitted to the Congress in a consolidated deferral report which listed the individual items as D80-50.1 through 50.34.

g. This supplementary report was transmitted solely to make a technical correction to the original report by reflecting a delay of expenditures (outlays) rather than a delay of obligations (BA).

h. This deferral was made prior to the formation of the Department of Health and Human Services and the Department of Education on May 7, 1980. At the time this item was transmitted to the Congress, it was reported under the Department of Health, Education, and Welfare.

i. This amount was rescinded by the 1980 Supplemental Appropriations and Rescission Act, P.L. 96-304.

j. This supplementary report was transmitted to expand the application of this deferral.

k. The Senate disapproved this deferral (S Res. 464) on August 1, 1980.

l. This supplementary report includes the effect of releases totalling $8,000 thousand and adjustments of $5,582 thousand made prior to the transmittal of the report

m. This release was required pursuant to Chapter XIII of P.L. 96-304.

n. Congressional action on the 1980 Transportation and Related Agencies Appropriation Bill (P.L 96-131) rescinded these funds

o. This amount includes the effect of releases totalling $2,691 thousand made prior to the transmittal of the supplementary report.

p. This amount includes the effect of a release totalling $12,456 thousand made prior to the transmittal of the supplementary report.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Food Safety and Quality Service—

54310 8-15-80 / Voluntary meat and poultry plant quality control systems

FEDERAL COMMUNICATIONS COMMISSION

52800 8-8-80 / FM broadcast station in Los Osos-Baywood Park, Calif.; Changes made in table of assignments

53156 8-11-80 / Radio broadcast services, FM broadcast station in Mt. Vernon, Ohio; Changes in table of assignments

52801 8-8-80 / TV broadcast stations in Irving and Dallas, Tex.; Changes made in table of assignments

FEDERAL HOME LOAN BANK BOARD

55693 8-21-80 / Federal savings and loan institutions; change in control

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community Planning and Development, Office of Assistant Secretary—

55968 8-21-80 / Community Development Block Grants, Small Cities Program

52762 8-7-80 / Urban homesteading program

Federal Housing Commissioner, Office of Assistant Secretary for Housing—

51770 8-5-80 / Dollar limitation increase for solar energy systems

52371 8-7-80 / Low income public housing; PHA-owned projects; continued operation after completion of debt service

54204 8-14-80 / Multifamily housing projects with HUD-insured or HUD-held mortgages, transfer from nonprofit to profit-motivated ownership

19868 3-26-80 / Sections 8 and 23 housing assistance payments programs—Amendment of Fair Market Rent Schedules, existing housing

[Corrected at 45 FR 54330, 8-15-80]

INTERIOR DEPARTMENT

Fish and Wildlife Service—

52807 8-8-80 / Delta green ground beetle, listing as a threatened species with critical habitat

54678 8-15-80 / Listing of Leon Springs pupfish as endangered with critical habitat

52803 8-8-80 / Valley elderberry longhorn beetle, listing as a threatened species with critical habitat

JUSTICE DEPARTMENT

Drug Enforcement Administration—

54329 8-15-80 / Partial filling of prescriptions for Schedule II controlled substances, modification of the procedure

TRANSPORTATION DEPARTMENT

Coast Guard—

52387 8-7-80 / Vessel inspections; tailshaft examination

List of Public Laws

Last Listing September 11, 1980

This is a continuing listing 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).

H.R. 7072 / Pub. L. 96-346 To amend sections 5702 and 5704 of title 5, United States Code, to increase the maximum rates for per diem and actual subsistence expenses and mileage allowances of Government employees on official travel, and for other purposes. (Sept. 10, 1980; 94 Stat. 1148) Price: $1.