AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3-10-82
Vol. 47 No. 47
Pages 10199-10502

federal register

Wednesday
March 10, 1982

GSA
373-81C
2/3

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $75.00 per year, or $45.00 for six months, payable in advance. The charge for individual copies is $1.00 for each issue, or $1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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.

Contents

Federal Register
Vol. 47, No. 47
Wednesday, March 10, 1982

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
10230 Georgia et al.

Agriculture Department
See Agricultural Marketing Service.

Air Force Department
NOTICES
Meetings:
10271 Scientific Advisory Board

Arts and Humanities, National Foundation
NOTICES
Meetings:
10330 Inter-Arts Advisory Panel
10330 Theatre Advisory Panel

Census Bureau
NOTICES
Meetings:
10265 Population Statistics Census Advisory Committee

Civil Aeronautics Board
RULES
Organization, functions, and authority delegations:
10200 Deputy General Counsel; "smoking rule" waivers
NOTICES
Hearings, etc.:
10265 Airpac, Inc.
10265 Thompson Travel Ltd.

Commerce Department
See Census Bureau; International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
10340 Meetings; Sunshine Act (2 documents)

Conservation and Renewable Energy Office
NOTICES
Consumer products; petitions for waiver of test procedures:
10272 General Electric Co.; dishwashers; correction

Consumer Product Safety Commission
RULES
Poison prevention packaging:
10201 Potassium supplements; child-resistent packaging exemption
PROPOSED RULES
Poison prevention packaging:
10235 Prednisone tablets; child-resistant packaging exemption

Defense Department
See Air Force Department.

Energy Department
See Conservation and Renewable Energy Office; Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
10206 California
10208 New York; correction
Air quality planning purposes; designation of areas:
10208 Nebraska
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
10212 Corn syrup
10212 Dimethylformamide (DMF)
10210 Polyethylene glycol
10211 Tolerances for minor uses based on residue data from limited geographical areas
PROPOSED RULES
Air quality planning purposes; designation of areas:
10243 Nevada
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
10244 Chlorpyrifos
NOTICES
Air quality implementation plans; approval and promulgation:
10293 Volatile organic compounds from can coating operations; approval of revised compliance schedules
Motor vehicle fuel economy, evaluation of retrofit devices:
10287 Super-Mag Fuel Extender
Pesticide, food, and feed additive petitions:
10286 Elanco Product Co.
10290 ICI Americas, Inc., et al.
10293 Union Carbide Corp.
Pesticide registration, cancellation, etc.:
10289 Du Pont Oust Weed Killer Dry Flowable
10289 MV-678 Insect Growth Regulator, etc.
10288 Prevex Turf Fungicide
10286 Sonalan E. C.
10291 Sweeney's Rat & Mouse Killer, etc.
Pesticides; experimental use permit applications:
10288 Interior Department
10288 University of California
Pesticides; temporary tolerances:
10292 2,4,5,6-tetrachloroisophthalonitrile and its metabolite

Federal Communications Commission
RULES
Common carrier services:
10219 Telephone network; connection of terminal equipment; editorial amendments
Radio services, special:
10220 Maritime services; radiotelegraph requirement exemption for cargo vessels
Radio stations; table of assignments:
10219 Alaska

PROPOSED RULES
Radio stations; table of assignments
10260 Arkansas
10261 Minnesota
Television stations; table of assignments
10259 South Carolina

Federal Deposit Insurance Corporation
NOTICES
10340 Meetings; Sunshine Act (2 documents)

Federal Emergency Management Agency
RULES
Flood insurance; special hazard areas:
10216 Arizona et al.
PROPOSED RULES
Flood elevation determinations:
10245 Arizona et al.

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
10202 Annual reports (Form R0284); system flow diagrams
Natural Gas Policy Act; ceiling prices for high cost natural gas produced from tight formations; various States:
10203 Nebraska
PROPOSED RULES
Electric utilities (Federal Power Act):
10237 Annual reports (Form No. 1), class A and B licensees; elimination of data requirements; rehearing
Natural Gas Policy Act: ceiling prices for high cost natural gas produced from tight formations; various States:
10237 Alabama
10238, 10239 Colorado (2 documents)
10241, 10242 New Mexico (2 documents)
NOTICES
Hearings, etc.:
10272 Anchorage, Alaska
10272 Arcata, Calif.
10273 Arkansas Louisiana Gas Co. (2 documents)
10274 Arkansas Power & Light Co.
10275 Capital Development Co.
10275 Central Illinois Public Service Co.
10273 Colorado Interstate Gas Co.
10276 East Coast Engineering
10276 El Paso Natural Gas Co.
10277, 10278 Energenics Systems, Inc. (2 documents)
10278 Florida Gas Transmission Co.
10279 Jersey City, N.J.
10280 Lakeview Hydro Associates
10281 Long Lake Energy Corp. (2 documents)
10282 Mississippi River Transmission Corp.
10282 Montana-Dakota Utilities Co.
10282 Mountain Fuel Resources, Inc.
10283 Mountain Fuel Supply Co. (2 documents)
10283 Northern Natural Gas Co.
10279 Parkinson, Keith Roberts
10285 South Georgia Natural Gas Co.
10285 Southwest Gas Corp.
10285, 10286 Transwestern pipeline Co. (2 documents)
10284 Oil pipelines, interstate; tentative 1979 annual valuation reports

Federal Home Loan Bank Board
NOTICES
Applications, etc.:
10293 Continental Federal Savings & Loan Association
10294 Highland Federal Savings & Loan Association
10294 Home Federal Savings & Loan Association
10294 Home Federal Savings & Loan Assocation of Deming
10294 Keene Co-Operative Bank
10294 Local Federal Savings & Loan Association
10294 Mid-State Federal Savings & Loan Association
10295 Washington Federal Savings & Loan Association of Seattle
Meetings:
10293 Federal Savings and Loan Advisory Council

Federal Housing Commissioner—Office of Assistant Secretary for Housing
RULES
Mortgage and loan insurance programs:
10205 Interest rate changes
10204 Property improvement and manufactured (mobile) home loans; interest rate changes

Federal Maritime Commission
RULES
10217 Credit information; collection, compilation, and exchange; exemption of agreements

Federal Reserve System
NOTICES
10341 Meetings; Sunshine Act

Health and Human Services Department
See Health Care Financing Administration.

Health Care Financing Administration
NOTICES
Medicaid; State plan amendments reconsideration; hearings:
10295 South Carolina

Housing and Urban Development Department
See Federal Housing Commissioner—Office of Assistant Secretary for Housing.

Interior Department
See Land Management Bureau; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
NOTICES
Antidumping:
10268 Large power transformers from France
Countervailing duties:
10266 Scissors and shears from Brazil
10268 Stainless steel products from Spain

International Trade Commission
NOTICES
Import investigations:
10314 Automotive visors
10314 Drill point screws for drywall construction

10314 Steel products from Belgium, Brazil, France, Italy, Luxembourg, Netherlands, Romania, United Kingdom, and West Germany

Interstate Commerce Commission
NOTICES
Motor carriers:
10299, 10300 Finance applications (2 documents)
10305, 10312 Permanent authority applications (2 documents)
10301 Temporary authority applications
Railroad services abandonment:
10298 Sacramento Northern Railway

Justice Department
See Prisons Bureau.

Land Management Bureau
RULES
Public land orders:
10215 Colorado
10214 Montana
10213 New Mexico
10214, 10215 Oregon (3 documents)
10213 Washington
10213 Wyoming
NOTICES
Boundary descriptions, classification, and management plans:
10297 Las Vegas District Resource Area, Nev.
Classification of lands:
10296 Oregon
Coal leases, exploration licenses, etc.:
10295 Alabama
10296 Wyoming
Meetings:
10296 Eugene District Advisory Council
Withdrawal and reservation of lands, proposed, etc.:
10297 Montana

Minority Business Development Agency
NOTICES
Financial assistance application announcements:
10269 California and Washington

National Credit Union Administration
RULES
Federal credit unions:
10199 Loan-interest rates; increase
PROPOSED RULES
Federal credit unions:
10232 Service corporations; deregulation
10234 Share, share draft, and share certificate accounts; conditions and classes; deregulation

National Labor Relations Board
NOTICES
10341 Meetings; Sunshine Act

National Oceanic and Atmospheric Administration
RULES
10200 Administrative proceedings; financial compensation of participants, suspension; interim; correction
Fishery conservation and management:
10227 Bering Sea and Gulf of Alaska groundfish; foreign fishing
10227 North Pacific Ocean and Bering Sea; foreign fishing
10228 Tanner crab off Alaska
NOTICES
Environmental statements; availability, etc.:
10271 Estuarine Sanctuary, Hudson River, N.Y.; scoping meeting
Marine mammal permit applications, etc.:
10270 Southwest Fisheries Center
Marine sanctuaries:
10271 St. Thomas, V.I.; removal from list of active candidates

National Park Service
NOTICES
Meetings:
10298 Cape Cod National Seashore Advisory Commission
Natural Landmarks National Registry; proposed additions, deletions, etc.:
10298 New Jersey et al.

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
10331 Arizona Public Service Co.
10330 Exxon Nuclear Corp.
10331 Georgia Power Co. et al.
10332 Nebraska Public Power District
10332 Northern States Power Co.
10332 Public Service Co. of Colorado

Postal Service
RULES
Domestic Mail Manual:
10206 Express mail next day service acceptance times; interim rule and request for comments

Prisons Bureau
RULES
Inmate control, custody, care, treatment, and instruction:
10206 Commutation of sentence petitions; and work/study release; correction

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
10297 San Luis Valley Project, Closed Basin Division, Colo.; hearings

Securities and Exchange Commission
NOTICES
Hearings, etc.:
10335 New England Electric System et al.
10336 Northeast Utilities
10337 Southern Co. et al.
Meetings:
10333 Shareholder Communications Advisory Committee
10341 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
10333, 10334 Chicago Board Options Exchange, Inc. (2 documents)

10334 Midwest Clearing Corp.
10334 Midwest Securities Trust Co.
10334 Pacific Stock Exchange, Inc.
10335 Stock Clearing Corp. of Philadelphia

Small Business Administration
NOTICES
Applications, etc.:
10339 FB Small Business Lending Corp.
10339 Washington Finance & Investment Corp.

Social Security Reform, National Commission
NOTICES
10329 Meetings

Surface Mining Reclamation and Enforcement Office
RULES
Permanent programs submission; various States:
10372 Georgia
PROPOSED RULES
Permanent and interim regulatory programs:
10501 Surface and underground coal mining operations; erosion and attendant air pollution control and regrading or stabilizing rills and gullies; hearing correction

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

June 13, 1902 (Revoked by PLO 6184)..... 10213

5683 (Revoked by PLO 6193)..... 10214

7 CFR

Proposed Rules:

1004..... 10230
1006..... 10230
1007..... 10230
1011..... 10230
1012..... 10230
1046..... 10230
1094..... 10230
1096..... 10230
1098..... 10230

12 CFR

701..... 10199

Proposed Rules:

701 (2 documents)..... 10232, 10233

14 CFR

385..... 10200

15 CFR

904..... 10200

16 CFR

1700..... 10201

Proposed Rules:

1700..... 10235

18 CFR

260..... 10202
271..... 10203

Proposed Rules:

141..... 10237
271 (5 documents)..... 10237–10242

24 CFR

201..... 10204
203..... 10205
213..... 10205
234..... 10205

28 CFR

570..... 10206

30 CFR

910..... 10372

Proposed Rules:

816..... 10501
817..... 10501

39 CFR

111..... 10206

40 CFR

52 (2 documents)..... 10206, 10208
81..... 10208
180 (4 documents)..... 10210–10212

Proposed Rules:

81..... 10243
180..... 10244

43 CFR

Public Land Orders:

1642 (Revoked by PLO 6186)..... 10213

3500 (Revoked in part by PLO 6194)..... 10215

3633 (Revoked by PLO 6191)..... 10214

4839 (Revoked by PLO 6195)..... 10215

6184..... 10213
6186..... 10213
6187..... 10213
6190..... 10214
6191..... 10214
6193..... 10214
6194..... 10215
6195..... 10215

44 CFR

65..... 10215

Proposed Rules:

67..... 10245

46 CFR

524..... 10217

47 CFR

68..... 10219
73..... 10219
83..... 10220

Proposed Rules:

73 (3 documents)..... 10259–10261

50 CFR

611 (2 documents)..... 10227
671..... 10228

Rules and Regulations

Federal Register
Vol. 47, No. 47
Wednesday, March 10, 1982

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: This rule authorizes Federal credit unions to charge interest rates of up to 21 percent per year on loans granted after September 2, 1981 and before September 5, 1983. The 21 percent interest rate ceiling was scheduled to expire June 3, 1982. This rule is necessary because of fluctuations in the cost of funds. The conditions which led the Board to determine that an increase in the loan rate ceiling was justified in December, 1980 have remained basically unchanged throughout 1981.

DATES: Effective date: March 4, 1982. Expiration date: September 4, 1983 or as otherwise ordered by the NCUA Board.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Acting Director, Office of Policy Analysis, (202) 357–1090.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221 raised the interest rate ceiling for Federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the NCUA Board to set a higher limit (or limits), after consultation with Congress and other Federal financial agencies, if the Board should determine that (i) money market interest rates have risen over the preceding six months and that (ii) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth.

On December 3, 1980, the NCUA Board, having consulted with the appropriate Congressional committees, the Department of the Treasury, and the other Federal financial regulatory agencies, determined that these conditions had been met. The Board therefore raised the interest rate ceiling to 21 percent for a nine month period. In a subsequent action the Board extended the period governed by the 21 percent ceiling an additional nine months. The 21 percent ceiling is scheduled to expire on June 3, 1982.

Economic Conditions

The conditions which led the Board to determine that an increase in the loan rate ceiling was justified in December, 1980 have remained basically unchanged throughout 1981.

During 1980, money market rates followed an upward trend for more than six months and were fluctuating in the 13% to 15% range. This pattern continued through 1981. In 42 out of 52 weeks during 1981, the six-month Treasury bill rate was greater than 13%. In May, the six-month Treasury bill rate peaked at 15.7%. It declined slightly during June and July and returned to about 15% in July, August and September. The six-month rate decreased from more than 15% to about 11% during the fourth quarter of 1981. However, from November, 1981 through the end of January, 1982, the six-month rate increased continually at a trend rate of about 13 basis points per week. As of February 16, 1982, the six-month Treasury bill rate was 14.4%.

Federal credit union liquidity remains high due to modest loan growth. At yearend 1980, the loan-to-share ratio, an inverse measure of liquidity, was 70%. As of December, 1981, it remained basically unchanged. However, a revival of loan growth could quickly reverse the present abundance of liquid assets. In addition, if money market rates continue at their current levels, Federal credit unions whose poor earnings will not permit them to pay high dividend rates may experience outflows of shares and a resulting decline in liquidity.

Below normal earnings during 1979 and 1980 prevented Federal credit unions from building their capital. The ratio of capital—regular reserves plus other reserves, the allowance for loan losses, and retained earnings—to total assets declined from 6.2% to 6.0% from yearend 1979 to yearend 1980. Earnings improved somewhat during 1981 as a result of the additional flexibility provided to Federal credit unions on loan rates and as a result of a modest increase in loans outstanding. However, the rebuilding of Federal credit union capital as a result of this improvement is modest.

High interest rates continue to affect credit union earnings. Earnings improved slightly during 1981. However, this improvement was, in part, the consequence of the greater flexibility Federal credit unions had with respect to loan rates since December, 1980.

Growth in Federal credit union assets, loans, and savings has been modest during 1981. As of December, 1981, (the most recent data) assets and savings at Federal credit unions were growing at about a 3% annual rate. Loans were growing at an annual rate of about 1%. Insufficient flexibility in loan rates during 1982 and 1983 would prevent some Federal credit unions from paying competitive dividend rates and would stifle any improvement in growth.

Extension of Interest Rate Ceiling

The NCUA Board is therefore extending the 21 percent interest rate ceiling an additional 18 months. Federal credit unions will continue to be able to charge interest rates of up to 21 percent per year on the unpaid balance inclusive of all finance charges. The ceiling will expire after September 4, 1983, unless otherwise ordered by the NCUA Board.

The 21 percent ceiling is scheduled to expire after June 3, 1982, but it is being extended at this time in order to facilitate planning by credit union officials. Because of the time lag encountered in making changes to data processing systems and because of the time necessary to revise forms, without this change credit unions would now have to begin planning for the expiration of the interest rate ceiling. A delay in extending the ceiling could therefore result in additional costs being incurred by Federal credit unions.

Again, the NCUA Board does not expect that all Federal credit unions will raise their loan rates nor does it expect that those credit unions that do increase their loan rates will do so on all categories of loans. Neither does the Board expect that those Federal credit

unions that have already raised their rates will necessarily maintain them at their current levels. The ceiling is being extended so that the board of directors of each credit union will continue to have the flexibility to react to economic conditions in the manner that is in the best interests of their members.

Regulatory Procedures

The NCUA Board has determined that notice and public comment on this rule are impracticable and not in the public interest. 5 U.S.C. 553(b)(B). Because of the need for a planning period, and because of the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, an immediate extension of the 21 percent interest rate ceiling is necessary. For these reasons and because the rule relieves a restriction, the Board has determined not to provide a delayed effective date. 5 U.S.C. 553(d).

For the same reasons and because the change will increase the management flexibility and competitive positions of small credit unions, a regulatory flexibility analysis is not required. 5 U.S.C. 603(a), 604(a). Nonetheless, if the Regulatory Flexibility Act did apply, the Board would be willing to certify that this rule will not have a significant economic impact on a substantial number of small Federal credit unions. This rule is necessary because of fluctuations in the cost of funds. These fluctuations affect all Federal credit unions regardless of size.

Since the rule would relieve burdens and delay would cause unnecessary harm, the NCUA Board also finds that full and separate consideration of all the requirements of the Regulatory Simplification Act is impracticable. However, the NCUA Board has considered a number of these policies, as set forth in the preamble above.

Accordingly, NCUA amends § 701.21–1A of its rules and regulations as set forth below.

Dated: March 4, 1982.

Rosemary Brady,

Secretary of the Board.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

§ 701.21–1A [Amended]

1. Section 701.21–1A paragraph (c) is amended by replacing the date "June 2, 1982" with the date "September 4, 1983" each time it appears and by replacing the date "June 3, 1982" with the date "September 5, 1983" each time it appears.

(12 U.S.C. 1757(5)(A)(vi)(I), 1757(5)(A)(ix), 1766)

[FR Doc. 82–6519 Filed 3–9–82; 8:45 am]

BILLING CODE 7535–01–M

CIVIL AERONAUTICS BOARD

14 CFR Part 385

[Reg. OR–192; Amdt. No. 121]

Delegations and Review of Action Under Delegation; Nonhearing Matters

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: The CAB amends its delegations of authority to reflect a recent change in its smoking rule.

DATES: Adopted: March 4, 1982; Effective: March 10, 1982.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: By ER–1203, 45 FR 83206, December 18, 1980, the Board added a new § 252.6 to its smoking rule, 14 CFR Part 252, to allow airlines to request a waiver of one or more requirements of that rule in order to experiment with alternative "methods for protecting nonsmokers from tobacco smoke to the maximum possible degree." At the same time, by OR–176, 45 FR 83207, December 18, 1980, the Board delegated authority to the Director, Bureau of Consumer Protection to grant or deny these waiver requests from airlines. This delegation of authority followed the language of § 252.6.

By ER–1245, 46 FR 45934, September 16, 1981, the Board reissued its smoking rule. The waiver provision was renumbered § 252.4 and its wording was changed. It now allows airlines to request a waiver of one or more requirements of Part 252 in order to experiment with other "methods of achieving the public policy goals" of that part. By this notice, we are changing the language of the delegation of authority to conform to the changes in the smoking rule made by ER–1245. By a previous notice, OR–190, 47 FR 5204, February 4, 1982, this authority was transferred to the Deputy General Counsel.

Since this is a rule of agency procedure and merely conforms one provision in our rules to another, the Board finds that notice and public procedure are unnecessary and that the rule may take effect in less than 30 days.

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

Accordingly, the Board amends 14 CFR Part 385, *Delegations and Review of Action Under Delegation; Nonhearing Matters,* as follows:

1. The authority for Part 385 is:

Authority: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 754, 757, 758, 766, 771, 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1377, 1386; Reorganization Plan No. 3 of 1961, 26 FR 5989.

2. Paragraph (g) of § 385.22 is revised to read:

§ 385.22 Delegation to the Deputy General Counsel.

The Board hereby delegates to the Deputy General Counsel, the authority to:

* * * * *

(g) Grant or deny applications for waivers filed under § 252.4 of this chapter in order to allow a carrier to experiment with other methods of achieving the public policy objectives of part 252 of this chapter.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–6499 Filed 3–9–82; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

Financial Compensation of Participants in Administrative Proceedings

Correction

In FR Doc. 82–6256, appearing on page 9820 in the issue of Monday, March 8, 1982, make the following correction.

On page 9820, third column, the part heading should have read:

"PART 904—CIVIL PROCEDURES".

BILLING CODE 1505–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Human Prescription Drugs In Oral Dosage Forms; Exemption of All Unit-Dose Forms of Potassium Supplements Containing Not More Than 50 Milliequivalents of Potassium Per Unit-Dose From Child-Protection Packaging Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission exempts all unit-dose forms of potassium supplements containing not more than 50 milliequivalents of potassium per unit-dose from child-protection packaging requirements. The information available to the Commission indicates that child-protection packaging for the drug as described is not needed to protect children from serious illness or injury, because of the absence of adverse experience from ingestion by children of potassium supplements in all forms, including powdered and liquid potassium.

DATE: This exemption is effective March 10, 1982.

FOR FURTHER INFORMATION CONTACT: Charles Jacobson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 8, 1981 (46 FR 35296), the Commission proposed to exempt from the child-resistant packaging requirements of the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471–1476) all unit-dose forms of potassium supplement containing not more than 50 milliequivalents (mEq) of potassium per unit-dose. Such preparations are required to be packaged in child-resistant packaging by regulations issued under the PPPA, published at 16 CFR 1700.14(a)(10). These regulations are applicable to all human oral prescription drugs, and were issued to protect children from serious personal injury or illness which might result from handling, using, or ingesting these substances.

Background

In the Federal Register of September 30, 1980 (44 FR 34968), the Commission issued a regulation to exempt potassium supplements in individually-packaged effervescent tablets containing not more than 50 milliequivalents of potassium from requirements for child-resistant packaging. This exemption was based on the absence of adverse experience with effervescent potassium tablets, and on test data indicating that their effervescence inhibits ingestion in dangerous amounts.

In the same Federal Register notice, the Commission announced its intention to reopen the issue of exempting all unit-dose forms of potassium supplements, including powdered and liquid forms as well as individually wrapped tablets. The Commission decided to reopen this issue after considering correspondence from Berlex Laboratories, a manufacturer of a powdered potassium supplement, stating that the proposal of an exemption for potassium supplements in effervescent form was inconsistent with the denial of a petition from that firm (PP 75–11) which had requested an exemption from special packaging requirements for powdered potassium chloride in individual packets.

The Commission denied that petition because experimental evidence indicated that potassium chloride powder, administered to rabbits in amounts equivalent to ingestion of one to three packets of the drug by a small child, caused severe gastic irritation and injury to the animals. The Commission also based its denial of petition PP 75–11 on the lack, at that time, of human experience data with this drug.

The Commission had also denied an earlier petition from Warren-Teed Pharmaceuticals, Inc. (PP 74–42) for exemption of liquid potassium supplements in unit-dose form. The Commission denied that petition because of the lack of adequate human experience data available at that time with which to evaluate the effect of its ingestion by children; the fact that the products were highly flavored; and an evaluation of toxicity data indicating that five unit-dose vials (100 mEq potassium) might produce toxic effects in a small child.

Proposal of July 8, 1981

After the Commission voted in 1975 to deny the petitions for exemption of potassium supplements in powdered and liquid form, additional information, data, and human experience became available to the Commission about these products. After considering this more recently developed information and data, the Commission published a proposal in the Federal Register of July 8, 1981 (46 FR 35296) to exempt from the requirements for child-resistant packaging all potassium supplements in unit-dose form that contain not more than 50 mEq of potassium per unit-dose. The notice of July 8, 1981, solicited written comments from all interested parties on the proposed exemption.

In that notice, the Commission published a detailed explanation of the reasons for proposing to exempt all potassium supplements in unit-dose form. The following is a summary of those reasons:

1. *Absence of reports of adverse effects to young children from ingestion.* Examination of National Clearinghouse for Poison Control Center (NCPCC) data, now available for the period 1969–1978, reveals no reported ingestions in children under 5 of any of the liquid or powered potassium supplement brands which comprise the majority of the market. NCPCC data involving the ingestion of generic potassium chloride (dosage form and trade name not specified) show only 37 ingestions in children under 5, one of which resulted in symptoms; there was no hospitalization. Estimates from information available to the Commission indicate that over 40 million prescriptions for potassium supplements were dispensed over that period. Examination of National Electronic Injury Surveillance System (NEISS) data through 1980 reveals no reports of ingestion of powdered or liquid potassium supplements.

Additionally, the Commission believes that the rabbit test, used at the time of denial of the petitions to show that low doses of powdered potassium chloride were capable of producing gastric injury in the animals, was too sensitive a model for prediction of human injury. Recent CPSC studies indicate that common vinegar, which is regularly consumed by children and adults without adverse effect, causes gastric damage in rabbits in excess of that produced by powdered potassium supplements.

The Commission observed that gastric lesions of the type induced in the rabbits by potassium chloride would be readily apparent in children were they to occur. The Commission also noted that the fact that they do not occur is supported by the substantial human experience data discussed above as well as by the absence of any harmful sequellae occurring to children involved in the child taste studies submitted with the original petitions on potassium powder.

2. *Low toxicity of all dosage forms of potassium supplements.* At the time the Commission proposed the exemption, it pointed out that acute toxicity from oral administration of potassium is highly unlikely because large doses induce vomiting and because absorbed potassium is excreted rapidaly unless

there has been prior kidney damage. Based upon staff calculations, a small child (22 lbs.) would have to ingest a minimum of 100 mEq of potassium (4–5 unit-dose packets of powder or 5 unit dose vials of liquid) before physiological effects such as listlessness, mental confusion or muscle weakness in the extremities might be expected. Child taste studies, submitted by Berlex, Mead-Johnson and Abbott Laboratories at the time of their original petitions, indicated that more than half of the children consumed (or spilled) less than one mEq of powdered potassium chloride. Of the remaining children, only one percent ingested (or spilled) more than 15 mEq.

The Commission also observed that the unit-dose packaging of the liquid potassium supplements may be a deterrent to their home use. The proposal did not apply to liquid potassium supplements which are not packaged in individual doses. These products are manufactured and labeled "for institutional use only." This, combined with the higher cost of the unit-dose vial and pharmacy storage space requirements, suggests that pharmacists are less apt to dispense this package form in filling patient prescriptions. The Commission noted that the crimped aluminum cap on the liquid potassium supplements can be an impediment to small children's ingestion of toxic amounts of the drug. Although the cap is not marketed as a child-resistant closure, the manufacturers consider the seal on the vial to be an impediment to children. This may be significant since rapid consumption and absorption of potassium are necessary in order to exceed the kidney threshold and accumulate toxic amounts of potassium within the body.

3. *Recommendations of the Technical Advisory Committee.* Members of the Technical Advisory Committee on Poison Prevention Packaging were asked to comment on the merits of proposing an exemption for all unit-dose forms of potassium supplements before that committee was abolished by the Consumer Product Safety Amendments of 1981 (Pub. L. 97–35; 95 Stat. 702, 753). Nine of the twelve members who responded recommended proposal of the exemption for potassium supplements in both powdered and liquid form. One member recommended that potassium powder should be exempt, but not liquid potassium products. Another member recommended that exemptions for powdered and liquid potassium supplements should not be granted, except for liquid preparations sold to institutions. One member did not make a recommendation.

4. *Recommendation of the Food and Drug Administration.* The Food and Drug Administration (FDA), which had concurred with the Commission's original decision to deny the requests for exemption of powdered potassium supplements, gave updated comments on the possibility of exempting powdered potassium supplements in individual packets. Those comments recommended that the Commission propose an exemption from special packaging requirements for powdered potassium supplements. These comments cited information indicating that the rabbit test was inappropriate, and human experience data generated since denial of the petition indicating that potassium supplements do not pose a significant poisoning risk for children if ingested.

Response to Proposal

The Commission received no comments in response to the proposal of July 8, 1981. The Commission has received no additional information from any other source which causes it to conclude that the proposed exemption should not be issued on a final basis.

Conclusion

Having considered the requested exemptions, the available human experience data, information on the inappropriateness of the rabbit test, toxicity information, opinions of the members of the Technical Advisory Committee on Poison Prevention Packaging, and recommendations of the Food and Drug Administration, the Commission finds that special packaging is not required to protect children from serious personal injury or illness resulting from handling, using, or ingesting all unit dose forms of potassium supplements, including unit dose vials of liquid potassium and powdered potassium in unit-dose packets as well as individually-packaged effervescent tablets, containing not more than 50 mEq of potassium per unit dose. Potassium supplements which are not packaged in unit dose forms are not within the coverage of this exemption.

Effective Date

The Administrative Procedure Act provides at 5 U.S.C. 553(d) that a substantive rule must be published at least 30 days before its effective date, except in the case of a rule which grants an exemption. The rule issued below grants an exemption from requirements for child-resistant packaging which would otherwise be applicable to potassium supplements in unit dose form, and will be effective immediately.

PART 1700—POISON PREVENTION PACKAGING

Therefore, for the reasons set forth above, § 1700.14 of Title 16 of the Code of Federal Regulations is amended by revising paragraph (a)(10)(vi) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) Prescription Drugs. Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal Law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c) except for the following: * * *

(vi) All unit dose forms of potassium supplements, including individually-wrapped effervescent tablets, unit dose vials of liquid potassium, and powdered potassium in unit-dose packets, containing not more than 50 milliequivalents of potassium per unit dose.

* * * * *

(Pub. L. 91–601, secs. 2(4), 3, 4, 84 Stat. 1670–72 (15 U.S.C. 1471(4), 1472, 1474); Pub. L. 92–573, sec. 30 (a), 86 Stat. 1231 (15 U.S.C. 2079(a)))

Effective date. This amendment shall be effective on March 10, 1982.

Dated: March 5, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 82-6496 Filed 3-9-82; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM82-18-000; Order No. 215]

Revision of System Flow Diagrams; Format No. FERC 567

Issued March 4, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) revises its regulations at § 260.8, that require the report of "System Flow

Diagrams" by attaching a formal designation number to this report, by updating certain descriptions in the regulations and by reducing the number of copies of the report that are required to be filed. The report is filed annually by major natural gas pipelines and contains data on the operation of the pipeline.

EFFECTIVE DATE: April 5, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Czarick, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, 825 North Capitol Street, NE., Room 6006–C, Washington, D.C. 20426, (202) 357–9098.

SUPPLEMENTARY INFORMATION:

Issued: March 4, 1982.

I. Background and Summary

By this rule, the Federal Energy Regulatory Commission (Commission) makes certain non-substantive revisions to its regulations at 18 CFR 260.8 requiring and describing the annual report, "Form RO284, System Flow Diagrams".[1] The Commission collects the data required in § 260.8 from certain natural gas pipeline companies under the authority of sections 4, 5, 7, and 10 of the Natural Gas Act (15 U.S.C. 717c, 717d, 717f and 717i).[2]

Section 260.8 requires the annual filing of a diagram from each Class A natural gas pipeline company[3] having a system delivery capacity in excess of 100,000 Mcf of natural gas per day. Each diagram must reflect certain operating conditions of the company's main transmission system, such as pipeline diameters, pressure and volume data. The diagram is important because it provides the Commission with information, on a yearly basis, concerning the means of transporting gas, including the distance of haul, the peak day and average day volumes carried, emergency interconnections, and engineering data describing the pipeline system configuration. This report supplements the information filed in certificate applications.

The Commission has determined that the information reported in the system flow diagrams is necessary to its regulatory functions, and will, therefore, continue to collect it. The Commission, however, makes the following non-substantive revisions to its regulations at § 260.8: (1) The official designation for the system flow diagram report is to be styled as "Format No. FERC 567", (2) the number of copies of the report required for submission is reduced from twelve to five, and (3) the references to "FPC"[4] in clauses (12) and (15) of paragraph (b) are changed to "FERC".

II. Public Procedure and Effective Date

The revisions prescribed in this rulemaking do not substantively change the Commission's regulations or reporting requirements. Accordingly, the Commission finds that notice and public procedure pursuant to 5 U.S.C. 553(b) are unnecessary. The changes in this final rule will be effective April 5, 1982, for reports filed on or before June 1, 1982, and for all reports thereafter.

(Natural Gas Act, as amended, 15 U.S.C. 717–717w; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142)

For the foregoing reasons, Chapter I of Title 18, Code of Federal Regulations, is amended in Part 260, effective April 5, 1982, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Section 260.8 is amended by revising the heading, paragraph (a), and paragraphs (b)(12)(iii) and (b)(15) to read as follows:

§ 260.8 System flow diagrams: Format No. FERC 567.

(a) Each Class A natural gas pipeline company, having a system delivery capacity in excess of 100,000 Mcf per day (measured at 14.73 p.s.i.a. and 60° F.), shall file with the Commission by June 1 of each year five (5) copies of a diagram or diagrams * * *

(b) * * *

(12) * * * (iii) the maximum daily volumes (noncoincidental) delivered to each customer under rates subject to FERC jurisdiction.

* * * * *

(15) The information required by paragraphs (b)(12), (13) and (14), of this section may be furnished in tabular form, or by reference to FERC Form No. 2, providing, that the information is suitably keyed to the diagram by appropriate identifying symbol or number.

[FR Doc. 82-6558 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[1] The reporting requirement was never given an official designation by this Commission. The designation, "Form RO284" was assigned to the reporting requirement by the Office of Management and Budget.

[2] The requirement in § 260.8 was initially prescribed by Order No. 303–A (May 10, 1966, 31 FR 7226, May 18, 1966) and was modified twice thereafter (Order No. 345, May 9, 1967, 32 FR 7331, May 17, 1967; and Order No. 430, April 12, 1971, 36 FR 7051, April 14, 1971).

The Commission exercises its authority under sections 4, 5, and 7 of the Natural Gas Act pursuant to section 402(a) of the Department of Energy Organization Act (42 U.S.C. 7172). The Commission is authorized to collect data under section 10 of the Natural Gas Act pursuant to a delegation of authority from the Secretary of Energy to the Commission (Delegation Order No. 0204–1 (1977)).

[3] A Class A natural gas company is one having annual operating revenues of $2,500,000 or more. (*See* Part 201, Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act (Class A and Class B), General Instructions.)

[4] Federal Power Commission, the Commission's predecessor agency.

---

18 CFR Part 271

[Docket No. RM79–76–000 (Nebraska—1); Order No. 214]

High-Cost Gas Produced From Tight Formations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5) the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Nebraska Oil and Gas Conservation Commission that the Niobrara Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective March 4, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued: March 4, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Niobrara Formation in Nebraska as a designated tight formation eligible for incentive pricing under §271.703. The amendment was proposed in a Notice of Proposed Rulemaking by Director, OPPR, issued November 6, 1981 (46 FR

56428, November 17, 1981) [1] based on a recommendation by the State of Nebraska Oil and Gas Conservation Commission (Nebraska) in accordance with § 271.703(c) that the Niobrara Formation be designated as a tight formation.

Evidence submitted by Nebraska supports the assertion that the Niobrara Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Nebraska recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3101–3432; Administrative Procedure Act, 5 U.S.C. 553.)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective March 4, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding new subparagraph (71) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(71) *Niobrara Formation in Nebraska.* RM79–76–000 (Nebraska—1).

(i) *Delineation of formation.* The Niobrara Formation is found in all of Chase, Deuel, Dundy, Hitchcock, Keith, and Perkins Counties, the western half of Frontier County, (Townships 5 through 8 North, Ranges 27 through 30 West), the eastern half of Cheyenne County (Townships 12 through 17 North, Ranges 46 through 49 West), and the southernmost third of Garden County (Townships 15 through 19 North, Ranges 41 through 46 West).

(ii) *Depth.* The Niobrara Formation underlies the Fort Hays Limestone Formation and overlies the Pierre Shale Formation. The average depth to the top of the Niobrara Formation is 2,450 feet.

[FR Doc. 82-6429 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[1] Comments were invited and one comment in support of the recommendation was received. No party requested a hearing and no hearing was held.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-82-972]

Mortgage Insurance Loans; Changes in Interest Rates

AGENCY: Commissioner, Office of Assistant Secretary for Housing—Federal Housing.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA maximum allowable finance charge on Title I mobile home loans, and combination and mobile home lot loans. This action by HUD is designed to bring the maximum interest rate and financing charges on HUD/FHA-insured loans into line with market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Title I Insured Loans, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410 (202–755–6680).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. Maximum finance charges on mobile home loans have been lowered from 19.00 percent to 18.00 percent, and the finance charge on combination loans for the purchase of a mobile home and a developed or undeveloped lot has been lowered from 18.50 percent to 17.50 percent. The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD's environmental procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Subpart B—Eligibility Requirements—Mobile Home Loans

1. Section 201.540 paragraph (a) is revised to read as follows:

§ 201.540 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 18.00 percent simple interest per annum. No points or discounts of any kind may be assessed or collected in connection with the loan transaction, except that a one percent origination fee may be collected from the borrower. If assessed, this fee must be included in the finance charge. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart D—Eligibility Requirements—Combination and Mobile Home Lot Loans

2. Section 201.1511, paragraph (a)(1) is revised to read as follows:

§ 201.1511 Financing charges.

(a) *Maximum financing charges.* * * *

(1) 17.50 percent per annum.

* * * * *

(Sec. 3(a), 82 Stat. 113; 12 U.S.C. 1709–1; sec. 7, Department of Housing and Urban Development Act, 42 U.S.C. 3534(d))

Dated: March 1, 1982.

Philip D. Winn,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 82-6385 Filed 3-9-82; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Parts 203, 213, 234

[Docket No. R-82-971]

Mortgage Insurance Loans; Changes in Interest Rates

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA interest rates on insured home loans. This action by HUD is designed to bring the maximum interest rates into line with other competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: March 2, 1982.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202-426-4667).

SUPPLEMENTARY INFORMATION: The following amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. The maximum interest rate on HUD/FHA insured home mortgage insurance programs has been lowered from 16.50 percent to 15.50 percent for level payment (including operative builder) and graduated payment home loan programs (GPM).

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made in accordance with HUD's environmental procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

Subpart A—Eligibility Requirements

1. Section 203.20 paragraph (a) is revised to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before March 2, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

2. Section 203.45 paragraph (b) is revised to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before March 2, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. Section 203.46 paragraph (c) is revised to read as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before March 2, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart C—Eligibility Requirements Individual Properties Released From Project Mortgage

4. Section 213.511 paragraph (a) is revised to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before March 2, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements Individually Owned Units

5. Section 234.29 paragraph (a) is revised to read as follows:

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before March 2, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

6. Section 234.75 paragraph (b) is revised to read as follows:

§ 234.75 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgate shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before March 2, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

7. Section 234.76 paragraph (c) is revised to read as follows:

§ 234.76 Eligibility of modified graduated payment mortgages.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum, except that where an application for commitment was received by the Secretary before March 2, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

(Sec. 3(a), 82 Stat. 113; 12 U.S.C. 1709-1; sec. 7 of the Department of Housing and Urban Development Act, (42 U.S.C. 3535 (d)))

Dated: March 1, 1982.

Philip D. Winn,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 82-6386 Filed 3-9-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 570

Control, Custody, Care, Treatment and Instruction of Inmates; Final Rules

Correction

In FR Doc. 82-6013, appearing at page 9755 in the issue of Friday, March 5, 1982, the line immediately following the heading, "Part 570—Community Programs" in the first column of page 9756 should have read, "§§ 570.50-570.52 (Subpart D) [Removed]"

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 111

Express Mail Next Day Service Acceptance Times

AGENCY: Postal Service.

ACTION: Interim regulations with request for comments.

SUMMARY: By notice published in the March 4, 1982, issue of the **Federal Register**, the Postal Service announced that it will implement a change in the Domestic Mail Classification Schedule for Express Mail Next Day Service acceptance times on March 14, 1982, on a temporary basis. Under this change, Express Mail Next Day Service articles can be accepted at the time or times prescribed by the Postal Service, instead of the former 5:00 p.m. acceptance time, which has constrained the Postal Service's operational latitude and flexibility.

Interim implementing regulations for the temporary change in the classsification schedule have been developed and are set forth below. Although they are to take effect on March 14, 1982, comments on these regulations are solicited, and will be considered in drafting regulations for a permanent classification change, if the Postal Service proposal is implemented on a permanent basis.

EFFECTIVE DATE: 12:01 a.m., March 14, 1982.

COMMENT DATE: Written comments should be received on or before April 30, 1982.

ADDRESS: Written comments should be directed to the General Manager, Expedited Mail Services Division, Customer Services Department, Room 5541, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260. Copies of all written comments will be available for public inspection and copying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at the above location.

FOR FURTHER INFORMATION CONTACT: Buford L. Knowles, Expedited Mail Services Division, (202) 245-5624.

SUPPLEMENTARY INFORMATION: The current Domestic Mail Classification Schedule provision on acceptance times for Express Mail Next Day Service provides for a nationwide 5:00 p.m. acceptance time. The temporary classification change recognizes that this rigid 5:00 p.m. acceptance time has constrained the Postal Service's operational latitude and flexibility to adjust to changes in air transporation schedules. The current inability to adjust acceptance times has resulted in a reduction in the scope of Express Mail Next Day Service in many instances and has also been the source of customer complaints. The temporary classification change will afford the Postal Service the operational latitude and flexibility it needs.

To implement this temporary classification change, interim regulations considered necessary by the Postal Service are set forth below. These regulations take effect when the change in Express Mail Next Day Service acceptance times classification provision is implemented on a temporary basis at 12:01 a.m., March 14, 1982.

By notice in the March 4, 1982 issue of the **Federal Register** of the resolution of the Board of Governors of the Postal Service implementing the classification change on a temporary basis, the Postal Service has given the 10 days' notice required by 39 U.S.C. 3641(e). Accordingly, the Postal Service finds it unnecessary and not required by the public interest to give additional notice of these interim regulations before they become effective. However, we reiterate that comments are welcomed, and that they will be considered as appropriate.

In view of the considerations discussed above, the Postal Service hereby adopts the following interim revision of the Domestic Mail Manual, which is incorporated by reference in the **Federal Register**. *See* 39 CFR 111.1.

224 Express Mail Next Day Service

Section 224.1 is revised to read as follows:

224.1 Availability of Service

a. Facilities. Next Day Service is available at designated retail postal facilities for overnight service to designated destination 3-digit ZIP Code delivery areas, facilities or locations.

b. Acceptance Times. Next Day Service mail must be tendered by the time or times authorized by the postmaster.

c. Next Day Service Directories. Each designated facility provided for in 224.1a must maintain an Express Mail Next Day Service directory showing, for the 3-digit ZIP Code area in which the facility is located, the following information:

(1) The 3-digit ZIP Code areas to which next day delivery service is offered;

(2) the Express Mail zone from the origin to each destination 3-digit ZIP Code area;

(3) The retail facilities at which Next Day Service mail may be tendered;

(4) The acceptance times for each such facility; and

(5) A list of facilities at which Next Day Service mail may be claimed.

d. Service Limitation. Service to or from 3-digit ZIP Code areas, facilities or offices, or at times not listed in the Next Day Service directory for a designated facility provided for in 224.1a is prohibited.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of these changes will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401, 403, 404, 3621, 3623, 3641(e))

Fred Eggleston,

Assistant General Counsel, Legislative Division, Office of General Law and Administration.

[FR Doc. 82-6501 Filed 3-9-82; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2062-4]

Approval and Promulgation of Implementation Plans; San Diego Nonattainment Area Plan State of California

AGENCY: Environmental Protection Agency.

ACTION: Final Rulemaking.

SUMMARY: On April 14, 1981 the Environmental Protection Agency (EPA) took actions on the San Diego Air Basin Nonattainment Area Plan (NAP) with regard to the requirements of Part D, "Plan Requirements for Nonattainment Areas," of the Clean Air Act. EPA approved with conditions portions of the NAP for total suspended particulates (TSP), nitrogen dioxide (NO_2), carbon monoxide (CO), and ozone (O_3). The conditions of approval required that the

State of California submit specific material as State Implementation Plan (SIP) revisions to correct deficiencies which were identified in the San Diego NAP.

The purpose of this notice is to advise the public that certain of these conditions have been fulfilled by the State.

EPA is therefore taking final action to approve the material, incorporate it into the SIP, and revoke the applicable conditions.

EFFECTIVE DATE: May 10, 1982.

ADDRESSES: Copies of the State's submittal are available for public inspection during normal business hours at the EPA Region 9 Office and at the following locations.

The Office of the Federal Register, 1100 L Street NW., Washington, D.C. 20408
Public Information Reference Unit, Environmental Protection Agency Library, 401 M Street SW., Washington, D.C. 20460
California Air Resources Board, 1102 Q Street, Sacramento, CA 95812
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123
San Diego Association of Governments, 1200 Third Avenue, Suite 524, San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Acting Director, Air Management Division, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Melinda Taplin, (415) 974-8006.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1981 (46 FR 5965), EPA conditionally approved the NAP for TSP and NO_2 and deferred action overall on the NAP for O_3 and CO. The reader is referred to that **Federal Register** notice for a detailed discussion of EPA's findings. Today's notice discusses conditions of EPA's approval of the NAP which required the State to submit corrective material by July 13 and December 31, 1981.

This action does not address deficiencies in the Inspection/Maintenance (I/M) portion of the NAP as the State has not submitted corrections to the SIP in this area. It also does not address volatile organic compound (VOC) rules or the permit program which are being addressed in other notices.

Description

On July 13, August 31, November 18, and December 8, 1981 the State submitted materials to satisfy the conditions of approval promulgated in the April 14, 1981 rulemaking. These portions respond directly to the conditions and, in so doing, update the NAP. The State submittals are as follows:

July 13, 1981—Annual emission reduction estimates per pollutant per tactic, emission inventory subcategories of fugitive dust, 1982 emission projections for reactive hydrocarbons (RHC), CO, NO_x and TSP, 1987 emission projections for RHC and CO, justification for TSP design value, health effects of the plan provisions, resolutions from local governments committing to adoption/implementation of transportation control measures, basic transportation needs commitment, and a schedule to analyze alternative transportation control measures.

August 31, 1981—Air Pollution Control Board resolutions committing the District to (1) submit annual implementing agency fiscal and personnel commitments to implement the NAP and (2) implement those nontraditional TSP source control measures necessary to provide for attainment, and emission reduction estimates for the transportation control measures.

November 18, 1981—Schedule to study nontraditional TSP sources.

December 8, 1981—TSP modeling results which show the emission reductions necessary to provide for attainment.

Discussion

EPA's conditions, the State's responses, and EPA's actions are described below. A more detailed discussion of EPA's findings is included in the Technical Support Document available at the addresses indicated above.

1. *Condition*—Emission projections for O_3, CO, TSP, and NO_2 for December 31, 1982, and for O_3 and CO for December 31, 1987.

State Action—On July 13, 1981 the State submitted the 1982 and 1987 emission projections noted above.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition.

2. *Condition*—Annual emission reduction estimates per control tactic per pollutant.

State Action—On July 13 and August 31, 1981 the State submitted annual emission reduction estimates for each control tactic for O_3, CO, TSP, and NO_2.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition.

3. *Condition*—Commitment to submit annual implementing agency and personnel commitments to implement the San Diego Air Basin NAP.

State Action—On July 13 and August 31, 1981 the State submitted the necessary commitments.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition.

4. *Condition*—Identification and analysis of the health effects of the San Diego Air Basin NAP provisions.

State Action—On July 13, 1981 the State submitted health effects analyses which complement the previous State submittal of Chapter 26.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition.

5. *Condition*—Written evidence of local adoption of legally enforceable commitments and implementation schedules consistent with reasonable further progress for the seven adopted transportation control measures (TCMs).

State Action—On July 13, 1981 the State submitted copies of local government resolutions of adoption for TCMs contained in the NAP along with implementation schedules.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition.

6. *Condition*—A commitment to establish, expand, or improve public transportation to meet basic transportation needs.

State Action—On July 13, 1981 the State submitted the San Diego Association of Governments' commitment to meet basic transportation needs via their Overall Work Program, a 1979 study, and their 1980 Regional Transportation Plan.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition.

7. *Condition*—A schedule to analyze alternative packages of TCMs, including but not limited to those measures listed in section 108(f)(1)(A) of the Clean Air Act.

State Action—On July 13, 1981 the State submitted a schedule and work program which provide for development and technical analysis of additional TCMs to be considered for inclusion in the required 1982 NAP submittal.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition.

8. *Condition*—Documentation for the TSP design value used to determine allowable emissions, and modeling results showing emission reductions necessary to provide for attainment of the TSP standard.

State Action—On July 13, 1981 the State submitted documentation for the chosen design value and on December 8, 1981 they submitted modeling results.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition.

9. *Condition*—Emission inventory for the San Diego Air Basin for TSP identifying subcategories of the fugitive dust source category.

State Action—On July 13, 1981 the State submitted the necessary fugitive dust subcategories for the TSP inventory.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition.

10. *Condition*—Commitment and schedule to study nontraditional TSP source control measures, and a commitment to implement those measures necessary to provide for attainment.

State Action—On August 31, 1981 the State submitted a resolution from the San Diego Air Pollution Control Board committing to study and implementation. On November 18, 1981 the State submitted a study schedule and commitment to work with the districts to implement those measures determined necessary after study.

EPA Action—This material corrects the deficiency. EPA approves the submittal for incorporation into the SIP and revokes the applicable condition. The November 18, 1981 submittal was approved in a recent final rulemaking notice.

11. *Condition*—Reanalysis of NO_2 attainment demonstration or NO_2 analysis which can support an EPA attainment redesignation.

State Action—On March 26, 1981 the State submitted air quality data showing that there were no NO_2 National Ambient Air Quality Standards violations in West San Diego County during 1979 and 1980.

EPA Action—On July 23, 1981 EPA designated West San Diego County attainment for NO_2 (46 FR 37896). Therefore, EPA revokes the applicable condition.

Today's action results in a continued overall conditional approval of the NAP for TSP with respect to Part D. However, since this notice addresses neither the I/M program, the permit program, nor the VOC rules, today's actions do not result in a final overall approval or disapproval of the NAP for O_3 and CO with respect to Part D. Thus, the prohibition on construction of certain major new or modified VOC and CO sources remains in effect as well as limitations on certain Federal funding assistance for San Diego County required by section 176(a) of the Clean Air Act.

Regulatory Process

EPA has determined that good cause (see Administrative Procedure Act, 5 U.S.C. 553(b)) exists to approve the above items without providing further notice and opportunity to comment since the revisions merely satisfy certain conditions of approval. EPA has already provided opportunity to comment on the appropriateness of the conditions in the October 4, 1979 proposed rulemaking notice (44 FR 57109). The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1982. This action may not be challenged later in proceedings to enforce its requirements.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1981.

(Sections 110, 120, 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: March 4, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart F—California

1. Section 52.220, paragraph (c) is amended by adding subparagraphs (113), (114), and (115) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

* * * * *

(113) Supplemental material for the San Diego Nonattainment Area Plan submitted on July 13, 1981, by the Governor's designee.

(114) Supplemental material for the San Diego Nonattainment Area Plan submitted on August 31, 1981, by the Governor's designee.

(115) Supplemental material for the San Diego Nonattainment Area Plan submitted on December 8, 1981, by the Governor's designee.

* * * * *

2. Section 52.232, paragraph (a) is amended by *revoking, removing, and reserving* paragraphs (a)(4)(i)(B), (a)(4)(ii), (a)(4)(iii), and (a)(4)(iv) as follows:

§ 52.232 Part D Conditional approval.

(a) * * *

* * * * *

(4) * * *

(i) * * *

(A) * * *

(B) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) [Reserved]

* * * * *

[FR Doc. 82-6504 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-38-M

---

40 CFR Part 52

[A-2-FRL-2047-7]

Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan

Correction

In FR Doc. 82-6046, appearing at page 9463 in the issue of Friday, March 5, 1982, the sixth line of § 52.1670(c)(65) in the third column of page 9464 should have read, "years from March 5, 1982, the".

BILLING CODE 1505-01-M

---

40 CFR Part 81

[A-7-FRL-2049-7]

Designation of Areas for Air Quality Planning Purposes; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 107(d) of the Clean Air Act, as amended (hereafter referred to as "the Act"), requires the states and EPA to determine the attainment status of all areas in regard to the National Ambient Air Quality Standards (NAAQS). All designations are recommended by the state and approved or modified as necessary by EPA. Designations in Nebraska of areas as either attainment, nonattainment or unclassifiable were published in the March 3, 1978, **Federal Register** (43 FR 8962).

EPA is taking final action in this notice on redesignation requests for the Lincoln carbon monoxide (CO), and Douglas, Sarpy, and Cass County total suspended particulate (TSP) nonattainment areas which were proposed in the November 13, 1979 (44 FR 65408) and the January 22, 1981 (46 FR 7009) **Federal Registers.**

DATES: These designations are effective March 10, 1982.

ADDRESSES: Copies of the state submittal and EPA's evaluation report are available at the following locations.

Environmental Protection Agency, Public Information and Reference Unit, Room 2922, 401 M Street, SW., Washington, D.C. 20460

Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska 68509

Lincoln-Lancaster County Air Pollution Control Agency, 2200 St. Mary's Avenue, Lincoln, Nebraska 68502

Permits and Inspection Division, Housing and Community Development Department, Room 402, 1819 Farnam, Omaha, Nebraska 68102

Lincoln-Lancaster County Planning Commission, 555 South Tenth Street, Lincoln, Nebraska 68508

Omaha-Council Bluffs Metropolitan Area Planning Agency, 7000 West Center Road, Omaha, Nebraska 68106

FOR FURTHER INFORMATION CONTACT: Eloise Reed at (816) 374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION: The Act required each state to prepare a list of areas which attained the NAAQS, which exceeded the NAAQS, and which had insufficient data to make a determination, for each pollutant for which there is a standard. An attainment area is one in which the measured or predicted air quality does not exceed the ambient air quality standards. A nonattainment area is one in which the air quality is worse than the standards. An unclassifiable area is one for which there is insufficient monitoring or modeling data to determine whether the area is attainment or nonattainment.

The state of Nebraska submitted requests to EPA for redesignation of the Lincoln CO nonattainment area in the May 14, 1979, state implementation plan (SIP) submittal for Lincoln CO, and for redesignation of the Douglas, Sarpy and Cass County TSP nonattainment areas in the September 25, 1980, SIP submittal for these areas. EPA proposed action on these redesignation requests on November 13, 1979 (44 FR 65408) and January 22, 1981 (46 FR 7009), respectively, and is now taking final action to redesignate the applicable areas. No comments were received on either proposed rulemaking.

EPA will be taking final action on the Part D requirements for these nonattainment areas in a future **Federal Register.**

Area Designations

The March 3, 1978, designations for the areas discussed in this notice are being changed based on the results of adequate monitoring or modeling data to more accurately define the areas where violations occurred. The reader is referred to the proposed rulemakings referenced above for background information on these actions.

(a) Lincoln CO—EPA proposed that the CO nonattainment area for Lincoln be revised to (1) retain the CO nonattainment designation for the Antelope Creek Basin (as described in the SIP revision) and (2) redesignate Lincoln, excluding the Antelope Creek Basin, as unclassifiable for CO.

No comments were received on this proposed action.

Action—EPA approves Nebraska's request for boundary changes and redesignations for the Lincoln CO nonattainment area, as described above.

(b) Douglas County TSP—EPA proposed that the primary TSP nonattainment area for Douglas County be revised to (1) retain the primary TSP nonattainment area for the 24th and "O" Street, and 11th and Nicholas Street sites, as defined in the SIP, (2) remove the primary and retain the secondary nonattainment designation for the remainder of Omaha, and (3) redesignate Douglas County, excluding Omaha, as attainment for TSP.

No comments were received on this proposed action.

Action—EPA approves Nebraska's request for boundary changes and redesignations for the Douglas County TSP nonattainment area, as described above.

(c) Sarpy County TSP—EPA proposed that the primary TSP nonattainment status for Sarpy County be revised to (1) remove the primary nonattainment designation and retain the secondary nonattainment designation for Bellevue, and (2) reclassify all of Sarpy County, excluding Bellevue, as an attainment area. In so doing EPA is modifying the state's request for a redesignation to attainment for the entire county.

No comments were received on this proposed action.

Action—EPA approves the boundary changes and redesignations for the Sarpy County primary TSP nonattainment area, as described above.

(d) Cass County TSP—EPA proposed that the primary TSP nonattainment status for Cass County be revised to (1) redesignate Cass County, excluding the municipal boundaries of Weeping Water and Louisville, as unclassifiable for TSP, and (2) retain the primary TSP nonattainment designation for the area within the municipal boundaries of Weeping Water and Louisville. In so doing, EPA is modifying the state's request for a redesignation to attainment for Cass County, excluding Weeping Water and Louisville.

No comments were received on this action.

Action—EPA approves the boundary changes and redesignation for the Cass County primary TSP nonattainment area, as described above.

Conclusions

In some instances, the description of the areas submitted by the state are so lengthy that they cannot be published in the limited space available. Exact descriptions of all designated areas are available from EPA and the state at the addresses given above.

The Administrator finds good cause to make these designations effective immediately, as they form the basis for the Nebraska nonattainment plan submission on which final action will be taken in a future **Federal Register.**

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This

rule is not "major" because for most of the designation changes, it only approves state actions and imposes no additional substantive requirements which are not currently applicable under State law. For the state actions which EPA is modifying, no additional regulatory requirements are imposed by this rule. Hence it is unlikely to have an annual effect on the economy of $100 million or more, or to have other significant adverse impacts on the national economy.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that these attainment status redesignations will not have a significant economic impact on a substantial number of small entities. This action imposes no regulatory requirements but only changes area air quality designations.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2), the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce those requirements.

This notice of final rulemaking is issued under the authority of section 107(d) of the Clean Air Act Amendments of 1977.

Dated: March 4, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Section 81.328 is amended by revising the table for carbon monoxide (CO) and total suspended particulate (TSP) to read as follows:

§ 81.328 Nebraska

* * * * *

NEBRASKA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 085 (Douglas and Sarpy Counties):				
Douglas County:				
Omaha—24th and O Street site [1]	X			
Omaha—11th and Nicholas Street site [1]	X			
Remainder of Omaha		X		
Remainder of Douglas County				X
Sarpy County:				
Bellevue		X [2]		
Remainder of Sarpy County				X
AQCR 086			X [2]	
AQCR 145				X
AQCR 146:				
Cass County:				
Louisville (municipal boundaries)	X			
Weeping Water (municipal boundaries)	X			
Remainder of Cass County			X [2]	
Dawson County			X [2]	
Remainder of AQCR 146				X

[1] As described in the State implementation plan.
[2] EPA designation replaces State designation.

NEBRASKA—CO

Designated area	Does not meet primary standards	Cannot be classified	Better than national standards
City of Lincoln:			
Antelope Creek basin [1]	X		
Rest of city of Lincoln		X	
City of Omaha	X		
Remainder of State			X

[1] As described in the State implementation plan.

[FR Doc. 82-6503 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 180

[OPP-300042A; PH-FRL-2071-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Polyethylene Glycol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR 180.1001 (c), (d), and (e) by revising (broadening) the permissible mean molecular weight to the 194–9,500 range for the inert ingredient polyethylene glycol [alpha-hydro-omega-hydroxypoly(oxyethylene)]. This regulation was requested by American Cyanamid Co.

EFFECTIVE DATE: Effective on March 10, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. M–3708 (A–110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter Gray, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 514D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–7110).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of April 13, 1981 (46 FR 21632), that American Cyanamid Co., Agricultural Research Div., Box 400, Princeton, NJ 08540, requested that the Administrator amend 40 CFR 180.1001(d) by broadening the permissible mean molecular weight of polyethylene glycol from 200–9,500 to the 194–9,500 range.

Only one comment was received. The commenter was in agreement with the proposal and also proposed that the same change be made in the listing of polyethylene glycol in 40 CFR 180.1001(c) for reasons of consistency. By clerical error, polyethylene glycols are also listed in paragraph (c) under the chemical name as: "[alpha-hydro-omega-hydroxypoly(oxyethylene)]; molecular weight 200–9,500 (as defined in 21 CFR 121.2513)." Note that § 121.2513 has been changed to 21 CFR 178.3750. The agency notes that polyethylene gylcol is also listed in 40 CFR 180.1001(e) for use on animals.

Therefore, in order to be consistent, the agency has concluded that the following editorial changes should be made in 40 CFR 180.1001.

1. In paragraph (c), the present entry for alpha-hydro-omega-hydroxypoly(oxyethylene) should be replaced with: "Polyethylene glycol [alpha-hydro-omega-hydroxypoly(oxyethylene)]; mean molecular weight 194 to 9,500—conforms to 21 CFR 178.3750."

2. Because paragraph (c) includes both pre- and post-harvest uses, the present entry for polyethylene glycol in paragraph (d) (pre-harvest) is not consistent and should be deleted.

3. The present entry for polyethylene glycol in paragraph (e) should be changed to read exactly as that in the revised paragraph (c) above.

The changes in nomenclature are editorial only. No substantive comments were received on the proposal to broaden the acceptable molecular weight from 200–9,500 to 194–9,500. No requests were received for referral to an advisory committee.

Therefore, it is concluded that the amendments to 40 CFR 180.1001 (c), (d), and (e) will protect the public health, and they are established as set forth below.

Any person adversely affected by this regulation may, on or before April 9, 1982, file written objections with the hearing Clerk, EPA, Rm. M–3708 (A–110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Effective on March 10, 1982.

(Sec. 408(e), 68 Stat. 514; (21 U.S.C. 346a(e)))

Dated: March 2, 1982.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1001 is amended in paragraph (c) by revising the entry "alpha-hydro-omega-hydroxypoly-(oxyethylene); mean molecular weight 200–9,500 (as defined in 21 CFR 121.2513)" in paragraph (d) by deleting the entry for "Polyethylene glycol (mean molecular weight 200 to 9,500)" and in paragraph (e) by revising the entry "Polyethylene glycol (mean molecular weight 200 to 9,500)," as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Polyethylene glycol [alpha-hydro-omega-hydroxypoly (oxyethylene)] mean molecular weight 194 to 9,500 conforms to 21 CFR 178.3750.		Surfactants, related adjuvants of surfactants.
* * * * * * *		

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Polyethylene glycol (mean molecular weight 200 to 9,500).		Solvent, deactivator. [Deleted.]
* * * * * * *		

(e) * * *

* * * * * * *		
Polyethylene glycol [alpha-, hydro-omega-hydroxypoly (oxyethylene)]; mean molecular weight 194 to 9,500 conforms to 21 CFR 178.3750.		Surfactants, related adjuvants of surfactants.
* * * * * * *		

[FR Doc. 82-6506 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[OPP-00000/R362; PH-FRL-2065-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related notice.

SUMMARY: This notice gives background information regarding EPA's decision to consider for approval tolerances for minor uses based on residue data from limited geographical areas. Approval of proposals will result in amending sections in 40 CFR Part 180 pertaining to specific chemicals.

DATE: Comments must be received on or before March 25, 1982.

ADDRESS: Written comments to: Donald Stubbs, Emergency Response Section, Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–7123).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 5, 1979 (44 FR 12097), EPA issued a minor use policy statement on pesticide registration and request for information. Written comments were invited regarding present or anticipated minor use registration problems. Several commenters questioned the EPA policy of requiring residue data for minor uses from all geographical regions where the crop is grown. These commenters contended that often field plots must be treated and residue samples collected and analyzed even though the pest problem does not occur and there is no need for the pesticide in the area under study. They pointed out that the current residue data requirements may delay IR–4 for years in submitting a petition to the Agency for a pesticide use important to one region, because of the necessity of gathering data from regions where there is little or no need for the pesticide.

The Congress actively supported EPA's minor use role by amending the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in 1978 to include the so-called "minor use amendment" set forth in section 3(c)(2)(A). That provision of the law directs EPA to make minor use data requirements commensurate with the anticipated extent and pattern of use and degree of exposure of man and the environment to the pesticide, and

instructs the agency to consider relevant economic factors, including impact on the registrant's incentive to develop the needed data, in structuring these data requirements.

The Agency agrees with the commenters, that a tolerance important only to a limited region could be established based on residue data from only that region. Therefore, EPA has decided to consider for approval tolerances for minor uses based on residue data from limited geographical areas. Products for which such tolerances have been established will be registered only for those geographical areas for which the residue data has been submitted and approved. In order to expand the area of usage, the registrant will have to submit additional residue chemistry data to support the requested expansion of use. Each proposed tolerance will be evaluated based on the available data to determine if such data allows a finding that the tolerance will protect the public health.

(Sec. 3(c)(2)(A) FIFRA as amended)

Dated: February 19, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-6037 Filed 3-4-82; 8:45 am]

BILLING CODE 6560-32-M

---

40 CFR Part 180

[OPP-300058A; PH-FRL-2065-5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Corn Syrup

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for the inert ingredient corn syrup under 40 CFR 180.1001(c). This exemption was requested by Tuco Products Co., Division of the Upjohn Co.

EFFECTIVE DATE: Effective on March 10, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking in the **Federal Register** of January 20, 1982 (47 FR 2889) which announced that at the request of Tuco Products Co., Division of Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49001, the Administrator proposed to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for the inert ingredient corn syrup.

No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It is concluded that the amendment to 40 CFR 180.1001(c) will protect the public health; therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before April 9, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Effective on: March 10, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a), (e)))

Dated: February 23, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1001(c) is amended by adding and alphabetically inserting corn syrup to the table to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* * * * *		
Corn syrup...	Pre- and postharvest application.	Rehydrating agent.
* * * * *		

[FR Doc. 82-6033 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

---

40 CFR Part 180

[OPP-300054A; PH-FRL-2065-6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Dimethylformamide (DMF)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for dimethylformamide (DMF). The exemption is limited to use by the U.S. Department of Interior (USDI) in formulations of the lamprecide sodium salt of alpha, alpha, alpha-trifluoro-4-nitro-meta-cresol or 4-nitro-3-(trifluoromethyl) phenol (also called TFM) in the Great Lakes.

EFFECTIVE DATE: Effective on March 10, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter Gray, Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 514D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7110).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking that published in the **Federal Register** of December 23, 1981 (46 FR 62299) that the U.S. Department of the Interior, Fish and Wildlife Service, Washington, DC 20240, had requested that 40 CFR 180.1048 be amended by establishing an exemption from the requirement of a tolerance for dimethylformamide when used as a solvent for the sodium salt of alpha, alpha, alpha-trifluoro-4-nitro-meta-cresol or 4-nitro-3-(trifluoromethyl)phenol, (also called TFM) in water for control of the sea lamprey.

No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It is concluded that the amendment to 40 CFR 180.1046 will protect the public health, therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before April 9, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify

the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Effective on: March 10, 1982.

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e)))
Dated: February 17, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1046 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 180.1046 Dimethylformamide; exemption from the requirement of tolerances.

* * * * *

(b) Dimethylformamide (DFM) is exempted from the requirement of a tolerance, when used by the U.S. Department of Interior, Fish and Wildlife Service, as a solvent for the lamprecide, sodium salt of alpha, alpha, alpha-trifluoro-4-nitro-meta-cresol, or 4-nitro-3-(trifluoromethyl)phenol in the Great Lakes.

[FR Doc. 82-6034 Filed 3-9-82; 8:45 am]
BILLING CODE 6560-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6184

[OR-22028 (Wash)]

Washington; Revocation of Executive Order of June 13, 1902

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew 160 acres of land for use by the Navy Department for target range purposes. The land is in private ownership.

EFFECTIVE DATE: March 10, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. Oregon State Office, 503–231–6905.

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

1. The Executive Order of June 13, 1902, which withdrew the following described land for use by the Navy Department for target range purposes is hereby revoked:

Willamette Meridian

T. 23 N., R. 1 E.,
Sec. 34, SE¼.

The area described contains 160 acres in Kitsap County.

2. The land described above has been conveyed from United States ownership and will not be restored to operation of the public land laws, including the mining laws and mineral leasing laws.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 2, 1982.

[FR Doc. 82-6421 Filed 3-9-82; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 6186

[W-060194]

Wyoming; Revocation of Public Land Order No. 1642

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order affecting 80 acres of public land withdrawn for use by the Bureau of Land Management as an administrative site. This action will restore the lands to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: April 7, 1982.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307–778–2220, extension 2336.

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

1. Public Land Order No. 1642 of May 22, 1958, which withdrew the following described public lands for use by the Bureau of Land Management as an administrative site is hereby revoked.

Sixth Principal Meridian

T. 19 N., R. 81 W.,
Sec. 8, SW¼NE¼, NW¼SE¼.

The area described contains 80 acres in Carbon County.

2. At 10:00 a.m. on April 7, 1982, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on April 7, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will be open to applications and offers under the mineral leasing laws and to location under the United States mining laws at 10:00 a.m. on April 7, 1982.

4. The lands have been and will continue to be open to appropriation under the Mineral Material Act of July 31, 1947, as amended, 30 U.S.C. 601–604.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 2, 1982.

[FR Doc. 82-6422 Filed 3-9-82; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 6187

[NM-36235]

New Mexico Powersite Restoration No. 754; Partial Revocation of Waterpower Designation No. 1

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes Waterpower Designation No. 1, New Mexico 1, as it affects 114.96 acres of public and nonpublic lands in Otero County. This land is no longer valuable for power purposes. The 34.96 acres of public land will be restored to operation of the public land laws. The remaining 80 acres, situated within the Mescalero Apache Indian Reservation will remain withdrawn for that purpose.

EFFECTIVE DATE: April 7, 1982.

FOR FURTHER INFORMATION CONTACT: Stella V. Gonzales, New Mexico State Office, 505–988–6211.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2651; 43 U.S.C. 1714, and pursuant to the determination of the Federal Energy Regulatory Commission in DA–87, New Mexico, it is ordered as follows:

1. Departmental Order of August 7, 1916, is hereby revoked insofar as it affects the following described lands:

New Mexico Principal Meridian

T. 13 S., R. 11 E.,
Sec. 22, lot 3, SE¼SW¼;
Sec. 27, NE¼NW¼.

The area described contains 34.96 acres of public and 80.00 acres of nonpublic lands in Otero County.

2. The State of New Mexico has waived its preference right for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10 a.m. on April 7, 1982, the public lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 7, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The lands have been open and continue to be open to applications and offers under the mineral leasing laws, and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955, 69 Stat. 682; 30 U.S.C. 621.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 2, 1982.

[FR Doc. 82-6417 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6190

[OR-20253]

Oregon; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial Order in part as to 30.20 acres of land withdrawn for reclamation purposes. The land will not be open to operation of the public land laws, including the mining laws, because it is included within an application for withdrawal by the U.S. Fish and Wildlife Service.

EFFECTIVE DATE: March 10, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

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

1. The Secretarial Order of June 25, 1919, which withdrew the following described land for use by the Bureau of Reclamation for reclamation purposes in connection with the Klamath Project, is hereby revoked insofar as it affects the following described land:

Willamette Meridian Klamath Project

T. 41 S., R. 10 E.,
Sec. 15, Lot 2.

The area described contains 30.20 acres in Klamath County.

2. The land is included in the U.S. Fish and Wildlife Service withdrawal application OR 12169 for an addition to the Lower Klamath National Wildlife Refuge and remains segregated from operation of the public land laws, including the United States mining laws. the land has been and continues to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 2, 1982.

[FR Doc. 82-6418 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6191

[M-066918]

Montana; Revocation of Public Land Order No. 3633

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order No. 3633, dated April 9, 1965, affecting 145 acres withdrawn for a public recreation area. This action will restore the land to operation of the public land laws generally, including location under the mining laws.

EFFECTIVE DATE: April 7, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office 406-657-6291.

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

1. Public Land Order No. 3633, dated April 9, 1965, which withdrew certain land for use as a public recreation area is hereby revoked in its entirety.

Principal Meridian

Maiden Canyon Recreation Area

T. 16 N., R. 20 E.,
Sec. 4, SW¼SW¼;
Sec. 5, lots 14 and 15.

A roadside strip 100 feet on each side of the centerline of the Bureau of Land Management's Maiden Canyon Road, starting at the engineer's station 38+14.35 on the southeasterly boundary of the Kentucky Favorite Mineral Survey No. 3314 and along a portion of the southeasterly boundary of the Spotted Horse Mineral Survey No. 2361, lot 8, section 5, T. 16 N., R. 20 E., and extending southeasterly for approximately 1.5 miles, ending at engineer's station 124+32.53 in SE¼, section 9, T. 16 N., R. 20 E.

The areas described aggregate approximately 145 acres in Fergus County.

2. At 8 a.m. on April 7, 1982, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on April 7, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. At 8 a.m. on April 7, 1982, the lands above will be open to mineral location under the mining laws.

The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 2, 1982.

[FR Doc. 82-6416 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6193

[OR-19288, OR-19289]

Oregon; Revocation of Executive Order No. 5683 and Secretarial Order of April 26, 1933

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order which withdrew 40 acres of land and a Secretarial Order which withdrew 39.95 acres of land as lookout stations. This action will restore the lands to operation of the public land laws generally, including the mining laws.

EFFECTIVE DATE: April 7, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

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

1. Executive Order No. 5683 of August 12, 1931, and the Secretarial Order of April 26, 1933, which withdrew the following described lands as lookout stations, are hereby revoked:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 40 S., R. 5 E.,
Sec. 31, lot 4.
T. 41 S., R. 5 E.,
Sec. 5, NE¼SW¼.

The areas described aggregate 79.95 acres in Klamath County.

2. At 10 a.m., on April 7, 1982, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

3. At 10 a.m., on April 7, 1982, the lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continue to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 2, 1982.

[FR Doc. 82-6419 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6194

[C-0102703, C-26516]

Colorado; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a portion of Public Land Order 3500 which withdrew land for the Bureau of Reclamation Fryingpan-Arkansas Project. This action will restore 40 acres of land to Forest Service management and open it to operation of the mining laws.

EFFECTIVE DATE: April 7, 1982.

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

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

1. Public Land Order 3500 dated December 2, 1964, FR Doc. 64-12562, which withdrew land for the Bureau of Reclamation Fryingpan-Arkansas Project is hereby revoked as to the following described land:

Sixth Principal Meridian

San Isabel National Forest

T. 10 S., R. 80 W.,
Sec. 31, SW¼SE¼.

The area described contains 40 acres in Lake County.

2. At 7:45 a.m. on April 7, 1982, this land shall be open to such forms of appropriation as may by law be made of national forest land, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on April 7, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. This land shall be open to location and entry under the United States mining laws at 7:45 a.m. on April 7, 1982. These lands have been and remain open to applications and offers under the mineral leasing laws.

Inquiries concerning this land should be addressed to the Chief, Withdrawal Section, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 2, 1982.

[FR Doc. 82-6414 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6195

[OR-5546]

Oregon; Revocation of Public Land Order No. 4839

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order which withdrew 158.44 acres of land for recreation and scientific study purposes. This action will restore the land to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: April 7, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

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

1. Public Land Order No. 4839 of June 1, 1970, which withdrew the following described land for use by the Bureau of Land Management for recreation and scientific study purposes, is hereby revoked:

Williamette Meridian

Revested Oregon and California Railroad Grant Land, Rogers Mountain Petrified Wood Area

T. 10 S., R. 1 E.,
Sec. 31, N½NE¼, NE¼NW¼, and fractional NW¼NW¼.

The area described contains 158.44 acres in Linn County.

2. At 10 a.m., on April 7, 1982, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land will be open to such forms of disposition as may by law be made of Revested Oregon and California Railroad Grant Lands.

3. At 10 a.m., on April 7, 1982, the land will be open to location under the United States mining laws. The land has been and continues to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 2, 1982.

[FR Doc. 82-6420 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Associate Director, State and Local Programs and Support, after consultation with the Chief Executive Officer of each community listed, finds that modification of the proposed Special Flood Hazard Areas (SFHAs) for those communities is appropriate as a result of requests for changes in the interim and/or Proposed Rule.

DATES: These modified SFHAs are in effect as of the dates listed in the sixth column of the attached list and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified SFHA determinations for each community are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P. E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support has published a notification of the SFHAs in prominent local newspapers for the communities listed below. Ninety (90) days have elapsed since that publication, and the Associate Director has received appeals from the communities requesting changes in the proposed SFHA determinations.

The numerous changes made in the SFHAs on the Flood Insurance Rate Map for each community make it administratively infeasible to publish in this notice all of the SFHA changes contained on the maps. However, this notice includes the address of the Chief Executive Officer where the modified SFHA determinations are available for inspection.

The modifications are pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65).

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These SFHAs are 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 SFHAs 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 modified SFHAs shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

The changes in the SFHAs listed below are in accordance with 44 CFR 65.4.

§ 65.4 [Amended]

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Arizona: Mohave	City of Kingman (Docket No. FEMA 6037).	*The Kingman Daily Miner:* May 14, 1981; May 15, 1981.	The Honorable A. H. Carpenter, Mayor, City of Kingman, 310 North Fourth Street, Kingman, AZ 86401.	Dec. 22, 1981	040060C
Connecticut: New Haven	Town of Southbury (Docket No. FEMA 6050).	*Voices:* May 13, 1981; May 20, 1981.	Mr. Michael J. Kenney, First Selectman, Town of Southbury, 501 Main Street, Southbury, CT 06488.	Dec. 11, 1981	090089C
Illinois: Lake	Village of Third Lake (Docket No. FEMA 6038).	*Grayslake Times:* May 14, 1981; May 21, 1981.	Edwin Sutter, President, Village of Third Lake, 23 South Lake Ave., Lake Villa, IL 60046.	Dec. 25, 1981	170392C
Kentucky: Harlan	City of Loyall (Docket No. FEMA 6039).	*Harlan Daily Enterprise:* May 15, 1981; May 22, 1981.	The Honorable Charles Wattenberger, Mayor, City of Loyall, P.O. Box 127, Loyall, Kentucky 40854.	Dec. 11, 1981	215189B
Michigan: Emmet	City of Harbor Springs, (Docket No. FEMA 6040).	*Harbor Light:* May 13, 1981; May 20, 1981.	Honorable David Irish, Mayor, City of Harbor Springs, 349 East Main Street, Harbor Springs, MI 49740.	Dec. 24, 1981	260272C
New Jersey: Bergen	Township of Rochelle Park (Docket No. FEMA 6054).	*Our Town:* May 21, 1981; May 28, 1981.	The Honorable William Schneider, Mayor, Township of Rochelle Park, 24 Chestnut Avenue, Rochelle Park, NJ 07660.	Dec. 18, 1981	340070B
Monmouth	Township of Ocean (Docket No. FEMA 6041).	*Asbury Park Press:* May 21, 1981; May 28, 1981.	The Honorable Richard E. English III, Mayor, Township of Ocean, Township Hall, Deal and Monmouth Roads, Oakhurst, NJ 07755.	Dec. 18, 1981	340319D
Monmouth	Township of Upper Freehold (Docket No. FEMA 6042).	*Messenger Press:* May 14, 1981; May 21, 1981.	The Honorable W. Wilmer Drews, Mayor, Township of Upper Freehold, Upper Freehold Township Building, P.O. Box 89, Cream Ridge, NJ 08514.	Dec. 11, 1981	340332D
North Carolina: Rowan	Town of East Spencer (Docket No. FEMA 6043).	*Salisbury Post:* May 15, 1981; May 22, 1981.	The Honorable Reginald Massey, Mayor, Town of East Spencer, P.O. Box 338, East Spencer, North Carolina 28039.	Dec. 11, 1981	370211C
Ohio: Ashland	City of Ashland (Docket No. FEMA 6044).	*Ashland Times Gazette:* May 15, 1981; May 22, 1981.	Honorable Don M. Richey, Mayor, City of Ashland, Municipal Building, 206 Claremont Avenue, Ashland, Ohio 44805.	Dec. 25, 1981	390007C
Butler	City of Trenton (Docket No. FEMA 6045).	*Middletown Journal:* May 15, 1981; May 22, 1981.	Honorable John Madoffori, Mayor, City of Trenton, 21 East State Street, Trenton, Ohio 45067.	Dec. 25, 1981	390047B
Pennsylvania: Delaware	Borough of Brookhaven (Docket No. FEMA 6046).	*Delaware County Daily Times:* May 1, 1981; May 8, 1981.	John Moccia, President, Brookhaven Borough Council, Brookhaven Road and Edgemont Avenue, Brookhaven, PA 19105.	Dec. 4, 1981	420403B
South Carolina: Sumter	City of Sumter (Docket No. FEMA 6067).	*Sumter Daily Item:* May 22, 1981; May 29, 1981.	The Honorable W. A. McElveen, Jr., Mayor, City of Sumter, P.O. Box 1449, Sumter, SC 29150.	Dec. 18, 1981	450184B
Utah: Davis	City of North Salt Lake (Docket No. FEMA 6017).	*Davis County Clipper:* May 6, 1981; May 13, 1981.	The Honorable Robert Palmquist, Mayor, City of North Salt Lake, 17 South Main Street, North Salt Lake, UT 84054.	Dec. 22, 1981	490048C
Vermont: Washington	Town of Waitsfield (Docket No. FEMA 6064).	*Valley Reporter:* May 21, 1981; May 28, 1981.	Mr. Everett Larrow, Chairman, Board of Selectmen, Town of Waitsfield, P.O. Box 134–A, Waitsfield, VT 05673.	Dec. 18, 1981	500120C
California: Riverside	City of Indian Wells (Docket No. FEMA 6085).	*Daily News:* June 16, 1981; June 17, 1981.	The Honorable Frank Chilson, Mayor, City of Indian Wells, 45–300 Club Drive, Indian Wells, CA 92260.	Jan. 19, 1982	060254D
San Diego	City of El Cajon (Docket No. FEMA 6090).	*The Daily Californian:* June 17, 1981; June 18, 1981.	The Honorable John Reber, Mayor, City of El Cajon, 200 East Main Street, El Cajon, CA 92020.	Jan. 19, 1982	060289C
North Dakota: Mercer	City of Hazen (Docket No. FEMA 6051).	*Hazen Star:* May 14, 1981; May 21, 1981.	The Honorable Melvin P. Beckler, Mayor, City of Hazen, P.O. Box 717, Hazen, ND 58545.	Jan. 19, 1982	380067C
Utah: Utah	City of Payson (Docket No. FEMA 6087).	*The Payson Chronicle:* August 26, 1981; September 2, 1981.	The Honorable Gary S. Hansen, Mayor, City of Payson, P.O. Box 118, Payson, UT 84651.	Jan. 6, 1982	490157C
Connecticut: Litchfield	Town of New Milford (Docket No. FEMA 6070).	*New Milford Times:* June 4, 1981; June 11, 1981.	The Honorable Clifford Chapin, First Selectman, Town of New Milford, Town Hall, 10 Main Street, New Milford, CT 06776.	Feb. 12, 1982	090049C
Hartford	Town of Wethersfield (Docket No. FEMA 6096).	*Hartford Courant:* July 3, 1981; July 10, 1981.	Mr. Henry R. Allen, Town Manager, Town of Wethersfield, 505 Silas Deane Highway, Wetherfield, Connecticut 06109.	Feb. 19, 1982	090040B

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Kentucky: McCracken	City of Paducah (Docket No. FEMA 6008).	*The Paducah Sun:* March 20, 1981; March 27, 1981.	The Honorable John K. Penrod, Mayor, City of Paducah, P.O. Box 2267, Paducah, Kentucky 42001.	Feb. 12, 1982	210152C
Minnesota: Hennepin	City of Plymouth (Docket No. FEMA 6100).	*The Newhope Plymouth Post:* July 9, 1981; July 16, 1981.	James G. Willis, City Manager, City of Plymouth, 3400 Plymouth Blvd., Plymouth, MN 55447.	Feb. 19, 1982	270179C
Massachusetts:					
Berkshire	City of Pittsfield (Docket No. FEMA 6091).	*Berkshire Eagle:* June 19, 1981; June 26, 1981.	The Honorable Charles Smith, Mayor of Pittsfield, City Hall, 70 Allen Street, Pittsfield, MA 02101.	Feb. 19, 1982	250037C
Plymouth	Town of Pembroke (Docket No. FEMA 6099).	*Silver Lake News:* July 2, 1981; July 9, 1981.	Mr. John Ahearn, Chairman, Board of Selectmen, Town of Pembroke, Littles Avenue, Pembroke, Massachusetts 02359.	Feb. 19, 1982	250277
New Jersey: Bergen	Borough of Elmwood Park (Docket No. FEMA 6101).	*The Record:* July 3, 1981; July 10, 1981.	The Honorable Richard A. Mola, Mayor, Borough of Elmwood Park, Borough Hall, Market Street, Elmwood Park, New Jersey 07407.	Feb. 26, 1982	340500B
New York: Steuben	City of Corning (Docket No. FEMA 6072).	*Corning Leader:* June 19, 1981; June 26, 1981.	The Honorable Joseph J. Nasser, Mayor, City of Corning, City Hall, Corning, NY 14830.	Feb. 12, 1982	360772C
North Carolina: Wake	Town of Cary (Docket No. FEMA 6102).	*Cary News:* July 8, 1981; July 15, 1981.	The Honorable Fred Bond, Mayor, Town of Cary, 316 North Academy Street, P.O. Box 128, Cary, North Carolina 27511.	Feb. 26, 1982	370238B
Mecklenburg	City of Charlotte (Docket No. FEMA 6103).	*The Charlotte Observer:* July 3, 1981; July 10, 1981.	Honorable Eddie Knox, Mayor, City of Charlotte, City Hall, 600 East Trade Street, Charlotte, NC 28202.	Feb. 26, 1982	370159B
Texas: Harris	City of Shoreacres (Docket No. FEMA 6104).	*The Bayshore Sun:* July 9, 1981; July 16, 1981.	The Honorable Rowe H. Holmes, Mayor, City of Shoreacres Boulevard, LaPorte, TX 77571.	Feb. 16, 1982	485510C
Vermont: Windsor	Town of Chester (Docket No. FEMA 6105).	*Rutland Herald:* July 2, 1981; July 9, 1981.	Mr. Prentice Hammond, Town Manager, Town Office, Chester, Vermont 05144.	Feb. 26, 1982	500146C
Washington: King	City of Bellevue (Docket No. FEMA 6106).	*The Daily Journal-American:* July 6, 1981; July 7, 1981.	The Honorable Richard M. Foreman, Major, City of Bellevue, P.O. Box 1768, Bellevue, WA 98009.	Feb. 23, 1982	530074C
Wisconsin: Brown	(Unincorporated area (Docket No. FEMA 6083).	*Green Bay Press Gazette:* June 26, 1981; July 3, 1981.	William H. Hnilicka, County Administrator, Brown County, North Building, 305 East Walnut St., Green Bay, WI 54301.	Feb. 19, 1982	550020B
New Jersey: Morris	Township of Hanover (Docket No. FEMA 6114).	*Regional Weekly News:* July 22, 1981; July 29, 1981.	Mr. Harold Keenan Township Administrator, Township of Hanover, P.O. Box 250, Whippany, New Jersey 07981.	Mar. 5, 1982	340343
North Dakota: Mercer	City of Beulah (Docket No. FEMA 6086).	*Beulah Beacon:* June 18, 1981; June 25, 1981.	The Honorable Daroid Benz, Mayor, City of Beulah, P.O. Box 910, Beulah, ND 58523.	Mar. 2, 1982	380066C
Utah: Davis	City of Bountiful (Docket No. FEMA 6084).	*Davis County Clipper:* June 17, 1981; June 24, 1981.	The Honorable Elmer W. Barlow, Mayor, City of Bountiful, 790 South 100 East, Bountiful, UT 84010.	Mar. 2, 1982	490039B
Washington: Lewis	City of Morton (Docket No. FEMA 6107).	*The Morton-Eastern Lewis County Journal:* July 9, 1981; July 16, 1981.	The Honorable James A. Mitchell, Mayor, City of Morton, P.O. Box 1089, Morton, WA 98356.	Mar. 2, 1982	530105C
Wyoming: Laramie	City of Cheyenne (Docket No. FEMA 6115).	*The Wyoming State Tribune* and *The Wyoming Eagle:* July 21, 1981; July 22, 1981.	The Honorable Don Erickson, Major, City of Cheyenne, 2101 O'Neil Avenue, Cheyenne, WY 82001.	Mar. 2, 1982	560030C

Pursuant to the provisions of 5 USC 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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 Associate Director, State and Local Programs and Support)

Issued: February 25, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6269 Filed 3-9-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 524

[General Order 23, Revised: Docket 81-18]

Exemption of Certain Agreements From the Requirements of Section 15, Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This exempts agreements which provide for the collection, compilation and exchange of credit experience information from the filing and approval requirements of section 15 of the Shipping Act, 1916 (46 U.S.C. 814). The Commission has determined that this exemption will not substantially impair effective regulation of common carrier practices, result in unjust discrimination or be detrimental to commerce.

EFFECTIVE DATE: April 9, 1982.

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

SUPPLEMENTARY INFORMATION: Section 35 of the Shipping Act, 1916 (the Act) (46 U.S.C. 833a) allows the Commission to exempt any class of agreements between persons subject to the Act from any requirement of the Act where it finds that such exemption will not substantially impair effective regulations by the Commission, be unjustly discriminatory, or be detrimental to commerce. Under this authority the Commission previously announced (46 FR 13243) that it proposed to amend 46 CFR Part 524 (Commission General Order 23) to exempt from the filing and approval requirements of section 15 of the Act, agreements which provide for the collection, compilation, and exchange of credit information.

Comments on the proposed rule were due by April 21, 1981 and were received from the (1) Baltimore Marine Terminal

Association, (2) New York Credit and Financial Management Association. (3) Puerto Rico Maritime Shipping Authority (PRMSA), (4) North European Conferences (NEC), (5) Atlantic and Gulf American-Flag Berth Operators (AGAFBO) and (6) ten conference and rate agreements (Group of Ten).

On June 18, 1981, the Department of Justice (DOJ) filed a motion seeking leave to file reply comments to NEC's arguments concerning antitrust immunity for the exempted agreements.[1] This motion was granted by the Commission on July 8, 1981. On August 5, 1981 the Commission, in response to a motion from NEC, denied NEC's request for oral argument but permitted NEC to file a reply to DOJ's comments. On August 24, 1981, the Associated Latin American Freight Conferences (ALAFC) filed a Petition for Intervention in response to the Commission's Order dated August 5, 1981, on the question "whether agreements exempted by Commission rule from section 15 requirements are excepted from the provisions of the antitrust laws." The ALAFC Petition is hereby accepted.

The Baltimore Marine Terminal Association and the New York Credit and Financial Management Association support the rule as proposed. The New York Association of 3200 members note that the exchange of credit information among competitors has long been recognized in law and by the courts as proper business activity.

PRMSA supports the proposed rulemaking and asks that the Commission address specific questions so as to allow for a better understanding of how the exemption can and cannot be utilized by carriers. The Commission offers the following in response to the four specific questions raised by PRMSA:

(a) The final rule does not allow carriers to discuss or agree to credit policies and practices such as concern the period of time for which credit is to be extended or the procedure to be utilized if payment is not received within a certain period. These activities fall within the scope of credit rule enabling authority found in conference or ratemaking agreements which is excluded by the rule. By way of clarification, the final rule limits approved activity under the exemption to that which pertains to the collection, compilation and exchange of credit experience information only. Agreement on any credit matter which is required to be published in a tariff on file with the Commission is prohibited.

(b) The rule would allow carriers to exchange credit experience information such as providing each other with the names of shippers who have not paid freight charges within the period called for by a carrier's tariff rules.

(c) The rule would allow agreement parties to form or employ an entity to collect, compile and distribute credit experience information.

(d) The rule provides only for collecting, compiling and exchanging credit experience information and does not allow carriers to discuss or agree upon a common "credit history report" form which is to be completed by shippers prior to their being granted credit privileges. However, if such a credit history report form is already required by individual members of an argeement, the information in that report could be distributed to the other members.

The Group of Ten comments that the agreements proposed to be exempted are purely administrative agreements serving no competitive purpose and that such agreements allow each carrier to exercise individual judgment in determining whether to extend credit or require cash from any given shipper. Consequently, although the conferences do not believe this type of agreement is subject to the filing and approval requirements of section 15, they support the proposal noting that those who wish to obtain antitrust immunity may file for section 15 approval.[2] This commentator also asks that credit rule enabling authority, which is specifically excluded in the proposal, be clarified and that the Commission affirm its past holding that separate section 15 approval is not required for credit rule enabling authority in ratemaking agreements. The Commission notes that credit rule enabling authority has been clarified in the final rule and that such activity is specifically prohibited activity only as to the types of credit information agreements exempted under this rule.

NEC and AGAFBO generally support the proposed Rule. However, they and the ALAFC take exception to the statment appearing in the supplementary information that the proposed exemption will not confer antitrust immunity. In general, these parties argue that exempted agreements are lawful for Shipping Act purposes and are, therefore, entitled to the antitrust immunity which section 15 affords "lawful agreements." They submit that section 35 does not preclude the grant of antitrust immunity and that the Commission may, in considering a proposed exemption, properly determine that a class of agreements satisfies the standards for antitrust immunity set forth in section 15. Regarding the class of agreements subject to this proceeding, these parties submit that there are no competitive considerations that would preclude approval and antiturst immunity. The Department of Justice opposes the contention that an exemption under section 35 can have the effect of granting immunity from the antitrust laws.

As NEC indicated in its comments, the Commission has previously determined that antitrust immunity does not attach to agreements exempted pursuant to section 35. *Exemption of Non-Exclusive Transshipment Agreements,* 10 S.R.R. 148 (1968). In fact, both the Commission and the Supreme Court have indicated that the limited antitrust immunity afforded by section 15 is only conferred by an affirmative act of approval pursuant to section 15. *FMC* v. *Svenska Amerika Linien,* 390 U.S. 234, 242 (1968); *Volkswagenwerk* v. *FMC,* 390 U.S.C 261, 273 (1968).

In our view, agreements awarded a section 35 exemption from the filing and approval requirments of section 15 enable parties to elect not to file such agreements without fear that they will violate those requirements. Relief from the filing and approval requirements cannot be construed or equated with approval and the concomitant finding that the agreement merits antitrust immunity. Should exempted agreements authorize concerted conduct which has antitrust implications, the parties operate under that agreement at their risk. Moreover, in the usual course, the Commission would not authorize section 35 exemptions to agreements which have significant antitrust implications. The Commission, as the public arbiter of competition in the shipping industry, has an affirmative duty to examine the potential anticompetitive consequences of each agreement, as well as the circumstances surrounding it, before granting approval and the limited antitrust immunity afforded by such approval. Accordingly, the Commission rejects the NEC, AGAFBO, and the ALAFC positions regarding antitrust immunity in the Final Rule.

Section 35 also provides that the Commission may attach conditions to any exemption and may, by order, revoke any such exemption. The Commission has provided that these

[1] The supplementary information in the Notice of Proposed Rulemaking 46 FR 13243 provided that: "The proposed exemption would not confer antitrust immunity." NEC's comments took exception to this statement.

[2] Optional section 15 approval is available under 46 CFR 524.7.

agreements, although exempted, must be kept by the parties and available for inspection by the Commission during the term of the agreement and two years thereafter.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. The exemption will not impose any reporting or record keeping requirements which might result in a compliance or reporting burden on small entities. The exemption will primarily benefit carriers. The shipping public, some of whom undoubtedly are small entities may enjoy a secondary benefit from this exemption but it is not foreseen that this benefit will amount to a "significant economic impact," within the meaning of 5 U.S.C. 605(b).

PART 524—EXEMPTION OF CERTAIN AGREEMENTS FROM THE REQUIREMENTS OF SECTION 15, SHIPPING ACT, 1916

Accordingly, under sections 15, 35 and 43 of the Shipping Act, 1916 (46 U.S.C. 814, 833a and 841a) and 5 U.S.C. 553, the Federal Maritime Commission amends 46 CFR Part 524 as follows:

1. A new paragraph (e) is added to § 524.2, *Definitions* which reads:

§ 524.2 Definitions.

* * * * *

(e) A credit information agreement is an agreement between common carriers by water or their duly appointed representatives which provides only for the collection, compilation and exchange of credit experience information. Under such an agreement, the parties cannot discuss or agree on any matter which is required to be published in a tariff pursuant to the Shipping Act, 1916 or any rule published pursuant thereto.

2. A sentence is added to § 524.3, *Exemption of agreements* which reads:

§ 524.3 Exemption of agreements.

* * * Agreements as defined in paragraph 524.2(e) shall be kept by the parties and shall be available for inspection by the Commission during the term of the agreement and two years thereafter.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-6084 Filed 3-9-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

Connection of Terminal Equipment to the Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules concerning connection of telephone equipment to the telephone network to correct a typographical error and to correctly identify a standard reference document.

FOR FURTHER INFORMATION CONTACT: William H. von Alven, Common Carrier Bureau, (202) 632-6440.

SUPPLEMENTARY INFORMATION: In the matter of editorial amendment of §§ 68.308(b)(6)(iii) and 68.314(e)(1); Order.

Adopted: February 23, 1982.

[Released: February 24, 1982.]

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. We are amending an equation appearing in § 68.308(b)(6)(iii) to read as follows:

§ 68.308 [Amended]

* * * * *

(b) * * *

(6) * * *

(iii) For the four-wire conventional terminating set interface.

$$\text{tlf,tlr} > \begin{cases} 18 - 4\,\dfrac{\log\,(f/200)}{\log 2.5}\ \text{dB; for } 200 < f < 500\ \text{Hz} \\ 14\ \text{dB; for } 500\ \text{Hz} < f < 3200\ \text{Hz} \end{cases}$$

$$\text{RLi,RLo} > 3\text{dB}$$

* * * * *

The denominator, log 2.5, is missing in the current version of the rules.

§ 68.314 [Amended]

2. We are editorially amending § 68.314(e)(1) of the Commission's rules to correct a reference to a publication which has been superseded. The last sentence of this paragraph is changed to read:

A sufficient set of operating characteristics for interfacing with central office AIOD channels is contained in the Electronics Industries Association (EIA) Standard RS-464, Section 4.4.1., dated December 1969.

The original document, EIA Specification SP-1285, is no longer available.

3. Authority for this action is contained in section 4(i) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules. Since these changes are editorial in nature, the public notice, procedure and effective date provisions of 5 U.S.C. 553 do not apply.

4. Questions related to this matter should be directed to William H. von Alven, (202) 632-6440.

5. In view of the above, it is ordered, that the editorial amendments set forth herein are adopted, effective March 10, 1982.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307).

Federal Communications Commission.

Alan R. McKie,

Deputy Managing Director.

[FR Doc. 82-6387 Filed 3-9-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-569; RM-3889]

FM Broadcast Station in Kodiak, Alaska; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 266 to Kodiak, Alaska, in response to a petition filed by Kachemack Broadcasters, Inc. The assigned channel would provide a first commercial FM service to Kodiak.

DATE: Effective: April 27, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Report and Order; Proceeding Terminated

Adopted: February 18, 1982.

Released: February 26, 1982.

By the Acting Chief, Policy and Rules Division:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Kodiak, Alaska).

1. The Commission has under consideration a Notice of Proposed Rule Making, 46 FR 43208, published August 27, 1981, proposing the assignment of Class C FM Channel 266 to Kodiak, Alaska, in response to a petition filed by Kachemack Broadcasters Inc.

(petitioner).[1] Supporting comments were filed by the petitioner. No oppositions to the proposal were received.

2. Kodiak (population 4,756)[2] on Kodiak Island (population 9,939) is located in the Gulf of Alaska, approximately 400 kilometers (250 miles) southwest of Anchorage, Alaska. It is served locally by full-time AM Station KVOK (licensed to the petitioner) and noncommercial FM Station KMXT (Channel 261A).

3. In its comments, the petitioner restated the information contained in the Notice demonstrating the need for a first commercial FM station at Kodiak. Petitioner claims that the continued expansion of population and industry and the promise of future growth in this area emphasize the need to provide the first commercial FM service to this strategic transportation and service center. The proposed assignment would serve the public interest and promote the Commission's allocation policies as stated in its Revision of FM Rules (First Report and Order) in Docket 14185, 23 RR 1803 (1962), according to petitioner. Petitioner also reiterated its intent to apply for the channel if assigned.

4. The Commission believes that the public interest would be served by assigning Channel 266 to Kodiak, Alaska. The petitioner has shown that there is a need and it is willing to operate a first commercial FM service in that community. Although a community the size of Kodiak is not normally assigned a Class C channel, we proposed the assignment based on the remoteness of the community and its apparent need for a wide coverage area station. We also find no intermixture problems with the assignment since the Class A licensee operates a noncommercial station which would not be considered a competition.

5. Accordingly, pursuant to sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, it is ordered, That effective April 27, 1982, the FM Table of Assignments (§ 73.202(b) of the Commission's rules), is amended with respect to the following community:

City	Channel No.
Kodiak, Alaska	261A, 266

6. It is further ordered, that this proceeding is terminated.

[1] Kachemack is licensee of AM Station KVOK, Kodiak, Alaska.

[2] Population figures are taken from the 1980 U.S. Census.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-6393 Filed 3-9-82; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 83

[PR Docket No. 79-336; FCC 82-75]

Stations on Shipboard in the Maritime Services; Grant of General Exemption From the Radiotelegraph Requirements of the Communications Act to Certain United States Cargo Ships

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule to grant a general exemption from the radiotelegraph requirements of the Communications Act to cargo ships of 1600 gross tons and upward when engaged on coastwise voyages along the east, west and Gulf coasts of the contiguous 48 states. Since it could not be determined that radiotelephony on 2182 kHz would provide adequate safety coverage on all coastwise voyages to a distance of 150 nautical miles from land, additional communications requirements are specified in the rule for obtaining the general exemption.

EFFECTIVE DATE: April 2, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Adopted: February 11, 1982.

Released: February 24, 1982.

By the Commission: Commissioners Quello and Jones concurring in the result; Commissioner Fogarty dissenting.

In the Matter of Amendment of Part 83 to grant a general exemption from the radiotelegraph requirements of Title III, Part II of the Communications Act to United States cargo ships of 1600 gross tons and upward navigated solely on domestic voyages along the east, west or Gulf coasts of the contiguous 48 states.

1. A notice of proposed rulemaking and notice of inquiry in the above-captioned matter was released on January 3, 1980, and was published in the **Federal Register** on January 9, 1980, 45 FR 1924. The time for filing comments was extended by Private Radio Bureau Order released January 28, 1980, and was published in the **Federal Register** on February 1, 1980, 45 FR 7269. The time for filing comments and reply comments has expired.

2. By this action we are establishing the criteria for granting a general exemption from the requirements of section 351(a)(1)(A) of the Communications Act, which requires cargo ships of 1600 gross tons and upward to be equipped with a radiotelegraph station. In the Notice of Proposed Rule Making, we proposed to grant a general exemption from the radiotelegraph requirements for cargo ships of 1600 gross tons and upward that are navigated on coastwise voyages, so long as the ships are equipped with radiotelephone installations operating in the medium frequency (MF) bans. We have concluded however, that a radiotelephone installation operating solely in the MF band would not provide the necessary safety communications in all cases. Instead, to qualify for a general exemption ships must meet certain additional communications requirements. In particular, ships must possess a capability for radiotelephony via satellite and be equipped with very high frequency (VHF), high frequency (HF) and medium frequency (MF) terrestrial equipment. In addition, we are requiring that ships have radioteletype capability in the satellite and HF bands. The ships shall also have a radiotelegraph auto alarm to receive any distress messages on 500 kHz and have the capability to relay the distress message to a station having a radiotelegraph capability via any of the systems on the ship. We are also requiring that the ship participate in the Automated Mutual-assistance Vessel Rescue System (AMVER). In addition, we are specifying that the ship have adequate personnel on board to operate all of the systems installed and the capability to keep all systems in satisfactory operating condition.

3. Title III, Part II of the Communications Act of 1934, as amended, provides that unless an exemption is granted, all cargo ships of 1600 gross tons and upward must be equipped with a radiotelegraph (Morse code) station operated by one or more radio officers or operators. Pursuant to the statute, an exemption can only be granted to ships navigated not more than 150 nautical miles from the nearest land, and if it is determined that the routes of the voyages or other circumstances are such as to render full

application of the radiotelegraph requirements unreasonable or unnecessary. In determining whether a general exemption is warranted, we also must consider any effects on the efficiency of distress services for all ships. We have concluded that the alternate means of communications discussed above, if provided in lieu of the radiotelegraph installation, would provide equivalent or better communications for distress and safety. Therefore, we have concluded that for ships meeting the specified conditions the radiotelegraphy requirements need not be met.

Background

4. Congress allowed the Commission the discretion to grant exemptions from these radiotelegraph requirements set forth in section 351 of the Act. Section 352(b) of the Communications Act of 1934, as amended, provides in pertient part that:

> (b) Except for nuclear ships, the Commission may, if it considers that the route or the conditions of the voyage or other circumstances are such as to render a radio station unreasonable or unnecessary for the purpose of this part, exempt from the provisions of this part any ship or class of ships which falls within any of the following descriptions:
> * * * * *
> (2) Cargo ships which in the course of their voyage do not go more than one hundred and fifty nautical miles from the nearest land;
> * * * * *

5. The Commission has already granted exemptions from the radiotelegraph requirements of Title III, Part II to some cargo ships of 1600 gross tons and upward. For example, exemptions have been granted for ships whose special configuration allows them to navigate on the New York Barge Canal, [1] and ships that navigate on the Great Lakes 90% of the time but make occasional coastwise voyages when the Great Lakes are closed to navigation.[2]

6. In the past, the Commission has also received requests to exempt from the radiotelegraph requirements cargo ships that engage in coastwise voyages, but do not navigate in excess of 150 miles from land. The Commission has generally denied such requests on the ground that radiotelegraph systems are essential for the ship-to-ship communications necessary to ensure that each ship may act as a potential lifeboat for others in its same class. This conclusion stemmed from a belief that the effectiveness of the pool of mutual assistance is in direct ratio to the number of ships on international, as well as on domestic, voyages that are in the pool.[3] It is clear, however, that marine communications technology has changed dramatically in the past few years. Accordingly, our view of exemption requests must take these changes into consideration.

7. In recent years there have been substantial improvements in marine high seas radiotelephone communications as a result of the introduction of single sideband. Further, the Safety of Life at Sea Convention, London, 1974 (SOLAS, 1974) now requires that all compulsorily installed radiotelephone and radiotelegraphy ships maintain a continuous watch on 2182 kHz. Radiotelephone and radiotelegraphy ships subject to SOLAS, 1974 are also required to install a VHF installation to permit a listening watch to be maintained on the bridge. While ships of 1600 gross tons or more navigated on domestic coastwise voyages are not subject to SOLAS, 1974, they are required to be fitted with VHF in order to comply with existing safety regulations, such as bridge-to-bridge and vessel traffic services system requirements.

8. In addition, the United States Coast Guard has complete VHF coverage of the coastline of the contiguous 48 states up to a minimum distance of 20 nautical miles. Radiotelegraph ships with 2182 kHz transmit and receive capability are able to participate in both the VHF and MF safety systems. This capability establishes a link between radiotelegraph and radiotelephone ships.

9. Because of these developments, we proposed in this proceeding to grant a general exemption from the radiotelegraph requirement to all cargo ships of 1600 gross tons and upward. We left open, however, whether ships qualifying for this exemption would be permitted to operate up to 150 nautical miles from the nearest land as permitted in section 352(b)(2) of the Act, and expected to reach a determination on this issue after considering the comments received. In addition, we requested specific comments on: (a) Whether the Commission has the authority to grant a general exemption to ships of 1600 gross tons and upward, (b) the operational effectiveness of radiotelephony on 2182 khZ as compared to radiotelegraphy on 500 khz, and (c) whether a language barrier exists which would inhibit the effectiveness of radiotelephone for safety purposes.

Comments of Participants

10. In response to the Notice, we have received letters, formal comments and reply comments as follows:

a. Correspondence received (Appendix B)

(i) 33 Congressional inquiries on behalf of constitutents, of which 22 were radio officers.

(ii) 6 letters from Congressmen on their own behalf.

(iii) 15 letters from radio officers.

b. Comments were received from :

American Institute of Marine shipping (AIMS)
American Pacific Container Lines (AMPAC)
American Radio Association and Radio Officers Union (ARA/ROU)
Atlantic Richfield Company (ARCO)
Central Committee of Telecommunications of the American Petroleum Institute (API)
United States Coast Guard (USCG)
Communications Workers of America (CWA)
ITT Mackay Marine (ITT)
William N. Krebs (KREBS)
Maritime Administration (MARAD)
International Organization of Masters, Mates and Pilots (IOMMP)
Matson Lines (MATSON)
Department of the Navy (USN)
William B. Prechtl (PRECHTL)
Sun Transport, Inc. (SUN)
Texaco, Inc. (TEXACO)

c. Reply comments were received from:

AIMS
ARA/ROU
ARCO
Center for Law and Social Policy on behalf of Center for Environment Education, Coast Alliance, Defenders of Wildlife, Environmental Defense Fund, Environmental Policy Center, Friends of the Earth, Fund for Animals, National Wildlife Federation, Natural Resources Defense Council, Sierra Club, Society for Animal Protective Legislation and Wilderness Society (Environmental Agencies)
KREBS

d. *Ex parte* comments and oral presentations were made by AIMS, EXXON and ARA/ROU to the Commission and various staff members in the Private Radio Bureau and Office of Plans and Policy. A new proposal was submitted to consider individual exemptions based on improved communications rather than a general exemption. The criteria which the Commission would use to consider an individual exemption should be placed

[1] On these ships, the wheelhouse may be hydraulically lowered to clear low bridges.

[2] VHF radiotelephone in the band 156.250–162.000 MHz is used as the safety system on the Great Lakes; MF radiotelephone systems were replaced by VHF as provided for in the most recent Great Lakes Agreement between the United States and Canada, which entered into force May 6, 1975.

[3] See, for example, *Request for Reconsideration of Previous Denial of Exemption from the Radiotelegraph Provisions, Memorandum Opinion and Order*, aff'd sub nom. *Spentonbush Fuel Transport Service, Inc.* v. *FCC, 315 F. 2d 198 2nd Cir. (1963).*

in the rules for guidance for the applicant.

11. A summary of each comment and reply comment received is attached in Appendix D in alphabetical order. The Comments and reply comments addressed several main issues, which are set out in the following paragraphs.

12. All of the radio officers believed that the marine safety system would be severely derogated if the radiotelegraph were removed from ships engaged on coastwise voyages. The comments noted that, because a ship radio officer's sole duty is communications, during any distress situation, his entire attention may be devoted to passing distress traffic. They also point out that radio operators, as a result of their professional training, are able to fine-tune equipment so as to receive communications under adverse conditions of noise and other sources of interference. Further, they assert, certain types of messages such as weather and MEDICO messages are more efficiently received by telegraphy by experienced operators. The radio operators believed in addition that radiotelegraph is more accurate than radiotelephone under all conditions and point out that no language barrier exists in radiotelegraphy communications. Similarly, many of the commenters did not believe that a radiotelephone watch officer would be a satisfactory substitute for a ship's radio officer because of the asserted lack of communications professionalism of the deck officers, and because a deck officer's radio duties would be secondary to his deck duties. Other commenters stated that the radio discipline on the radiotelephone distress frequency is so poor and the volume of traffic so great, that the deck officer turns down the volume and adjusts the squelch to the point that no effective watch is maintained on the radiotelephone distress frequency.

13. Other commenters, respond, however, that during a distress it is undesirable to have complete control of communications in the hands of one person. In their view, reliance for communications on one person in a distress situation reduces a ship's effectiveness, particularly during the on-scene phase of the rescue operation. They also point out that some information contained in weather and MEDICO messages can be passed more rapidly by radiotelephone even though the information may have to be repeated to ensure accuracy. They believe in addition that no language barrier exists for radiotelephone transmissions since English is the universal language for maritime navigation and all ships have English speaking deck officers for VHF communications when entering port areas. Finally, these commenters point out that the radiotelegraph watch maintained by a radio operator is only for an 8 hour period. The remaining 16 hours are guarded by an auto alarm. Further, they assert, auto alarm systems are greatly affected by atmospherics and during periods of high atmospheric noise the auto alarm is practically useless. Hence, they challenge the alleged safety benefits of maintaining a radio officer, since his watch is effectively limited to only 8 hours out of any 24 hour period.

14. AIMS (API and EXXON associating themselves with AIMS) supported the proposal stating that, while the 5000 kHz safety system has proved to be effective, other systems which include MF, HF and VHF radiotelephony and satellite communications are capable of producing an even more effective safety system. However, in defining a safety system, they believe that certain distance parameters should be established that would coincide with the radio equipment now available to cover such defined areas. AIMS also submitted a proposal which recommended the necessary equipment for a general exemption based on varying distances from land.[4] In addition, AIMS recommends that to qualify for the exemption ships be required to participate in the AMVER system.[5]

15. ARA/ROU oppose a general exemption because they believe it has not been established that requiring radiotelegraph installations on ships on coastwise voyages is unreasonable or unnecessary. According to ARA/ROU, because the density of shipping increases as ships approach port areas, the routes of coast-wise voyages are as hazardous as, or more hazardous than, ocean voyages. They also believe that a general exemption would remove these ships as potential lifeboats to other large ships in distress and would derogate the safety system. They point out that, because environmental conditions of strong winds, heavy seas and storm conditions are usually prevalent during distress situations, ship surivors and ships rely heavily on large ships to provide assistance, since these ships are equipped with radiotelegraph, auto alarm and direction finding equipment.

16. The US Navy is also opposed to the proposal on grounds that it would remove coastal ships from participation in international agreements for guarding 500 kHz and inhibit lending aid to ships in distress. Like ARA/ROU it believes coastal trade, out to 150 nautical miles, is more congested and dangerous than ocean traffic. Further, because the coastal belt is heavily used by international shipping, and since foreign ships do not guard 2182 kHz (the radiotelephone distress frequency), the Navy fears that there will be no distress guard between international and U.S. coastal shipping.

17. In the NPRM/NOI we expressly requested comments on the maximum distance from land that might be appropriate for granting a general exemption. The commenters were nearly unanimous in their view that 2182 kHz was not effective up to 150 nautical miles.[6] The Coast Guard, which by statute is authorized to assume operational responsibilities relating to maritime distress, safety and protection of life and property on the high seas and coastal areas, points out that its coverage on 2182 kHz is restricted to 70 nautical miles. Thus, it states, because the Coast Guard station cannot provide a safety system on 2182 kHz equivalent to 500 kHz, a general exemption based on the radiotelephone distress frequency 2182 kHz would not be feasible at this time.[7]

---

[4] These recommendations are shown in Appendix C. In this docket, we are only considering the recommendation to distances up to 150 nautical miles from the nearest land with equipment operating in all of the above listed bands.

[5] AMVER—Automated Mutual-assistance Vessel Rescue System is operated by the Coast Guard and is an international system which provides important aid to the development and coordination of Search and Rescue (SAR) efforts. Merchant ships of all nations are encouraged to send voluntary sailing reports to the AMVER Center to be entered into the electronic computer which generates and maintains dead reckoning positions for the ships. Characteristics of the ships which are valuable in SAR efforts are also entered into the computer from available sources of information.

[6] A technical analysis comparing the range of 500 kHz and 2182 kHz prepared by Mr. George W. Haydon of the National Telecommunications and Information Agency (NTIA) was submitted by ARA/ROU. In this report, Mr. Haydon determined that 500 kHz was more effective than 2182 kHz to distance up to 150 nautical miles. AIMS, in their reply comments, submitted excerpts from a technical report prepared by Mr. William A. Kissick, which was prepared for the Coast Guard. In this report, charts, were submitted which showed coverage on 2182 kHz to distances beyond 150 nautical miles along the coast of the U.S. These reports are further discussed in footnote 21.

[7] The Coast Guard also states the AMVER systems reports are more easily handled on either manual or automated telegraphy than by radiotelephony. It explains that ships reporting into the AMVER system usually report in on high frequencies. Thus, because the Coast Guard capability to handle a large number of AMVER messages by radiotelephony is limited, the Coast Guard is not prepared to accept a significant number of nondistress messages by radiotelephony in either the MF of HF frequency bands.

18. On June 18, 1981, and *ex parte* presentation was made by EXXON Communications Company which requested that Section 83.480 of the Commission's rules be amended to set forth specific conditions under which the Commission would grant requests for exemption to distances beyond 70 nautical miles up to the statutory limit of 150 nautical miles. In EXXON's view, to be considered for exemption for distances between 70 and 150 nautical miles, a ship should report to AMVER as recommended by that system and have at least the following communications equipment installed:

a. Satellite earth terminal providing both voice and telex with a main, emergency and reserve source of energy;

b. HF single sideband radiotelephone capable of operating on any designated safety and distress channel;

c. Radiotelephone installation which fully complies with the rules applicable to the 2182 kHz distress watch receiver;

d. Narrow-band direct-printing telegraphy with SITOR; and

e. At least two VHF transceivers.

19. ARA/ROU made an *ex parte* presentation in response to EXXON. ARA/ROU believe that the shift from a general exemption to individual exemptions based on installation of certain communications equipment, as proposed by EXXON, is deceptive. ARA/ROU believe that, because there would be no examination by the Commission of the individual circumstances affecting the safety of the particular ship, EXXON's approach would be similar to a general exemption. That is, any ship having the prescribed equipment would be treated the same, even though the route and conditions of the voyages and other circumstances relating to safety might differ in the various coastal areas and among the different types of ships. ARA/ROU also object to the specifics of EXXON's proposal, arguing that:

a. There is not now nor is there any early plan for a safety system based on using satellite terminals on ships;

b. SITOR facilities are used between shore and ship stations. There is no direct ship-to-ship communications during distress. SITOR terminals automatically shut down under poor signal conditions leaving blank spaces which are unacceptable for distress communications.

c. The FGMDSS [8] will require selective calling. SITOR is not an effective substitute for selective calling. SITOR is effective only when used in a one-to-one shore communications link in the ARQ mode. When used in the FEC mode, SITOR can only detect errors which appear as blank spots in the transmission. There is no SITOR frequency dedicated to distress.

d. U.S. ships now report to AMVER, but foreign ships are not required to participate.

Finally ARA/ROU state that EXXON merely proposes a hodge-podge of equipment which would frustrate the requirement to maintain a satisfactory safety system during the transition to FGMDSS. According to ARA/ROU, the EXXON proposal also does not create a competitive market for equipment or encourage development of improved telecommunications, but simply an inferior system that would result in the loss of lives.

20. Additional *ex parte* presentations were made by both ARA/ROU and EXXON concerning points previously raised. One of the points of major differences was the coverage and effectiveness of satellite communications for safety purposes. ARA/ROU assert that a ship terminal requires a stable platform for transmission and that satellite antennas must be accurately directed to the satellite irrespective of the motion of the ship. Accordingly, ARA/ROU conclude that satellite communications is basically only a "fair weather" mode. ARA/ROU also state that satellite coverage between 10 and 5 degrees elevation angles over the horizon is marginal in the Gulf of Mexico from Tampa, Florida to New Orleans, Louisiana and west of New Orleans, Louisiana to Brownsville, Texas there is no satellite coverage. EXXON responds that the MARISAT/INMARSAT system provides reliable coverage down to 5 degrees and diminishing quality communications down to the horizon. According to EXXON, MARISAT coverage exists in all coastal waters except for that portion of the western Gulf of Mexico, and for these waters the Commission could consider alternate means of communications available for safety and distress in the MF, HF and VHF bands. EXXON also states that a new satellite will be operational in February 1982, which will provide additional coverage for the Atlantic coast and throughout the entire Gulf of Mexico. EXXON also disagreed with ARA/ROU statements concerning the reliability of satellite communications during severe weather conditions.

21. The Coast Guard, in its comments on the *ex parte* proposals, states its view that the provision of additional equipment, along with the capability to operate and maintain all the ship's systems used for distress and safety would be an adequate substitute for the mandated radiotelegraph system. In its opinion, the following equipment should be required:

a. A satellite earth terminal providing both voice and telex.

b. A single sideband radiotelephone with voice channels capable of operating on any distress and safety frequency in the maritime bands.

c. Narrow-band direct-printing radiotelegraphy with SITOR.

d. An IMCO required 2182 kHz radiotelephone distress frequency watch receiver with a radiotelephone alarm generator.

e. At least two VHF transceivers.

f. Provision for emergency and reserve power sources.

g. A 500 kHz auto alarm receiver and the capability of relaying the distress message to shore via one of the systems listed above.

The Coast Guard also recommends that ships qualifying for the general exemption be required to participate in the AMVER system, and, further, that the ships maintain and operate all of the ships' systems used for distress and safety in accordance with §§ 83.155(d) and 83.162 of the Commission's rules.

22. The opposing commenters in this proceeding also vigorously dispute the Commission's legal authority to grant the general exemption originally proposed in this docket. The American Radio Association-MMP and the Radio Officers Union-MEBA ("ARA/ROU") also assert that, even if the Commission has such authority, it may not grant such an exemption or promulgate such a rule without further notice of proposed rule making.

Discussion

A. Authority To Promulgate a Final Rule Without Further Notice

23. In a reply, dated August 26, 1981, to an *ex parte* presentation by EXXON, the ARA/ROU, by its attorney, described what in their view are two procedural barriers to granting a general exemption by final rule without further notice of proposed rule making.

24. The first objection of ARA/ROU is that the Commission's notice of proposed rule making and notice of inquiry in this docket did not "wholly meet" the requirement of section 553(b)(2) of the Administrative Procedure Act, 5 U.S.C. 553(b), that a notice of proposed rule making contain "reference to the legal authority under which the rule is proposed." In support of their contention, ARA/ROU point out that paragraph 10 of our notice cited only section 4(i) and 303(r) of the Communications Act of 1934, as

[8] See paragraph 36 for discussion of FGMDSS.

amended, and did not cite section 352(b) of the Act.[9] The short answer to this contention is that, while paragraph 10 of our notice did not cite section 352(b), paragraph 4 of our notice expressly did so, even so far as to quote the relevant language of the section on which we were relying. Further, paragraph 9(1) of our notice made the question of our authority to grant the proposed exemption a principal question in our inquiry. For these reasons, we feel this objection is without merit.

25. The ARA/ROU also objects that the exemption and rule we are hereby adopting is beyond the scope of our notice of proposed rule making and notice of inquiry in this proceeding and consequently cannot be adopted, if at all, without further notice of proposed rule making.

26. In this connection, ARA/ROU point out that our notice did not expressly mention that such items as satellite communications, SITOR [10] and participation in AMVER might be considered as grounds for granting an exemption.[11] ARA/ROU further assert that the Administrative Procedure Act requires that notice be published in the **Federal Register**, and because the proposals by AIMS/EXXON (and presumably by the Coast Guard) were not published in the **Federal Register**, they may not be used as a basis for consideration in our decision to grant a general exemption.

27. Having duly considered these objections, we conclude that further proceedings are not required, and indeed are not warranted. We believe that the Notice of Proposed Rule Making and Notice of Inquiry adequately informed the public of the "terms and substance of the proposed rule or a description of the subjects and issues involved," as required by the Administrative Procedure Act, 5 U.S.C. 553(b)(3). The rule ultimately adopted need not be identical to those proposed, but may take into consideration factors brought out in the comments. "Surely every time the Commission decides to take account of some additional factor it is not required to start the proceedings all over again." *Logansport Broadcasting Corp.* v. *United States*, 210 F. 2d 24, 28 (1954). We conclude that the rules are within the scope of the original notice and do not require further notice for several reasons. First, the requirement that the equipments and procedures mentioned be conditions for a vessel to qualify for the exemption results in a substantially lesser "scope" of exemption than the one originally proposed. Second, our original notice did not limit itself as to the considerations which might be taken into account in granting such an exemption.[12] Third, all interested members of the public who participated in this proceeding were on actual notice that the Commission was considering these matters and, in fact, vigorously participated on the record in their consideration. Fourth, the record of the proceeding is replete with discussion of all possible nuances of our proposal. Accordingly, we feel that further proceedings would not result in any further facts or arguments not now on the record, and would result in repetitive discussion and waste our resources and those of the public.

B. Legal Authority for the Exemption Herein Adopted

28. The ARA/ROU argue vigorously that the Commission lacks the legal authority to adopt the exemption proposed in our notice. AIMS, on the other hand, argues with equal vigor that the Commission has such authority. We conclude that we do have authority to adopt the exemption for the following reasons.

1. *The Language of the Act Confers Exemption Authority*

29. Without regard to the legislative history of the Act (which is discussed below), the plain text of the applicable provisions of the Act grant the Commission authority to adopt this exemption. A brief discussion of those provisions is essential to illustrate this conclusion. Section 351(a)(1) of the Act imposes the radiotelegraph requirement on cargo ships of 1600 gross tons and upward. In relevant part, section 351(a)(1) reads as follows:

"Except as provided in section 352 hereof it shall be unlawful for any ship of the United States * * * to be navigated in the open sea * * * unless such ship is equipped with an efficient radio station * * * as specified by subparagraphs (A) * * *." Subparagraph (A) of Section 351(a)(1) reads in relevant part: "* * * cargo ships of one thousand six hundred gross tons and upward shall be equipped with a radiotelegraph station * * *." Section 352(b) gives the Commission the authority to exempt ships from the requirements of section 351. In relevant part, section 352(b) reads: "* * * the Commission *may*, if it considers that the route or the conditions of the voyage *or other circumstances* are such as to render a radio station unreasonable or unnecessary for the purpose of this part, exempt from the provision of this part any ship or classes of ship within * * * the following description * * * cargo ships which in the course of their voyage do not go more than one hundred and fifty nautical miles from the nearest land * * *." (emphasis supplied).

30. Even the ARA/ROU appears to concede that, read literally, this language appears to grant the Commission authority to exempt cargo ships of 1600 gross tons and upward from the radiotelegraphy requirement.[13] Thus, for purposes of the exemption here at issue, and reading the Act literally, the Commission could exempt a "class of ships", namely cargo ships which do not go more than 150 nautical miles from land, from the requirement to carry any radio station whatever if the Commission concluded that "other circumstances" rendered a radio station "unreasonable or unnecessary".

31. It is a standard rule of statutory construction that, if the plain language of a statute authorizes an action, the courts need not look to the legislative history of it. However, because the ARA/ROU make strong arguments that such a literal construction of the statute is not warranted by other provisions of the Act read in the light of the legislative history, we will discuss the legislative history.

2. *The Legislative History Permits The Exemption Hereby Adopted*

32. The ARA/ROU contend that, even if the Commission were to conclude (as we have) that an exemption such as the one proposed were warranted, this conclusion would constitute an administrative agency policy

[9] Sections 4(i) and 303(r) confer general rule making authority on the Commission. Section 352(b) confers the specific authority to grant exemptions from the provisions of Part II of Title III of the Act.

[10] SITOR (Simplex Telegraphy Over Radio) involves three modes:

a. ARQ—Automatic Retransmission Request.

b. FEC—Forward Error Correction (Broadcast mode).

c. SEL FEC—Selective Forward Error Correction (Broadcast mode) limited to an addressee or collective addressees.

[11] In passing, we note that our notice also did not mention 2 VHF transceivers and the 500 kHz auto alarm equipment, as proposed by the U.S. Coast Guard in this proceeding, which is incorporated in our final rule granting an exemption.

[12] In this regard, the Commission in paragraph 6 and footnote 3 thereto expressly notified the public that it was considering reversing past practice of not granting general exemptions from radio telegraphy requirements except under the most rigorous conditions. Further, paragraph 7 in the notice sets forth an illustrative, but not exclusive, list of recent developments which warranted this reconsideration of past practice. See paragraph 7 above.

[13] The ARA/ROU, however, argue that the legislative history of these provisions precludes such a literal reading. This argument is treated below.

determination in favor of radiotelephony over radiotelegraphy in violation of the clear intent of Congress to require radiotelegraphy. If this is so, of course, legislative action by the Congress would be required to permit the exemption, in spite of our decision on the merits, because use of telegraphy would be compelled by statute.

33. Without belaboring the extensive record in this proceeding, we agree with ARA/ROU that, in the past, Congress clearly contemplated that United States cargo ships of 1600 gross tons or more on coastwise (domestic) voyages would "track" the radio communications standards, namely the requirement of telegraphy capability and the concomitant requirement for radio officers, established by the Safety of Life at Sea Convention (SOLAS) for vessels on international voyages.[14] Nor is there any doubt that, in the past, and until very recently, the Commission has expressed a view that it might not have the authority to grant a general exemption relieving the requirement.[15]

34. Having so stated, however, we nevertheless conclude that the disjunctive phrase "or other circumstances" in section 352 permits the Commission to consider intervening historical and technical developments as factors in deciding whether or not to exempt a "class of ships" from the requirement to carry radiotelegraph equipment. As set forth in our notice in this docket and as fully explained in this report and order, communications developments have occurred which, in our opinion warrant the adoption of this exemption. The fact is that, because of recent equipment requirements, all telegraphy vessels are now mandatorily equipped with telephony equipment which renders them *de facto* members of the "mutual pool of assistance".[16] Further, the additional and clearly stringent capabilities we are imposing as conditions for qualifying for the exemption hereby adopted further ensure the ability of vessels of 1600 gross tons and upward to participate in both the domestic and international "safety system". Because adherence to these conditions renders the radiotelegraph requirements unreasonable and unnecessary, these developments and conditions constitute, in our view, precisely the kind of "other circumstances" that the Congress intended we could consider in exercising the very broad exemption power clearly and literally conferred by section 352 of the Act. Certainly, nothing in the legislative history cited by ARA/ROU precludes such an interpretation.

35. Our past doubts on the scope of our exemption power are also no bar to this conclusion. See *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 169–170 (1968). Furthermore, while legislation to clarify whatever ambiguity might attend this question would be useful, it is not necessary to deciding it. Consequently, we have concluded that the Act empowers us to grant the exemption hereby adopted and that it is warranted by the technical, operational and practical considerations discussed elsewhere in this report and order.

C. Justification For The Exemption

36. After carefully considering the comments in this proceeding we conclude that, where ships meet specified radio equipment and other safety requirements, it is unreasonable and unnecessary to require these ships to meet the radiotelegraphy requirement set forth in section 351 of the Act. As stated earlier,[17] this conclusion is based primarily on the significant advances that have occurred in radiotelephony in the 45 years since enactment of section 351 and on factors relating to the changing characteristics of the maritime distress system. The present maritime distress system is based on the principle that a ship in distress alerts another ship on 500 kHz for radiotelegraphy ships and on 2182 kHz for radiotelephony ships. However, efforts to improve the present system led the IMCO Maritime Safety Committee in 1981 to adopt a proposal for a Future Global Maritime Distress and Safety System,[18] which will essentially consist of the ship-to-shore distress alerting of a rescue coordinating center (RCC) and the shore-to-ship alerting by the RCC of the most suitable rescuing ship or ships. The FGMDSS concept, which has been approved by the IMCO Maritime Safety Committee with a goal of adoption by 1990, plans to make maximum use of satellite techniques including satellite Emergency Position Indicating Radio Beacons (EPIRB's) and digital selecting calling. Other improved communications utilized in the system concept are narrow-band direct-printing and single sideband voice. In essence, the FGMDSS will provide integrated use of all the maritime mobile frequency bands to ensure transmission and reception of distress and safety calls at short, medium and long range.[19] Thus, it seems clear that a substitution of terrestrial radiotelephony, satellite, and narrow-band direct-printing equipment instead of manual radiotelegraphy equipment is fully consistent with modern concepts of structuring maritime distress systems, such as the planned FGMDSS system, and, in our view, will provide an effective safety communications system prior to the transition period to the FGMDSS.

37. Moreover, we note that, about 7 years ago, the US Navy itself removed the 500 kHz equipment and watch requirements on naval ships. Radiotelephony and radio teletype were substituted as a means of providing satisfactory and secure communications for command and control of the ships, and resulted in its removal of all naval ships from the radio telegraph pool of mutual assistance. Despite that, there have been no reports of accidents to other ships or derogation of the radiotelegraphy pool of mutual assistance as a direct result of the removal of this 500 kHz capability from naval ships. This record, we believe, provides additional evidence that reliance on radiotelephonic communications is unlikely to have an adverse effect on overall distress communications.[20]

38. In reaching this conclusion, we concede that the most efficient watch may be that which is maintained by a radio officer during the period he is on duty. However, we also recognize that, during the period that the watch is maintained on the auto alarm, there may

[14] See for example ARA/ROU "Comment" dated April 18, 1980, in this docket, at page 11.

[15] See ARA/ROU "Comment", at pages 12–17.

[16] See paragraph 6 of our notice of proposed rule making and notice of inquiry in this docket. See also paragraph 7 above.

[17] See para. 7, *supra*.

[18] Details of the concepts, operations and equipment requirements of the FGMDSS are contained in the Sixth Notice of Inquiry, Docket No. 20274, FCC 81–72, released March 12, 1981 (46 FR 16692; March 13, 1981).

[19] In the FGMDSS, short range does not exceed 25 miles. Medium range does not exceed 100 miles. Long range exceeds 200 miles.

[20] We note that the Maritime Administration proposes to commence implementing Public Law 96–387, which when funded will pay ship operators to install communications equipment on ships found to be suitable for use by the U.S. Government in time of war or national emergency. This equipment is expected to improve communications between U.S. Navy and U.S. merchant marine ships. All U.S. cargo ships of 1000 gross tons and upwards which are likely to be involved in national security support operations are eligible to receive subsidies to install National Defense Features (NDF) communications to participate in this program. In recent years a gap developed between U.S. Navy ship and U.S. merchant marine ship communications when the U.S. Navy removed their radio telegraph installations for higher capability communications systems. These NDF installations are intended to provide the necessary facilities for long-distance communications between U.S. Navy and U.S. merchant ships. The NDF equipment consists of the following:

a. One high frequency transmitter;

b. Two high frequency receivers;

c. One marine digital selective calling system; and

d. One MARISAT terminal.

be a decrease in efficiency since the auto alarm is subject to false alarms and equipment malfunctions. Furthermore, although the deck officer has other duties in addition to maintaining the radio watch, we believe, nevertheless, that this watch is satisfactory for safety purposes. Indeed, during certain phases of distress situation, it may be especially desirable to have the communications on the bridge where the ship is being operated. As to the fears of some commenters that the deck officer may disable the receiver to reduce the noise of the bridge, we observe that the Commission can only specify the required equipment and establish operational requirements; it is ultimately the responsibility of the master to ensure that the operation is in accordance with our rules.

39. Finally, the Commission recognizes that each capability, such as SITOR and satellite communications, that we are imposing as a condition for the general exemption has its unique limitations. However, we believe that the cumulative effect of requiring the installation of all these capabilities clearly results in an adequate substitute for manual Morse telegraphy and, therefore, constitutes a sufficient basis for granting a general exemption. We also do not believe that the language barrier on radiotelephony exists to a degree that it inhibits safety communications. The English language is the universal language used in the maritime service for communications on VHF in port areas. Moreover, use of the IMCO "Standard Marine Navigational Vocabulary" provides that standard for satisfactory verbal communications.

40. As suggested by the foregoing, we have also studied the proposals for additional equipment and the Coast Guard's comments on the efficiency of this enhanced communications for safety purposes.[21] We conclude that the recommendation of the Coast Guard, which would require the provision of additional equipment, participation in the AMVER system, and the capability to operate and maintain all of the installed communications equipment in accordance with §§ 83.159 and 83.162 of the Commission's rules respectively, satisfies the requirement for a general exemption.[22] In sum, in order to qualify for the general exemption we believe that ships must be equipped with radiotelephone equipment operating in the MF, HF, VHF and satellite bands. The HF and satellite installations must also be capable of TELEX operation with SITOR. Moreover, ships must be equipped with the radiotelephone distress frequency watch receiver with a radiotelephone alarm.

41. In view of foregoing, we conclude that § 83.480 of the rules can be amended to grant the general exemption for ships meeting all of the specified criteria.

42. Regarding questions on matters covered in this document contact Nicholas G. Ragnato (202) 632–7175.

Action

43. Accordingly, It is Ordered, That under the authority contained in Sections 4(i), 303(r) and 352(b) of the Communications Act of 1934, as amended, Part 83 of the Commission's rules be amended as set forth in the attached Appendix A effective April 2, 1982.

44. It is further ordered, that this proceeding is terminated.

[21] Technical analysis which compared the communications range of 500 kHz and 2182 kHz prepared by Mr. George W. Haydon of the National Telecommunications and Information Agency (NTIA), was submitted by ARA/ROU. AIMS, in their reply comments, submitted excerpts from a technical report prepared by Mr. William A. Kissick of NTIA, which was prepared for the Coast Guard. Certain assumptions were made in each of these reports which prevent direct comparison such as different values for the RF signal-to-noise density ratio, different emissions and different power outputs. However, when adjustments were made for comparison of the minimum coverage distances, both reports were found to be substantially the same. The Kissick report is misleading because it is a computer analysis of coverage under given conditions. The actual Coast Guard coverage in 2182 kHz is 70 nautical miles and is limited by the receivers installed. There is no program to change receivers to enhance the coverage to 150 nautical miles. In light of these limitations several commenters stated that it was necessary to supplement 2182 kHz with HF frequencies to assure communications when 2182 kHz is ineffective due to either the attenuation of ground waves or high noise conditions. It was suggested that 4125 and 6215.5 kHz be designated for distress and safety purposes in the Radio Regulations. In the United States, however 4125 kHz is available to limited coast/ship stations. Accordingly, before making this frequency available for distress and safety purposes, it would be necessary to obtain a replacement frequency for these limited coast/ship stations. In addition, the United States is now preparing its proposals for the 1983 World Administrative Radio Conference for Mobile Telecommunications, which will be held in Geneva beginning February 23, 1983, and one of the items on the agenda is a proposal to use 4125 kHz and 6215.5 kHz to supplement the carrier frequency 2182 kHz for distress and safety purposes. We believe it would be inadvisable to assign any additional high frequencies for distress and safety communications prior to the Conference.

[22] In light of these conclusions, and the fact that exempt vessels so fitted will function efficiently in a safety system, we further conclude that there will be no impact on safety and consequently no impact on the environment. Consequently, the preparation of an environmental impact statement, as suggested by one commenter, is not necessary before adopting the general exemption. This rulemaking does not involve any of the classes of "major action" requiring preparation of an environmental impact statement. See 47 CFR 1.1305.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Note.—Due to the ongoing effort to minimize publishing costs, Appendices B through D will not be printed herein. However, they are available for inspection in the Commission's Docket Branch, Room 239, 1919 M St. NW., Washington. D.C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Section 83.480 is amended by revising the title of the section redesignating existing paragraph (c) as (d) and adding new paragraph (c) to read as follows:

§ 83.480 General and individual ship exemptions.

* * * * *

(c) Exemption from the radiotelegraph requirements of Title III, Part II of the Communications Act of 1934, as amended, is granted to cargo ships of 1600 gross tons and upward navigated on domestic voyages along the coasts of the contiguous 48 states if the following criteria are met:

(1) The routes of the voyage are never more than 150 nautical miles from the nearest land.

(2) The ship shall have a satellite terminal providing both voice and telex.

(3) The ship shall have a single sideband radiotelephone with voice channels capable of operating on any distress and safety channel in the marine bands.

(4) The ship shall have a narrow-band direct-printing radiotelegraph with SITOR.

(5) The ship shall have the required 2182 kHz radiotelephone distress frequency watch receiver with a radiotelephone alarm signal generator.

(6) The ship shall have at least two VHF transceivers.

(7) The above equipment shall have provisions for emergency and reserve power sources.

(8) The ship shall have a 500 kHz auto alarm receiver and the capability of relaying the distress messages received to shore via one of the systems listed above.

(9) The ship shall participate in the AMVER system.

(10) The ship shall have the capability to operate and maintain all of the ships systems used for distress and safety in accordance with §§ 83.155(d) and 83.162 of the Commission's Rules respectively.

(d) * * *

[FR Doc. 82-6389 Filed 3-8-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of effective date.

SUMMARY: This notice publicizes the effective date of certain foreign reporting requirements that were included in the final rules implementing the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

EFFECTIVE DATE: March 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1658, Juneau, Alaska 99802, Telephone 907–586–7221.

SUPPLEMENTARY INFORMATION: With several exceptions, the rules implementing the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (46 FR 63295) became effective on January 1, 1982. The effective date of § 611.93(d), "Additional reporting requirements," was delayed until the reporting requirements were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Director of OMB approved § 611.93(d) on February 18, 1982, and assigned it OMB control number OMB 648–0075. Accordingly, the effective date of § 611.93(d) as set forth in the final rules implementing the FMP is March 10, 1982.

Dated: March 5, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-6500 Filed 3-9-82; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 611

Foreign Fishing in the North Pacific Ocean and Bering Sea

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The NOAA issues final regulations on foreign check-in requirements off Alaska. Foreign fishing vessels carrying fish caught outside U.S. fishery conservation zone (FCZ) are subject to inspection by an authorized officer before catching or processing fish within the FCZ seaward of Alaska if notified that an inspection is required. This regulation will prevent reporting fish caught in the FCZ as being caught outside the FCZ.

EFFECTIVE DATE: April 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, Telephone (907) 586–7221.

SUPPLEMENTARY INFORMATION: Foreign fishing vessels in the FCZ are required by 50 CFR 611.9 to maintain daily cumulative catch and transfer logs for fish harvested, processed, or transferred in the FCZ. Catch logs or other records are not required for fish caught outside the FCZ and brought in, although some vessels voluntarily report their catch. These undocumented fish preclude enforcement officers from determining what proportion of fish on board a foreign fishing vessel was taken from the FCZ. Therefore, this amendment establishes procedures that ensure accountability for all of the catch on board, by requiring foreign fishing vessels either to enter the FCZ off Alaska with an empty hold or to document fish in the hold when entering the FCZ. This amendment will facilitate enforcement of the catch reporting rules required by 50 CFR 611.9. The proposed rulemaking was published on October 3, 1980 (45 FR 65641). Comments were invited for 60 days, and three letters were received. A summary of their comments and NOAA's response appear below.

Comments

The proposed rulemaking was published on October 3, 1980 (45 FR 65641). Comments were invited for 60 days, and three letters were received. A summary of their comments and NOAA's responses appear below.

1. To minimize time losses due to a required inspection, at least 6–12 hours advance notice of the inspection or waiver of the inspection should be given before the starting time reported in the BEGIN notice. If the inspection is required, the inspection should be conducted within a reasonable period before the start of fishing reported in the BEGIN notice, at a position which will not require the vessel to deviate from its course.

2. If an inspection would cause the foreign vessel to lose fishing time, then a notice waiving the inspection should be issued.

3. Foreign fishing fees have already been paid to offset the costs of enforcing this regulation; therefore, any inconvenience which would result in delays or additional operating costs should be absorbed by the Coast Guard rather than passed on to the foreign vessel.

4. The proposed regulations can cause many misinterpretations and it is suggested that a simpler form of the regulations be drafted.

5. The U.S. enforcement officers always have the right to inspect the catch on board a fishing vessel whenever they think necessary, and there is no reason to repeat this authority once again in these regulations.

6. It is understood that the fish caught in the FCZ other than in the Alaska Region need not be reported upon entering the FCZ seaward of Alaska.

Response to Comments

1 & 2. A vessel which has made the required BEGIN and PRODUCT ABOARD reports may begin fishing twenty-four hours after such reports, unless notified that an inspection will be required. Since U.S. surveillance vessels cover a broad area, a foreign fishing vessel may have to await the arrival of an authorized inspection officer or deviate from its course to meet the authorized officer.

3. Additional costs to the U.S. resulting from implementing and enforcing these regulations will not be passed on to the foreign fishing vessel inspected.

As mentioned above, authorized officers requesting an inspection will make an effort to minimize any inconvenience to the foreign fishing vessel inspected; however, costs to the fishing vessel which may result from procedures to comply with these regulations will be absorbed by that vessel.

4. The final regulations have been redrafted. Any time a vessel enters the FCZ seaward of Alaska with fish or fish products onboard caught outside the FCZ, it will have to report the fish.

5. The purpose of this regulation is not to reiterate U.S. authority to inspect foreign vessels within the FCZ, but rather to require those vessels to make a report which may serve as the basis for an exercise of such authority.

6. Upon entering the FCZ seaward of Alaska, foreign fishing vessels are required to report only those fish caught outside of the U.S. FCZ. Fish caught elsewhere within the U.S. FCZ will have been recorded in the daily cumulative catch logs and reported in the weekly

catch report required under 50 CFR 611.9.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this amendment to the foreign fishing regulations is necessary and appropriate to the conservation and management of Alaska groundfish resources, and that it is consistent with the national standards of the Magnuson Fishery Conservation and Management Act (MFCMA), other provisions of the MFCMA, and other applicable law. He also has determined that this is not a major Federal action significantly affecting the quality of the human environment, and that it therefore does not require preparation of an environmental impact statement under Section 102(2)(C), the National Environmental Policy Act.

The Administrator of the National Oceanic and Atmospheric Administration has determined that this regulation is not a "major rule" requiring a regulatory analysis under Executive Order 12291; since it is a foreign fishing reporting requirement, it will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or exports markets.

The Administrator has determined that this recordkeeping requirement on foreign fishing vessels will not have a significant economic impact on a substantial number of small entities, and thus does not require the preparation of a regulatory flexibility analysis under 5 U.S.C. 603 and 604.

These regulations impose a new reporting burden on foreign fishermen.

The Office of Management and Budget has approved collecting this information through March 31, 1983, under OMB #648-0075.

Dated: March 4, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

1. The authority citation for 50 CFR Part 611 reads as follows:

Authority: 16 U.S.C. 971 *et seq.*, 16 U.S.C. 1361 *et seq.*, and 16 U.S.C. 1821 and 1855.

2. For the reasons set out in the preamble, 50 CFR 611.90 is amended by adding paragraph (f) as follows:

§ 611.90 General provisions.

* * * * *

(f) *Additional report.* (1) When transmitting the BEGIN notice required under § 611.4(a)(1), each foreign fishing vessel carrying fish and entering the fishery conservation zone (FCZ) seaward of the State of Alaska must declare the amount of fish and fish products on board which were caught or processed outside of the FCZ. An illustration of a sample report follows:

The stern trawler NAVIS, LTUX, will begin fishing on June 15, 1981, at 1500 G.m.t. at position 56°00'N. latitude, 168°00'W. longitude in Bering Sea Area I. The NAVIS has on board 105.5 metric tons (mt) of frozen Pacific cod, and 35 mt of fish meal that were produced from fish caught outside the FCZ. The required message would be transmitted as follows:

FROM: F/V NAVIS, LTUX
TO: 17th COAST GUARD DISTRICT, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
NAVIS/LTUX/0615/1500/5600N/16800W/51/BEGIN//PRODUCT
ABOARD/701/105.5/702/53/MEAL/35//

(2) If a vessel thus reporting fish or fish products onboard will be inspected, notice of an inspection shall be sent to the vessel within 24 hours after transmission of the BEGIN notice. Each vessel that will be inspected shall not harvest or process fish in the FCZ until the inspection is completed by an authorized officer. If notice of an inspection is not sent to the vessel within 24 hours after transmission of the BEGIN notice and PRODUCT ABOARD reports, the vessel may begin to harvest or process fish.

(3) It will be presumed that unreported fish or fish products were harvested in the FCZ unless the vessel has on board records of the amounts of fish and fish products caught outside the FCZ. The records must be in English and provide the same information required by §§ 611.9(b), 611.9(d)(1), and 611.9(d)(2).

[FR Doc. 82-6521 Filed 3-9-82; 8:45 am]
BILLING CODE 3510-22-M

---

50 CFR Part 671

Tanner Crab Off Alaska; Early Closure of Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, National Marine Fisheries Service, has determined that the desired harvest level of Tanner crab for the Northeast Section of the Kodiak District in Registration Area J will be achieved on March 5, 1982, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce, therefore, issues this notice of closure of the Northeast Section to fishing for Tanner crab by vessels of the United States on March 5, 1982, thereby adjusting the previous closing date of April 30, 1982, in order to prevent overfishing of Tanner crab stocks in the Northeast Section.

DATES: This notice is effective from 12:00 noon, Alaska Standard Time (AST), March 5, 1982, until 12:00 noon Alaska Daylight Time (ADT), April 30, 1982. Notice of closure was filed for public inspection with the Office of the Federal Register on March 5, 1982 at 3:49 p.m.

Public comments on the closure are invited until March 20, 1982.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT:
Robert W. McVey, 907-586-7221.

SUPPLEMENTARY INFORMATION:

The fishery management plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP), governing this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments, by field order, to season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under the criteria set out in that section.

50 CFR 671.26(f) establishes five districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of these districts is the Kodiak District, for which an overall optimum yield of 35 million pounds has been set.

One of the sections in the Kodiak District is the Northeast Section. The State of Alaska's 1981 Tanner crab index survey indicates the desired harvest level during the 1982 season to be 800,000 pounds for this section. That level is based on the relative abundance of legal male crabs observed in the crab indexing surveys conducted in 1981 as compared to 1980—the survey showed that the number of legal male crabs has declined by 50 percent from 1980 levels. During the 1982 fishing season, which began February 10, (the opening date

was delayed from January 22 to February 10, see 46 FR 58699), catch per unit of effort (CPUE) has declined from an average of 40 crabs per pot to 22 crabs per pot over the area. This declining CPUE substantiates the results of the 1981 survey. Further fishing could result in harm to the resource.

As of February 28, about 600,000 pounds have been harvested in the Northeast Section. It is estimated that the desired harvest of 800,000 pounds of crab from this section will be achieved on March 5, 1982.

In light of this information, the Regional Director, National Marine Fisheries Service, in accordance with 50 CFR 671.27(b), has determined that:

1. The actual condition of Tanner crab stocks in the Northeast Section is substantially different from the condition that was previously anticipated; and

2. This difference reasonably supports the need to protect those Tanner crab stocks by closing the Northeast Section to further fishing for Tanner crab during the current fishing year after 12:00 noon, AST, on March 5, 1982.

For these reasons, the Northeast Section of the Kodiak District in Registration Area J, as defined in 50 CFR 671.26(f)(1)(i), is closed to all fishing for Tanner crab from 12:00 noon, AST, March 5, 1982, until 12:00 noon, ADT, April 30, 1982, at which time the closure of the Kodiak District prescribed in 50 CFR 671.26(f)(2)(i) will begin.

This closure will not be effective prior to filing this notice for public inspection with the Office of the Federal Register and publicizing the closure for 48 hours through ADF&G procedures, under 50 CFR 671.27(a)(2). Under 50 CFR 671.27(b)(4), public comments on this notice of closure may be submitted to the Regional Director at the address stated above for 15 days following the effective date. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m.) at (1) the NMFS Kodiak Field Office, ADF&G Building at Kashevaroff and Mission Roads, Kodiak, Alaska 99615, and (2) the NMFS Alaska Regional Office, Federal Building, Room 483, 709 West Ninth Street, Juneau, Alaska 99802. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

The Tanner crab stock in the Northeast Section will be subject to damage by overfishing unless this order takes effect promptly. I therefore find for good cause that advance notice and public comment on this order is contrary to the public interest, and that there should be no delay in its effective date.

This action is taken under the authority of regulations specified at 50 CFR 671.27, and is taken in compliance with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. In addition, it does not contain any collection of information request, as defined in the Paperwork Reduction Act of 1980.

(16 U.S.C. 1801 *et seq.*)

Dated: March 5, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-6479 Filed 3-5-82; 3:49 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 47
Wednesday, March 10, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1004, 1006, 1007, 1011, 1012, 1046, 1094, 1096, and 1098

[Docket No. AO-366-A19 et al.]

Milk in the Georgia and Certain Other Marketing Areas; Hearings on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO No.
1007	Georgia	AO-366-A19.
1004	Middle Atlantic	AO-160-A58.
1006	Upper Florida	AO-356-A19.
1011	Tennessee Valley	A0-251-A24.
1012	Tampa Bay	AO-347-A22.
1046	Louisville-Lexington-Evansville	AO-123-A49.
1094	New Orleans-Mississippi	AO-103-A42.
1096	Greater Louisiana	AO-257-A30.
1098	Nashville, Tennessee	AO-184-A44.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by cooperative associations to amend nine Federal milk marketing orders that regulate the handling of milk in the marketing areas listed above. The proposals would provide in each order during April, May and June 1982 a hauling credit on certain bulk Class II and Class III milk transferred or diverted to unusually distant outlets for surplus disposition. One of the proponent cooperatives has requested that these proposals be adopted on an expedited basis so that the amendments can be made effective for the spring months of 1982. The cooperative claims that the proposed action is needed because of increased production, declining fluid milk sales, and the loss of manufacturing capacity in the area over the past several years.

DATE: The hearing will convene March 16, 1982.

ADDRESS: The hearing will be held at the Airport Holiday Inn North, 1380 Virginia Avenue, East Point, Georgia 30344, beginning at 9:30 a.m., local time.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202/447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Airport Holiday Inn North, 1380 Virginia Avenue, East Point, Georgia 30344, beginning at 9:30 a.m., local time, on March 16, 1982, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the Georgia; Middle Atlantic; Upper Florida; Tennessee Valley; Tampa Bay; Louisville-Lexington-Evansville; New Orleans-Mississippi; Greater Louisiana; and Nashville, Tennessee, marketing areas. In view of the request for expedited action, the Department has concluded that less than 15 days' notice of the hearing is warranted in this proceeding.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to Proposals Nos. 1 through 9.

Begining January 1, 1981, actions under the Federal milk order program became subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Dairymen, Inc.:

PART 1007—MILK IN THE GEORGIA MARKETING AREA

Proposal No. 1

Add a new paragraph (g) to § 1007.60 as follows:

§ 1007.60 Handler's value of milk for computing uniform price.

* * * * *

(g) For the months of April, May and June 1982, subtract the amount obtained from multiplying the pounds of bulk fluid milk products classified as Class II or Class III which were transferred or diverted to an other order plant pursuant to § 1007.42(b)(3) or to an other nonpool plant pursuant to § 1007.42(d)(2) which is located outside Alabama, Georgia, Tennessee and South Carolina, and more than 225 miles, as determined by the market administrator, from the pool plant from which transferred or if diverted from the pool plant of last receipt by a per hundredweight rate for each such transfer or diversion equal to 3.6 cents for each 10 miles or fraction thereof that such plant is located more than 225 miles from the pool plant from which transferred or if diverted from the pool plant of last receipt.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Proposal No. 2

Add a new paragraph (f) to § 1004.60 as follows:

§ 1004.60 Pool obligation of each pool handler.

* * * * *

(f) For the months of April, May and June 1982, subtract the amount obtained from multiplying the pounds of bulk fluid milk products classified as Class II which were transferred to an other order plant pursuant to § 1004.42(e)(3) or transferred or diverted to a nonpool plant pursuant to § 1004.42(d) which is located, as determined by the market administrator, more than 180 miles from the city hall in Philadelphia, Pennsylvania, and also more than 200 miles from the zero milestone in Washington, D.C., or the city hall in Baltimore, Maryland, by a per hundredweight rate for each such transfer or diversion equal to 3.6 cents for each 10 miles or fraction thereof that such plant is located more than 180 miles from the city hall in Philadelphia, Pennsylvania, and also more than 200 miles from the zero milestone in Washington, D.C., or the city hall in Baltimore, Maryland, whichever is less.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

Proposal No. 3

Add a new paragraph (g) to § 1011.60 as follows:

§ 1011.60 Handler's value of milk for computing uniform price.

* * * * *

(g) For the months of April, May and June 1982, subtract the amount obtained from multiplying the pounds of bulk fluid milk products classified as Class II or Class III which were transferred or diverted to an other order plant pursuant to § 1011.42(b)(3) or to an other nonpool plant pursuant to § 1011.42(d)(2) which is located outside Tennessee and more than 125 miles, as determined by the market administrator, from the pool plant from which transferred or if diverted from the pool plant of last receipt by a per hundredweight rate for each such transfer or diversion equal to 3.6 cents for each 10 miles or fraction thereof that such plant is located outside Tennessee and more than 125 miles from the pool plant from which transferred or if diverted from the pool plant of last receipt.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

Proposal No. 4

Add a new paragraph (g) to § 1046.60 as follows:

§ 1046.60 Handler's value of milk for computing uniform price.

* * * * *

(g) For the months of April, May and June 1982, subtract the amount obtained from multiplying the pounds of bulk fluid milk products classified as Class II or Class III which were transferred or diverted to an other order plant pursuant to § 1046.42(b)(3) or to an other nonpool plant pursuant to § 1046.42(d)(2) which is located outside the State of Kentucky and the Indiana counties included within the marketing area and more than 100 miles, as determined by the market administrator, from the pool plant from which transferred or if diverted from the pool plant of last receipt by a per hundredweight rate for each such transfer or diversion equal to 3.6 cents for each 10 miles or fraction thereof that such plant is located more than 100 miles from the pool plant from which transferred or if diverted from the pool plant of last receipt.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

Proposal No. 5

Add a new paragraph (h) to § 1094.60 as follows:

§ 1094.60 Handler's value of milk for computing uniform price.

* * * * *

(h) For the months of April, May and June 1982, subtract the amount obtained from multiplying the pounds of bulk fluid milk products classified as Class II or Class III which were transferred or diverted to an other order plant pursuant to § 1094.42(b)(3) or to an other nonpool plant pursuant to § 1094.42(d)(2) which is located outside the marketing area and more than 150 miles, as determined by the market administrator, from the pool plant from which transferred or if diverted from the pool plant of last receipt by a per hundredweight rate for each such transfer or diversion equal to 3.6 cents for each 10 miles or fraction thereof that such plant is located more than 150 miles from the pool plant from which transferred or if diverted from the pool plant of last receipt.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

Proposal No. 6

Add a new paragraph (g) to § 1096.60 as follows:

§ 1096.60 Handler's value of milk for computing uniform price.

* * * * *

(g) For the months of April, May and June 1982, subtract the amount obtained from multiplying the pounds of bulk fluid milk products classified as Class II or Class III which were transferred or diverted to an other order plant pursuant to § 1096.42(b)(3) or to another nonpool plant pursuant to § 1096.42(d)(2) which is located outside Louisiana and Mississippi and more than 150 miles, as determined by the market administrator, from the pool plant from which transferred or if diverted from the pool plant of last receipt by a per hundredweight rate for each such transfer or diversion equal to 3.6 cents for each 10 miles or fraction thereof that such plant is located more than 150 miles from the pool plant from which transferred or if diverted from the pool plant of least receipt.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

Proposal No. 7

Add a new paragraph (g) to § 1098.60 as follows:

§ 1098.60 Handler's value of milk for computing uniform price.

* * * * *

(g) For the months of April, May and June 1982, subtract the amount obtained from multiplying the pounds of bulk fluid milk products classified as Class II or Class III which were transferred or diverted to an other order plant pursuant to § 1098.42(b)(3) or to an other nonpool plant pursuant to § 1098.42(d)(2) which is located outside Tennessee and more than 100 miles, as determined by the market administrator, from the pool plant from which transferred or if diverted from the pool plant of last receipt by a per hundredweight rate for each such transfer or diversion equal to 3.6 cents for each 10 miles or fraction thereof that such plant is located more than 100 miles from the pool plant from which transferred or if diverted from the pool plant of last receipt.

Proposed by Upper Florida Milk Producers Association, and Tampa Independent Dairy Farmers Association, Inc.:

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

Proposal No. 8

Add a new paragraph (h) to § 1006.60 as follows:

§ 1006.60 Handler's value of milk for computing uniform price.

* * * * *

(h) For the months of April, May, and June 1982, subtract the amount obtained

from multiplying the pounds of bulk fluid milk products classified as Class II which were transferred or diverted to an other order plant pursuant to § 1006.42(c)(3) or to an other nonpool plant pursuant to § 1006.42(b) which is located outside Florida, Louisiana, Mississippi, North Carolina, South Carolina, Alabama, Georgia, Tennessee and Kentucky, and more than 225 miles, as determined by the market administrator, from the pool plant from which transferred or if diverted from the pool plant of last receipt by a per hundredweight rate for each such transfer or diversion equal to 3.6 cents for each 10 miles or fraction thereof that such plant is located more than 225 miles from the pool plant from which transferred or if diverted from the pool plant of last receipt.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

Proposal No. 9

Add a new paragraph (h) to § 1012.60 as follows:

§ 1012.60 Handler's value of milk for computing uniform price.

* * * * *

(h) For the months of April, May, and June 1982, subtract the amount obtained from multiplying the pounds of bulk fluid milk products classified as Class II which were transferred or diverted to an other order plant pursuant to § 1012.42(c)(3) or to an other nonpool plant pursuant to § 1012.42(b) which is located outside Florida, Louisiana, Mississippi, North Carolina, South Carolina, Alabama, Georgia, Tennessee and Kentucky, and more than 225 miles, as determined by the market administrator, from the pool plant from which transferred or if diverted from the pool plant of last receipt by a per hundredweight rate for each such transfer or diversion equal to 3.6 cents for each 10 miles or fraction thereof that such plant is located more than 225 miles from the pool plant from which transferred or if diverted from the pool plant of last receipt.

PARTS 1007, 1004, 1006, 1011, 1012, 1046, 1094, 1096, AND 1098 [AMENDED]

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 10

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the market administrator of each of the orders for the aforesaid specified marketing areas or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only).
Office of the Market Administrator of each of the orders for the aforesaid specified marketing areas

Procedual matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on March 4, 1982.

Eddie F. Kimbrell,

Acting Administrator.

[FR Doc. 82-6381 Filed 3-9-82; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Deregulation of Credit Union Service Corporations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would deregulate the majority of Section 701.27–2 of NCUA's Rules and Regulations (12 CFR 701.27–2) entitled "Credit Union Service Corporations." The proposal would deregulate and leave to the discretion of a Federal credit union's board of directors the identity of investment partners, the percentage of services to be sold to noninvesting credit unions, and most other general business matters. In addition, the proposal would permit other than the corporate form of organization and would also permit these organizations to be profit-making entities. It is also proposed that the current approval procedures for this type investment (as required by the Federal Credit Union Act) be significantly simplified. The proposal to deregulate is based on a determination by the NCUA Board that these rules may be having a stifling effect on the innovation and flexibility of the credit unions in utilizing the service concept which is not beneficial to the credit unions, especially in these difficult economic and budgetary times.

DATE: Comments must be received on or before May 10, 1982.

ADDRESS: Comments should be sent to Robert S. Monheit, Regulatory Development Coordinator, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Todd A. Okun, Assistant General Counsel, Office of General Counsel, at the above address. Telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: Effective April 9, 1979, NCUA published a final rule implementing the provisions of Pub. L. 95–22 which authorized Federal credit unions to invest in, to make loans to, or extend lines of credit to organizations providing services associated with the routine operations of credit unions 44 FR 12401, Mar. 7, 1979. As this new authorization represented a significant departure from and expansion of previous Federal credit union authority, the implementing regulation stringently limited the options and alternatives available to credit union service corporations.

It is the view of the NCUA Board that a significant amount of time has elapsed during which Federal credit unions have been able to familiarize themselves with this new authority. In addition, this time period has enabled the NCUA Board to monitor credit union activity pursuant to the regulation. It appears that the stringency of the present regulation may be having a stifling effect on both innovation and flexibility in utilizing the credit union service corporation concept. The NCUA Board is convinced that in these difficult economic and budgetary times, boards of directors must be free to fashion programs and make investments, as permitted by statute, that will be the most beneficial for a given credit union. It is in this spirit that the following proposal is offered.

Analysis of Proposed Changes

1. It is proposed that the title of the regulation be changed to "Credit Union Service Organizations" to reflect the fact that what has been called "credit union service corporations" need not be

limited to a corporate form. Appropriate definitional changes are proposed.

2. It is proposed that a "credit union service organization" need not be comprised solely of credit unions.

3. It is proposed that a "credit union service organization" not be required to provide services to each of its investing credit unions nor must it limit its provision of services to noninvestors to the present 20% or any particular percentage of the previous fiscal year's cost of operation.

4. It is proposed that a "credit union service organization" not be limited to non-profit status.

5. It is proposed that service fees charged by a "credit union service organization" not be limited to an amount sufficient only to cover the cost of the services provided.

6. It is proposed that a Federal credit union may form, by itself or jointly with other entities, a "credit union service organization" engaging in any of the activities listed in the regulation (those activities taken from the legislative history and later added to) without the necessity of applying for NCUA approval. In effect, those listed activities will be "pre-approved" by the NCUA Board. However, applications must be submitted to NCUA and approval given for any other proposed activities that are associated with the routine operations of credit unions. This is a requirement of section 107(7)(I) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I)). If approved, they will be added to the list of approved activities.

7. It is proposed that the current portion of the regulation requiring that certain language be adopted showing NUCA approval be deleted as unnecessary.

8. It is proposed that the current portion of the regulation delineating the procedure for revoking approval of a credit union service corporation be deleted as unnecessary. The Federal Credit Union Act contains sufficient authority to deal with violations of law or rules and unsafe or unsound practices engaged in by Federal credit unions.

9. It is proposed that loans to "credit union service organizations" *not* be limited to "credit union service organizations" in which the would-be lender has already invested.

10. It is proposed that the section of the current regulation requiring submission of articles of incorporation be omitted even when the corporate form is chosen.

The NCUA Board is also soliciting comment on whether any other activities or services should, at the time any proposed rule becomes final, be added to subsection (b) of the proposed rule as permissible investments. It must be remembered that in order to be deemed permissible such activities or services must be "associated with the routine operations of credit unions." Comments suggesting such new services or activities (such as, for example, tax counseling services or differing types of EFT, ATM or transaction related services) should include justification for deeming them to be "associated with the routine operations of credit unions."

Procedures for Regulatory Development

The NCUA Board certifies that these proposed changes, if adopted, will not have a significant economic impact on a substantial number of small Federal credit unions (Federal credit unions with less than $1,000,000 in assets). The NCUA Board believes that only a few Federal credit unions below $1,000,000 in assets are participating in credit union service corporations. Therefore, a substantial number of small Federal credit unions will not be affected. In addition, because these proposed changes, if adopted, will increase the management flexibility of small credit unions, increase their competitive positions and reduce their paperwork burden, a regulatory analysis is not required. 5 U.S.C. 605(b).

Dated: March 4, 1982.

Rosemary Brady,

Secretary, National Credit Union Administration Board.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

Accordingly, it is proposed that 12 CFR 701.27–2 be revised to read as follows:

701.27–2 Credit union service organizations.

(a) For purposes of this section, a "credit union service organization," is an entity defined in section 107(5)(D) or described in section 107(7)(I) of the Federal Credit Union Act.

(b) The purpose of a credit union service organization is to provide only those goods and services and perform only those functions that are associated with routine credit union operations. It may provide any or all of the following to its customers:

(1) Data processing services;

(2) promotion, marketing and general management support services;

(3) access to sophisticated accounting systems;

(4) debt counseling services;

(5) management training and education to credit union personnel;

(6) services related to processing, selling or servicing mortgage loans;

(7) credit card services;

(8) automated teller machine services; and

(9) Debt collection services.

(c) A Federal credit union may, either by itself or by agreement with other entities, form or invest in a credit union service organization. Such an organization may be formed or invested in without NCUA approval if it will perform only those services described in paragraph (b) of this section.

(d) If a Federal credit union desires to form or invest in a credit union service organization that will provide services or engage in activities not described in paragraph (b) of this section, it must submit in writing to the NCUA Board an application to approve such new activities or new services. The application must contain a narrative indicating the activities to be engaged in or services to be provided and why they should be considered associated with the routine operations of credit unions.

(e) No official and/or employee of a Federal credit union may have a direct or indirect pecuniary interest in a credit union service organization in which that Federal credit union has invested or to which it has loaned funds. In addition, no official of a Federal credit union may receive any salary or compensation from a credit union service organization in which that Federal credit union has invested or to which it has loaned funds other than reimbursement for necessary expenses incurred in operating the credit union service organization.

(f) A credit union service organization may charge service fees.

(g) A Federal credit union investing in or lending to a credit union service organization must submit call reports or any other information upon request by the NCUA Board.

(h) A Federal credit union may invest in and lend to a credit union service organization within the limits delineated in sections 107(7)(I) and 107(5)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I) and 1757(5)(D)).

(i) A credit union service organization shall be subject to examination by the NCUA Board to the extent permitted by law.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789))

[FR Doc. 82–6517 Filed 3–9–82; 8:45 am]

BILLING CODE 7535–01–M

12 CFR Part 701

Share, Share Draft, and Share Certificate Accounts

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: On December 18, 1981, the NCUA Board issued an advance notice of Proposed Rulemaking soliciting public comment on a proposal to deregulate § 701.35 of the NCUA Rules and Regulations which covers the terms, conditions and classes of accounts to be offered by Federal credit unions. The majority of the public comments supported complete deregulation of § 701.35 including deletion of the regulations governing significant terms and conditions of share, share draft, and share certificate accounts, operational constraints, and specific advertising and disclosure requirements. In view of the public comments, the Board has issued a proposed rule which provides for the deregulation of share, share draft, and share certificate accounts. The deregulation proposal would remove numerous regulatory restrictions and therefore would provide Federal Credit Unions greater opportunities to compete effectively and to better meet the needs of their members.

DATES: Comments must be received on or before April 10, 1982.

ADDRESS: Send comments to Regulatory Development Coordinator, Robert Monheit, National Credit Union Administration, 1776 G St., NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Acting Director, Office of Policy Analysis, Telephone (202) 357–1090, or Steven Bisker, Senior Attorney, Office of General Counsel, Telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: On December 18, 1981, the NCUA Board issued an advance notice of proposed rulemaking soliciting public comment on a proposal to deregulate § 701.35 of the NCUA Rules and Regulations (12 CFR 701.35). The advance notice proposed to place the responsibility for determining the terms and conditions governing accounts with a Federal credit union's board of directors. A board of directors would be responsible for determining the classes of accounts to be offered, maturities, dividend rates, minimum denominations, premature withdrawal penalty provisions, and any other terms or conditions governing the account. In addition, the advance notice requested comments on whether the operational constraints and advertising and disclosure provisions in the current regulations should be amended.

This deregulation proposal would remove numerous regulatory restrictions and therefore would provide all Federal credit unions greater opportunities to compete effectively and to better meet their members' needs.

Summary of Public Comments

A total of 265 comments on the deregulation proposal were received from credit unions, credit union leagues and trade associations, and other interested parties. A majority (199) of the commenters supported the proposal to completely deregulate § 701.35. Specific suggestions included the deletion of specified dividend rate ceilings, required early withdrawal penalties, the required truncation of share drafts, and the specific notice that dividends cannot be guaranteed. Many commenters favoring the deregulation proposal also suggested that NCUA support legislative action which would remove the base 15% statutory loan rate limit (currently 21% under the provisional rate ceiling authority) and would expand Federal credit union investment powers. In their view, it is unduly restrictive from a management perspective to provide complete flexibility on the liability side of the balance sheet without corresponding flexibility on the asset side. Finally, some commenters favoring deregulation recommended that NCUA consider issuing regulatory guidelines to provide some information to those credit unions which may be unsure of the many alternatives available for structuring share, share draft, and share certificate accounts once such accounts have been deregulated.

A group of 21 commenters did not address the deregulation proposal generally but instead confined their comments to the current specifically worded disclosure that dividends cannot be guaranteed. Without exception, this group of commenters recommended deletion of the specifically worded disclosure.

Among the commenters opposed to deregulation, the general view was that there was a need for specific regulations. These commenters suggested that since many credit unions relied on volunteers, it was difficult to determine appropriate business decisions for a credit union without specific regulatory guidance. Other commenters opposing the proposal supported deregulation, but recommended that deregulation be phased in gradually over an extended period of time.

A Proposed Rule

In view of the public comments generally supporting the proposal to deregulate § 701.35 of the NCUA Rules and Regulations, the NCUA Board has approved the issuance of a proposed rule for public comment which places the responsibility for determining the terms and conditions governing share, share draft, and share certificate accounts with a Federal credit union's board of directors. In addition, the proposed rule specifies no operational constraints on share, share draft, or share certificate accounts, and requires that if advertising and disclosures are made, they accurately present the significant terms and conditions governing accounts.

The proposed rule references sections 107(6) and 117 of the Federal Credit Union Act (12 U.S.C. sections 1757(6) and 1763). Section 107 (6) stipulates that Federal credit unions may receive from members, other credit unions, certain public units, and nonmembers in the case of credit unions serving predominantly low-income members payments on shares at varying dividend rates, share certificates at varying dividend rates and maturities, and share drafts subject to terms, rates, and conditions as may be established by the board of directors. Thus, with the exception of low-income credit unions, the Act does not authorize Federal credit unions to establish accounts for nonmember individuals.

Section 117 states that Federal credit union boards of directors may authorize, after the provision for required reserves, the payment of dividends on share, share certificate, and share draft accounts. Authorized dividends, therefore, are based on available current and prior earnings after the provision for required reserves.

Numerous commenters on the advance notice suggested that the deregulation of share, share draft, and share certificate accounts should be accompanied by similar deregulation of the asset side of credit union balance sheets. Accordingly, the Board would like to receive comments on: (1) Whether the current 21-percent loan rate ceiling or a higher or lower rate ceiling would be appropriate in the event of

deregulation of share accounts, and (2) how any other asset side regulations should be amended.

Regulatory Procedures

A comment period of 30 days (rather than 60 days) is provided because the Advance Notice of Proposed Rulemaking has provided ample opportunity for comment on the broad policy issues. The NCUA Board certifies that the proposed rule will not have a significant economic impact on a substantial number of small Federal credit unions. The proposed change in § 701.35 of the NCUA Rules and Regulations reduces regulatory restrictions and increases management flexibility and the competitive position of small credit unions. Therefore, a regulatory flexibility analysis is not required. 5 U.S.C. 603(a), 604(a).

In accordance with the provisions of the Regulatory Simplification Act, rules stipulating alternative restrictions than those in the current proposal were considered by the NCUA Board. However, in view of the public comments, the alternatives were burdensome by comparison to the proposed rule.

Accordingly, NCUA proposes that a new 12 CFR 701.35 be adopted as set forth below.

Dated: March 4, 1982.

Rosemary Brady,

Secretary of the Board.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

It is proposed that 12 CFR 701.35 be revised to read as follows:

§ 701.35 Share, share draft and share certificate accounts.

(a) Federal credit unions may offer share, share draft and share certificate accounts in accordance with section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)), and the board of directors may declare dividends on such accounts as provided in section 117 of the Federal Credit Union Act (12 U.S.C. 1763).

(b) No Federal credit union shall use advertising, disclosures or agreements, whether written or oral, that misrepresent the terms or conditions of its share, share draft or share certificate accounts or that are designed so as to mislead current or prospective account holders.

(12 U.S.C. 1757(6), 1766(a))

[FR Doc. 82-6518 Filed 3-9-82; 8:45 am]

BILLING CODE 7535-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Human Prescription Drugs in Oral Dosage Forms; Exemption of Prednisone Tablets From Child-Protection Packaging Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes for public comment an exemption from child-protection packaging requirements for prednisone in tablet form when dispensed in packages containing no more that 105 mg. of the drug. Prednisone is an anti-inflammatory steroid drug. The Commission believes that child-resistant packaging is unnecessary to protect children who ingest the drug in quantities of 105 mg. or less from serious illness or injury, because of the low toxicity of prednisone and the lack of adverse human experience associated with the drug. Mayrand Pharmaceuticals, Inc., a manufacturer of prednisone tablets, petitioned the Commission for this exemption.

DATE: Comments on this proposed exemption must be received by May 10, 1982. Comments received after this date will be considered to the extent practicable.

If the Commission issues a final regulation exempting this product, the Commission proposes that the exemption become effective on the date the final regulation is published in the **Federal Register.**

ADDRESS: Comments, preferably in five copies, should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Third Floor, 1111 18th Street, NW., Washington, D.C. 20207. Comments received may be seen in the Office of the Secretary during working hours Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Marozzi, Division of Safety Packaging and Scientific Coordination, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301–492–6604.

Background

On May 29, 1981, the Commission received a petition (PP 81–1) from Mayrand Pharmaceuticals, Inc., Greensboro, North Carolina, requesting an exemption from child-resistant (special) packaging requirements for its prednisone product, the Sterapred Uni Pak. The Uni Pak consists of a polystyrene package containing 21 individually packaged 5 mg. prednisone tablets. Prednisone is a steroid used for its potent anti-inflammatory effects in disorders of many organ systems. Based upon the low toxicity of prednisone and the lack of adverse human experience data, the Commission is proposing an exemption for prednisone tablets on a generic basis.

Grounds for Exemption

The petitioner contends that an exemption for prednisone in tablet form when dispensed in amounts of 105 mg. or less is justified based upon the low toxicity of the drug and upon the lack of adverse human experience data associated with accidental ingestions of the drug. The petitioner further states that this amount, based on well established comparative pharmacologic activity, is equivalent to 84 mg. of methylprednisolone. The Commission has issued an exemption from special packaging requirements for packages containing not more than 84 mg. of methylprednisolone.

The toxic effects of the glucocorticoid hormones and their synthetic derivatives are entirely associated with long-term therapy. The petitioner has indicated that oral LD_{50} values are not presently available for prednisone. The Commission finds that glucocorticoids, such as prednisone, are virtually nontoxic in even very large acute dosages. It is, for this reason, nearly impossible to administer sufficient drug to test animals to arrive at an LD_{50} dose and thus such values are not generally reported in the literature. However, prednisolone, a synthetic glucorcorticoid which is pharmacologically equivalent to prednisone, failed to produce any deaths in mice when given in oral does of up to 5 gm./kg. Methylporednisolone, a synthetic glucocorticoid already exempted from special packaging requirements when dispensed in amounts of 84 mg. or less, was found to produce no deaths in rats when administered orally in doses of up to 12 gm./kg. Based on available pharmacological and toxicological data, the Commission believes that one could reasonably predict that the LD_{50} for prednisone would be equivalent to its pharmacologic twin, prednisolone (i.e., greater than 5 gm./kg.). LD_{50} values of this magnitude generally indicate negligible to slight acute toxicity.

A review of data from the National Clearinghouse for Poison Control Centers (NCPCC) for the three-year period 1977–1979 indicates a total of 328 ingestions of oral glucocorticoid anti-inflammatory drugs by children under

five (dosage form not specified). Fourteen of these were reported as exhibiting symptomatology such as nausea, vomiting, and lethargy. There was one hospitalization; however, the individual was asymptomatic and was presumably held only for observation. Represented among this total number of ingestions are 124 involving prednisone. Five of these prednisone ingestions exhibited symptomatology similar to that described above; no child was reported hospitalized.

The Commission's Poison Control Center Contract Data Bases for 1976 and 1977 were also reviewed for ingestion data. Sixteen ingestions involving this class of drugs were reported in 1976; one involved symptoms such as nausea, vomiting and lethargy. There were no hospitalizations. Eleven of 16 cases were associated with prednisone. A total of 8 cases were reported in 1977 (one with symptoms; no hospitalization). Two of these 8 cases were associated with prednisone.

Information available from the National Electronic Injury Surveillance System shows that five incidents involving children under five years of age ingesting steroid based anti-inflammatory drugs were reported. Two involved prednisone. All children involved in these incidents were treated and released. Similarly, two reports of ingestion of similar products to the National Injury Information Clearinghouse indicate that both children were treated and released.

The Commission solicited the opinion of the Food and Drug Administration (FDA) on the exemption request. FDA recommended that the exemption be granted because of the lack of reported adverse human experience associated with accidential ingestion, the low acute oral toxicity of gluco-corticoid drugs in general, and because the amount of prednisone for which the exemption was sought is far lower than the amount necessary to produce toxic effects. In support of the latter reason, the FDA noted that, because prednisone and methylprednisolone are bioequivalent, the moderate acute toxicity for the two drugs would be the same. Accordingly, on the basis of the LD 50 data available for methylprednisolone, FDA concurred with Mayrand's extrapolation (submitted in support of the petition for exemption) showing that over 1100 five mg. prednisone tablets would have to be ingested to produce toxic effects in a 10 kg. (22 lb.) child.

The Commission also solicited comments from its Technical Advisory Committee on Poison Prevention Packaging.[1] All nine members who responded favored granting the exemption on the basis of low acute toxicity and the fact that similar steroid based prescription drugs have previously been granted exemptions from the special packaging requirements.

Findings

Based on currently available information showing the low toxicity of prednisone and the lack of adverse human experience reported as a result of children ingesting prednisone, the Commission preliminarily finds that prednisone tablets, when dispensed in packages containing no more than 105 mg. of the drug, do not pose a risk of serious personal illness or serious injury to children. Accordingly, the Commission proposes to exempt prednisone tablets when dispensed in packages containing not more than 105 mg. of the drug, from the child-resistant packaging requirements. This action constitutes the granting of petition PP 81–1.

The Commission emphasizes that this proposed exemption is limited to prednisone tablets which contain no other substances subject to the requirements for special packaging under 16 CFR 1700.14(a)(10).

Environmental Considerations

The Commission's interim rules for carrying out its responsibilities under the National Environmental Policy Act (see 16 CFR Part 1221; 42 FR 25494) provide that exemptions to an existing standard that do not alter the principal purpose or effect of the standard normally have no potential for affecting the environment and that, therefore, environmental review of exemptions is generally not required (§ 1021.5(b)(1)). The rules also state that environmental review of rules requiring poison prevention packaging is generally not required (§ 1021.5(b)(3)).

With respect to the exemption of prednisone, when dispensed in tablet form in packages containing no more than 105 mg. of the drug, from the requirements for special packaging, the Commission finds that the rule will have no significant effect on the environment and that no environmental review is necessary.

Impact on Small Businesses. Section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, including small businesses. Section 605(b) of this act provides that an agency is not required to prepare a regulatory flexibility analysis where the agency certifies that the rule will not, if issued, have a significant economic impact on a substantial number of small entities. In accordance with section 605(b), the Commission certifies that the regulation proposed here, if issued in final form, will not have a significant economic impact on a substantial number of small entities. The regulation proposed here exempts, from special packaging requirements, prednisone tablets when packaged in quantities of not more than 105 mg. Thus, pharmacists dispensing the drug in these quantities or manufacturers packaging such quantities in packages intended to be dispensed directly to the consumer need not utilize child-resistant packaging. Rather, they are free to use conventional packaging which, in most cases, is less expensive than child-resistant packaging. Accordingly, the proposed exemption will have the effect of decreasing pharmacists' and manufacturers' packaging costs for prednisone tablets packaged in quantities of not more than 105 mg.

Conclusion and Promulgation

PART 1700—POISON PREVENTION PACKAGING

Having considered the petition, human experience data and the animal toxicity studies, the poison control statistics of the National Clearinghouse for Poison Controls Centers from 1977 through 1979, medical and scientific literature, and information from other Commission data sources, and having consulted, pursuant to section 3 of the Poison Prevention Packaging Act of 1970 (PPPA), with the Technical Advisory Committee on Poison Prevention Packaging established in accordance with section 6 of the PPPA, the Commission concludes that an exemption from the special packaging requirements for prednisone in tablet form when dispensed in packages containing no more than 105 mg. of the drug should be proposed as set forth below. Accordingly, pursuant to the provisions of the PPPA (Pub. L. 91–601, sections 2, 3, 4; 85 Stat. 1670–72; 15 U.S.C. 1471, 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–572, section 30(a); 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes that 16 CFR 1700.14(a)(10) be

[1] This consultation occurred prior to the 1981 amendment to the Poison Prevention Packaging Act which abolished the Technical Advisory Committee. *See* Section 1205 of the Omnibus Reconciliation Act of 1981, Pub. L. 97–35, 95 Stat. 357.

amended by adding subparagraph (ix), as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * * (10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(ix) prednisone in tablet form, when dispensed in packages containing no more than 105 mg. of the drug, and containing no other substances subject to this § 1700.14(a)(10).

* * * * *

(Secs. 2, 3, 5, Pub. L. 91–601, 84 Stat. 1670, 1671 (15 U.S.C. 1471, 1472, 1474))

Dated: March 5, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 82–6497 Filed 3–9–82; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM80–55–000]

Order Granting Rehearing for Purposes of Further Consideration

Issued: March 5, 1982.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting rehearing for purposes of further consideration.

SUMMARY: The Federal Energy Regulatory Commission (Commission) grants rehearing for the limited purpose of further consideration of a petition to rehear Order No. 200, a final rule to revise Form No. 1, "Annual Report of Public Utilities, Licensees and Others (Class A and Class B)". That final rule, which was issued on January 6, 1982 (47 FR 1267, January 12, 1982), revised and reduced the number of data elements in the form.

FOR FURTHER INFORMATION CONTACT: Cathy Ciaglo, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Room 8104–B, Washington, D.C. 20426, (202) 357–8033.

SUPPLEMENTARY INFORMATION:

In the matter of a revision of FERC Form No. 1, Annual Report of Electric Utilities, Licensees and Others (Class A and Class B), Docket No. RM80–55–000, order granting rehearing for purposes of further consideration.

On January 6, 1982, the Federal Energy Regulatory Commission (Commission) issued a final rule to revise Form No. 1, "Annual Report of Electric Utilities, Licensees and Others (Class A and Class B)" (Order No. 200, 47 FR 1267, January 12, 1982). This rule substantially reduced the number of schedules and data elements in the form, established or altered threshold reporting levels in certain schedules, and changed the reporting instructions in several schedules. The revisions were made as part of the Commission's ongoing program to review all of its reporting requirements and to eliminate any further collection of data that are not needed for Commission decisionmaking and regulatory duties.

On February 4, 1982, Certain Municipal Systems filed a timely petition for rehearing of Order No. 200. In order to have sufficient time to consider the issues raised in this application, the Commission will grant rehearing of Order No. 200 solely for the purpose of further consideration.

The Commission Orders

Rehearing of Order No. 200 is granted for the limited purpose of further consideration of the issues raised in the petition for rehearing. This action does not constitute a grant or denial of the petition on its merits in whole or part. As provided in § 1.34(d) of the Commission's regulations, no answers to this petition will be entertained by the Commission because this Order does not grant rehearing on any substantive issues.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–6495 Filed 3–9–82; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–76 (Alabama–2)]

High-Cost Gas Produced From Tight Formations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR § 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking contains the recommendations of the State Oil and Gas Board of Alabama that the Hartselle Sandstone Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on April 5, 1982.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 19, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washigton, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

Issued: March 4, 1982.

I. Background

On February 8, 1982, the State Oil and Gas Board of Alabama (Alabama) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Hartselle Sandstone Formation located in Walker and Winston Counties, Alabama, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determined whether Alabama's recommendation that the Hartselle Sandstone Formation be designated a tight formation should be adopted. Alabama's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Alabama recommends that the Hartselle Sandstone Formation found beneath the Bangor limestone of the Mississippian period, in the Black Warrior Basin, be designated a tight formation. The recommended formation

is found in Township 11 South, Ranges 7 to 9 West and Township 12 South, Ranges 6 to 10 West in Winston County, and in Townships 12 to 17 South, Ranges 4 to 10 West in Walker County. Alabama recommends excluding the Jasper Field located in Township 13 South, Range 7 West, Sections 21 through 28, and 33 through 36, in Walker County.

The depth to the top of the recommended formation varies from approximately 400 feet below the surface in the northern part of the area to 3,000 feet below the surface in the southern part. The Hartselle Sandstone Formation varies in thickness from zero at the downdip pinchout in southern Walker County and along the western border of Walker County, to over 150 feet in northern Walker County and southern Winston County.

III. Discussion of Recommendation

Alabama claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Alabama on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Alabama further asserts that existing State and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are, or are expected to be, used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Alabama that the Hartselle Sandstone Formation, as described and delineated in Alabama's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before April 5, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Alabama–2), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than March 19, 1982.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

PART 271—CEILING PRICES

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is revised by adding new subparagraph (101) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(72) through (100) [Reserved]

(101) *Hartselle Sandstone Formation in Alabama.* RM79–76 (Alabama–2)

(i) *Delineation of formation.* The Hartselle Sandstone Formation in Alabama is found in Township 11 South, Ranges 7 to 9 West and Township 12 South, Ranges 6 to 10 West in Winston County, and in Townships 12 to 17 South, Ranges 4 to 10 West, in Walker County. The Jasper Field located in Township 13 South, Range 7 West, Sections 21 through 28, and 33 through 36, in Walter County is excluded.

(ii) *Depth.* The depth of the formation varies from approximately 400 feet in the northern part of the recommended area to 3,000 feet in the southern part of the area. It varies in thickness from zero at the downdip pinchout in southern Walker County and along the western border of Walker County, to over 150 feet in northern Walker and southern Winston Counties.

[FR Doc. 82–6430 Filed 3–9–82; 8:45 am]

BILLING CODE 6717–01–M

---

18 CFR Part 271

[Docket No. RM79–76 (Colorado–23)]

High-Cost Gas Produced From Tight Formations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Dakota and Morrison Formations each be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on April 5, 1982.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 19, 1982.

ADDRESS: Comments and request for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued: March 4, 1982.

I. Background

On February 19, 1982, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Dakota and Morrison Formations located in Garfield and Mesa Counties, Colorado, each be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Dakota and Morrison Formations each be designated a tight formation should be adopted. The United States Department of the Interior, Minerals Management Service (formerly the U.S. Geological Survey) concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of recommendation

The recommended formations underlie portions of Garfield and Mesa Counties, Colorado. The area is located within the Grand Valley of western Colorado near the city of Grand Junction, Colorado. The area contains 303,000 acres of which 75% are Federal lands and 25% are fee lands, and encompasses all or portions of Townships 7 through 13 South, Ranges 97 through 98 and 100 through 104 West, 6th P.M.; Townships 1 and 2 North, Ranges 1 and 2 West, Ute P.M.; Township 1 North, Range 1 East, Ute P.M.; Township 1 South, Range 1 West, Ute P.M.; and Townships 1 through 3 South, Ranges 1 and 2 East, Ute P.M. The average depth to the top of the Dakota Formation is 2,815 feet. The average thickness of the Dakota Formation is 190 feet with the base of the Dakota Formation defined as the top of the Morrison Formation. The average depth to the top of the Morrison Formation is 3,005 feet.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–28 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formations, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formations is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of these formations will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Dakota and Morrison Formations, as described and delineated in Colorado's recommendation as filed with the Commission, each be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposal rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before April 5, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Colorado–23), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than March 19, 1982.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

PART 271—CEILING PRICES

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is revised by adding new subparagraphs (96) and (97) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(72) through (95) [Reserved]

(96) *Dakota Formation in Colorado.* RM79–76 (Colorado–23).

(i) *Delineation of formation.* The Dakota Formation is located in Garfield and Mesa Counties, Colorado, and underlies portions of Townships 7 through 13 South, Ranges 97 through 98 and 100 through 104 West, 6th P.M.; Townships 1 and 2 North, Ranges 1 and 2 West, Ute P.M.; Townships 1 North, Range 1 East, Ute P.M.; Township 1 South, Range 1 West, Ute P.M.; and Township 1 through 3 South, Ranges 1 and 2 East, Ute P.M.

(ii) *Depth.* The average depth to the top of the Dakota Formation is 2,815 feet.

(97) *Morrison Formation in Colorado.* RM79–76 (Colorado–23).

(i) *Delineation of formation.* The Morrison Formation is located in Garfield and Mesa Counties, Colorado, and underlies portions of Townships 7 though 13 South, Ranges 97 through 98 and 100 through 104 West, 6th P.M.; Townships 1 and 2 North, Ranges 1 and 2 West, Ute P.M.; Township 1 North, Range 1 East, Ute P.M.; Township 1 South, Range 1 West, Ute P.M.; and Townships 1 through 3 South, Ranges 1 and 2 East, Ute P.M.

(ii) *Depth.* The average depth to the top of the Morrison Formation is 3,005 feet.

[FR Doc. 82–6431 Filed 3–9–82; 8:45 am]

BILLING CODE 6717–01–M

---

18 CFR Part 271

[Docket No. RM79–76 (Colorado–24)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the National Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Mesaverde and Mancos Formations each be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on April 5, 1982.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 19, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued: March 4, 1982.

I. Background

On February 5, 1982, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Mesaverde and Mancos Formations located in Rio Blanco County, Colorado, each be designated as a tight formation. Pursuant to §271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Mesaverde and Mancos Formation each be designated a tight formation should be adopted. The United States Department of the Interior, Minerals Management Service (formerly the U.S. Geological Survey) concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended formations are located entirely within Rio Blanco County, Colorado, in portions of Township 1 South, Ranges 98, 99, and 100 West, 6th P.M. and Township 2 South, Ranges 98, 99, and 100 West 6th P.M. The recommended area covers approximately 93,134 acres, of which 87,536 acres or 94% consists of Federal and Indian land. The area under consideration is on the western flank of the Piceance Creek Basin with an average depth to the top of the producing interval of 6,693 feet for the Mesaverde and 9,495 feet for the Mancos.

The Mancos "B" member of the Mancos Formation in those portions of Townships 1 and 2 South, Range 100 West within the recommended area has previously been designated a tight formation in FERC Docket No. RM79–76 (Colorado–13), Order No. 143 issued April 29, 1981. The present recommendation asks that the rest of the Mancos formation in this area be designated a tight gas formation.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–27 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formations, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B), and

(3) No well drilled into the recommended formations is expected to produce more than five (5) barrels of oil per day.

Colorado futher asserts that existing State and Federal Regulations assure that development of these formations will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Mesaverde and Mancos Formations, as described and delineated in Colorado's recommendation as filed with the Commission, each be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views, or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 5, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Colorado-24), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communcations concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than March 19, 1982.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

PART 271—CEILING PRICES

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is revised by adding new subparagraphs (98) and (99) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(72) through (97) [Reserved]

(98) *Mesaverde Formation in Colorado.* RM79–76 (Colorado-24).

(i) *Delineation of formation.* The Mesaverde Formation is found in the southwestern portion of Rio Blanco

County, Colorado, about 70 miles northwest of the town of Grand Junction. The Mesaverde Formation is located in Township 1 South, Ranges 98 and 99 West, 6th P.M., all; Township 1 South, Range 100 West, 6th P.M., Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36; Township 2 South, Range 98 West, 6th P.M., Sections 4 through 8; Township 2 South, Range 99 West, 6th P.M., Sections 1 through 12, 15 through 22, and 27 through 34; and Township 2 South, Range 100 West, 6th P.M., Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36.

(ii) *Depth.* The Mesaverde Formation varies in thickness from 2,900 to 3,600 feet. The average depth to the top of the Mesaverde Formation is 6,693 feet.

(99) *Mancos Formation in Colorado.* RM79–76 (Colorado-24).

(i) *Delineation of formation.* The Mancos Formation is found in the southwestern portion of Rio Blanco County, Colorado, about 70 miles northwest of Grand Junction. The Mancos Formation is located in Township 1 South, Ranges 98 and 99 West, 6th P.M., all; Township 1 South, Range 100 West, 6th P.M., Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36; Township 2 South, Range 98 West, 6th P.M., Sections 4 through 8; Township 2 South, Range 99 West, 6th P.M., Sections 1 through 12, 15 through 22, and 27 through 34; and Township 2 South, Range 100 West, 6th P.M., Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36.

(ii) *Depth.* The Mancos Formation is approximately 5,000 feet thick. The average depth to the top of the Mancos Formation is 9,495 feet.

[FR Doc. 82–6432 Filed 3–9–82; 8:45 am]

BILLING CODE 6717–01–M

---

18 CFR Part 271

[Docket No. RM79–76 (New Mexico–9)]

High-Cost Gas Produced From Tight Formation; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of New Mexico that the Dakota Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on April 2, 1982.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written request for a public hearing are due on March 18, 1982.

ADDRESS: Comments are requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued: March 3, 1982.

I. Background

On February 18, 1982, the State of New Mexico Energy and Minerals Department, Oil Conservation Division (New Mexico) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Dakota Formation located in San Juan County, New Mexico, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether New Mexico's recommendation that the Dakota Formation be designated a tight formation should be adopted. The United States Department of the Interior, Minerals Management Service (formerly the U.S. Geological Survey) concurs with New Mexico's recommendation. New Mexico's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Dakota Formation is located in San Juan County, New Mexico, in Townships 31 and 32 North, Ranges 10 through 13 West, NMPM, in the Basin Dakota Gas Pool, in the northwestern portion of the San Juan Basin near the Hogback Monocline. The average depth to the top of the Dakota Formation is 6,753 feet. The gross thickness of the formation varies from 200 to 300 feet.

The recommended area is subject to New Mexico Order No. R–1670–V, issued on May 22, 1979, which authorizes infill drilling in the Basin-Dakota Gas Pool. Accordingly, certain portions within the proposed area may be subject to exclusion pursuant to § 271.703(c)(2)(i)(D) of the regulations.

III. Discussion of Recommendation

New Mexico claims in its submission that evidence gathered through information and testimony presented at a public hearing in Case No. 7361 convened by New Mexico on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

New Mexico further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by New Mexico that the Dakota Formation, as described and delineated in New Mexico's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 2, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (New Mexico–9), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to

whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than March 18, 1982.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

PART 271—CEILING PRICES

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event New Mexico's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is revised by adding new subparagraph (100) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(72) through (99) [Reserved]

(100) *Dakota Formation in New Mexico.* RM79–76 (New Mexico–9).

(i) *Delineation of formation.* The Dakota Formation is found in Townships 31 and 32 North, Ranges 10 through 13 West, NMPM, in San Juan County, New Mexico. The formation is within the Basin-Dakota Gas Pool, in the northwestern portion of the San Juan Basin near the Hogback Monocline.

(ii) *Depth.* The Dakota Formation is below the Graneros Shale Formation and above the Morrison Formation. The average depth to the top of the Dakota Formation is 6,753 feet. Gross thickness of the formation varies from 200 to 300 feet.

[FR Doc. 82-6433 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

CFR Part 271

[Docket No. RM79–76 (New Mexico–10)]

High-Cost Gas Produced From Tight Formations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of New Mexico that the Chacra Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on April 5, 1982.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 19, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued: March 4, 1982.

I. Background

On March 1, 1982, the State of New Mexico Energy and Minerals Departments, Oil Conservation Division (New Mexico) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Chacra Formation located in Sandoval County, New Mexico, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determined whether New Mexico's recommendation that the Chacra Formation be designated a tight formation should be adopted. The United States Department of the Interior, Minerals Management Service (formerly the U.S. Geological Survey) concurs with New Mexico's recommendation. New Mexico's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Chacra Formation is located in Sandoval County, New Mexico, in portions of Townships 21 and 22 North, Ranges 5 through 7 West, NMPM, on the Chaco Slope of the Southern San Juan Basin. The average depth to the top of the Chacra Formation is 1,658 feet. The average thickness of the formation is 300 feet.

III. Discussion of Recommendation

New Mexico claims in its submission that evidence gathered through information and testimony presented at a public hearing in Case No. 7300 convened by New Mexico on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

New Mexico further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by New Mexico that the Chacra Formation, as described and delineated in New Mexico's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C.

20426, on or before April 5, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (New Mexico-10), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than March 19, 1982.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

PART 271—CEILING PRICES

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event New Mexico's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is revised by adding new subparagraph (102) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(72) through (101) [Reserved]

(102) *Chacra Formation in New Mexico.* RM79–76 (New Mexico-10).

(i) *Delineation of formation.* The Chacra Formation is found in Township 21 North, Range 5 West, Sections 6, 7, 8, 16 through 22 and 26 through 36; Township 21 North, Range 6 West, Sections 1 through 18, 20 through 27, 35 and 36; Township 21 North, Range 7 West, Sections 1 through 4, and 10 through 13; Township 22 North, Range 6 West, Sections 6, 7, 8, 16 through 22, and 26 through 36; and Township 22 North, Range 7 West, Sections 1 through 36, NMPM in Sandoval County, New Mexico. The formation is on the Chaco Slope of the Southern San Juan Basin.

(ii) *Depth.* The Chacra Formation averages 300 feet in thickness and is the uppermost sand formation below the Huerfanito bentonite bed. The average depth to the top of the Chacra Formation is 1,658 feet.

[FR Doc. 82–6434 Filed 3–9–82; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A–9–FRL–2050–7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In today's notice, EPA is proposing to revise the sulfur oxides (SO_x) attainment status designation for portions of the Steptoe Valley Hydrographic Region of Nevada. The SO_x designation is proposed to be changed from nonattainment to unclassifiable for all of Steptoe Valley except the central portion. The designation for the central portion of the Valley, including the cities of Ely and McGill, is proposed to remain nonattainment for SO_x. These revisions are being proposed pursuant to section 107(d)(2) of the Clean Air Act. The EPA invites public comment on the proposed redesignations.

DATE: Comments will be considered if received on or before April 9, 1982.

ADDRESSES: Comments should be directed to: Douglas Grano, Air Programs Branch (A–2–3), Air Management Division, EPA Region 9, 215 Fremont Street, San Francisco, CA 94105.

EPA's Technical Support Document for the proposed redesignation is available for public inspection during normal business hours at the EPA Region 9 Office at the address above and at the following locations:

Public Information Reference Unit, Room 2404 (EPA Library), 401 M Street SW., Washington, DC 20460

Nevada Department of Conservation and Natural Resources, 201 South Fall Street, Carson City, NV 89710

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Telephone: (415) 974–8222.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, under Paragraph 107(d)(2) of the Clean Air Act, as amended, EPA promulgated attainment status designations for all states (43 FR 8962). The Steptoe Valley Hydrographic Region of Nevada was designated nonattainment for SO_x due to measured ambient air quality violations. These violations were recorded at monitoring sites surrounding the Kennecott Corporation copper smelter in McGill. The McGill smelter is the only major stationary source of SO_x in the Valley. Under Paragraph 107(d)(5) of the Clean Air Act, a state may revise its designations of attainment status and submit them to EPA for consideration and promulgation.

A study entitled, "Technical Support Document—Redesignation of Steptoe Valley, Nevada," was recently prepared for the State of Nevada by the consulting firm of Dames & Moore. The study uses dispersion modeling and indicates that the nonattainment area for SO_x should be smaller than the entire Steptoe Valley. As a result, the Nevada Division of Environmental Protection (NDEP) has published a notice of public hearing to consider changes to the designation for SO_x in the Steptoe Valley. the changes are: the northern and southern portions of the Valley be redesignated to unclassifiable, while the remainder, or central portion, stay nonattainment.

Discussion

EPA has reviewed the proposed designation changes and modeling study, and has determined that the redesignations are approvable. NDEP's action is consistent with the EPA policy which allows nonattainment areas to be as small as possible as long as they encompass all areas expected to be experiencing ambient air quality violations and all sources which are believed to have a significant impact on the expected violations. The modeling study and EPA's analysis are discussed in detail in EPA's Technical Support Document.

The proposed boundaries of the nonattainent area (central portion of the Valley) are:

That portion of the Steptoe Valley Hydrographic Region (179) which lies between two east-west lines located approximately 20 miles to the north and south of McGill, Nevada.

The legal description of the nonattainment area boundary is contained in EPA's Technical Support Document.

EPA Actions

The NDEP's proposal to redesignate portions of Steptoe Valley is approvable. In the interest of shortening the Federal review period, EPA is proposing to redesignate these portions of Nevada now, prior to receiving a formal request from the State. This new procedure is referred to as "parallel processing". If NDEP's formal redesignation request substantively differs from today's proposal, EPA would publish a revised notice of proposed rulemaking. However, if no substantive changes are made in NDEP's formal request, EPA will issue a final rulemaking notice based on today's proposal and any comments received.

If EPA redesignates the northern and southern portions of the Valley to unclassifiable, the Part D requirements of the Clean Air Act would no longer apply for SO_x in those areas.

Note.—Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities (46 FR 8709, January 27, 1981). The attached rule, if promulgated, constitutes a SIP approval under Section 110 and 172 within the terms of the January 27 certification. This action only approves state actions. It imposes no new requirements.

(Sections 107(d) and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7407(d) and 7601(a)).

Dated: February 4, 1982.

Sonia F. Crow,

Regional Administrator.

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

[FR Doc. 82-6402 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-38-M

---

40 CFR Part 180

[PP 0E2387/P191; PH-FRL-2065-4]

Chlorpyrifos; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the combined residues of the insecticide chlorpyrifos and its metabolite in or on the raw agricultural commodity onions (dry bulb). The proposed amendment to establish a maximum permissible level for residues of the insecticide in or on the commodity was submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before March 25, 1982.

ADDRESS: Written comments to: Donald Stubbs, Emergency Response Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-7123) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 0E2387 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Michigan, New York, Oregon, Washington, and Wisconsin.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the agricultural commodity onions (dry bulb) at 0.5 ppm.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of the proposed tolerance of 0.5 ppm in or on onions (dry bulb) were two-year rat and dog feeding studies, each with no-observable-effect levels (NOEL's) of 0.1 mg/kg/day based on red blood cell anticholinesterase (RBC AChE) effects and 3.0 mg/kg/day based on systemic effects (highest dose) with the rat feeding study giving negative onceogenic potential; a 3-generation rat reproduction study with a NOEL of 1.0 mg/kg/day (highest dose); a mouse teratology study negative for teratogenic effects at 25 mg/kg/day (highest dose); a hen acute delayed neurotoxicity study negative at 100 mg/kg; and a mouse oncogenicity study negative at 15 ppm (highest dose).

The acceptable daily intake (ADI), based on the rat feeding study (NOEL of 0.1 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.01 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60 kg human is calculated to be 0.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.1953 mg/day. The current action will utilize 0.9% of the ADI. Published tolerances utilize 32.54% of the ADI. All tolerances (published and currently pending) utilize 70.21% of the ADI.

The metabolism of chlorpyrifos is adequately understood for the proposed use in this petition. An adequate analytical method (gas chromatography) is available for enforcement purposes. Reside data are from tests conducted in New York, Washington, and Wisconsin. Since no feed item is involved, there should be no secondary residues transferred to meat, milk, poultry, or eggs. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein may request, on or before March 25, 1982, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. As provided for in the Administrative Procedure Act (5 U.S.C. 553(d)(3)), the comment period time is shortened to less than 30 days because of the necessity to expeditiously provide a means for control of onion maggots which infest direct-seeded onions. The comments must bear a notation indicating the document control number, "(PP 0E2387/P191)." All written comments filed in response to this petition will be available for public inspection in the office of Donald Stubbs from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

As required by Executive Order 12291, EPA has determined that this proposed rule is not a "Major" rule therefore does not require a Regulatory Impact Analysis. In addition, the Office of

Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerances levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: February 24, 1982.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.342 be amended by adding and alphabetically inserting the commodity onions (drybulb) to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodity	Part per million
* * * * *	
Onions (dry bulb)	0.5
* * * * *	

[FR Doc. 82-6035 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6254]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below and proposed changes to base flood elevations 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, P.E., National Flood Insurance Program, 202) 287–0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

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)
Arizona	Pima County (Unincorporated Areas)	Santa Cruz River	120 feet upstream of the intersection of Avra Valley Road and Santa Cruz River.	*2,065
			130 feet downstream of the intersection of Sunset Road and Santa Cruz River.	*2,213
		Santa Cruz River—With Consideration of Levee.	75 feet downstream of the intersection of the Southern Pacific Railroad spur bridge and Santa Cruz River.	*2,714
		Santa Cruz River—Without Consideration of Levee.	Intersection of Sahuarita Road and Southern Pacific Railroad.	*2,704

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Santa Cruz River	80 feet upstream of the intersection of Continental Road and Santa Cruz River.	*2,854
			Center of U.S. Highway 89 (State Highway 93), 150 feet north of its intersection with Pima Mine Road.	#3
		Santa Cruz River West Overflow Channel.	125 feet downstream of the intersection of Continental Road and Santa Cruz River West Overflow Channel.	*2,854
		Los Robles Wash	150 feet upstream of the intersection of Trico Road and Los Robles Wash.	*1,929
			Center of Avra Road, 1,000 feet north of its intersection with Avra Valley Road.	#3
		West Branch Brawley Wash	110 feet downstream of the intersection of Avra Valley Road and West Branch Brawley Wash.	*1,991
		Blanco Wash	Intersection of Chinle Road and Chinle Lane	*1,918
			Center of Tucker Road, 4,200 feet west of its intersection with Anway Road.	#2
		Brawley Wash	Intersection of Manville Road and Reservation Road	#1
		Black Wash	Center of Snyder Hill Road, 2.5 miles east of its intersection with Sandario Road.	#2
		Rillito Creek	Intersection of La Cholla Boulevard and Rillito Creek	*2,256
			25 feet upstream of the intersection of Dodge Boulevard and Rillito Creek.	*2,382
		Pantano Wash—With Consideration of Levee.	50 feet north of the intersection of North Craycroft Road and Pantano Wash.	*2,435
		Pantano Wash—Without Consideration of Levee.	Center of North Craycroft Road, 1,250 feet north of its intersection with Fort Lowell Road.	*2,434
		Pantano Wash	Intersection of Golf Links Road and Camino Seco	*2,667
		Canada del Oro	Intersection of Magee Road and Shannon Road	*2,301
			25 feet upstream of the intersection of U.S. Highway 89 (Tucson-Florence Highway) and Canada del Oro.	*2,639
			Intersection of Rollins Road and Lago del Oro Parkway.	*2,926
		Tanque Verde Creek	100 feet upstream of the intersection of Sabino Canyon Road and Tanque Verde Creek.	*2,478
			Center of Barbary Coast Road, 150 feet east of its intersection with Soldier Terrace.	*2,624
		Sopori Wash	Intersection of Arivaca Road and Sopori Ranch Road	*3,197
		Sopori Wash Overflow	Center of U.S. Highway 89, 350 feet south of its intersection with Arivaca Road.	*3,069
		West Branch Santa Cruz River	Center of Valencia Road, 3,500 feet east of its intersection with Mission Road.	#1
		East Branch Brawley Wash	Intersection of Clayton Road and Twin Peaks Road	#1
		Big Wash	75 feet downstream of the intersection of Wilds Road and Big Wash.	*2,970
		Rincon Creek—With Consideration of Levee.	Center of Old Spanish Trail, 1,500 feet west of its intersection with Camino del Garanon.	*2,902
		Rincon Creek—Without Consideration of Levee.	North side of the levee, 2,100 feet upstream along Rincon Creek from its intersection with Old Spanish Trail.	*2,894
		Rincon Creek	50 feet upstream of the intersection of Camino Loma Alta and Rincon Creek.	*2,987
		Sabino Creek	200 feet east of the intersection of Snyder Road and Hidden Valley Road.	*2,594
		Agua	Intersection of Fort Lowell Road and Connestoga Avenue.	*2,643
		Julian Wash	25 feet upstream of the intersection of Alvernon Way and Julian Wash.	*2,603
			Intersection of McKinley Avenue and Dream Street	#1
		Airport Wash	50 feet downstream of the intersection of the Air National Guard Access Road and Airport Wash.	*2,548
		Ventana Canyon Wash	130 feet upstream of the intersection of River Road and Ventana Canyon Wash.	*2,506
		Pima Wash	Intersection of Orange Grove Road and Pima Wash	*2,483
		Gibson Arroya	Intersection of Arroyo Avenue and Palm Street	*1,749

Maps available for inspection at Planning and Zoning Department, 131 West Congress, Tucson, Arizona.

Send comments to the Honorable Sam Lena, 131 West Congress, Tucson, Arizona 85701.

Arkansas	Unincorporated areas of Ashley County	Fountain Creek	Just upstream of Arkansas Highway 81	*162
		Snake Creek	Approximately 600 feet downstream of the gravel road that is located about 0.75 miles upstream of the confluence of Snake Creek Tributary 1.	*93
			Just upstream of the gravel road that is located about 0.61 miles upstream of the confluence Snake Creek Tributary 5.	*121
		Snake Creek Tributary 1	Just upstream of the gravel road that is located about 0.52 miles upstream of the confluence with Snake Creek.	*94
		Snake Creek Tributary 2	Just upstream of the gravel road that is located about 0.41 miles upstream of the confluence with Snake Creek.	*97
		Snake Creek Tributary 3	Just upstream of the gravel road that is located about 1.50 miles upstream of the confluence with Snake Creek.	*127
		Snake Creek Tributary 5	Approximately 200 feet upstream of Arkansas Highway 133.	*135
		Big Brushy Creek	Approximately 400 feet upstream of the Rock Island and Pacific Railroad.	*120

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 500 feet downstream of Arkansas Highway 133.	*126
		Bell Branch	Approximately 400 feet upstream of Marais Saline Road.	*97
		Maxwell Creek	Just downstream of the asphalt road that is located about 1.45 miles upstream of the confluence with Big Brushy Creek.	*116
		Big Brushy Creek Tributary 1	Just upstream of the gravel road that is located about 0.44 miles upstream of the confluence with Big Brushy Creek.	*147
		Big Brushy Creek Tributary 2	Approximately 0.38 miles upstream of the confluence with Big Brushy Creek.	*134
		Big Brushy Creek Tributary 3	Approximately 400 feet downstream of the gravel road that is located about 1.04 miles upstream of the confluence with Big Brushy Creek.	*120
		Little Brushy Creek	Just upstream of Hancock Road	*108
			Just upstream of Arkansas Highway 133	*131
		Little Brushy Creek Tributary 1	Just upstream of Arkansas Highway 133	*130
		Little Brushy Creek Tributary 2	Just downstream of the asphalt road that is located about 0.43 miles upstream of the confluence with Little Brushy Creek.	*134
		Middle Fork West Creek	Just upstream of U.S. Highway 82	*144
		Middle Fork Tributary	Just downstream of U.S. Highway 82	*147
		West Fork West Creek	Just downstream of the asphalt road that is located 1,100 feet upstream of the confluence with Middle Fork West Creek.	*147
		East Fork West Creek	Just upstream of U.S. Highway 82	*147
			Just upstream of Arkansas Highway 52	*170

Maps available for inspection at Ashley County Judge's Office, County Courthouse for Ashley, Hamburg, Arkansas 71646.

Send comments to Mr. Dan Hartley, Ashley County Judge or Mr. Norman T. Watson, County Administrative Assistant, Ashley County Courthouse, Hamburg, Arkansas 71646.

Arkansas	Unincorporated areas of Lonoke County	Fourmile Creek	Just upstream of Arkansas Highway 319	*228
			Just upstream of Arkansas Highway 321	*243
			Just downstream of Arkansas Highway 5	*296
			Just upstream of Lonoke-Pulaski County Line	*313
		Magness Creek	Just upstream of County Road	*240
			Just upstream of County Line	*264
			Just upstream of Arkansas Highway 5	*309
		Hudson Branch Creek	Just upstream of County Road	*243
			Just upstream of Arkansas Highway 38	*262
			Just upstream of East Main STreet	*287
		White Oak Branch	Just downstream of First Street	*263
			Just upstream of U.S. Highway 67, 167	*277
			Just upstream of Arkansas Highway 5	*287
		Bayou Two Prairie Near Cabot	Just upstream of First Street	*266
			Just upstream of Arkansas Highway 367	*266
			Just upstream of U.S. Highway 67, 167	*271
		Bayou Two Prairie Tributary Near Cabot.	Just upstream of Arkansas Highway 89	*287
		North Bayou	Just upstream of Scroggins Street	*221
			Just upstream of Arkansas Highway 161	*224
		Bayou Two Prairie Near Carlisle	Just upstream of Arkansas Highway 13	*215
			Just upstream of U.S. Highway 70	*218
		Bayou Meto	Just upstream of U.S. Interstate 40	*238
			Just upstream of County Line	*245
		Bayou Two Prairie Near Lonoke	Just upstream of Arkansas Highway 31	*227
			Just upstream of the corporate limits	*228
		Pack Branch	Just upstream of Dismukes Avenue	*230

Maps available for inspection at the Lonoke County Judge's Office, County Courthouse, Lonoke, Arkansas 72081.

Send comments to Honorable Don C. Spence, Lonoke County Judge, County Courthouse, P.O. Box 431, Lonoke, Arkansas 72081.

Arkansas	Unincorporated areas of Saline County	Saline River	Just upstream of Highway 291	*252
			Just downstream of County Road 27	*264
			Just upstream of Chicago Rock Island and Pacific Railroad.	*281
			Just upstream of Interstate Highway 30	*286
		Alum Fork Saline River	Just downstream of County Road	*299
		Cedar Creek	Just downstream of County Road 195	*498
			Just upstream of County Road 59	*550
			Just upstream of County Road	*568
			Just downstream of County Road	*566
		Middle Fork Saline River	Approximately 630 feet upstream of County Road 59	*506
			Approximately 300 feet downstream of County Road 59.	*504
			Approximately 950 feet downstream of County Road 57.	*481
		Mill Creek	Lake Cortez	*539
			Approximately 330 feet upstream of downstream County Limits.	*539
		North Fork Saline River	Approximately 1,300 feet upstream of State Highway 5	*300
		Hurricane Creek	Just upstream of Missouri Pacific Railroad	*350
			Just downstream of County Road 43	*356
			Just downstream of Interstate Highway Service Road	*371
			Just upstream of Interstate Highway Service Road	*373

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Fourch Creek	Just upstream of Cross Section A, At mile 22.54 above mouth, approximately 800 feet at upstream of the location in alignment with County Road 83 Extended.	*321
			Just upstream of County Line Road	*489
			Just upstream of County Road 35	*532
		Otter Creek	At Cross Section A just upstream of the corporate limits of Shannon Hills.	*319
			At County Road 37	*330
			Approximately 130 feet at downstream of County Road 37.	*332
		Crooked Creek	Approximately 150 feet at upstream of State Highway 111.	*316
			Approximately 250 feet at downstream of Missouri Pacific Railroad.	*322
			Just downstream of County Road 612	*336
		Lorance and Dry Creek	Just upstream of the upstream crossing of U.S. Highways 65 and 167.	*248
			Approximately 400 feet at downstream of County Road 215.	*266
			Just upstream of County Road 204 (Chicot Road)	*283
			Just downstream of County Road 31 (Shannon Hills Road).	*297

Maps available for inspection at Saline County Judge's Office, County Courthouse, Benton, Arkansas 72015.

Send comments to Honorable Wayne M. Bishop, Saline County Judge, County Courthouse, Benton, Arkansas 72015.

Colorado	Lamar (City), Prowers County	Arkansas River	Approximately 400 feet west of the intersection of Moyer Street and Fifth Street.	*3,615
		Willow Creek	Downstream side of the intersection of First Street and the channel.	*3,631
			Downstream side of the intersection of Woodland Lane and channel.	*3,651
			Intersection of southernmost corporate limits and channel.	*3,666

Maps available for inspection at City Surveyor's Office, 104 E. Parmenter, Lamar, Colorado.

Send comments to the Honorable Joe Reichart, Box 270, Lamar, Colorado 81052.

Illinois	(Uninc.) Boone County	Kishwaukee River	About 4,100 feet downstream of Newburg Road	*729
			Just downstream of Stone Quarry Road	*755
			About 200 feet downstream of Poplar Grove Road	*763
			At County Line Road	*779
		North Kinnikinnick Creek	Just upstream of Chrysler Road	*828
			Just upstream of McCurry Road	*842
			Just upstream of Rockton Road	*862
			Just upstream of Free Church Road	*869
			Just upstream of Grade School Road	*931
			About 2,200 feet upstream of Grade School Road	*933
		South Kinnikinnick Creek	At downstream county boundary	*811
			About 100 feet downstream of Conservation Area Road.	*855
			About 200 feet upstream of North Boone School Road (near Caledonia road).	*878
			About 500 feet upstream of Livingston School Road	*905
			Just downstream of North Boone School Road (upstream of Livingston School Road).	*917
		Beaver Creek	About 3,600 feet downstream of North Road	*735
			Just upstream of Riverside Road	*785
			Just upstream of Orth Road	*821
			Just downstream of Hunter Road	*898
		Mosquito Creek	At mouth	*767
			Just downstream of Reed's Crossing Road	*808
		Pisasaw Creek	About 300 feet downstream of Lawrence Raod	*764
			Just upstream of Squaw Prairie Road	*775
			About 500 feet upstream of Woodstock Road	*788
		Coon Creek	At Chicago and North Western railroad	*766
			About 5,500 feet upstream of Garden Prairie Road	*775
		Tributary A	At mouth	*753
			About 200 feet downstream of Chicago and North Western railroad.	*758
			About 250 feet upstream of Chicago and North Western railroad.	*767
			Just downstream of Interstate 90	*786
		Tributary D	At mouth	*816
			Just upstream of Orth Road	*821
			About 5,650 feet upstream of Orth Road	*845

Maps available for inspection at the City-County Planning Commission, Boone County Courthouse, Belvidere, Illinois.

Send comments to Honorable LeRoy Schroeder, Chairman of the Boone County Board, Boone County, Boone County Office Building, 613 North Main, Belvidere, Illinois 61008.

Indiana	(C) Hartford City, Blackford County	Little Lick Creek	About 850 feet downstream of Walnut Street	*872
			Just upstream of Norfolk and Western Railway	*878
			About 4,350 feet upstream of Water Street at the eastern corporate limits.	*880

Maps available for inspection at the City Hall, 227 North High Street, Hartford City, Indiana.

Send comments to Honorable Merle R. Headley, Mayor, City of Hartford City, City Hall, 227 North High Street, Hartford City, Indiana 47348.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Indiana	(C) Marion Grant County	Mississinewa River	About 2,000 feet downstream of State Routes 9 and 37.	*785
			Just downstream of Pennsylvania Street	*803

Maps available for inspection at the City Engineer's Office, City Hall, 301 South Branson Street, Marion, Indiana.

Send comments to Honorable Fred Weagley, Mayor, City of Marion, City Hall, 301 South Branson Street, Marion, Indiana 46952.

Indiana	(T) Roanoke, Huntington County	Cow Creek	About 400 feet downstream of High Street at the eastern corporate limits.	*754
			About 1,800 feet upstream of Seminary Street at the western corporate limits.	*759
		McPherren Ditch	About 500 feet downstream of Second Street at the eastern corporate limits.	*754
			About 1,400 feet upstream of Seminary Street	*766

Maps available for inspection at the Town Hall, P.O. Box 328, Roanoke, Indiana.

Send comments to Honorable Carolyn Parsons, Town Board President, Town of Roanoke, Town Hall, P.O. Box 328, Roanoke, Indiana 46783.

Indiana	(Uninc.) Rush County	Big Blue River	Just upstream of County Road 1,000 West	*851
			About 450 feet upstream of State Route 140	*892
		Flatrock River	Just upstream of County Road 350 South	*937
			Just upstream of State Route 3	*955
			Just downstream of County Road 300 North	*967
		Six Mile Creek	At County Road 1000 West (about 3,900 feet downstream of County Road 800 North.	*858
			Just upstream of County Road 1000 West (about 2,550 feet upstream of County Road 900 North.	*883
			About 6,900 feet upstream of County Road 1100 North (upstream county boundary).	*927
		Goose Creek	At confluence with Big Blue River	*875
			Just downstream of Big Blue Dam No. 2	*910
			Just upstream of Big Blue Dam No. 2	*935
		Three Mile Creek	At confluence with Big Blue River	*881
			Just downstream of Big Blue Dam No. 3	*884
			Just upstream of Big Blue Dam No. 3	*928
			Just upstream of Campground Dam	*930
			About 2,900 feet upstream of County Road 250 West	*988
		Charlottes Brook	At confluence with Six Mile Creek	*914
			At upstream county boundary	*951

Maps available for inspection at the Area Planning Commission Office, Rush County Courthouse, 1st and Main Street, Rushville, Indiana.

Send comments to Honorable Lowell Angle, President of the County Commission Board, Rush County, Rush County Courthouse, 1st and Main Street, 2nd Floor, Planning Commission Office, Rushville, Indiana 46173.

Maryland	Town, Charlestown, Cecil County	Chesapeak Bay (Tidal Flooding affecting Northeast River).	Entire shoreline within the Town of Charlestown	*12

Maps available for inspection at the Town Hall, Charlestown, Maryland.

Send comments to Honorable Roger A. Herron, Council President of Charlestown, P.O. Box 154, Charlestown, Maryland 21914.

Massachusetts	Shirley, Town, Middlesex County	Nashua River	Downstream Corporate Limits	*215
			Upstream Corporate Limits	225
		Squannacook River	Confluence with Nashua River	*215
			300 feet upstream of West Groton Road	*238
			Upstream Corporate Limits	*258
		Catacoonamug River	Confulence with Nashua River	*224
			Upstream of Phoenix Pond Dam	*241
			180 feet upstream of Main Street	*259
			Upstream of dam	*265
			Confluence of Bow Brook	*272
		Bow Brook	Confluence with Catacoonamug Brook	*272
			Private Drive	*292
		Morse Brook	Confluence with Nashua River	*218
			4,175 feet upstream of Walker Road	*224
		Mulpus Brook	Confluence with Nashua River upstream of Private Drive.	*216
			Approximately 100 feet	*236
			Upstream of Hazen Road	*264
			Upstream of Longley Road	*285
			Upstream Corporate Limits	*296
		Walker Brook	Confluence with Nashu River	*218
			2,700 feet upstream of Walker Road	*230
			Approximately 5,045 feet upstream Walker Road	*245
		Trout Brook	Confluence with Nashua River	*223
			120 feet downstream of Front Street	*245
			560 feet upstream of Ayer Road	*260
			Clark Road	*273

Maps available for inspection at the Town of Shirley Town Hall, Lancaster Road, Shirley, Massachusetts.

Send comments to Honorable Henry D. Fagan, Chairman of the Town of Shirley Board of Selectmen, Lancaster Road, Shirley, Massachusetts 01464.

New Hampshire	Newport, Town, Sullivan County	Sugar River	Downstream corporate limits	*593
			Upstream of Claremont and Concord Railroad (1st crossing).	*617

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream side of Claremont and Concord Railroad bridge (2nd crossing).	*661
			Downstream of State Routes 11 and 103	*676
			Approximately 4,750' upstream of State Routes 11 and 103.	*708
			Upstream side of Claremont and Concord Railroad bridge (3rd crossing).	*752
			Approximately 1,200' upstream of Claremont and Concord Railroad bridge (5th crossing).	*769
			Downstream of Oak Street	*782
			Upstream side of Belknap Avenue	*790
			Downstream of Cross Street	*816
			Upstream of Private Road	*852
		North Branch	Confluence with Sugar River	*774
		Sugar River	Corporate limits	*778
		South Branch	Confluence with Sugar River	*791
		Sugar River	Downstream of Pollards Mill Road	*803
			Approximately 3,400' upstream of Pollards Mill Road	*851
			Approximately 3,300' downstream of confluence of Spring Brook.	*888
			Downstream of Coon Brook Road	*921
			Corporate limits	*931

Maps available for inspection at the Office of the Selectmen, Newport Town Municipal Building, 15 Sunappe Streeet, Newport, New Hampshire.

Send comments to Honorable Arnold Greenleave, Chairman of the Town of Newport Board of Selectmen, Municipal Building, 15 Sunappe Street, Newport, New Hampshire 93773.

New Hampshire	Rumney, Town, Grafton County	Baker River	Downstream Limits	*490
			Approximately 5,000' upstream of downstream Corporate Limits.	*491
			Approximately 10,000' upstream of downstream Corporate Limits.	*492
			Confluence of Clark Brook	*495
			Confluence of Stinson Brook	*500
			Upstream Stinson Lake Road	*502
			Confluence of Halls Brook	*508
			Approximately 5,000' upstream of confluence of Halls Brook.	*513
			Upstream Sand Hill Road	*523
			Upstream Corporate Limits	*532
		Stinson	Confluence with Baker River	*500
		Brook	Approximately 90' upstream of Quincy Road	*510
			Approximately 110' upstream of Stinson Lake Road	*634
			Approximately 1,300' upstream of Stinson Lake Road	*662

Maps available for inspection at the Chairman Board of Selectmans Office, Rumney, New Hampshire.

Send comments to Honorable Donald Kenneson, Chairman of the Town of Rumney Board of Selectmen, Rumney, New Hampshire 03266.

New Jersey	Deptford, Township, Gloucester County	Delaware River	At downstream corporate limits	*10
			At Almonesson Road	*10
		South Branch Big Timber Creek	Approximately 5,000' upstream Almonesson Road	*11
			Upstream Lower Landing Road	*17
			At upstream corporate limits	*18

Maps available for inspection at the Municipal Building, 1011 Cooper Street, Deptford, New Jersey.

Send comments to Honorable James E. McGratten, Mayor of Deptford Township, Municipal Building, 1011 Cooper Street, Deptford, New Jersey 08096.

New Jersey	Hackensack, City, Bergen County	Hackensack River	Entire shoreline within community	*9
		Coles Brook	Confluence with Hackensack River	*9
			Kinderkamack Avenue (upstream side)	*10
			Main Street (downstream side)	*15

Maps available for inspection at the City Hall, 65 Central Avenue, Hackensack, New Jersey.

Send comments to Honorable Fred Cerba, Mayor of Hackensack, City Hall, 65 Central Avenue, Hackensack, New Jersey 07602.

New Jersey	Hoboken, City, Hudson County	Upper New York Bay	Entire shoreline of the Hudson River within the Corporate Limits.	*10

Maps available for inspection at the City Hall, Washington and First Streets, Hoboken, New Jersey.

Send comments to Honorable Steve Cappiello, Mayor of Hoboken, City Hall, Washington and First Streets, Hoboken, New Jersey 07030.

New Jersey	Monmouth Beach, Borough, Monmouth County.	Atlantic Ocean	Entire shorelines within community	*16
		South Shrewsbury River	Shoreline from northern corporate limits to confluence of Pleasure Bay.	*12
		Pleasure Bay	Shoreline from confluence with South Shrewsbury River to 325 feet north of extended Gull Point Road.	*12
			Shoreline from 325 feet north of extended Gull Point Road to confluence of Manahassett Creek.	*11
		Manahassett Creek	Shoreline from confluence with Pleasure Bay to southern corporate limits.	*11

Maps available for inspection at the Municipal Building, 22 Beach Road, Monmouth Beach, New Jersey.

Send comments to Honorable F. Brent Neale, Mayor of Monmouth Beach, Municipal Building, 22 Beach Road, Monmouth Beach, New Jersey 07750.

New Jersey	Somers Point, City, Atlantic County	Great Egg Harbor Bay	Shoreline within corporate limits	*9

Maps available for inspection at the Municipal Building, Shore Road, Somers Point, New Jersey.

Send comments to Honorable Harvey L. Smith, Mayor of Somers Point, Shore Road and New Jersey Avenue, Somers Point, New Jersey 08244.

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 Jersey	Stanhope, Borough, Sussex County	Musconetcong River	Downstream Corporate Limits	*711
			Approximately 180 feet downstream of Interstate Route 181 and U.S. Route 206 connector.	*731
			Houdaille Road (upstream side)	*742
			Approximately 610 feet upstream of Houdaille Road	*751
			Approximately 1,600 feet upstream of Houdaille Road	*767
			Upstream of dam located upstream of abandoned railroad crossing downstream of Waterloo Road.	*786
			Approximately 550 feet upstream of Waterloo Road	*796
			Approximately 1,070 feet upstream of Waterloo Road	*811
			Downstream of dam located downstream of Furnace Street.	*824
			Furnace Street (upstream side)	*837
			Downstream of U.S. Route 206	*853
			Upstream of Lake Musconetcong Dam	*862
			Upstream Corporate Limits	*864

Maps available for inspection at the Municipal Building, 77 Main Street, Stanhope, New Jersey.

Send comments to Honorable Michael Bender, Mayor of Stanhope, Municipal Building, 77 Main Street, Stanhope, New Jersey 07874.

New Jersey	Washington, Township, Gloucester County.	South Branch Big Timber Creek	Downstream corporate limits	*18
			Approximately 200' upstream West Church Street	*24
			Approximately 3,600' upstream of West Church Street	*25
			Upstream side of Dam No. 2	*45
			Upstream side of Dam No. 3	*68
			Upstream side of Dam No. 4	*85
			Approximately 3,460' upstream of Atlantic City Expressway D*98.	
			Upstream side of Redwood Street	*125
		Mantua Creek	Upstream of Delsea Drive	*67
			Approximately 1,500' downstream of Green Tree Road	*81
			Upstream of Fish Pond Road	*111
		Duffield Run	Downstream corporate limits	*74
			Downstream of Green Tree Road	*84
			Approximately 1,320' upstream of Kandle Lake Dam	*105

Maps available for inspection at the Municipal Building, Trainersville, New Jersey.

Send comments to Honorable Howard E. Johnson, Mayor of Washington Township, P.O. 1106, Trainersville, New Jersey 08012.

New Jersey	Woodbridge, Township, Middlesex County.	Rahway River	Entire lenght of river within community	*12
		South Branch Rahway River	Approximately 2,790' downstream of corporate limits	*12
			At downstream corporate limits	*15
			Upstream of New Dover Road	*20
			Upstream of Green Street	*30
			Upstream of Wood Avenue	*40
		Parkway Branch	At confluence with South Branch Rahway River	*36
			Downstream of Garden State Parkway	*44
		Pumpkin Patch Brook	At downstream corporate limits	*61
			Upstream of Inmans Avenue	*69
			Upstream of Inwood Avenue	*88
		Woodbridge River	Entire length of river within community	*12
		Raritan River	Entire shoreline within community	*15
		Spa Spring	At confluence with Woodbridge River	*12
			Downstream of Convey Boulevard	*15
		Heards Brook	At confluence with Woodbridge River	*12
			Upstream of Amboy Avenue	*25
			Downstream of U.S. Route 9	*42

Maps available for inspection at the Municipal Building, One Main Street, Woodbridge, New Jersey.

Send comments to Honorable Joseph DeMarion, Mayor of Woodbridge, One Main Street, Woodbridge, New Jersey 07095.

New York	The Branch, Village, Suffolk County	Northeast Branch, Nissequoque River.	Downstream Corporate Limits	*35
			Approximately 320 feet downstream of Hauppague Road.	*40
			Upstream Corporate Limits	*46

Maps available for inspection at the residence of the Mayor, 18 Cambridge Street, Smithtown, New York.

Send comments to Honorable John Lenihan, Mayor of The Branch, 18 Cambridge Street, Smithtown, New York 11787.

New York	Palatine Bridge, Village, Montgomery County.	Mohawk River	Downstream Corporate Limits	*300
			Upstream Corporate Limits	*302

Maps available for inspection at the Village Office, Route 5, Palatine Bridge, New York.

Send comments to Honorable Anthony Malagesi, Mayor of Palatine Bridge, Box 208, Route 5, Palatine Bridge, New York 13428.

New York	Piermont, Village, Rockland County	Hudson River	Shoreline from approximately 0.18 mile north of Orchard Terrace (extended) to a point 0.64 mile southwest of Ferry Road (extended).	*10

Maps available for inspection at the Office of the Village Clerk, Village Hall, 478 Pierpont Avenue, Pierpont, New York.

Send comments to Honorable William Goswick, Mayor of Piermont, Village Hall, 478 Piermont Avenue, Piermont, New York 10968.

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	Russell Gardens, Village, Nassau County	Russells Creek	Approximately 20 feet downstream of Clent Road	*74
			Approximately 265 feet upstream of Clent Road	*81
			Upstream Corporate Limits	*115
Maps available for inspection at the Village Hall, Six Tain Drive, Russell Gardens, New York.				
Send comments to Honorable Roasrio Negri, Mayor of Russell Gardens, Village Hall, Six Tain Drive, Russell Gardens, New York 11021.				
New York	Sag Harbor, Village, Suffolk County	Sag Harbor Bay	Entire shoreline within community	*12
		Little Northwest Creek	Shoreline from confluence with Sag Harbor Bay to corporate limits.	*10
		Sag Harbor Cove	Shoreline from Bay Street extended to 400 feet south of extended Redwood Road.	*11
			Shoreline from 400 feet south of extended Redwood Road to confluence of Ligonee Brook.	*9
		Ligonee Brook	Shoreline from confluence with Sag Harbor Cove to corporate limits.	*9
Maps available for inspection at the Village Hall, Main Street, Sag Harbor, New York.				
Send comments to Honorable Fred Runco, Mayor of Sag Harbor, Village Hall, Main Street, Box 660, Sag Harbor, New York 11963.				
Ohio	(C) Sidney, Shelby County	Great Miami River	About 0.3 mile downstream of Chessie System	*924
			Just upstream of Gearhart Road	*937
			About 0.8 mile upstream of confluence of Tawawa Creek.	*946
		Tawawa Creek	About 0.2 mile upstream of Riverside Drive	*944
			Just upstrem of Civic Park Road	*956
			At upstream corporate limits	*969
Maps available for inspection at the City Manager's Office, City Hall, 201 West Popular Street, Sidney, Ohio.				
Send comments to Honorable Gary Van Fossen, Mayor, City of Sidney, City Hall, 201 West Poplar Street, Sidney, Ohio 45365.				
Oklahoma	City of Oklahoma City, Oklahoma, Canadian, Cleveland, McClain, Pottawatomie Counties.	North Canadian River	Just upstream of St. Louis and San Francisco Railroad	*1,107
			Just upstream of Westminister Road	*1,124
			Just downstream of northeast 108th Street	*1,132
			Just downstream of Midwest Boulevard	*1,148
			Just downstream of I-35	*1,174
			Just downstream of Western Avenue	*1,185
			Just upstream of Portland Avenue	*1,196
			Just upstream of Chicago Rock Island and Pacific Railroad.	*1,228
			Just upstream of U.S. Highway 66	*1,248
		North Canadian Tributary 8	Just upstream of northeast 93rd Street	*1,152
			Just upstream of northeast 78th Street	*1,173
			Just downstream of northeast 63rd Street	*1,192
		North Canadian Tributary 9	Just downstream of St. Louis and San Francisco Railway.	*1,153
			Just upstream of Post Road	*1,186
		Crutcho Creek	Just downstream of Arnold Drive	*1,205
			Just downstream of southeast 59th Street	*1,225
			Just downstream of southeast 74th Street	*1,243
		Crutcho Creek Tributary E	Just upstream of southeast 44th Street	*1,210
			Just upstream of Reserve Road	*1,228
		Crutcho Creek Tributary C	Just upstream of Twinning Drive	*1,213
			Just downstream of Epperly Drive	*1,246
		Crutcho Creek Tributary C-1	Approximately 400 feet downstream of southeast 59th Street.	*1,232
		Crutcho Creek Tributary F	Just upstream of Voorhees Road	*1,228
		Crutcho Creek Tributary G	Approximately 1,400 feet downstream of Atchison Topeka & Santa Fe Railway.	*1,240
		Cherry Creek	Just downstream of Parker Drive	*1,256
		Crooked Oak Creek	Just downstream of I-40	*1,175
			Just downstream of southeast 22nd Street	*1,194
			Just downstream of Grand Boulevard	*1,213
			Just upstream of southeast 44th Street	*1,221
			Just downstream of southeast 59th Street	*1,236
			Just upstream of Atchison Topeka & Santa Fe Railway	*1,250
			Just upstream of southeast 74th Street (I-240)	*1,265
		Crooked Oak Creek Tributary A	Approximately 500 feet upstream of Eastern Avenue	*1,239
		Lightning-Creek	Just upstream of southwest 29th Street	*1,192
			Just downstream of southwest 59th Street	*1,213
			Just upstream of southwest 67th Street	*1,217
			Just upstream of I-240	*1,225
			Just downstream of Western Avenue	*1,247
			Just downstream of Walker Avenue	*1,264
		Lightning Creek Tributary-1	Just downstream of Southeast 59th Street	*1,224
			Just upstream of Santa Fe Avenue	*1,237
		Lightning Creek Tributary 3	Just upstream of South Walker	*1,231
		Lightning Creek Tributary 6	Approximately 1,500 feet upstream of confluence with Lightning Creek.	*1,243
			Just downstream of Pennsylvania Avenue	*1,267
		Twin Creek	Just upstream of Western Avenue	*1,189
			Just upstream of Pennsylvania Avenue	*1,196
			Just upstream of St. Louis San Francisco Railway	*1,210
			Just downstream of southwest 29th Street	*1,221

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of southwest 48th Street	*1,241
		Brock Creek	Just upstream of southeast 25th Street (Commerce Street).	*1,201
			Just upstream of southwest 44th Street	*1,223
			Just downstream of southwest 59th Street	*1,238
		North Canadian River Tributary 10	Just downstream of southwest 25th Street	*1,209
			Just upstream of South Portland Avenue	*1,227
		North Canadian River Tributary 12	Approximately 3,000 feet upstream of confluence of North Canadian Tributary 13.	*1,222
		North Canadian River Tributary 13	Just upstream of southwest 29th Street	*1,226
		Campbell Creek	Just upstream of southwest 29th Street	*1,234
		Campbell Creek East Branch	Just upstream of southwest 44th Street	*1,251
		Campbell Creek Middle Branch	Just upstream of Council Road	*1,264
			Just downstream of southwest 59th Street	*1,279
		North Canadian River Tributary 14	Just upstream of West Reno Avenue	*1,216
			Just downstream of Chicago, Rock Island, and Pacific Railroad.	*1,226
			Just upstream of 10th Street	*1,254
			Just downstream of N.W. 16th Street	*1,270
		Mustang Creek	Just upstram of southwest 15th Street	*1,236
			Just downstream of Morgan Road	*1,240
			Just downstream of Sara Road	*1,244
			Just downstream of southwest 29th Street	*1,280
			Just dowmstream of Czech Hall Road	*1,285
			Just downstream of Cemetery Road	*1,325
		Mustang Creek (New Channel)	Just downstream of Dam	*1,244
		Mustang Creek Tributary 1	Just downstream of southwest 29th Street	*1,241
			Just downstream of southwest 44th Street	*1,263
			Just downstream of southwest 59th Street	*1,288
		Mustang Creek Trilbutary 1 West Branch.	Just downstream of southwest 59th Street	*1,292
		Mustang Creek Tributary 2	Just downstream of southwest 29th Street	*1,255
			Just upstream of southwest 44th Street	*1,271
			Just upstream of Mustang Road	*1,279
			Just upstream of Czech Hall Road	*1,297
		Mustang Creek Tributary 2 South Branch.	Just downstream of southwest 59th Street	*1,287
		Mustang Creek Tributary 3	Just downstream of southwest 15th Street	*1,263
			Just upstream of Mustang Road	*1,268
			Just upstream of Czech Hall Road	*1,289
			Just downstream of Reno Avenue	*1,320
		Mustang Creek Tributary 3	Just upstream of Mustang Road	*1,268
		East Branch	Just upstream of Reno Avenue	*1,281
		Mustang Creek	Just downstream of Wildwood Drive	*1,295
		Tributary 3 West Branch		
		Mustang Creek Tributary 4	Just downstream of Cemetery Road	*1,306
		Shell Creek	Just upstream of I-40	*1,279
			Just upstream of northwest 23rd Street	*1,285
			Just upstream of northwest 10th Street	*1,296
			Just upstream of West Reno Avenue	*1,305
			Just downstream of southwest 15th Street	*1,318
			Just upstream of southwest 29th Street	*1,332
		Shell Creek Tributary 1	Just downstream of Cimarron Road	*1,306
		Shell Creek Tributary 2	Just downstream of Richland Road	*1,290
		Shell Creek Tributary 3	Just downstream of northwest 10th Street	*1,295
			Just upstream of Richland Road	*1,304
			Just upstream of Frisco Road	*1,331
		Shell Creek Tributary 4	Just upstream of Cimarron Road	*1,306
			Just downstream of West Reno Avenue	*1,312
		Shell Creek Tributary 4 West Branch.	Just upstream of Cimarron Road	*1,299
		Shell Creek Tributary 5	Just upstream of Richland Road	*1,313
			Just upstream of southwest 15th Street	*1,324
			Just downstream of southwest 29th Street	*1,340
		Shell Creek Tributary 5 East Branch.	Approximately 1,000 feet upstream of confluence with Shell Creek Tributary 5.	*1,316
		Shell Creek Tributary 6	Just upstream of southwest 29th Street	*1,333
		Canadian River	Just upstream of U.S. Highway 62	*1,162
		Canadian River Tributary 1	Just upstream of southwest 149th Street	*1,172
			Just upstream of southwest 134th Street	*1,183
			Just downstream of Pennsylvania Avenue	*1,186
			Just downstream of southwest 119th Street	*1,204
			Just downstream of southwest 104th Street	*1,232
		Tributary 1 of Canadian River Tributary 1.	Just upstream of southwest 149th Street	*1,175
		Tributary 2 of Canadian River Tributary 1.	Just upstream of southwest 149th Street	*1,180
			Just upstream of Western Avenue	*1,191
		Tributary 0 of Canadian River Tributary 1.	Just downstream of southwest 134th Street	*1,190
			Just downstream of Western Avenue	*1,199
		Tributary 3 of Canadian River Tributary 1.	Just downstream of southwest 119th Street	*1,205
		Tributary 4 of Canadian River Tributary 1.	Just upstream of southwest 119th Street	*1,201
		Canadian River Tributary 2	Just upstream of southwest 149th Street	*1,162
			Just downstream of southwest 134th Street	*1,185
			Just upstream of southwest 119th Street	*1,210

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Cow Creek	Just downstream of southwest 134th Street	*1,185
			Just upstream of 119th Street	*1,196
			Just downstream of southwest 104th Street	*1,209
			Just upstream of southwest 89th Street	*1,232
		Cow Creek Tributary 1	Just downstream of southwest 119th Street	*1,202
			Just downstream of southwest 104th Street	*1,232
		Cow Creek Tributary 2	Just upstream of of southwest 119th Street	*1,196
			Just upstream of Council Road	*1,237
			Just upstream of County Line road	*1,259
			Just downstream of southwest 104th Street	*1,274
		North Branch of Cow Creek Tributary 2.	Just upstream of southwest 104th Street	*1,213
			Just downstream of Council Road	*1,257
		West Branch of Cow Creek Tributary 2.	Just upstream of southwest 104th Street	*1,240
		Cow Creek Tributary 3	Just upstream of southwest 104th Street	*1,213
		Deep Fork	Just downstream of Triple X Road	*916
			Just downstream of Choctaw Road	*932
			Just downstream of Memorial Road	*1,007
			Just upstream of northeast 122nd Street	*1,017
			Just downstream of northeast 108th Street	*1,028
			Just upstream of Britton Road	*1,043
			Just upstream of Wilshire Boulevard (78th Street)	*1,052
			Just upstream of northeast 63rd Street	*1,064
			Just upstream of Eastern Avenue	*1,077
			Just upstream of Kelly Avenue	*1,088
			Just downstream of Lincoln Boulevard	*1,091
			Just upstream of Northeast Expressway	*1,111
			Just upstream of Mattern Drive	*1,138
			Just upstream of Young Boulevard	*1,152
			Just downstream of 36th Street	*1,164
			Just upstream of May Avenue	*1,181
			Just downstream of North Roff Street	*1,215
			Just downstream of Warren Avenue	*1,238
		Deep Fork Tributary 4	Approximately 2,500 feet upstream of confluence with Deep Fork.	*1,010
		Deep Fork Tributary 5	Just downstream of Turner Turnpike	*1,011
			Just downstream of northeast 122nd Street	*1,048
		Deep Fork Tributary 6	Just upstream of Interstate Highway 35	*1,046
		Deep Fork Tributary 7	Just upstream of Sooner Road	*1,031
			Just upstream of northeast 93rd Street	*1,070
		Harrison Creek	Just downstream of Interstate Highway 35	*1,040
			Just downstream of Bryant Avenue	*1,053
			Just upstream of Eastern Avenue	*1,073
			Just downstream of Kelley Avenue	*1,105
			Just upstream of 108th Street	*1,127
		Harrison Creek Tributary 1	Approximately 1,500 feet upstream of confluence with Harrison Creek.	*1,051
		Harrison Creek Tributary 2	Just upstream of northeast 122nd Street	*1,063
			Just upstream of Eastern Avenue	*1,082
		West Branch of Harrison Creek Tributary 2.	Approximately 1,000 feet upstream of confluence with Harrison Creek Tributary 2.	*1,089
		Harrison Creek Tributary 3	Just downstream of Kelley Avenue	*1,111
		Deep Fork Tributary 9	Just upstream of Missouri-Kansas-Texas Railroad	*1,050
			Just downstream of Wileshire Boulevard (78th Street)	*1,066
		Deep Fork Tributary 10	Just upstream of Interstate Highway 35	*1,052
			Just upstream of Eastern Avenue	*1,073
			Just upstream of Wilshire Boulevard (78th Street)	*1,097
		Deep Fork Tributary 11	Approximately 1,500 feet upstream of confluence with Deep Fork.	*1,072
		Deep Fork Tributary 12	Just upstream of 50th Street	*1,097
		Deep Fork Tributary 13	Just downstream of Grand boulevard	*1,075
			Just downstream of Eastern Avenue	*1,110
			Just upstream of northeast 36th Street	*1,135
		Deep Fork Tributary 13A	Just upstream of Eastern Avenue	*1,115
		Deep Fork Tributary 13B	Just upstream of 36th Street	*1,127
		Deep Fork Tributary 16	Just downstream of 55th Street	*1,092
			Just upstream of 50th Street	*1,119
			Just downstream of northeast 42nd Street	*1,121
		Deep Fork Tributary 16	Just upstream of northeast 50th Street	*1,112
		West Branch	Just downstream of Lincoln Boulevard (U.S. Highway 77).	*1,118
		Deep Fork Tributary 17	Just upstream of northeast Expressway	*1,091
			Just downstream of Santa Fe Boulevard	*1,121
			Just downstream of northwest 71st Street	*1,130
		Deep Fork Tributary 18	Just downstream of Private Road	*1,137
			Just downstream of Northwest 35th Street	*1,148
		Deep Fork Tributary 18	Just upstream of North Walker	*1,144
			Just downstream of northwest 36th Street	*1,161
		Deep Fork Tributary 20	Just upstream of Western Avenue	*1,136
		Golf Course Creek	Just upstream of North Bellview Drive	*1,153
			Just downstream of northwest 63rd Street	*1,164
		Golf Course Creek West Branch	Just upstream of Rivera Drive	*1,163
		Cloverleaf Creek	Just downstream of Pennsylvania Avenue	*1,142
			Just downstream of Bellview Drive	*1,153
		Deep Fork Tributary 22	Approximately 1,000 feet upstream of confluence with Deep Fork.	*1,159
		Chisholm Creek	Just downstream of 192nd Street	*1,052

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of 178th Street	*1,066
			Just downstream of Western Avenue	*1,096
			Just downstream of Memorial Road	*1,121
			Just downstream of 122nd Street	*1,143
			Just downstream of Pennsylvania Avenue	*1,164
		Chisholm Creek Tributary 3	Just downstream of 192nd Street	*1,067
		Chisholm Creek Tributary 4	Just downstream of Corporate Limits	*1,064
		Chisholm Creek Tributary 6	Just upstream of N.W. 164th Street	*1,085
		Chisholm Creek Tributary 8	Just upstream N.W. 150th Street	*1,098
			Just downstream of Memorial Road	*1,125
		Chisholm Creek Tributary 9	Just downstream of Hefner Road	*1,169
		Deer Creek	Just downstream of Morgan Road	*1,087
			Just downstream of Sara Road	*1,098
			Just upstream of Czech Hall Road	*1,127
			Just downstream of Frisco Road	*1,172
			Just downstream of Richland Road	*1,217
		Walnut Creek	Just upstream of N.W. 164th Street	*1,068
			Just downstream of N.W. 150th Street	*1,090
			Just downstream of N.W. 136th Street	*1,117
			Just upstream of Council Road	*1,167
			Just upstream of Hefner Road	*1,204
			Just upstream of Northwest Expressway	*1,230
		Deer Creek Tributary 3	Just downstream of N.W. 150th Street	*1,087
			Just upstream of Memorial Road	*1,125
			Just upstream of N.W. 122nd Street	*1,176
		Deer Creek Tributary 3 West Branch.	Just upstream of County Line Road	*1,152
		Deer Creek Tributary 4	Just downstream of N.W. 122nd Street	*1,167
		Deer Creek Tributary 5	Just upstream of Mustang Road	*1,121
		Deer Creek Tributary 6	Just downstream of Memorial Road	*1,134
		Deer Creek Tributary 7	Just upstream of Memorial Road	*1,125
			Just downstream of Northwest Expressway	*1,161
		Spring Creek of Deer Creek	Just downstream of Memorial Road	*1,129
			Just upstream of N.W. 122nd Street	*1,167
			Just downstream of Czech Hall Road	*1,211
		Deer Creek Tributary 8	Just downstream of Northwest Expressway	*1,149
			Just downstream of Cemetary Road	*1,185
		Deer Creek Tributary 11	Just downstream of Oak Hill Road	*1,178
		Deer Creek Tributary 12	Just downstream of Frisco Road	*1,170
		Deer Creek Tributary 13	Just upstream of Frisco Road	*1,220
		Deer Creek Tributary 14	Just upstream of Memorial Road	*1,225
		Bluff Creek	Just downstream of N.W. 192nd Street	*1,036
		Bluff Creek	Just downstream of N.W. 122nd Street	*1,096
		Bluff Creek Tributary A	Just downstream of Portland Avenue	*1,082
		Bluff Creek Tributary A-1	Just downstream of Portland Avenue	*1,060
		Dry Creek of Bluff Creek	Just downstream of of (West Bound) Memorial Road	*1,090
			Just downstream of Quail Creek Road	*1,139
		Bush Creek of Dry Creek	Just downstream of Oak Hollow Road	*1,132
		Spring Creek of Bluff Creek	Just upstream of MacArthur Boulevard	*1,108
			Just downstream of Britton Road	*1,152
			Just downstream of N.W. 83rd Street	*1,180
			Just downstream of N.W. 63rd Street	*1,247
		Spring Creek West Branch	Just downstream of MacAuther Boulevard	*1,102
			Just downstream of Hefner Road	*1,195
		Silver Creek of Spring Creek	Just downstream of of Rockwell Avenue	*1,170
		Bluff Creek above Lake Hefner	Just downstream of Northwest Expressway	*1,215
			Just downstream of N.W. 63rd Street	*1,224
		Hog Creek	Just upstream of south 149th Street	*1,056
			Just upstream of southeast 119th Street	*1,072
			Just upstream of Choctaw Road	*1,086
			Just downstream of I-40 Just	*1,116
			Just upstream of Hiwassee Road	*1,149
			Just upstream of Anderson Road	*1,179
			Just downstream of Westminister Road	*1,207
		Hog Creek Tributary 1	Just upstream of Choctaw Road	*1,084
		Hog Creek Tributary 2	Just upstream of Indian Meridian Road	*1,099
			Just upstream of S.E. 104th Street	*1,122
		Hog Creek East Branch	Just downstream of Inter-State Highway 40th Street	*1,114
			Just upstream of Interstate Highway 40	*1,124
			Just upstream of S.E. 59th Street	*1,149
		Hog Creek West Branch	Just upstream of Hiwassee Road	*1,124
			Just downstream of Anderson Road	*1,138
			Just upstream of Brook Haven Road	*1,185
		Hog Creek West Branch Tributary 1.	Aproximately 400 feet upstream of confluence with Hog Creek West Branch.	*1,090
		Hog Creek West Branch Tributary 2.	Just downstream of of Hiwassee Road	*1,222
		Hog Creek West Branch Tributary 3.	Just downstream of southeast 74th Street	*1,182
		Hog Creek Tributary 3	Just downstream of southeast 59th Street	*1,146
			Just upstream of southeast 59th Street	*1,152
		Hog Creek Tributary 5	Just downstream of southeast 44th Street	*1,172
		Hog Creek Tributary 6	Just downstream of southeast 44th Street	*1,155

Maps available for inspection at City Clerk's Office, Room 208, Municipal Building, 200 North Walker Street, Oklahoma City, Oklahoma 73102.

Send comments to Mayor Patience Latting or Mr. Scott Johnson, City manager, Room 302, Municipal Building, 200 North Walker Street, Oklahoma City, Oklahoma 73102.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Franklin, Township, York County	North Branch Bermudian Creek	Downstream Corporate Limits	*490
			Approximately 100' upstream of Franklintown Road	*505
			Confluence of Tributary No. 2	*515
			Confluence of Tributary No. 3	*527
			Approximately 200' upstream of U. S. Route 15	*549
			Approximately 200' upstream of Century Lane	*565
		Tributary No. 1	Approximately 100' downstream of downstream Corporate Limits.	*508
			At first upstream Corporate Limits	*540
			At second upstream Corporate Limits	*752
			Approximately 50' upstream of Stoney Run Road	*586
			Approximately 100' upstream of Private Road located upstream of State Route 194.	*604
		Tributary No. 2	Confluence with North Branch Bermudian Creek	*515
			Approximately 150' upstream of U. S. Route 15	*526
		Tributary No. 3	Confluence with North Branch No 3. Bermudian Creek	*527
			Approximately 700' upstream of FranklinChurch Road	*538
		Dogwood Run	Approximately 200' downstream of downstream Corporate Limits.	*635
			Approximately 1,600' upstream of Greenhouse Road	*660
			Approximately 3,100' upstream of Greenhouse Road	*687

Maps available for inspection at the Franklin Township Building, Dillsburg, Pennsylvania.

Send comments to Honorable Ray Knaub, Chairman of the Franklin Board of Supervisors, R. D. 1, Dillsburg, Pennsylvania 17019.

Pennsylvania	Kennett, Township, Chester County	Red Clay Creek	At the downstream Corporate Limits	*191
			At the confluence of East Branch Red Clay Creek	*204
		West Branch Red Clay Creek	At the confluence with East Branch Red Clay Creek	*204
			Approximately 1,600' upstream of Winding Lane	*217
			At Kaolin Road	*226
			At Private Road located approximately 3,850' upstream of Chandler Mill Road.	*244
			At Hillendale Road brigde	*256
			At Quarry Road	*265
			At West Cypress Street	*277
			At the upstream Corporate Limits	*286
		East Branch Red Clay Creek	At the confluence with Red Clay Creek	*204
			At downstream side of Old Kennett Road	*224
			At upstream side of McFarland Road bridge	*241
			Approximately 500' upstream of Hillendale Road bridge.	*260
			At the downstream Kennett Square Corporate Limits	*283
			At the upstream Kennett Square Corporate Limits	*306
			At the upstream Corporate Limits	*324
		Tributary 1	At the downstream Corporate Limits	*209
			At Burnt Mill Road bridge	*222
			Approximately 2,500' upstream of Burnt Mill Road bridge.	*246
		Tributary 2	At the downstream Corporate Limits	*316
			At the upstream side of Hadley Mill Road bridge	*328
			Approximately 1,300' upstream of Hadley Mill Road bridge.	*341
			At the upstream of Corporate Limits	*360

Maps available for inspection at the Township Building, Kennett Square, Pennsylvania.

Send comments to Honorable J. Fendall Froning, Chairman of the Kennett Board of Supervisors, P.O. Box H, Kennett Square, Pennsylvania 19348.

Pennsylvania	Parkesburg, Borough, Chester County	Little Buck Run	Approximately 200' downstream corporate limits	*470
			Downstream corporate limits	*471
			Upstream Church Street (Route 10) first crossing	*486
			Approximately 1,400' upstream of Church Street first crossing.	*502
			Upstream CONRAIL	*520
			Approximately 750' upstream of CONRAIL	*538
			Upstream Church Street third crossing	*559
			Approximately 900' upstream of Church Street third crossing.	*575
			Upstream corporate limits	*592

Maps available for inspection at the Borough Hall, 329 West First Avenue, Parkesburg, Pennsylvania.

Send comments to Honorable Peggy Smith, Council President of Parkesburg, 329 West First Avenue, Parkesburg, Pennsylvania 19365.

Pennsylvania	Pike, Township, Berks County	Pine Creek	Downstream Corporate Limits	*352
			Lobachsville Road (upstream side)	*367
			Confluence of West Branch of Pine Creek	*499
		West Branch of Pine Creek	Confluence with Pine Creek	*400
			Downstream of Rupert School Road	*447
		Oysterdale Creek	Downstream Corporate Limits	*352
			Downstream of Rohrbach Road	*375

Maps available for inspection at the residence of the Pike Township Secretary, Ms. Shirley Rhoads, R. D. 2, Oley, Pennsylvania.

Send comments to Honorable Rudolph S. Rhoads, Chairman of the Pike Board of Supervisors, R. D. 2, Oley, Pennsylvania 19547.

Pennsylvania	Selinsgrove, Borough, Snyder County	Susquehanna River	Downstream Corporate Limits (extended)	*434
			Upstream of CONRAIL crossing	*438

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream Corporate Limits (extended)	*439
		Penns Creek	Downstream of downstream Corporate Limits	*433
			Upstream of upstream Corporate Limits	*434
		South Tributary	Downstream of Market Street at downstream Corporate Limits.	*433
			Upstream of Sandhill Road	*437
			Approximately 200 feet upstream of Abandoned Private Bridge.	*440
			Downstream of West Sassafrass Street	*451

Maps available for inspection at the Borough Office, Selinsgrove, Pennsylvania.

Send comments to Honorable Tobias Cordek, Town Manager of Selinsgrove, P.O. Box 34, Selinsgrove, Pennsylvania 17870.

Pennsylvania	Springfield, Township Erie County	Turkey Creek	State Line Road (upstream side)	*612
			Childs Road (upstream side) (downstream crossing)	*627
			Childs Road (downstream side (upstream crossing)	*648
			Norfolk and Western Railway (upstream side)	*665
			Interstate Route 90 (upstream side)	*686
		Tributary A to Turkey Creek	AT confluence with Turkey Creek	*669
			U.S. Route 20 (upstream side)	*690
			Interstate Route 90 (upstream side)	*701
		Raccoon Creek	Approximately 950 feet downstream of Conrail	*620
			Elmwood Road (upstream side)	*659
			U.S. Route 20 (upstream side)	*682
			Approximately 700 feet upstream of Sanford Road	*724
		Tributary A to Raccoon Creek	Confluence with Raccoon Creek	*668
			Nye Road (upstream side)	*671
			Approximately 2,900 feet upstream of Nye Road	*682
		Tributary B to Raccoon Creek	At confluence with Raccoon Creek	*682
			Approximately 4,300 feet upstream of Coon Creek Road.	*708
		Tributary C to Raccoon Creek	At confluence with Tributary B to Raccoon Creek	*682
			Approximately 3,400 feet upstream of confluence with Tributary B to Raccoon Creek.	*698
		Crooked Creek	At confluence with Lake Erie	*577
			Conrail (upstream side)	*627
			Norfolk & Western Railway (upstream side)	*661
			U.S. Route 20 (upstream side)	*678
			Approximately 1,600 feet upstream of Tubbs Road	*730
		Tributary A to Crooked Creek	At confluence with Crooked Creek	*588
			Approximately 3,700 feet upstream of confluence with Crooked Creek.	*616
		Tributary B to Crooked Creek	AT confluence with Crooked Creek	*662
			Academy Street (upstream side)	*716
			Approximately 300 feet upstream of Main Street	*733

Maps available for inspection at the Springfield Town House, Route 20 and Nye Road, West Springfield, Pennsylvania.

Send comments to Honorable Howard Weldon, Chiarman of the Springfield Board of Supervisors, Sanford Road, West Springfield, Pennsylvania.

Pennsylvania	Union, Township Snyder County	Susquehanna River	Corporate Limits (extended)	*420
			Confluence with Silver Creek	*422
			Confluence with Penns Creek	*430
		Penns Creek	Confluence with the Susquehanna River	*430
			Upstream of U.S. Routes 11 and 15	*433
		Middle Creek	Confluence with Penns Creek Upstream of dam	*433
			Upstream of dam	*441
			At Corporate Limits	*441
		Silver Creek	Confluence with the Susquehanna River	*422
			Approximately 70 feet upstream of Legislative Route 54018 (downstream crossing).	*462
			Approximately 80 feet upstream of Legislative Route 54018 (upstream crossing).	*529
			Approximately 60 feet upstream of Legislative Route 54071.	*554
			Approximately 100 feet downstream of Township Route 357 (extended).	*557

Maps available for inspection at the residence of the Union Township Secretary, R.D. 1, Port Trevorton, Pennsylvania.

Send comments to Honorable Thomas Herrold, Chairman of the Union Board of Supervisors, R.D. 1, Port Trevorton, Pennsylvania 17864.

Pennsylvania	York Springs, Borough Adams County	Tributary 1	Approximately 850' downstream of Latimore Street	*595
			Upstream Latimore Street	*606
			Upstream Corporate Limits	*607
		Tributary 2	Confluence with Tributary 1	*606
			Downstream Main Street	*618
			Upstream Corporate Limits	*638
		Gardner Run	Downstream Corporate Limits	*586
			Approximately 200' upstream Corporate Limits	*588

Maps available for inspection at the Borough Office, York Springs, Pennsylvania.

Send comments to Honorable Charles Kutz, Council President of York Springs, Borough Office, York Springs, Pennsylvania 17372.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tennessee	City of Dickson, Dickson County	Jones Creek	Just upstream of confluence of Jones Creek Tributary	*716
			Just upstream of Spring Street	*741
		Jones Creek Tributary	Just upstream of North Main Street (State Route 48)	*717
	Maps available for inspection at inspection at City Hall, 202 South Main Street, Dickson, Tennessee 37055.			
	Send comments to Mayor J. Buckner, City Hall, 202 South Main Street, Dickson, Tennessee 37055.			
Texas	City of Montgomery, Montgomery County	Town Creek	300 feet upstream of FM 149	*242
			Just downstream of the confluence with Town Creek Tributary.	*243
		Stewart Creek North	Just downstream of FM 149	*267
	Maps available for inspection at City Hall, Montogrnery, Texas 77356.			
	Send comments to Mayor Alex L. Brown or Barbra Watson, City Secretary, City Hall, P.O. Box 708, Montgomery, Texas 77356.			
Virginia	Saxis, Town, Accomack County	Pocomoke Sound	Entire shoreline within community	*10
	Maps available for inspection at the Town Office in the Fire House, Saxis, Virginia.			
	Send comments to Honorable Paul Martin, Major of Saxis, P.O. Box 43, Saxis, Virginia 23427.			
West Virginia	Chester, City, Hancock County	Ohio River	Downstream Corporate Limits	*637
			Upstream Corporate Limits	*689
	Maps available for inspection at the City Building, 375 Carolina Avenue, Chester, West Virginia.			
	Send comments to Honorable William Scarry, Mayor of Chester, 375 Carolina Avenue, Chester, West Virginia 26034.			
West Virginia	Wellsburg, City, Brooke County	Ohio River	Downstream corporate limits	*666
			Upstream corporate limits	*667
	Maps available for inspection at the City Hall, Seventh Street, Wellsburg, West Virginia.			
	Send comments to Honorable Anthony J. Cipriani, Mayor of Wellsburg, City Hall, Seventh Street, Wellsburg, West Virginia 26070.			
Wisconsin	(C) Lake Geneva, Walworth County	White River	About 200 feet upstream of State Highway 12	*836
			About 100 feet downstream of Chicago and North Western Railroad.	*849
			Just upstream of Lake Shore Drive	*858
			Just downstream of Lake Geneva Spillway	*859
		Lake Geneva	Shoreline	*865
	Maps available for inspection at the City Hall, 626 Geneva Street, Lake Geneva, Wisconsin.			
	Send comments to the Honorable Richard Folman, Mayor, City of Lake Geneva, City Hall, 626 Geneva Street, Lake Geneva, Wisconsin 53147.			
Wisconsin	(V) Lannon, Waukesha County	Fox River	About 2,900 feet downstream of Good Hope Road	*838
			About 900 feet downstream of Custer Lane	*855
			About 2,000 feet upstream of Custer Lane	*860
	Maps available for inspection at the Village Hall, Box 225, Lannon, Wisconsin.			
	Send comments to the Honorable Nicholas Quataro, Village President, Village of Lannon, Village Hall, Box 225, Lannon, Wisconsin 53046.			
Wisconsin	(C) Monroe, Greene County	Honey Creek	About 2,100 feet downstream of 4th Avenue, West	*986
			Just upstream of Meadow Green Court	*1,010
			Just upstream of 18th Avenue	*1,036
			About 1,200 feet upstream of 20th Avenue	*1,043
		Thunder Creek	Mouth at Honey Creek	*993
			Just upstream of 11th Street	*1,004
			About 1,300 feet upstream of State Highway 69	*1,015
	Maps available for inspection at the Office of the City Clerk, City Hall, Box 200, Monroe, Wisconsin.			
	Send comments to the Honorable Cliff Reasa, Mayor, City of Monroe, City Hall, Box 200, Monroe, Wisconsin 53566.			
Wisconsin	(C) Waupun, Dodge and Fond du Lac Counties.	Harris Creek	Just upstream of Newton Avenue	*886
			Just downstream of Main Street	*889
		South Branch of the Rock River	About 0.3 mile downstream of Fond du Lac Avenue	*872
			Just upstream of River Road	*877
			Just upstream of Brandon Street	*884
			About 1.0 mile upstream of Brandon Street	*886
	Maps available for inspection at the Office of the Flood Plain Administrator, City Hall, 201 East Main Street, Waupun, Wisconsin.			
	Send comments to the Honorable Harold Nummerdor, Mayor, City of Waupun, City Hall, 201 East Main Street, Waupun, Wisconsin 53963.			

(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. 40014128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: February 11, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 6277 Filed 3-9-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-112; RM-4023]

TV Broadcast Station in Charleston, S.C.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF-TV Channel 24 to Charleston, South Carolina, as its fifth TV channel in response to a request from BK Enterprises.

DATES: Comments must be filed on or before April 12, 1982, and reply comments must be filed on or before April 26, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip Cross, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: February 16, 1982.

Released: February 26, 1982.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Charleston, South Carolina); BC Docket No. 82-112, RM-4023.

1. The Commission herein considers a petition for rule making filed by B.K. Enterprises ("petitioner"), which seeks the assignment of UHF television Channel 24 to Charleston, South Carolina. Petitioner expressed an interest in applying for the channel, if assigned.

2. Charleston (population 69,510), seat of Charleston County (population 277,308),[1] is located on the Atlantic coast, 130 kilometers (80 miles) northeast of Savannah, Georgia. Charleston has four VHF television channel assignments, 2, 4, 5, and *7, of which three are commercial and one is noncommercial educational. This would be the first UHF channel assignment in Charleston.

3. According to the petitioner, substantial growth in Charleston and Charleston County evidences the need for expanded television selection. Petitioner states that the Trident Complex, a three county area—Berkeley, Charleston and Dorchester—that comprise the Charleston Metropolitan Market, has grown 28 percent between 1970 and 1980, from 336,040 to 430,301. It is projected to grow to over 500,000 by 1990. Petitioner indicates that the part of Charleston ranks 12th among U.S. ports in dollar value of cargo. Rapid growth of the area in recent years is said to be sparked by geographic location, favorable business climate, ample labor force and growth-minded government. Petitioner states that assignment of UHF Channel 24 to Charleston would serve to provide an important additional choice of programming.

4. In view of the foregoing, the Commission believes it appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's Rules, with regard to the city of Charleston, South Carolina, as follows:

City	Channel No.	
	Present	Proposed
Charleston, S.C.	2+, 4, 5+, and *7-.	2+, 4, 5+, *7-, and 24.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before April 12, 1982, and reply comments on or before April 26, 1982.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules. *See, Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Philip Cross, Broadcast Bureau, (202) 632-5414. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. As *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file

[1] Population figures are taken from the 1980 U.S. Census.

comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-6391 Filed 3-9-82; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 82-114; RM-3961]

FM Broadcast Station in Yellville, Arkansas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 249A to Yellville, Arkansas, in response to a petition filed by Adams Broadcasting Company. The assignment could provide a first FM service to Yellville.

DATES: Comments must be filed on or before April 12, 1982, and reply comments on or before April 26, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.302(b), Table of Assignments, FM Broadcast Stations, (Yellville, Arkansas); BC Docket No. 82-114, RM-3961.

Adopted: February 18, 1982.

Released: February 26, 1982.

1. The Commission herein considers a petition for rule making,[1] filed by Adams Broadcasting Company ("petitioner"), proposing the assignment of Channel 249A to Yellville, Arkansas, as that community's first FM assignment. Petitioner stated that it will apply for the channel, if assigned. No oppositions to the proposal were received.

2. Yellville (population 1,044),[2] seat of Marion County (population 11,333), is located approximately 176 kilometers (110 miles) north of Little Rock, Arkansas. It is served locally by daytime only AM Station KCTT.

3. According to the petitioner, Yellville and the Marion County area is one of the fastest growing areas in the United States, and it is ranked second in the State of Arkansas, in 1978, in terms of growth. Petitioner also states that agriculture and farming are the primary industries in Yellville, with a variety of new industries steadily locating in the city and surrounding area. Tourism is becoming increasingly important to the economy of Yellville (and Marion County) inasmuch as Yellville is only minutes from several lakes. Petitioner notes that the financial institutions serving Yellville have net assets or more than 110 million dollars. Finally, the petitioner claims that the proposed assignment would bring a first fulltime service to the community and would sustain current growth trends, paving the way for even larger expansion in the near future.

4. In view of the fact that the proposed FM assignment could provide a first FM broadcast service to Yellville, the Commission proposes to amend the FM Table of Assignments (Section 73.202(b) of the Rules) as follows:

City	Channel No.	
	Present	Proposed
Yellville, Ark		249A.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before April 12, 1982, and reply comments on or before April 26, 1982.

[1] Public Notice of the petition was given on August 17, 1981, Report No. 1305.

[2] Population figures are taken from the 1980 U.S. Census.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, §73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the notice of proposed rule making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counter proposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rule making to which this Appendix is attached. All submissions by parties of this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-6388 Filed 3-9-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-113; RM-3972]

FM Broadcast Station in Marshall, Minnesota; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of a second FM channel to Marshall, Minnesota, in response to a petition filed by Donnell, Inc.

DATES: Comments must be filed on or before April 12, 1982, and reply comments on or before April 26, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Marshall, Minnesota); BC Docket No. 82-113, RM-3972.

Adopted: February 18, 1982.

Released: February 26, 1982.

1. A petition for rule making,[1] was filed by Donnell, Inc. "petitioner") proposing the assignment of Channel 296A to Marshall, Minnesota, as that community's second FM assisgnment. Petitioner stated its intent to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Marshall (population 9,886),[2] seat of Lyon County (population 24,273) is located approximately 216 kilometers (135 miles) west-southwest of St. Paul, Minnesota. It is served locally by fulltime AM Station KMHL and Station KMHL-FM (Channel 261A) under common ownership.

3. In support of its proposal, the petitioner contends that Marshall is governed by a mayor-council form of government, and that it is the home of Southwest State University. It is a center of manufacturing and retail trade, and has a number of local industries. As the shopping and business center for a large area, Marshall has stores and professional offices of every type, in addition to its banks and savings associations.

[1] Public Notice of the petition was given on September 9, 1981, Report No. 1308.

[2] Population figures are taken from the 1980 U.S. Census.

4. Petitioner did not submit a preclusion study, and is requested to do so in comments to this proposal, listing communities over 1,000 population and without local aural service precluded by the proposed assignment. In addition a howing that alternate channels are available to those communities should be submitted.

5. In view of the foregoing information and the fact that the assignment would provide a second FM broadcast service to Marshall, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, with regard to the community of Marshall, Minnesota, as follows:

City	Channel No.	
	Present	Proposed
Marshall, Minn	261A	261A and 296A.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before April 12, 1982, and reply comments on or before April 26, 1982.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the pubic should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a

message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignments is also expected to file comments even it it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceedings or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-6392 Filed 3-9-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 47
Wednesday, March 10, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL AERONAUTICS BOARD

Application of Airpac, Inc. for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (82–3–32).

SUMMARY: The Board is proposing to award a certificate of public convenience and necessity to Airpac, Inc., authorizing it to engage in the interstate and overseas air transportation of persons, and the interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions, except that its authority to conduct all-cargo operations within Alaska or Hawaii shall be limited to the points listed in its application. The Board is also tentatively deciding that Airpac is fit, willing, and able to provide service.

DATES: Objections: All interested persons having objections to the Board's issuing the proposed certificate or to its tentative finding of fitness shall file, and serve upon all persons listed below no later than March 31, 1982, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 40345, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Airpac, Inc.; the mayor and airport manager of each city to which the pleading refers; and the Alaska Transportation Commission.

FOR FURTHER INFORMATION CONTACT: Gerard N. Boller, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5330.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–3–32 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82–3–32 to that address.

By the Civil Aeronautics Board, March 4, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-6474 Filed 3-9-82; 8:45 am]

BILLING CODE 6320-01-M

[Order To Show Cause 82–3–25]

Order Proposing To Cancel Permit of Thompson Travel Ltd.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause 82–3–35.

SUMMARY: The Board has decided to cancel the section 402 permit of Thompson Travel Limited, which authorized it to engage in the indirect air transportation of persons and their accompanying baggage between any point or points in the United States and any point or points outside the United States. This action is being taken at the request of Thompson Travel who indicated that it does not intend to use its permit.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this action be taken, as described in the order cited above, shall no later than March 29, 1982, file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 40504, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428) and mail copies to Thompson Travel Limited, Embassy of the United Kingdom, and the Departments of State and Transportation. A statement of objections must cite the docket number and must include a summary of testimony, statistical data or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to the disapproval of the President, make final the Board's tentative findings and conclusions and cancel the section 402 permit of Thomson Travel Limited.

TO GET A COPY OF THE COMPLETE ORDER: Request it from the Civil Aeronautics Board, Distribution Section, Room, 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington Metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Laurie S. Schaffer, (202) 673–5035, Legal Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20418.

By the Civil Aeronautics Board, March 4, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-6475 Filed 3-9-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409), Notice is hereby given that the Census Advisory Committee on Population Statistics will convene on April 2, 1982, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The Committee is compose of six members appointed by the Secretary of Commerce, and nine members designated by the President of the Population Association of America from the membership of that Association.

The agenda for the meeting, which is scheduled to adjourn at 4:15 p.m., is: (1) Introductory remarks by the Director of the Bureau of the Census, including staff changes and program and budget developments; (2) 1980 census update; (3) outlook for redesign of demographic surveys; (4) potential improvements in geographic aspects of the census; (5) race and Spanish statistics during the 1980's; (6) overview of population projections; (7) international demographic programs; (8) publicity and outreach program for 1980 census data products; (9) discussion of additional material sent to Committee Members; (10) Committee recommendations; and (11) agenda for the next meeting.

The meeting will be open to the public, and a brief period will be set aside for public comments and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Dr. Campbell Gibson, Room 2266, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, D.C. 20233). Telephone (301) 763–1408.

Dated: March 4, 1982.

Bruce Chapman,

Director, Bureau of the Census.

[FR Doc. 82-6423 Filed 3-9-82; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Certain Scissors and Shears From Brazil; Final Results of Adminstrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On July 30, 1981, the Department of Commerce published in the **Federal Register** a notice of the preliminary results of its administrative review of the countervailing duty order on certain scissors and shears from Brazil. The review is based upon information for the period March 1, 1979 through February 29, 1980. The notice stated that the Department had preliminarily determined the amount of the net subsidy to be 3.5 percent *ad valorem*. Interested parties were invited to comment on these prelimianry results. After analysis of all comments received, the Department determines that countervailing duties in the amount of 2.03 percent *ad valorem* will be assessed on all entries of this merchandise exported from December 7, 1979 through February 29, 1980. The Department further determines that a cash deposit of estimated countervailing duties of 2.79 percent *ad valorem* will be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results.

EFFECTIVE DATE: March 10, 1982.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–1767).

SUPPLEMENTARY INFORMATION:

Procedural Background

On July 30, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 38942) a notice of "Preliminary Results of Administrative Review of Countervailing Duty Order" on certain scissors and shears from Brazil (T.D. 77–64, 42 FR 8634). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are scissors and shears valued over $1.75 per dozen imported directly or indirectly from Brazil. These imports are currently classifiable under item numbers 650.90 and 650.92 of the Tariff Schedules of the United States.

There are two known exporters of this merchandise to the United States. This review is based on information from one of these exporters, ZIVI S.A.–Cutelaria, which represented approximately 85% of Brazilian exports, for the period March 1, 1979 through February 29, 1980. The review is limited to the benefits recieved under programs for preferential financing for exports and income tax exemptions for export earnings.

Analysis of Comments Received

Interested parties were invited to comment on our preliminary results. The Department received comments only from the Brazilian government.

The Brazilian government submitted several comments pertaining to the Department's methodology for cauculating the value of the net subsidy.

1. *Comment:* The Brazilian government argues that benefits derived from its program for income tax exemption on export earnings should be allocated over total revenues rather than export revenues. Under this program, exporters receive an exemption from Brazilian income tax at the end of the fiscal year based on the ratio of export to total sales, provided that the firm has made an overall profit on total production. The Brazilian government argues that, because the determining factor in a firm's eligilibity for this benefit is its overall profitability for a given year, the benefit accrues to the operations of the whole firm and not just to exports. Further, an exemption calculated on this basis cannot directly affect the price of the exported product; it can only have a general effect on all prices, both domestic and export. Thus, by allocating the benefits only to export revenues, the Department overstates the value of the subsidy, and allocating the tax savings over total revenues would more accurately reflect the true value of the benefit conferred.

Determination: When a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exorts, that program is an export subsidy. The fact that the firm as a whole must be profitable in order to benefit from this program does not detract from the program's basic function as an export subsidy. The possibility that a firm may not be profitable in a particular year and, due to this uncertainty, could not specifically apply benefits from this program to its export prices is not relevant to our determination. Therefore, the Department will continue to allocate the benefits under this program over the firm's export revenues instead of total revenues.

2. *Comment:* Under the income tax exemption program, the benefit from the tax savings earned during a particular tax year can not be calculated by the firm until its books are closed, sometime during the following year, when the firm can determine with finality its income for the tax year. Therefore, the numerator in the calculation of this benefit contained in the preliminary results, which ascribes the full value of the tax savings to the year in which it is earned, is incorrect. The Department should recognize this delay and choose as the appropriate numerator either the tax savings adjusted to reflect the loss in the value of the subsidy resulting from its deferred receipt, or alternatively, use the tax savings received during the review period (i.e., that earned during the previous year and calculated during the review period, when the company closed its books).

Determination: The Department agrees that we should use the tax savings received during the period under review. It is our general policy to allocate benefits over the period in which they are received. In the past, it has been our practice to consider benefits from any income tax-related subsidy program as received in the same year in which they were earned. In other words, tax benefits calculated on the basis of company performance in a given fiscal year were allocated over the same period. However, in light of the comments submitted by the Brazilian government, we now recognize that the period over which the benefits are earned is not necessarily coincident with the period in which the benefit is received and used by the firm. Therefore, in such situations of

uncertain benefits, tax savings earned as a result of company performance in a given fiscal year will now be allocated over the fiscal year in which they are received.

Although this is entirely consistent with our policies and principles, it represents a change in our method of allocation of many income tax-related subsidies to one year or another. In those cases where an order is outstanding, this change in methodology will necessitate a transitional reallocation of benefits. For example, in the instant case, because the tax savings received during this period of review have already been countervailed as though they were received in the period of review, we will not countervail the same benefits again for entries during the current period of review. Benefits earned as a result of company performance during the current period of review will be allocated over exports for the next administrative review. Therefore, for the purpose of this annual review, no countervailing duties will be actually assessed for this program for the period for which benefits have already been countervailed. The estimated countervailing duty deposit rate on future entries does not include estimated benefits under this program based on the new method of calculation, because export information needed to calculate those benefits was not available.

With the adoption of the above procedure, the alternate proposal of adjusting the tax savings to reflect the loss in value of the subsidy resulting from its deferred receipt becomes moot.

3. *Comment:* The Department overstates the benefit conferred by working-capital loans received through the preferential financing program by assuming that the entire interest savings from these short-term loans accrues during the review period in which the loans are granted, even if the loan occurs late in the period and can only affect entries after the date of the loan. In allocating loans contracted for during the current period of review, the Department should prorate the benefit throughout the duration of a loan, to the exent that such loans extend into a subsequent period of review. Loans from an earlier period which extend into the time covered by the current review should be allocated on the same basis. The Department's current method anticipates the actual receipt of the benefit and does not fully allow for factors, such as increased or decreased exports, which will affect the ultimate *ad valorem* value of the benefits.

Determination: Normally in a program such as this, where access to preferential loans is based upon a fixed percentage of the previous year's exports, there would be little difference between the method the Department employed in its preliminary notice and that proposed by the Brazilian government. However, when each year there is substantial growth in the value of exports over the previous year, the administrative convenience of allocating the whole loan to the period of review in which it was granted can create a distortion and overstate the *ad valorem* value of the benefit. Consequently, the Department agrees with the Brazilian government and is adopting the method proposed.

4. *Comment:* The Department calculated the deposit rate of estimated countervailing duties for future entries based upon the maximum level of utilization possible under the preferential financing program rather than the on the actual level of utilization during the period of review. By doing so, the Department makes the unrealistic assumptions that all loans made under this program have a duration of one full year and that there will be no growth in the value of exports over the previous year. This procedure fails to recognize that the causes for underutilization of the program during the period of review are inherent in the way the program operates and that the actual level of utilization during the review period is a reasonably accurate projection of future utilization.

Determination: The Department chose the method used in the preliminary results believing that the underutilization during the period of review was an anomaly. We departed from the normal procedure of calculating estimated duties by projecting results from the review period because we believed that such rates would mislead importers and lead to unexpected future liability. We believed that the maximum level of utilization possible under this program would more accurately reflect the results of future reviews.

Upon re-examination of information from the original investigations in this and other Brazilian countervailing duty cases and using corrected information for the annual review of this case, we have discovered that the apparent underutilization of this program is not unusual. Consequently, we have determined to use the usual method of projecting results from the review period when calculating the estimated countervailing duty deposit rate.

Final Results of the Review

As a result of our analysis of the comments received, we determine that during the period of review the net subsidy under the preferential financing program was 2.03 percent *ad valorem*, and that the net subsidy under the income tax exemption program has already been countervailed. Therefore, the net subsidy for assessment purposes conferred by the Government of Brazil on the export of certain scissors and shears is 2.03 percent *ad valorem*. With respect to the estimated duty deposit rate, based solely on estimated benefits under the preferential financing program, and taking into account the legal changes in the preferential financing program discussed in our notice of preliminary results of review, we have determined the appropriate rate for deposit of estimated duties to be 2.79 percent *ad valorem* on future entries.

The U.S. Customs Service will assess countervailing duties of 2.03 percent of the f.o.b. invoice price on all unliquidated entries of certain scissors and shears exported from Brazil during the period December 7, 1979 through February 29, 1980. All unliquidated entries exported from Brazil before December 7, 1979 will be liquidated according to instructions in earlier **Federal Register** notices dated June 21, 1977 (42 FR 31449), July 3, 1979 (44 FR 38839), September 28, 1979 (44 FR 55825) and February 26, 1980 (45 FR 12413).

Further, as provided by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Customs Service will collect a cash deposit of estimated countervailing duties of 2.79 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results.

This deposit requirement will remain in effect until publication of the final results of the next administrative review. The Department intends to begin the next review immediately after the publication of this determination. The amount of countervailing duties to be imposed on entries made from March 1980 through February 1981, will be determined in the next administrative review. Consequently, the suspension of liquidation previously ordered will continue for all shipments exported from Brazil on or after March 1, 1980.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1))

and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

March 4, 1982.

[FR Doc. 82-6358 Filed 3-9-82; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Countervailing Duty Investigations; Certain Stainless Steel Products From Spain

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of countervailing duty investigations.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating three countervailing duty investigations to determine whether producers, manufacturers, or exporters in Spain of hot-rolled stainless steel bar, cold-formed stainless steel bar and stainless steel wire rod receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigations proceed normally, we will make our preliminary determinations on or before May 13, 1982.

EFFECTIVE DATE: March 10, 1982.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, (202) 377-0171.

SUPPLEMENTARY INFORMATION:

Petition

On February 17, 1982, we received a petition from counsel for Al Tech Specialty Steel Corporation, Armco Stainless Steel Division, Carpenter Technology Corporation, Colt Industries, Inc. (Crucible Materials Group), Cyclops Corporation, Guterl Special Steel Corporation, Joslyn Stainless Steels, and Republic Steel Corporation, on behalf of the U.S. industry producing stainless steel bar and stainless steel wire rod. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26) the petition alleges that producers, manufacturers, or exporters in Spain of stainless steel bar and wire rod receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the "Act").

Since Spain is not a "country under the Agreement", section 303 of the Act applies to these investigations. In addition, the merchandise is dutiable; therefore, an injury determination is not required.

Initiation of Investigations

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of countervailing duty investigations and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on hot-rolled stainless steel bar, cold-formed stainless steel bar and stainless steel wire rod, and have found that the petition meets these requirements.

Therefore, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters in Spain of hot-rolled stainless steel bar, cold-formed stainless steel bar and stainless steel wire rod, as listed in the "Scope of the Investigations" section of this notice, receive bounties or grants. If our investigations proceed normally, we will make our preliminary determinations by May 13, 1982.

Scope of the Investigations

The products covered by each respective investigation are: stainless steel wire rod, hot-rolled stainless steel bar and cold-formed stainless steel bar. For a further description of these products, see Appendix A to this notice.

Allegations of Bounties or Grants

The petition alleges that producers, manufacturers, or exporters in Spain of hot-rolled stainless steel bar, cold-formed stainless steel bar and stainless steel wire rod receive the following benefits that constitute bounties or grants: excessive remission of indirect taxes; preferential loans and loan guarantees; preferential export financing programs; and capital grants.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

March 4, 1982.

Appendix A

For purpose of these investigations, the products are described below:

1. The term *"stainless steel wire rod"* covers a coiled, semi-finished, hot-rolled stainless steel product of solid cross section, approximately round in cross section, not under 0.20 inches nor over 0.74 inch in a diameter, not tempered, not treated, and not partly manufactured as currently provided for in item 607.26 of the *Tariff Schedules of the United States (TSUS)* or if tempered, treated, or partly manufactured as provided for in item 607.43 of the TSUS.

2. The term *"hot-rolled stainless steel bars"* covers hot-rolled stainless steel products of solid section having cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons or octagons, not coated or plated with metal as currently provided for in item 606.9005 of the *Tariff Schedules of the United States Annotated.*

3. The term *"cold-formed stainless steel bars"* covers cold-formed stainless steel products of solid section having cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons or octagons, not coated or plated with metal as currently provided for in item 606.9010 of the *Tariff Schedules of the United States Annotated.*

Stainless steel is an alloy steel which contains by weight less than 1 percent of carbon and over 11.5 percent of chromium. Iron must predominate by weight and the alloy is malleable as first cast. Alloy steel is defined as a steel which contains one or more of the following elements in the quantity, by weight, respectively indicated:

over 1.65 percent of manganese, or
over 0.25 percent of phosphorus, or
over 0.35 percent of sulphur, or
over 0.60 percent of silicon, or
over 0.60 percent of copper, or
over 0.30 percent of aluminum, or
over 0.20 percent of chromium, or
over 0.30 percent of cobalt, or
over 0.35 percent of lead, or
over 0.50 percent of nickel, or
over 0.30 percent of tungsten, or
over 0.10 percent of any other metallic element.

[FR Doc. 82-6359 Filed 3-9-82; 8:45 am]

BILLING CODE 3510-25-M

[A-427-030]

Large Power Transformers From France; Final Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On June 25, 1981, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from France. This review covered the only known exporter from France to the United States, Alsthom-Atlantique, S.A. (formerly Alsthom-Unelec), and the period October 1, 1972 through June 30, 1980.

Interested parties were given an opportunity to submit written comments or request a hearing on these preliminary results. At the request of the respondent the Department held a hearing on July 30, 1981.

After our analysis of the respondent's and a domestic interested party's pre-hearing briefs, comments at the hearing, and post-hearing briefs, our preliminary results of administrative review remain unchanged.

EFFECTIVE DATE: March 10, 1982.

FOR FURTHER INFORMATION CONTACT: Sid Briggs or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–5346/5289).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1972, a dumping finding with respect to large power transformers from France was published in the **Federal Register** as Treasury Decision 72–160 (37 FR 11772). On June 25, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 32928) the preliminary results of its administrative review of the finding. The Department has now completed its administrative review of that finding.

Scope of the Review

Imports covered by this review are shipments of large power transformers, that is, all types of transformers rated 10,000 KVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are rectifier-transformer units, commonly known as rectiformers, if the entire assembly is imported in the same shipment and entered on the same entry, and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. Such transformers are currently classifiable under items 682.0765 and 682.0775 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of one exporter of large power transformers from France to the United States, Alsthom-Atlantique S.A. (formerly Alsthom-Unelec).

Alsthom-Atlantique sells to the United States through its subsidiary, Cogenel, Inc. This review covers the period October 1, 1972 through June 30, 1980.

Analysis of the Respondent's Comments

Interested parties were given an opportunity to submit oral or written comments on the preliminary results. At the request of the respondent, Alsthom-Atlantique, and its subsidiary, Cogenel, Inc., the Department held a hearing on July 30, 1981.

(1) *Comment:* The respondent argued that the Department has the legal power to correct the scope of Treasury's determination of sales at less than fair value, which in the respondent's view erroneously included shunt reactors.

Position

Each stage of the statutory proceeding maintains the scope passed on from the previous stage. In this case, shunt reactors were included in the class or kind of merchandise described in the petition. Shunt reactors were subject to Treasury's investigation and covered by Treasury's final determination of sales at LTFV, the Tariff Commission's injury determination, and the antidumping finding. The scope of the antidumping finding may not be changed now during the section 751 administrative review since it is clear that shunt reactors were included in the subject class or kind of merchandise throughout the administrative proceeding.

(2) *Comment:* The respondent further contends that shunt reactors should not be subject to the finding because an article cannot be within the class or kind of merchandise covered by a finding unless there is evidence that the article was in fact exported during the period of investigation and was sold at less than fair value.

Position

We determine that shunt reactors are clearly within the stated definition of the class or kind of merchandise. Not all elements of a class or kind of merchandise must be exported to the U.S. during the period of investigation in order for such elements to be within the scope of the finding or order. Similarly, not all elements must be sold at less than fair value.

(3) *Comment:* The respondent contends that since there have been no shipments of French shunt reactors to the U.S. for the past dozen years, the Department has no information on sales of shunt reactors on which to base a cash deposit rate. The Department cannot use the fair value margin, since that was based on an investigation which did not examine exports of French shunt reactors. Should the Department include shunt reactors, the cash deposit rate should, therefore, be zero.

Position

Since the results of the fair value investigation were applicable to all items within the class or kind of merchandise, including shunt reactors, it is appropriate for the Department to use those dumping margins of 24 percent as best information available to establish a cash deposit rate of estimated duties. In general, the Department applies a single rate to a class or kind of merchandise.

Final Results of the Review

As a result of our analysis of these comments, the final results of our review are the same as those presented in our preliminary results of review. We therefore determine to postpone appraisement of shipments entered during the period October 1, 1972 through June 30, 1980, pending receipt of more specific information from the exporter regarding merchandise sold in the home market.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of 24 percent shall be required on all shipments of large power transformers, including shunt reactors, from France entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of June 1982.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Leonard M. Shambon,

Director, Office of Compliance.

March 3, 1982.

[FR Doc. 82-6411 Filed 3-9-82; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Financial Assistance Application Announcement

The Minority Business Development Agency announces that it is seeking applications under its program to operate six San Francisco Region projects for a twelve month period. The aggregate total costs of the projects are $1,340,000.

Funding Instrument: It is anticipated that the funding instruments as defined by the Federal Grant and Cooperative

Agreement Act of 1977 will be Cooperative Agreements.

Program Descriptions: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible minority clients in areas related to the establishment and operation of businesses. These proposed projects are specifically designed to provide business information counseling, financial packaging assistance, and assistance in identifying and exploiting business opportunities and new/or expanding markets.

One Cooperative Agreement Under the Business Development Center (BDC) Program to operate a pilot project for a 12-month period beginning September 1, 1982 in the Sacramento SMSA. This pilot project will operate at a cost not to exceed $250,000 and the project I.D. Number is 09–10–82011–01. Closing Date: 25 May 1982.

One Cooperative Agreement Under the Business Development Center (BDC) Program to operate a pilot project for a 12-month period beginning September 1, 1982 in the Stockton SMSA. This pilot project will operate at a cost not to exceed $170,000 and the project I.D. Number is 09–10–82016–01. Closing Date 25 May 1982.

One Cooperative Agreement Under the Business Development Center (BDC) Program to operate a pilot project for a 12-month period beginning September 1, 1982 in the Vallejo SMSA. This pilot project will operate at a cost not to exceed $170,000 and the project I.D. Number is 09–10–82022–01. Closing Date: 25 May 1982.

One Cooperative Agreement Under the Business Development Center (BDC) Program to operate a pilot project for a 12-month period beginning October 1, 1982 in the San Jose SMSA. This pilot project will operate at a cost not to exceed $410,000 and the project I. D. Number is 09–10–82008–01. Closing Date: 22 June 1982.

One Cooperative Agreement Under the Business Development Center (BDC) Program to operate a pilot project for a 12-month period beginning November 1, 1982 in the Seattle SMSA. This pilot project will operate at a cost not to exceed $170,000 and the project I. D. Number is 10–10–82013–01. Closing Date: 22 June 1982.

One Cooperative Agreement Under the Business Development Center (BDC) Program to operate a pilot project for a 12-month period beginning October 1, 1982 in the Salinas SMSA. This pilot project will operate at a cost not to exceed $170,000 I.D. Number is 09–10–82015–01. Closing Date: 22 June 1982.

An Application kit is available upon written request.

The pre-application conference to assist all interested applicants will be held at 450 Golden Gate Avenue, San Francisco, California 94102, Room 13029, (13th Floor) on April 21, 1982 at 10:00 A.M.

MBDA offers competitive Cooperative Agreements to all individuals, non-profit organizations, for-profit firms, local and state governments, federally recognized American Indian Tribes and educational institutions to perform the functions of a BDC which are:

—To provide managment and technical assistance to qualified minority firms,

—To develop and maintain an inventory of existing minority businesses and prospective entrepreneurs, and

—To provide brokering service that will foster and promote new business ownership, business expansions, market opportunities and new capital sources.

Legal services are excluded.

Applicants shall be required to contribute at least 10% of the total program costs through non-federal funds. A fee for services for assistance provided clients will be charged. The fee for services will be 10% for firms with gross sales of $500,000 or less and 25% for the firms with gross sales of over $500,000. Cost sharing contributions can be in the form of cash contributions, fee for services, or in-kind contributions.

The program is subject to OMB Circular A–95 requirements.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102.

For further information contact Mr. Mikel Cook at 415/556–6733.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: February 22, 1982.

R. V. Romero,

Regional Director.

[FR Doc. 82–6424 Filed 3–9–82; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Application for Marine Mammal Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Southwest Fisheries Center, NOAA, (P77Z), National Marine Fisheries Service

b. Address P.O. Box 271, La Jolla, California 92038.

2. Type of Permit Scientific Research.

3. Name and Number of Animals:

California sea lion (Zalophus californianus), 150

Harbor seal (Phoca vitulina), 150

4. Type of Take: Capture, tag, and release.

5. Location of Activity: Channel Islands, California.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before April 9, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 5, 1982.

Richard B. Roe,

Acting Deputy Director Office of Marine Mammals and Endangered Species National Marine Fisheries Service.

[FR Doc. 82–6494 Filed 3–9–82; 8:45 am]

BILLING CODE 3510–22–M

Proposed Estuarine Sanctuary, Hudson River, New York; Intent To Conduct Scoping Meeting and Prepare Environmental Impact Statement

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA), intends to conduct a scoping meeting on March 18, 1982, and prepare a draft environmental impact statement (DEIS) on a proposed estuarine sanctuary on the Hudson River in New York, in accordance with the provisions of the National Environmental Policy Act (NEPA) and section 315 of the Coastal Zone Management Act (CZMA). Designation of the sanctuary would protect and manage approximately 3,060 acres of important estuarine habitat at four sites along the Hudson River from southern most Piermont March (290 acres), Iona Island (240 acres), Tivoli Bay (675 acres) to the northernmost site of Stockport Marshes (1,855 acres). The distances between sites range from 20 miles to 50 miles.

Discussion

The estuarine sanctuary proposal is currently being developed in consultation with the State of New York, Federal agencies, and affected public groups. The proposal, as a federally assisted action, has been reviewed by the New York State Department of Environmental Conservation, Office of Natural Resources, in accordance with OMB Circular A–95.

The Office of Coastal Zone Management will hold a scoping meeting on March 18, 1982, at 10:00 a.m. in the Navy Conference Room at Page Building #1, Office of Coastal Zone Management, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235. Interested parties who wish to submit suggestions, comments, or substantive information concerning the scope or content of this proposed environmental impact statement are invited to attend. Parties who wish to respond in writing should do so by March 29, 1982. The DEIS will be prepared in compliance with the Council on Environmental Quality (CEQ) regulations (FR. Vol. 43 November 29, 1982).

Comments may be submitted in writing or by telephone to Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, NOAA; 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202)634–4236.

FOR FURTHER INFORMATION CONTACT: Dr. Richard J. Podgorny, Regional Sanctuaries Projects Manager, Sanctuary Programs Office, Office of Coastal Zone Management, (202) 634–4236.

(Federal Domestic Assistance Catalog No. 11.420 Coastal Zone Management Program Estuarine Sanctuary)

Dated: March 2, 1982.

William Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc. 82-6360 Filed 3-9-82; 8:45 am]

BILLING CODE 3510-08-M

St. Thomas, Virgin Islands; Announcement of Removal of the Southeastern St. Thomas Site From the List of Active Candidates

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: On October 31, 1979 (44 FR 62552), NOAA placed an area off southeastern St. Thomas on its List of Active Candidates (LAC) for further evaluation as a potential national marine sanctuary. In April 1981 a draft environmental impact statement was distributed and a public hearing was held on June 3, 1981. Draft regulations were published June 30, 1981 (FR Vol. 46, No. 125). The proposed St. Thomas marine sanctuary is not being removed from the LAC. The sanctuary anticipated cooperative management between the Virgin Islands and NOAA and delays in the promulgation of regulations by the Virgin Islands for activities within the proposed area have prevented NOAA from committing funds for designation and management in FY 1982. Funding levels for fiscal year 1983 are not sufficient to provide for designation and management of the site. A final environmental impact statement will not be prepared.

FOR FURTHER INFORMATION CONTACT: Edward Lindelof, Sancturay Project Manager, (202) 634–4236.

ADDRESS: Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431–1434 (the Act), authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as marine sanctuaries to protect their distinctive conservation, recreational, ecological, or esthetic values.

Placement on the List of Active Candidates is a procedural step in the evaluation of any area as a potential marine sanctuary. The southeastern St. Thomas site was made an active candidate on October 31, 1979 (44 FR 62552). A draft environmental impact statement (DEIS) on the proposal was distributed in April 1981 and a public hearing on the DEIS was held June 3, 1981.

The St. Thomas site is now being removed from the LAC. This project always has been considered a cooperative one between the Virgin Islands and NOAA with NOAA relying upon local regulations to control activities within the area of the proposed sanctuary. Delays in the promulgation of these regulations and the uncertainty of their eventual implemention have precluded timely progress on the project.

The decision to remove the St. Thomas site from active candidate status will not preclude reconsideration of this or other Virgin Islands sites in the future. NOAA is initiating a new process for evaluating potential marine sanctuaries by establishing a Site Evaluation List (SEL). Eight regional resource evaluation teams (including a Caribbean team) will identify, analyze, and recommend sites suitable for sanctuary consideration. Information on the St. Thomas site will be given to the regional team. If the area receives a high ranking relative to other sites within the Caribbean region, the team can recommend in essence that southeastern St. Thomas be reconsidered. Under these circumstances and if the Virgin Islands is interested and funding allows, the site can be reactivated.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: March 2, 1982.

William Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc. 82-6361 Filed 3-9-82; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 26, 1982.

The USAF Scientific Advisory Board will hold its Spring General Meeting at Peterson Air Force Base, Colorado

during the period April 28–29, 1982. The meeting will start at 8:30 a.m. and adjourn at 5:00 p.m. on April 28 and start at 8:00 a.m. and adjourn at 2:15 p.m. on April 29.

The Board will receive classified briefings on the Air Defense of North America. The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8845.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82–6425 Filed 3–9–82; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Case No. DW–002]

Energy Conservation Program for Consumer Products; Petition for Waiver of Dishwasher Test Procedures From General Electric Co.

Correction

In FR Doc. 82–5594 appearing on page 8813, in the issue of Tuesday, March 2, 1982, make the following changes.

1. On page 8814, second column, the "Note." indicated material deleted from the document was replaced with "XXXX's." Material deleted from the document was actually replaced with asterisks.

2. On page 8814, third column, second complete paragraph, asterisks should have been added to the end of the paragraph to indicate deleted material.

BILLING CODE 1505–01–M

Federal Energy Regulatory Commission

[Docket No. RE81–129–000]

City of Anchorage, Alaska; Application for Exemption

March 4, 1982.

Take notice that City of Anchorage, Alaska (Anchorage) filed an application on September 29, 1981 for exemption from certain requirements of Part 290 of the Commission's Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1982, information on the costs of providing electric service as specified in Subparts B, C, D, and E.

In its application for exemption Anchorage states that it should not be required to file the specified data for the following reasons:

1. Anchorage is a publicly owned and controlled electric utility. The Assembly of the Municipality of Anchorage is a body elected substantially from electric utility ratepayers and therefore exerts public review and control over the rate setting.

2. Anchorage is a small municipal utility which was not jurisdictionally within PURPA until 1980 having sold slightly in excess of the PURPA jurisdictional limit in the calendar year 1979 (522 million KWH).

3. Anchorage is physically and technically incapable of collecting the above data based upon the 1981 calendar year of operation. Anchorage's limited staff has been physically unable to write specifications, go to bid, purchase, install and operate the necessary metering and accounting system to adequately collect the above data.

4. Anchorage utilizes gas turbines for base load generation and peaks with these same units. Anchorage is not connected to a large power grid and is basically restricted in its generation options.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before April 26, 1982. Within that 45 day period such person must also serve a copy of such comments on: Mr. Thomas R. Stahr, City of Anchorage Municipal Light and Power Department, 1200 East First Avenue, Anchorage, Alaska 99501.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–6459 Filed 3–9–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5973–000]

City of Arcata; Application for Preliminary Permit

March 8, 1982.

Take notice that The City of Arcata (Applicant) filed on February 12, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5973 to be known as the Jacoby Creek Water Power Project located on Jacoby Creek in Humboldt, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. R. Robinson, City Manager, City of Arcata, 736 F Street, Arcata, California 95521.

Project Description—The proposed project would consist of: (1) A 3-foot high, 15-foot long diversion structure; (2) a 36-inch-diameter, 6000-foot long conduit; (3) a 30-inch diamter, 4000-foot long penstock; (4) a powerhouse containing a turbine-generating unit with a rated capacity of 400 kW; and (5) a 200-yard long 12-kV transmission line connecting to an existing Pacific Gas and Electric Line. The Applicant estimates a 1.2 million kWh annual energy production.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost of the fore mentioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $60,000. Power would be sold to Pacific Gas and Electric Company.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before May 14, 1982, the competing application itself; or a notice of intent to file such an application [see: 18 CFR 4.30 et eq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 14, 1982, and should specify the type of application forthcoming. Any application for license

or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than July 14, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have not comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 14, 1982.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. 825 North Capitol Street, NE., A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6446 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-32-000 (PGA82-2)]

Colorado Interstate Gas Co.; Proposed Changes in Rates Under Purchased Gas Adjustment Clause Provision

March 5, 1982.

Take notice that Colorado Interstate Gas Company, on February 24, 1982, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed changes would increase the commodity rate under CIG's jurisdictional rate schedules by 6.26 cents per Mcf and decrease the demand rate by 15.00 cents per Mcf.

The filing was made to enable CIG to reflect in its rates, pursuant to Section 21 of CIG's FERC Gas Tariff, Original Volume No. 1, net increased purchased gas costs it will experience as of April 1, 1982, as the result of rate filings made by certain of its pipeline suppliers.

CIG requests that the instant filing be made effective on April 1, 1982.

Copies of the filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6460 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-31-000 (PGA82-2, IPR82-2)]

Arkansas Louisiana Gas Co.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

March 5, 1982.

Take notice that on March 1, 1982 Arkansas Louisiana Gas Company (Arkla) tendered for filing 29th Revised Sheet No. 4 and 5th Revised Sheet No. 4A to its FERC Gas Tariff First Revised Volume No. 1, Rate Schedule No. G-2, to become effective April 1, 1982.

Arkla states that the purpose of 29th Revised Sheet No. 4 is to (1) reflect the cost of purchased gas for the six months period commencing April 1, 1982, (2) recover the accumulated deferred gas costs as of December 31, 1981, and (3) set forth the reduced PGA and estimated incremental pricing surcharges to be billed during the PGA period as contained on 5th Revised Sheet No. 4A effective April 1, 1982.

Arkla also states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties affected by this tariff change.

Any person desiring to be heard or to protest said filing should file a Petition To Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6442 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-31-001 (PGA82-2, IPR82-2)]

Arkansas Louisiana Gas Co.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

March 5, 1982.

Take notice that on March 1, 1982 Arkansas Louisiana Gas Company (Arkla) tendered for filing 27th Revised Sheet No. 185 and 5th Revised Sheet No. 185A to its FERC Gas Tariff Original Volume No. 3, Rate Schedule No. X-26, to become effective April 1, 1982.

Arkla states that the purpose of 27th Revised Sheet No. 185 is to (1) reflect the cost of purchased gas for the six months period commencing April 1, 1982, (2) recover the accumulated deferred gas costs as of December 31, 1981, and (3) set forth the reduced PGA and estimated incremental pricing surcharges to be billed during the PGA period as contained on 5th Revised Sheet No. 185A effective April 1, 1982.

Arkla also states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties affected by this tariff change.

Any person desiring to be heard or to protest said filing should file a Petition To Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8, and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6443 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-577-000]

Arkansas Power & Light Co.; Order Denying Motion To Reject

Issued: March 3, 1982.

On December 30, 1981, the Cities of Campbell and Thayer, Missouri (Cities) filed a motion requesting the Commission to modify its August 28, 1981 order accepting and suspending the rate increase in this proceeding and to reject the filing as to Cities because of an asserted *Mobile-Sierra* provision in Cities' contracts with Arkansas Power & Light Company. An answer was filed by AP&L on January 15, 1982. On January 29, 1982, the Commission issued a notice of intent to act on the motion.

The Cities' motion to reject is based on the following purported *Mobile-Sierra* [1] language in their contracts:

Article III—Rate

Each month Customer will pay to the Company for all energy delivered during the preceding month an amount determined in accordance with the Company's R–1 rate as now on file with the Federal Power Commission or as same may by amended from time to time.

* * * * *

Article VII—Regulatory Approval

This agreement is entered into subject to the approval of regulatory agencies having jurisdiction over such company matters. In addition, the rate, terms and conditions stated in this contract are subject to change at any time subject to the approval of government regulatory bodies having jurisdiction.

Cities contend that there is no language in the contracts "specifically providing for a change in rates by a unilateral rate filing." AP&L counters that the plain contract language clearly provides for a rate change "at any time" and notes that the Cities did not object to the Section 205 filing of AP&L's previous rate increase under these contracts in Docket No. ER78–489. AP&L further contends that contract language in other cases which Cities cite in support of their position is distinguishable from the contract language here.

We find that the contract language, while not specifically using the word "filing," does appear to provide for unilateral rate changes upon a filing by the utility. Article III of Campbell's contract [2] clearly states that the rate on file "may be amended from time to time," without qualification. Likewise, Article VII states that the rate, terms and conditions are "subject to change at any time." While such change is subject to the approval of the Commission, as are all unilateral changes made under Section 205, the change is not required to be made by the Commission. This fact distinguishes the language of other contracts relied on by Cities in their motion because those contracts provided for changes or amendments to be made by the regulatory authority having jurisdiction or conditioned upon its orders.[3] In contrast, the contract language at issue here provides for party-initiated changes which will be subject to the approval of the Commission. This procedure is completely consistent with that to a unilateral rate filing under Section 205(e) in which a rate change is made, "if at all," [4] by the filing utility, subject to approval in whole or in part by the Commission. The Courts have consistently distinguished between party-made and Commission-made rates in this context.[5]

Nor is there any contract language here to indicate that the Commission's approval must precede the effectiveness (subject to refund) of the rate. The term "subject to" is used twice in Article VII within the same sentence. It is clear that the statement "the rates, terms and conditions stated in this contract are subject to change at any time" does not mean that such change must occur prior to the effectiveness of the contract rate, terms and conditions. Such a reading would be absurd. There is likewise no reason to believe that the use of the phrase "subject to the approval of government regulatory bodies having jurisdiction" requires that such approval precede the effectiveness of the rate change, subject to refund, pending final Commission approval in whole or in part.

We note that, even if we had found the contract language to be ambiguous, which we have not, the question would not be settled. Cities did not object on contractual grounds to AP&L's Section 205 filing when it was made on June 30, 1981 or when the rate was placed into effect, subject to refund, by Commission order issued on August 28, 1981. Likewise, Cities did not object to the unilateral change of their rates in AP&L's prior rate case in Docket No. ER78–489. These facts might bear upon the intent of the parties or might demonstrate that acquiescence in or modification of the contract to provide for unilateral filings has occurred, even if a different interpretation of the contract were accepted. Further, the courts have found that:

> [s]trict construction against the drafter of a tariff is not justified if it ignores an alternate, reasonable construction which conforms to practical application and the intent of drafters or if other rules of tariff construction outweigh the ambiquity rule. *Coca-Cola v. Atchison, T & SF RY Co.*, 608 F.2d 213 at 221 (5th Cir. 1979).

Here, we find that the plain language of the contract provides for a rate change procedure that is entirely consistant with the procedure for a unilateral rate filing under Section 205, where a rate change becomes effective, subject to refund, pending approval by the Commission. We therefore find that AP&L's contract with the Cities provides for unilateral rate changes under Section 205(e), which changes become effective subject to refund if suspended, and we

---

[1] United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[2] Cities state at p. 3 that Articles III and VII of Campbell's contract are virtually identical to Articles IV and VIII of Thayer's contract. Therefore we include Thayer's contract in our discussion of Campbell's.

[3] *See* "Missouri Cities' Motion to Reject Rate Increase" at p. 6; "Answer of Arkansas Power & Light Company" at pp. 4–8.

[4] *Cf. Mobile, supra*, 350 U.S. 332 at 342.

[5] *Id.*; City of Oglesby v. FERC, 610 F.2d 897 at 910, 912 (D.C. Cir. 1979).

shall deny Cities' motion to reject the filing.

The Commission orders:

(A) Cities' motion to reject is hereby denied.

(B) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6457 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5394-000]

Capital Development Co.; Application for Preliminary Permit

March 8, 1982.

Take notice that Capital Development Company (Applicant) filed on September 22, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5394 to be known as the Summit Creek Water Power Project located on Summit Creek, within Gifford Pinchot National Forest in Lewis County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. John Terpstra, Capital Development Company, #4 South Sound Center, P.O. Box 3487, Lacey, Washington 98503.

Project Description—The proposed project would consist of: (1) A concrete diversion structure 10 feet high at Elevation 2090 feet; (2) 1.4 miles of diversion conduit; (3) 0.6 mile of penstock; (4) a powerhouse containing a turbine generator with 21 MW capacity and 69,985 MWh annual energy output; and (5) 8 miles of transmission line. The proposed market for project-generated energy is the Lewis County Public Utility District.

Purposed Scope of Studies Under Permit.—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimate cost of permit activities is $150,000.

Competing Applications.—This application was filed as a competing application to Hydro Resources Company's application for Project No. 5320 filed on September 4, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR § 4.30 et. seq. or § 4.101 et. seq. (1981), as appropriate].

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have not comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before April 26, 1982.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB, at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6444 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-182-000]

Central Illinois Public Service Co.; Application

March 4, 1982.

Take notice that on January 27, 1981, Central Illinois Public Service Company (Applicant), 607 East Adams Street, Springfield, Illinois 62701, filed in Docket No. CP82-182-000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.222 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization to transport, sell, and assign natural gas in interstate commerce as if Applicant were an intrastate pipeline as defined in Subparts C, D, and E of Part 284 of the Commission's Regulations under the Natural Gas Policy Act of 1978 as well as § 284.203 thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it received approximately 29,900,000,000 Mcf of natural gas within or at the boundaries of Illinois during the 12-month period ending December 1981. It is asserted that during the same period Applicant received approximately 30,650,000,000 Mcf of natural gas from all sources. It is also submitted that all of Applicant's existing operations are conducted in Illinois and that Applicant currently holds an exemption pursuant to Section 1(c) of the Natural Gas Act.

Applicant asserts that it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations.

Applicant elects to petition the Commission for rate approval of each transaction entered into under this blanket authorization in accordance with § 284.123(b)(2) of the Commission's Regulations. Therefore, Applicant does not propose to set forth any rate methodology in connection with such transactions at this time.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 26, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6458 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5598-000]

East Coast Engineering; Application for License

March 8, 1982.

Take notice that East Coast Engineering (Applicant) filed on November 3, 1981, 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 Milton Leather Board Project No. 5598. The project would be located on the Salmon Falls River in Strafford County, New Hampshire and York County, Maine. Correspondence with the Applicant should be directed to: Mr. James Rea, East Coast Engineering, P.O. Box 25, Barrington, New Hampshire 03825.

Project Description—The proposed project would consist of: (1) The existing stone masonry and concrete gravity dam, 350 feet long and varying in height from 2 feet to 37 feet; (2) a reservoir having a surface of 3.7 acres, a storage capacity of 60 acre-feet, and a normal pool elevation of 398.5 feet; (3) a new headgate structure; (4) a new 7-foot diameter steel penstock 600 feet long; (5) a new powerhouse with 2 units having a total generating capacity of 600 kW; (6) a new 34.5-kV transmission line 310 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual energy production would be 3,600,000 kWh.

Purpose of Project—All project would be sold to the Public Service Company of New Hampshire.

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 May 13, 1982, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 13, 1982.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6447 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-33-000]

El Paso Natural Gas Co.; Proposed Change in Rates Pursuant to Purchased Gas Cost Adjustments

March 5, 1982.

Take notice that on March 1, 1982, El Paso Natural Gas Company ("El Paso") tendered for filing a notice of a change in rates:

(i) For jurisdictional gas service rendered to customers served by its interstate gas transmission system under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGAC"), contained in the General Terms and Conditions applicable to El Paso's FERC Gas Tariff, Original Volume No. 1, which Section 19 also applies to certain special rate schedules contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2 and Original Volume No. 2A;

(ii) Attributable to a special surcharge to recover El Paso's estimated additional purchased gas costs for the period retroactive to December 1, 1978 incurred as a result of Federal Energy Regulatory Commission ("Commission") Order Nos. 93 and 93-A issued July 16, 1980 and April 24, 1981, respectively, at Docket No. RM80-33, as provided in El Paso's Petition for Waiver of Regulations Under the Natural Gas Act and Relief From Currently Effective Tariff Provisions filed February 3, 1982 at Docket No. RP82-41;

(iii) Attributable to El Paso's implementation, with respect to certain of its pipeline production, of the December 23, 1981 decision by the United States Court of Appeals for the Fifth Circuit in Mid-Louisiana Gas Co. v. FERC, No 80-3804, hereinafter referred to as Mid-Louisiana; and

(iv) Attributable to advance payments, transportation costs, and gas well royalty and production tax costs pursuant to the adjustment mechanisms designed to track such costs provide for in El Paso's Stipulation and Agreement dated July 10, 1981 and filed July 13, 1981 at Docket Nos. RP79–12 (Further Extension), CP80–367, and CI80–311 through CI80–320, as approved by Commision order dated August 28, 1981.

El Paso states that the total net change in El Paso's currently effective rates attributable to the PGAC, tracking mechanism adjustments, Order Nos. 93 and 93-A special surcharge and the implementation of the Mid-Louisiana decision is an increase of 62.39¢ per Mcf.

To implement the instant notice of change in rates, El Paso filed the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A:[1]

Tariff volume	Tariff sheet
Original Volume No. 1.	First Substitute Thirtieth Revised Sheet No. 3-B, Fifth Revised Sheet No. 159.
Third Reivsed Volume No. 2.	First Substitute Twenty-first Revised Sheet No. 1-D.
Original Volume No. 2A.	First Substitute Twenty-second Revised Sheet No. 1C.

El Paso has included in the filing the implementation of the Mid-Louisiana decision with respect to certain categories of its pipeline production. In this connection, the filing includes both a prospective annualized component and a surcharge designed to recover prices permitted by the Natural Gas Policy Act of 1978 for certain categories of gas produced by El Paso from and after December 1, 1978. Because of the magnitude of said retroactive dollar amount, El Paso proposed a surcharge for the twelve (12) month period commencing April 1, 1982. However, in order to implement a surcharge for a twelve (12) month period, El Paso requested the Commission to waive Section 154.38(d)(4) of its Regulations Under the Natural Gas Act and grant relief from section 19.7 of El Paso's FERC Gas Tariff, Original Volume No. 1.

If, upon review of the instant filing during the thirty (30) day notice period, the Commission is unable to make a final determination that the resale rates reflected on the proposed tariff sheets are just and reasonable because of questions regarding El Paso's right to implement the Mid-Louisiana decision with respect to certain categories of its pipeline-produced gas or regarding the manner of said implementation, El Paso requested the Commission to suspend El Paso's proposed tariff sheets for the minimum suspension period so that the rates may go into effect April 1, 1982, subject to refund, pending final Commission determination of said questions.

El Paso also requested that waiver be granted of all applicable rules, orders and regulations of the Commission, as may be deemed necessary, to permit the effectiveness of the tendered revised tariff sheets on April 1, 1982. However, in the event the Fifth Circuit Court has not issued a mandate in Mid-Louisiana by April 1, 1982, and only in that event, El Paso requested that the Commission accept for filing and make effective April 1, 1982, the substitute revised tariff sheets tendered which reflect the net change in El Paso's currently effective rates without the Mid-Louisiana decision. If the substitute sheets are thus made effective and the Fifth Circuit subsequently issues a mandate in the proceeding, El Paso proposes that the primary tariff sheets be made effective upon issuance of the mandate, and requests all waivers necessary to accomplish the post-April 1, 1982, effectiveness.

El Paso states that copies of the filing and the enclosures thereto have been served upon all interstate pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before Mar. 19, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.0) and the Regulations Under the Natural Gas Act (18 CFR 157.10). Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6448 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[1] El Paso also tendered, in addition to the above revised tariff sheets, certain substitute revised tariff sheets as discussed below.

[Project No. 5941-000]

Energenics Systems, Inc.; Application for Preliminary Permit

March 8, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on February 2, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5941 to be known as the Ohio River Lock and Dam No. 52 located on the Ohio River in Massac County, Illinois and McCracken County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas H. Clarke, Jr., President, Energenics Systems, Inc., 1727 Q Street, N.W., Washington, D.C. 20009.

Project Description—The proposed project would consist of: (1) A proposed powerhouse with generating units having a total installed capacity of 34.5 MW; (2) proposed 69-kV transmission lines; and (3) appurtenant facilities. The Applicant proposes to utilize an existing dam owned by the U.S. Corps of Engineers, and the Applicant estimates the average annual energy output would be 302 GWH.

Proposed Scope of Studies under Permit.—A preliminary permit, if issued, does not authorize construction. Energenics seeks issuance of a preliminary permit for a period of 36 months. During this time the Applicant proposes to study the engineering, economic and environmental feasibility of the project, in addition to consulting Federal, State, and local agencies to determine the environmental effects of the project. Applicant estimates the cost of the studies would be $50,000.

Competing Applications.—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before June 14, 1982, the competing application itself [see 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 14, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR

4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 14, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6449 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5905-000]

Energenics Systems, Inc.; Application for Preliminary Permit

March 8, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on January 21, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5905 to be known as the Conchas Hydro Project located on the Canadian River in San Miguel County, New Mexico. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas H. Clarke, Jr., President, Energenics Systems, Inc., 1727 Q Street, N.W., Washington, D.C. 20009

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Conchas Dam and Reservoir and would consist of: (1) A new steel penstock, 200 feet long and of 48-inch diameter, exending from an existing penstock (to be unplugged) in the main dam; (2) a second new penstock extending from a bifurcation to be installed in the irrigation outlet works in another section of the dam; (3) two new powerhouses containing turbine-generator units having a total rated capacity of 2,000 kW; (4) two tailraces; (5) a new transmission line, approximately 35 miles long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 3,000,000 kWh. Project energy would be sold to the Plains Electric Generation and Transmission Cooperative or to nearby public institutions or industrial users.

Purposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates cost of the studies under the permit would be $35,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before June 14, 1982, the competing application itself [see 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 14, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 14, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6450 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-49-000]

Florida Gas Transmission Co.; Notice of Proposed Cancellation of Tariff Sheets

March 5, 1982.

Take notice that on March 1, 1982, Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790, tendered for filing cancellation of

the following tariff sheets in its F.E.R.C. Gas Tariff:

Original Volume No. 1

Original Sheet No. 22–O
Substitute Original Sheet No. 22–P

The aforementioned tariff sheets contain Section 20 of the General Terms and Conditions of FGT's F.E.R.C. Gas Tariff, Original Volume No. 1. Section 20 is entitled "Louisiana First Use Tax Provision" and sets forth the manner in which FGT shall collect such tax in its jurisdictional resale rates.

On June 29, 1981, the Commission issued an order directing pipelines to cease collection of the First Use Tax from their customers; terminating tracking of the First Use Tax; and requiring the filing of revised rate tariff sheets. The order further required the filing of revised tariff sheets to eliminate from tariffs the current adjustment for the First Use Tax. On July 13, 1981, FGT filed a revised rate tariff sheet in compliance with the June 29th order of the Commission. On August 4, 1981 the Commission accepted FGT's revised rate tariff sheet. The instant filing will eliminate the Louisiana First Use Tax Provision from FGT's FERC Gas Tariff, Original Volume No. 1.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, Original Volume No. 1 and interested State Commissions and is being posted.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6451 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5989-000]

City of Jersey City; Application for Preliminary Permit

March 8, 1982.

Take notice that the City of Jersey City (Applicant) filed on February 16, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5989 to be known as the Boonton Project located on Boonton Reservoir, Rockaway River in Parsippany Troy Hills, Morris County, New Jersey. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. William R. Goble, Division of Engineering, 575 State Highway No. 440, Jersey City, New Jersey 07305.

Project Description—The proposed project would consist of: (1) an existing 30-foot high 3,250-foot long earthen dike at the south end of the Boonton Reservoir and a 2,150-foot long 120-foot high masonry gravity dam at the north end of the Reservoir; (2) Boonton Reservoir with a surface area of 794.1 acres at elevation 307.25 feet M.S.L.; (3) a new 265-kW turbine-generator located within a water treatment plant located 800 feet downstream from the masonry dam; (4) 0.2-mile long 220 V transmission line; and (5) appurtenant facilities. The project would produce up to 1,576,000 kWh annually to be sold to the local utility. The project is owned by the Applicant.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be up to $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before June 14, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)], A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 14, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commisssion's regulations [see: 18 CFR § 4.30 et seq. or § 4.10 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protest, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 14, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", on "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc.82-6445 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5785-000]

Keith Roberts Parkinson; Application for Preliminary Permit

March 8, 1982.

Take notice that Keith Roberts Parkinson (Applicant) filed on December 17, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5785 to be known

as the Teton River Project located on the Teton River in Fremont County Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Keith Roberts Parkinson, Route 1, Box 135–8, St. Anthony, Idaho 83445.

Project Description—The proposed project would consist of either:

(A) Alternative 1 consisting of: (1) A 7-foot high concrete diversion structure; (2) a 100-foot long steel penstock; (3) a powerhouse containing one generating unit rated at 650 kW; and (4) a transmission line; or

(B) Alternative 2 consisting of: (1) a 3-foot high concrete diversion structure; (2) a 300-foot long steel penstock; (3) a powerhouse containing one generating unit rated at 650 kW; and (4) a transmission line.

The average annual energy generation is estimated to be 5.0 million kWh.

Purposed Scope of Studies under Permit.—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time it would conduct environmental, engineering, economic, and feasibility studies, and prepare an FERC license application. A 400-foot long temporary access road will be required to conduct the studies. The road will be restored to the natural condition if the project proves infeasible. The cost of the work is estimated to be $30,000.

Competing Applications.—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before May 14, 1982, the competing application itself or a notice of intent to file such an application [see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 14, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than July 12, 1982.

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 14, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6465 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5848-000]

Lakeview Hydro Associates; Application for Preliminary Permit

March 8, 1982.

Take notice that Lakeview Hydro Associates (Applicant) filed on January 4, 1982 an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for Project No. 5848 to be known as the Lakeview Hydropower Project located on the Swift River near Colonial Heights, in Chesterfield County, Virginia. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Wayne L. Rogers, Lakeview Hydro Associates, 1444 Foxwood Court, Annapolis, Maryland 21401.

Project Description—The proposed project would consist of: (1) An existing 418-foot long and 38-foot high concrete dam; (2) a reservoir with a storage capacity of 570-acre foot; (3) a proposed powerhouse located at the left abutment of the dam; (4) proposed transmission lines; and (5) appurtenant facilities. Applicant estimates the capacity of the proposed project to be 500 KW, and the annual energy output to be 2 GWh. Energy produced at the proposed project would be sold to the Virginia Electric Power Company.

Proposed Scope of Studies under Permit.—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 18-month permit to prepare a project report including preliminary designs, results of hydrological, environmental and economic feasibility studies. The cost of the above activities along with preparation of an environmental impact report, obtaining agreements with Forest Service and other Federal, State and local agencies, preparing a license application conducting final field surveys and preparing designs is estimated by the Application to be $36,000.

Competing Applications.—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before June 14, 1982, the competing application itself [see 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 14, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et. seq. (1981), as appropriate].

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application.

(A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 14, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION" "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6452 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5764-000]

Long Lake Energy Corp.; Application for Preliminary Permit

March 8, 1982.

Take notice that Long Lake Energy Corporation (Applicant) filed on December 14, 1981 an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5764 to be known as the Court Street Dam Project located on the Genessee River in Monroe County, New York. The application is on file with the Commission and is available for public inspection.

Correspondence with the Applicant should be directed to: Paul J. Elston, 330 Madison Avenue, 7th Floor, New York, New York 10017.

Project Description—The proposed project would consist of: 1) The existing dam 11 feet high and 325 feet long and having 4 steel gates to maintain pool elevation for the Erie Canal.; 2) a reservoir with a surface area of 176 acres, a normal maximum pool elevation of 513.1 feet msl, and a storage capacity of 760 acre-feet; 3) an existing intake structure; 4) a new powerhouse having units with a total generating capacity of 2,250 kW; 5) a new tailrace; 6) a new switchyard; 7) a new transmission line 1800 feet long; and 8) appurtenant facilities. The Applicant estimates the annual energy production to be 6,100,000 kW-hrs. Project energy would be sold to Rochester Gas and Electric Corporation. The existing project facilities are owned by the City of Rochester and the State of New York.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates cost of the studies under the permit would be $60,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before June 14, 1982, the competing application itself [see: 18 CFR 4.30 et. seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 14, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 14, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6453 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4334-001]

Long Lake Energy Corp.; Application for License

March 8, 1982.

Take notice that Long Lake Energy Corporation (Applicant) filed on December 8, 1981, 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 the Philadelphia Hydroelectric Project No. 4334. The project would be located on the Indian River in Jefferson County, New York. Correspondence with the Applicant should be directed to: Paul J. Elston, 330 Madison Avenue, 7th Floor, New York, New York 10017 and Marvin

S. Lieberman, 888 17th Street, N.W., Washington, D.C. 20006.

Project Description—The proposed project would consist of: (1) Two existing concrete dams joined by an island and designated as the East and West Dams 60 feet long and 4 feet high and 30 feet long and 6 feet high, respectively; (2) an existing non-overflow section 45 feet long and 13 feet high; (3) an existing reservoir with a surface elevation of 475.9 feet m.s.l.; (4) new 1.2-foot high flashboards on the East Dam; (5) a new reinforced concrete intake structure in the non-overflow section; (6) a new 9-foot diameter penstock, 400 feet long; (7) a new powerhouse to contain a 3,000 kW turbine-generator unit; (8) a new 120-foot long transmission line; and (9) other appurtenances. The existing facilities are currently owned by the Village of Philadelphia. Applicant estimates that the average annual energy output would be 10,500,000 kWh.

Purpose of Project—Project energy would be sold to the Niagara Mohawk Power Corporation (NMPC).

Agency Comment.—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 May 14, 1982, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 14, 1982.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6454 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-48-000]

Mississippi River Transmission Corp.; Tariff Filing

March 5, 1982.

Take notice that on March 1, 1982, Mississippi River Transmission Corporation (MRTC) tendered for filing Eighth Revised Sheet No. 27H to its FERC Gas Tariff, First Revised Volume No. 1. MRTC states that the filing is being made to name in the purchased gas cost adjustment (PGA) provisions of its tariff pipeline supplier minimum commodity bill charges as costs, the jurisdictional portion of which is recoverable thereunder. MRTC states that its existing PGA provisions in fact provide for the recovery of such charges, and that accordingly the revised tariff sheet, which merely identifies these costs by name, does not effect a substantive tariff change. MRTC proposes that this tariff sheet be made effective as of April 1, 1982.

A copy of this filing has been mailed to Mississippi's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8, and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc.82-6461 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-71-000]

Montana-Dakota Utilities Co.; Settlement Conference

March 5, 1982.

Take notice that a settlement conference in the above-captioned dockets will be held at 10:00 a.m., on March 24, 1982, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance at the conference will not be deemed to authorize intervention as a party in the proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6455 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-47-000]

Mountain Fuel Resources, Inc.; Notice of FERC Gas Tariff Filing

March 5, 1982.

Take notice that Mountain Fuel Resouces, Inc. (Resources), on March 1, 1982 tendered for filing and acceptance Fourth Revised Sheet No. 4 and Second Substitute Fourteenth Revised Sheet No. 7 of its FERC Gas Tariff, Original Volume No. 1, to become effective November 16, 1981. Resources also filed Substitute Fifteenth Revised Sheet No. 7

of the above-referenced FERC Gas Tariff to become effective December 1, 1981.

The purpose of the instant filing is to restate the Base Tariff Rate as of November 16, 1981 in compliance with § 154.38(d)(4)(vi)(a) and the Commission's order issued December 31, 1981. The new Base Tariff Rate of $1.8608 is based on a cost-of-service calculation for the twelve months ended August 31, 1981, as adjusted for annualization of changes during the base period.

Resources states that copies of this filing were served on the Company's jurisdictional customers and affected state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6463 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-36-000]

Mountain Fuel Supply Co.; Tariff Sheet Filing

March 5, 1982.

Take notice that on March 1, 1982, Mountain Fuel Supply Company (Mountain Fuel), pursuant to § 154.62 of the Regulations of the Federal Energy Regulatory Commission (Commission), filed Fourteenth Revised Sheet No. 3-A to its FERC Gas Tariff, Original Volume No. 1. Mountain Fuel states that the filed tariff sheet relates to the Unrecovered Purchased Gas Cost Account of the Purchased Gas Adjustment Provision authorized by Commission order issued February 27, 1976, in Docket No. RP76-64. More specifically, the tariff sheet reflects a net increase from that currently being collected of $.30973/Mcf (Rate Schedule X-4), $.20007/Mcf (Rate Schedule X-5) and $.30772/Mcf (Rate Schedule X-20) all to be effective April 1, 1982.

Any person desiring to be heard or to make any protest with reference to said filing should on or before March 19, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing must file petitions to intervene in accordance with the Commission's Rules. Mountain Fuel's Tariff Filing is on file with the Commission and available for public inspection

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6456 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-115-011]

Mountain Fuel Supply Co.; Petition To Amend

March 4, 1982.

Take notice that on February 11, 1982, Mountain Fuel Supply Company (Petitioner), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP79-115-011 a petition to amend the order issued August 9, 1979, in the instant docket pursuant to § 7(c) of the Natural Gas Act so as to authorize the gathering and exchange of natural gas for Northwest Pipeline Corporation (Northwest) from an enlarged area in Sweetwater County, Wyoming, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued August 9, 1979, in the instant docket Petitioner was authorized pursuant to a letter agreement dated May 23, 1979, between the parties to provide Northwest with mutual gathering and exchange services in the Moxa Arch area of Lincoln, Uinta, and Sweetwater Counties, Wyoming.

Petitioner asserts that Northwest now desires to connect supplies of natural gas not located within the acreage designated in the agreement but adjacent to the Moxa Arch area to Petitioner's gathering facilities. It is submitted that Northwest and Petitioner have accordingly entered into an amendatory agreement dated August 1, 1980, wherein the parties agreed to add Section 5-T22N-R111W, Sweetwater County, Wyoming, to the area designated in the May 23, 1979, agreement. Petitioner therefore requests that the Commission amend its August 9, 1979, order in the instant docket so as to authorize the gathering and exchange of natural gas from an enlarged area pursuant to the August 1, 1980, amendatory agreement.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 26, 1982 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6462 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-45-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Proposed Changes FERC Gas Tariff

March 5, 1982.

Take Notice that on February 26, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) tendered for filing First Revised Sheet Nos. 53, 55, 56 and 57 which Northern proposed to become effective April 1, 1982.

These proposed revisions to the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1 reflect a new policy with respect to the construction and financing of additional sales facilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6464 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline Annual Valuation Reports; Finality of 1979

March 9, 1982.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

The Board has issued the tentative 1979 annual valuation reports for the following common carriers by oil pipelines:

Acorn Pipeline Company, Docket No. PV-1364-000
Allegheny Pipeline Company, Docket No. PV-1414-000
Amdel Pipeline Inc., Docket No. PV-1439-000
American Petrofina Pipe Line Company, Docket No. PV-1440-000
Amoco Pipeline Company, Docket No. PV-1302-000
Arapahoe Pipe Line Company, Docket No. PV-1378-000
ARCO Pipe Line Company, Docket No. PV-1329-000
Ashland Pipe Line Company, Docket No. PV-1291-000
Badger Pipe Line Company, Docket No. PV-1381-000
Belle Fourche Pipeline Company, Docket No. PV-1430-000
Black Lake Pipe Line Company, Docket No. PV-1425-000
Buckeye Pipe Line Company, Docket No. PV-1322-000
Butte Pipe Line Company, Docket No. PV-1382-000
Calnev Pipe Line Company, Docket No. PV-1404-000
Chevron Pipe Line Company, Docket No. PV-1416-000
Cheyenne Pipeline Company, Docket No. PV-1368-000
Chicap Pipeline Company, Docket No. PV-1427-000
Cities Service Pipe Line Company, Docket No. PV-1312-000
Collins Pipeline Company, Docket No. PV-1433-000
Colonial Pipeline Company, Docket No. PV-1422-000
Continental Pipe Line Company, Docket No. PV-1316-000
Cook Inlet Pipe Line Company, Docket No. PV-1426-000
CRA, Inc., Docket No. PV-1341-000
Crown-Rancho Pipe Line Corporation, Docket No. PV-1365-000
Diamond Shamrock Corporation, Docket No. PV-1349-000
Dixie Pipeline Company, Docket No. PV-1411-000
Emerald Pipe Line Corporation, Docket No. PV-1385-000
The Eureka Pipe Line Company, Docket No. PV-1338-000
Explorer Pipeline Company, Docket No. PV-1441-000
Exxon Pipeline Company, Docket No. PV-1394-000
Four Corners Pipe Line Company, Docket No. PV-1389-000
Getty Pipeline, Inc., Docket No. PV-1402-000
Gulf Central Pipeline Company, Docket No. PV-1436-000
Gulf Refining Company, Docket No. PV-1333-000
Hess Pipeline Company, Docket No. PV-1409-000
Hydrocarbon Transportation, Inc., Docket No. PV-1431-000
Jayhawk Pipeline Corporation, Docket No. PV-1406-000
Jet Lines, Inc., Docket No. PV-1413-000
Kaneb Pipe Line Company, Docket No. PV-1375-000
Kaw Pipe Line Company, Docket No. PV-1299-000
Kenai Pipe Line Company, Docket No. PV-1399-000
Kerr-McGee Pipeline Corporation, Docket No. PV-1429-000
Kiantone Pipeline Corporation, Docket No. PV-1435-000
Lake Charles Pipe Line Company, Docket No. PV-1419-000
Lakehead Pipe Line Company, Inc., Docket No. PV-1354-000
Laurel Pipe Line Company, Docket No. PV-1403-000
Marathon Pipe Line Company, Docket No. PV-1392-000
Mid-America Pipeline System, Docket No. PV-1395-000
Mid-Valley Pipeline Company, Docket No. PV-1353-000
Minnesota Pipe Line Company, Docket No. PV-1384-000
Mobil Pipe Line Company, Docket No. PV-1311-000
National Transit Company, Docket No. PV-1332-000
Ohio River Pipe Line Company, Docket No. PV-1292-000
Olympic Pipe Line Company, Docket No. PV-1417-000
Owensboro-Ashland Company, Docket No. PV-1456-000
Paloma Pipe Line Company, Docket No. PV-1420-000
Phillips Pipe Line Company, Docket No. PV-1320-000
Pioneer Pipe Line Company, Docket No. PV-1372-000
Plantation Pipe Line Company, Docket No. PV-1343-000
Platte Pipe Line Company, Docket No. PV-1367-000
Portal Pipe Line Company, Docket No. PV-1410-000
Portland Pipe Line Corporation, Docket No. PV-1347-000
Powder River Corporation, Docket No. PV-1437-000
Pure Transportation Company, Docket No. PV-1327-000
Santa Fe Pipeline Company, Docket No. PV-1428-000
The Shamrock Pipe Line Corporation, Docket No. PV-1369-000
Shell Pipe Line Corporation, Docket No. PV-1326-000
Sohio Pipe Line Company, Docket No. PV-1335-000
Southcap Pipe Line Company, Docket No. PV-1424-000
Southern Pacific Pipe Lines, Inc., Docket No. PV-1393-000
Sun Oil Line Company of Michigan, Docket No. PV-1370-000
Sun Pipe Line Company, Docket No. PV-1315-000
Tecumseh Pipe Line Company, Docket No. PV-1386-000
Texaco-Cities Service Pipe Line Company, Docket No. PV-1300-000
Texas Eastern Transmission Corporation, (Little Big Inch Division), Docket No. PV-1408-000
Texas-New Mexico Pipe Line Company, Docket No. PV-1293-000
The Texas Pipe Line Company, Docket No. PV-1330-000
Texoma Pipe Line Company, Docket No. PV-1449-000
Total Pipeline Corporation, Docket No. PV-1357-000
Trans Mountain Oil Pipe Line Corporation, Docket No. PV-1379-000
Trans-Ohio Pipeline Company, Docket No. PV-1412-000
West Emerald Pipe Line Corporation, Docket No. PV-1388-000
West Shore Pipe Line Company, Docket No. PV-1396-000
West Texas Gulf Pipe Line Company, Docket No. PV-1362-000
White Shoal Pipeline Corporation, Docket No. PV-1421-000
Williams Pipe Line Company, Docket No. PV-1423-000
Wolverine Pipe Line Company, Docket No. PV-1377-000
Wyco Pipe Line Company, Docket No. PV-1355-000
Yellowstone Pipe Line Company, Docket No. PV-1373-000

Section 19a(h) of the Interstate Commerce Act provides that if no protest is filed within thirty days, the valuation shall become final as of the date thereof. Notice is hereby given that no protest to the valuation reports for any of these carriers have been received and that each valuation report is final as of the date it was issued by the Board.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 82-6441 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-46-000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 5, 1982.

Take notice that South Georgia Natural Gas Company (South Georgia), on March 1, 1982 tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed changes are based on the twelve month period ending December 31, 1981, as adjusted, and would increase jurisdictional revenues by $623,889.

South Georgia states that the principal reasons for the proposed rate increase are to reflect (1) increased rate base due to new facilities, (2) increased operation and maintenance expenses and other taxes, and (3) a reduction in the sales volumes for the test year.

Copies of this filing have been served upon South Georgia's jurisdictional customers and interested state public service Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Petitions will be considered by the Commission 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6466 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-41-000 (PGA82-2)]

Southwest Gas Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

March 5, 1982.

Take notice that Southwest Gas Corporation (Southwest) on March 1, 1982, tendered for filing Fourteenth Revised Sheet No. 10 and Fourth Revised Sheet No. 10A pursuant to Section 9, Purchased Gas Adjustment Clause (PGA), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect an increase in rates occasioned by an increase in rates from Southwest's northern Nevada sole supplier of gas, Northwest Pipeline Corporation, effective April 1, 1982. The proposed increase in rates is effective April 1, 1982.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6467 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-130-001]

Transwestern Pipeline Co.; Proposed Change in FERC Gas Tariff

March 4, 1982.

Take notice that on February 26, 1982, Transwestern Pipeline Company (Transwestern) tendered for filing primary revised tariff sheets, adjusted for changes in accordance with the September 28, 1981 order issued by the Commission; in the alternative, Transwestern has tendered for filing revised tariff sheets, adjusted for changes in accordance with the September 28, 1981 order. The effective date of the revised tariff sheets is February 28, 1982. The revised tariff sheets are as follows:

Revised Nineteenth Revised Sheet No. 5
Revised Nineteenth Revised Sheet No. 6
Second Revised Sheet No. 25
First Revised Sheet No. 51
First Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 54
First Revised Sheet No. 55
Second Revised Sheet No. 63
Second Revised Sheet No. 64
Original Sheet No. 64–A
Sixth Revised Sheet No. 74
First Revised Sheet No. 76–A
First Revised Sheet No. 76–B
First Revised Sheet No. 76–C
Original Sheet No. 76–D
Second Revised Sheet No. 80
First Revised Sheet No. 81

or:

Alternate Revised Nineteenth Revised Sheet No. 5
Alternate Revised Nineteenth Revised Sheet No. 6

Transwestern states that the primary revised tariff sheets were filed to reflect use of the *United* method of cost classification and did not reflect use of the *South Georgia* method of amortizing Transwestern's future unfunded income tax liability. However, the alternative revised tariff sheets included as Alternates 1, 2 and 3 were filed to reflect use of the *Seaboard* method of cost classification and/or to reflect utilization of the *South Georgia* method. Furthermore, the alternate tariff sheets were filed to effectuate the agreement between Staff, Transwestern and the parties that Transwestern would eliminate any and all costs associated with the WESCO Coal Gasification project from its rates in Docket No. RP81–130–000.

In addition, Transwestern states that whether it moved to place into effect the primary revised tariff sheets or the revised tariff sheets included in Alternates 1, 2 or 3 depended upon (1) whether Transwestern believed it would be free from risk of undercollections if it put *Seaboard* rates into effect and (2) whether the IRS had issued a ruling respecting Transwestern's right to utilize the South Georgia method and continue to take advantage of accelerated depreciation for tax purposes. Because neither of the contingencies set forth above occurred, Transwestern moved to place into effect the primary revised tariff sheets, subject to Transwestern's alternative request.

Copies of this filing were served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6468 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 5, 1982.

Take notice that Transwestern Pipeline Company (Transwestern) on March 1, 1982 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

Twentieth Revised Sheet No. 5
Twentieth Revised Sheet No. 6
Fifth Revised Sheet No. 6A

or as an alternative to Sheet Nos. 5 and 6,

Alternate Twentieth Revised Sheet No. 5
Alternate Twentieth Revised Sheet No. 6

The above listed tariff sheets are issued pursuant to Transwestern's Purchased Gas Cost Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected in the above listed tariff sheets consists of an increase of 102.24¢/dth based upon increased purchased gas costs, adjusted for Projected Incremental Pricing Surcharges for the months of April, 1982 through September, 1982, and an increased balance in the Gas Cost Adjustment Account. This increase in rates is applied to those rates which Transwestern has moved to place into effect in Docket No. RP81-130 by letter dated February 25, 1982. In the February 25, 1982 filing Transwestern included two alternative sets of rate tariff sheets based on the inclusion or exclusion of costs associated with the WESCO coal gasification project. Transwestern proposes herein that the Commission accept the appropriate set of Sheet Nos. 5 and 6 listed above (in addition to Fifth Revised Sheet No. 6A) based on the Commission's determination with respect to Transwestern's February 25, 1982 motion in Docket No. RP81-130.

The proposed effective date of these tariff sheets is April 1, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 19, 1982. Protests will be considered by the Commission 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-6469 Filed 3-9-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-264; PH-FLL-2069-6]

Certain Companies; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have filed petitions proposing to establish tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF-264]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions have been submitted to the Agency requesting establishment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

PP 2F2645. Elanco Product Co., Division of Eli Lilly and Co., 740 South Alabama St., Indianapolis, IN 46285. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide ethalfluralin [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine] in or on the raw agricultural commodities grouping seed and pod vegetables, forage legumes and cucurbits at 0.05 part per million (ppm). The proposed analytical method for determining residues is by electron capture gas-liquid chromatography. (PM-23, Richard Mountfort, 703-557-1830).

PP 2F2628. American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540. Proposes amending 40 CFR 180.361 by establishing tolerances for the combined residues of the herbicide pendimethalin [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl] alcohol in or on the raw agricultural commodities sweet corn fodder, sweet corn forage, and sweet corn grain at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-25, Robert Taylor, 703-557-1800).

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 136))

Dated: March 2, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-6466 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-30215; PH-FRL-2069-5]

Elanco Products Co.; Application To Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Elanco Products Company has submitted an application to register the herbicide Sonalan E.C., a pesticide product containing an active ingredient not included in any previously registered pesticide product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comments by April 9, 1982.

ADDRESS: Written comments, identified by the document control number "[OPP-30215]" and the file symbol, should be submitted to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., NW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort (703-557-1830).

SUPPLEMENTARY INFORMATION: Elanco Products Company, a Division of Eli Lilly and Company, 740 South Alabama St., Indianapolis, IN 46285 has submitted an application to EPA to register the pesticide product Sonalan E.C., File symbol 1471-REE, containing 35.1 percent of the active ingredient ethalfluralin [*N*-ethyl-*N*(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine]. The applicant requests a conditional registration for general use for preemergence control of annual grasses, broadleaf weeds in seed and pod vegetables and cucurbits.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** Except for such material protected by section 10 of FIFRA, the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the product manager's office between 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing such comments telephone the product manager's office to ensure that the file is available on the date of the intended visit.

(Sec. 3(4)(c) of FIFRA, as amended)

Dated: March 2, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-6405 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[AMS-FRL-2069-4]

Announcement of Fuel Economy Retrofit Device Evaluation for "Super-Mag Fuel Extender"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Fuel Economy Retrofit Device Evaluation.

SUMMARY: This document announces the conclusions of the EPA evaluation of the "Super-Mag Fuel Extender" device under provisions of Section 511 of the Motor Vehicle Information and Cost Savings Act.

BACKGROUND INFORMATION: Section 511(b)(1) and section 511(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2011(b)) requires that:

(b)(1) Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit devices are accurate.

(c) The EPA Administrator shall publish in the **Federal Register** a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) The effect of any retrofit device on fuel economy;

(2) The effect of any such device on emissions of air pollutants; and

(3) Any other information which the Administrator determines to be relevant in evaluating such device.

EPA published final regulations establishing procedures for conducting fuel economy retrofit device evaluations on March 23, 1979 [44 FR 17946].

Origin of Request for Evaluation

On December 10, 1980, the EPA received a written request from the Metropolitan Denver District Attorney's Office of Consumer Fraud and Economic Crime to test at least one "cow magnet" type of fuel economy device. Following a survey of devices being marketed, the Metropolitan Denver District Attorney's Office selected the "Super-Mag" device as typical of its category and on April 13, 1981 provided EPA with units for testing.

Availability of Evaluation Report

An evaluation has been made and the results are described completely in a report entitled: "Evaluation of the Super-Mag Fuel Extender Device Under Section 511 of the Motor Vehicle Information and Cost Savings Act," report number EPA-AA-TEB-511-82-3 consisting of 20 pages including all attachments.

EPA also tested the Super-Mag Fuel Extender device. The EPA testing is described completely in the report "Evaluation of the Super-Mag Fuel Extender," EPA-AA-TEB-81-30, consisting of 12 pages. This report is contained in the preceding 511 Evaluation as an attachment.

Copies of these reports may be obtained from the National Technical Information Service by using the above report numbers. Address requests to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Telephone: (703) 487-4650 or FTS 737-4650.

Summary of Evaluation

The "Super-Mag Fuel Extender" consists of a set of two rectangular magnets mounted on plates, two steel plates, and two plastic ties that are installed around a vehicle's fuel line, about 3 inches from the carburetor. The magnets and plates are arranged so as to form an open-ended four-sided box surrounding the fuel line. A claim for the device's effectiveness appears in a message on the package label, which reads "Transforms Molecular Properties of Liquid Fuel to Maximum Combustion Efficiency." Advertisements also state, "The Super-Mag has been developed to increase gas mileage on compact, mid-size and luxury model automobiles with a savings up to 30%."

The request for evaluation of the "Super-Mag Fuel Extender" was made by the Metropolitan Denver District Attorney's Office of Consumer Fraud and Economic Crime.

The EPA evaluation of the device using three vehicles, showed that there was no emission or fuel economy benefit due to the installation of the "Super-Mag Fuel Extender."

FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Emission Control Technology Division, Office of Mobile Source Air Pollution Control, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668-4299.

Dated: March 1, 1982.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 82-6404 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-26-M

[OPP-30198A; PN-FRL-2070-1]

Nor-Am Agricultural Products Co.; Approval of Application To Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has approved the application by Nor-Am Agricultural Products Co. to register the pesticide product Prevex Turf Fungicide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, CM#2 Rm. 227, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of May 7, 1981 (46 FR 25544) that Nor-Am Agricultural Products, Inc., 350 West Sherman Blvd., Naperville, IL 60566, had submitted an application to register the pesticide product Prevex Turf Fungicide containing 66.5 percent of the active ingredient propyl [3-(dimethylamino)propyl]carbamate monohydrochloride also known as propamocarb hydrochloride, an ingredient not included in any previously registered product.

The application was approved on February 3, 1982 for general use in pesticide formulation. The product was assigned EPA registration No. 2139-121.

A copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 410 M St., SW., Washington, DC 20460. Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: March 2, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-6409 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50568; PH-FRL-2069-8]

Department of the Interior; Receipt of Application for an Experimental Use Permit for Sodium Monofluoroacetate (Compound 1080)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application for an experimental use permit from the U.S. Department of the Interior. The experimental use permit, file symbol 6704-EUP-EA, proposes allowing the use of 0.05 pound of sodium monofluoroacetate (Compound 1080) in single lethal dose baits on livestock ranges to evaluate the control of coyotes. A total of 512,00 acres would be used in programs in Idaho, Montana, and Texas.

DATE: Written comments must be received on or before April 9, 1982.

ADDRESS: Comments should bear the document control number OPP-50568 and be submitted to: Document Control Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St., SW., Washington, D.C. 20460.

The public record filed regarding this notice will be available for public inspection in Rm. E-107, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: William Miller (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: The Department of Interior's experimental use permit application requests that EPA approve experimental use of Compound 1080 in single lethal dose baits to control coyotes. EPA is also currently conducting a formal adjudicatory hearing on applications for registration of Compound 1080 in single lethal dose baits to control livestock predators, principally coyotes. The purpose of this hearing, which was initiated by a notice in the **Federal Register** of December 7, 1981 (46 FR 59622), is to determine whether EPA's 1972 Order cancelling and suspending the registration of Compound 1080 predacides should be modified or reversed. The hearings are being conducted under Subpart D of EPA's Rules of Practice, 40 CFR 164.130 through 164.133.

These hearings were initiated as a result of applications being submitted by State and Federal agencies requesting registration and emergency exemptions for the use of Compound 1080 as a predacide and a finding by the Administrator that "substantial new evidence" existed that would warrant such hearings. In addition to the applications for Compound 1080 single lethal dose baits, the applicants seek to use Compound 1080 in toxic collars, meat stations, and smear posts. The Subpart D hearings will address all of these Compound 1080 delivery mechanisms.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: March 3, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-6408 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50570; PH-FRL-2069-7]

University of California; Receipt of Application for an Experimental Use Permit for Sodium Monofluoroacetate (Compound 1080)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application for an experimental use permit from the University of California. The experimental use permit, file symbol 46879-EUP-R, proposes allowing the use of 0.66 pound of sodium monofluoroacetate (Compound 1080) in bait delivery units on livestock grazing areas to evaluate the control of coyotes on 400 acres in California.

DATE: Written comments must be received on or before April 9, 1982.

ADDRESS: Comments should bear the document control number OPP-50570 and be submitted to: Document Control Office (TS-793), Office of Pesticides and Toxic Substances, Environmental

Protection Agency, RM. E–401, 401 M St., SW., Washington, DC 20460.

The public record filed regarding this notice will be available for public inspection in Rm. E–107, at the above address from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: William Miller (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–2600).

SUPPLEMENTARY INFORMATION: The University of California's experimental use permit application requests that EPA approve experimental use of Compound 1080 in bait delivery units to control coyotes. EPA is currently conducting a formal adjudicatory hearing on applications for registration and emergency exemptions of Compound 1080 to control livestock predators, principally coyotes. The purpose of this hearing, which was initiated by a notice in the **Federal Register** of December 7, 1981 (46 FR 59622), is to determine whether EPA's 1972 Order cancelling and suspending the registration of Compound 1080 predacides should be modified or reversed. The hearings are being conducted under Subpart D of EPA's Rules of Practice, 40 CFR 164.130 through 164.133.

These hearings were initiated as a result of applications being submitted by State and Federal agencies requesting registration and emergency exemptions for the use of Compound 1080 as a predacide and a finding by the Administrator that "substantial new evidence" existed that would warrant such hearings. Applications have been received to use Compound 1080 in single lethal dose baits, toxic collars, meat stations, and smear posts. The Subpart D hearings will address all of these Compound 1080 delivery mechanisms.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: March 3, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-6407 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-30209A PH-FRL-2065-3]

E. I. du Pont de Nemours & Co.; Approval of Application To Conditionally Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has conditionally approved the application by E. I. du Pont de Nemours & Co. to register the pesticide product Du Pont Oust Weed Killer Dry Flowable herbicide containing an active ingredient not included in any previously registered pesticide product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, CM#2 Rm. 245, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of January 6, 1982 (47 FR 672) that E. I. du Pont de Nemours & Co., Wilmington, DE 19898, had submitted an application to register the pesticide product Du Pont Oust Weed Killer Dry Flowable herbicide containing 75 percent of the active ingredient Methyl 2-[[[[[(4,6-dimethyl-2-pyridimidinyl)amino)-carbonyl]amino)sulfonyl]benzoate, an ingredient not included in any previously registered product.

The application was approved on February 8, 1982 for general use in pesticide formulation. The product was assigned EPA registration No. 352–401.

A copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of he Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: February 23, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 82-6041 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL-2068-5; OPP-30214]

Certain Companies; Applications To Register Pesticide Products Containing New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by April 9, 1982.

ADDRESS: Written comments, identified by the document control number [OPP–30214] and the file or registration number, should be submitted to the manager (PM) cited at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The product manager at the telephone number cited.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Applications Received

1. File Symbol: 476–EERR.
Applicant: Stauffer Chemical Co., 1200 South 47th Street., Richmond, CA 94804.
Product name: MV–678 Insect Growth Regulator.
Active ingredient: 1-(8-Methoxy-4,8-dimethylnonyl)-4-(1-methylethyl) benzene 1.2%.
Proposed classification/Use: General. Used for the control of the red imported fire ants.
Type registration: Conditional.
Product manager (PM) 17: Franklin Gee, (703–557–2690).
2. File Symbol: 10182–AA.

Applicant: ICI Americas, Inc., Agricultural Chemicals Division, Wilmington, DE 19897.
Product name: Fusilade 2E Herbicide.
Active ingredient: (±)-Butyl 2-[4-[[5-(trifluoro-methyl)-2-pyridinyl]oxy]phenoxy] propanoate 25.2%.
Proposed classification/Use: General. For control of perennial and annual grasses in cotton and soybeans.
Type registration: Conditional.
Product manager (PM) 23: Richard Mountfort, (703–557–1830).
3. File Symbol: 10182–AT.
Applicant: ICI Americas, Inc.
Product name: Fusilade 4E Herbicide.
Active ingredient: (†)-Butyl 2-[4-[[5-(trifluoro-methyl)-2-pyrindinyl]oxy]phenoxy] propanoate 46.5%.
Proposed classification/Use: General. Controls perennial and annual grass weeds in cotton and soybeans.
Type registration: Conditional.
Product manager (PM) 23: Richard Mountfort, (703–557–1830).

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. Except for such material protected by section 10 of FIFRA, the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice will be available in the product manager's office between 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing such comments telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: February 25, 1982.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-6249 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL-2068-4; PF-263]

Certain Companies; Filing of Pesticide, Food, and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have submitted pesticide, food, and feed additive petitions to the EPA requesting establishment of tolerances, food, and feed additive regulations.

ADDRESS: Written comments may be submitted to the product manager cited in each petition at the address below: Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control number [PF–263] and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide, food, and feed additive petitions have been submitted to the Agency requesting the establishment of tolerances, food, and feed additive regulations in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

PP 2F2630. ICI Americas, Inc., Agricultural Chemicals Div., Wilmington, DE 19897. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide (±)-butyl 2-[4-[(5-trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate in on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.05
Cattle, meat	.05
Cattle, mbyp	.05
Cottonseed	.1
Eggs	.05
Goats, fat	.05
Goats, meat	.05
Goats, mbyp	.05
Hogs, fat	.05
Hogs, meat	.05
Hogs, mbyp	.05
Horses, fat	.05
Horses, meat	.05
Horses, mbyp	.05
Milk	.05
Poultry, fat	.05
Poultry, meat	.05
Poultry, mbyp	.05
Sheep, fat	.05
Sheep, meat	.05
Sheep, mbyp	.05
Soybeans	1.0

The proposed analytical method for determining residues is by high pressure liquid chromatography (HPLC) using an ultra-violet detector. (PM 23, Richard Mountfort, (703–557–1830)).

FAP 2H5337. FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes amending 21 CFR Part 193 by establishing a temporary regulation in conjuction with an experimental use permit permitting residues of the insecticide (2,3-dihydro-2,2-dimethyl-7-benzofuranyl [(dibutylamino) thio]methyl carbamate) and its carbamate cholinesterase inhibiting metabolities (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*n*-methylcarbamate; 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*n*-methylcarbamate; 2,3-dihydro-2,2-dimethyl-3-keto-7-benzofuranyl-*n*-methylcarbamate); and its phenolic metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranol; 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol) and its dibutylamine mebolite in or on citrus oil at 14.5 ppm and molasses 12.5 ppm. (PM 12, Jay Ellenberger, (557–2386)).

FAP 2H5337. FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes 21 CFR Part 561 by establishing a temporary regulation in conjunction with an experimental use permit permitting residues of the insecticide (2,3-dihydro-2,2-dimethyl-7-benzofuranyl [(dibutylamino) thio]methyl carbamate) and its carbamate cholinesterase inhibiting metabolities (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*n*methylcarbamate; 2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*n*-methyl-carbamate; 2,3-dihydro-2,2-dimethyl-3-keto-7-benzofuranyl-*n*-methylcarbamate;); and its phenolic metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranyl; 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol) and its dibutylamine mebolite in dried citrus pulp 9.50 ppm. (PM 12, Jay Ellenberger, (577–2386)).

PP 2F2640. Mobay Chemical Corp., Agricultural Chemicals Div., PO Box 4913, Kansas City, MO 64120. Proposes amending 40 CFR Part 180 by

establishing a tolerance for residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-l-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy-alpha-(1,1-dimethylehtyl)-1*H*-1,2,4-triazol-l-ethanol in or on pears at 1.0 ppm. (PM 21 Henry Jacoby, (703–557–1900)).

(Sec. 408(d) (1), 68 Stat. 512 (7 U.S.C. 136); 409(b) (5), 72 Stat. 1786 (21 U.S.C. 348))

Dated: February 24, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-6245 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL-2068-2; OPP-66090]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the name of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Production of these products after the effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: April 9, 1982.

ADDRESS: Written comments to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–401, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lela Sykes, Process Coordination Branch (TS–767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 516, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7121).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
30-19	Sweeney's Rat & Mouse Killer	W. R. Sweeney Manufacturer, Inc., 312-16 South Broadway, Salisbury, MO 65281	Nov. 7, 1967.
30-20	Sweeney's Mouse Bait	do	Nov. 19, 1971.
88-18	Raponex Warfarin Prepared Rat Killer Bait	The Hyponex Company, Inc., P.O. Box 4300, Copley, OH 44321	Aug. 10, 1971.
201-269	Shell Azodrin 5 Insecticide	Shell Chemical Company, 1025 Connecticut Ave., NW, Suite 200, Washington, DC 20036.	Dec. 7, 1971.
239-765	Ortho Chinch Bug	Chevron Chemical Company, 940 Hensley St., Richmond, CA 94801	June 16, 1954.
239-1198	Ortho Cryolite 50 Dust	do	July 22, 1958.
239-1529	Methyl Parathion 5 Emulsive	do	July 14, 1960.
239-1595	Ortho Dibrom Kelthane 2-3 Dust	do	May 5, 1961.
239-1757	Ortho Dibrom Kelthane Sulfur 4-4-30 Dust	do	Aug. 27, 1962.
239-1782	Ortho Malathion Cryolite 4-25 Dust	do	Nov. 19, 1962.
239-2074	Ortho Methyl Parathion 25 Wettable	do	Mar. 12, 1965.
239-2150	Ortho Dibrom Kelthane-Karathane 2-3-1 Dust	do	Oct. 26, 1965.
239-2194	Ortho Parathion Methyl Parathion 6-3 Emulsive	do	July 23, 1966.
239-2264	Ortho Torbidan 2-8 Spray	do	June 14, 1968.
239-2271	Ortho Parathion-Methyl Parathion 4-4 Emulsive	do	Aug. 19, 1968.
239-2347	Ortho Parathion Cryolite 2-40 Dust	do	June 25, 1971.
239-2389	Ortho Sod Webworm Control	do	May 13, 1972.
264-129	Rootone No. 10	Union Carbide Agricultural Products Company, Inc., P.O. Box 12014, Research Triangle Park, NC 27709.	July 12, 1960.
264-130	Transplantone	do	Do.
264-151	Rootone	do	May 31, 1961.
264-175	Vegiben Granular Pre-emergence Weedkiller	do	June 11, 1963.
264-178	Vegiben	do	Jan. 15, 1964.
264-217	Tre-Hold	do	May 31, 1967.
264-251	Amiben 20% Granular	do	July 24, 1970.
264-253	Coriben WP Pre-emergency Weedkiller	do	Feb. 7, 1972.
264-254	Amilon WP Pre-emergence Weedkiller	do	Aug. 4, 1970.
264-256	Dynoram Weed Killer	do	Apr. 12, 1971.
264-260	Vegiben 2E	do	Apr. 4, 1973.
264-266	Amiben Super 6 Liquid	do	Feb. 13, 1973.
264-274	Amiben 10 Granular	do	July 31, 1973.
264-278	Technical Methyl Ester	do	Aug. 21, 1973.
264-279	Technical Amiben Sodium Salt	do	Sept. 12, 1973.
279-83	Niagara CR 50 Dust	FMC Corporation, Agricultural Chemicals Division, 2000 Market St., Philadelphia, PA 19103.	Apr. 2, 1948.
279-1736	NAA 0.2 Dust	do	Mar. 3, 1961.
279-1985	Niagara Liqui-Stik 800	do	Sept. 24, 1962.
299-136	Livestock Dust Contains 0.5% Co-Ral	C. J. Martin Co., P.O. Box 1089, Nacogdoches, TX 75961	May 1, 1969.
335-214	Peribrite S	Pennwalt Corporation, Three Parkway, Philadelphia, PA 19102	Feb. 18, 1975.
464-201	Esteron 99 Concentrate	Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640	Sept. 25, 1957.
476-1798	Cryolite Sevin 35-5 Dust	Stauffer Chemical Company, 1200 South 47th St., Richomond, CA 94804	Feb. 13, 1964.
485-26	Winru Warfarin Rat & Mouse Killer	The Industrial Fumigant Company, P.O. Box 1200, Olathe, KS 66061	Jan. 8, 1952.
485-30	57% Malathion Concentrate	do	Mar. 10, 1958.
524-114	Granular Randox T	Monsanto Agricultural Products Company, 1101 17th St., NW, Suite 604, Washington, DC 20036.	Feb. 11, 1960.
524-109	Randox-T	do	Jan. 26, 1960.
602-75	Purina Co-Ral Animal Insecticide (25% Wettable Powder)	Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188	Aug. 22, 1958.
635-631	Noraben LS Herbicide	Grower Service Corporation, P.O. Box 18037, Lansing, MI 48901	Apr. 30, 1970.
728-104	Texas Star Screwworm Killer	Drexel Chemical Company, P.O. Box 9306, Memphis, TN 38109	Sept. 28, 1972.
802-489	Miller's Rat & Mouse Bait	The Charles N. Lilly Company, 7737 NE. Killingworth, Portland, OR 97218	Sept. 1, 1972.
827-200	Agrico Chinch Bug Control	Agrico Chemical Company, P.O. Box 346, Memphis, TN 38101	Mar. 9, 1964.
827-205	Agrico Tonic Contains Di-Syston 8-8-8 Plant Food	do	Jan. 10, 1967.
912-93	Pacific Cooperative's Prolin Ready-to-Use Rat & Mouse Bait	Farmers Union Central Exchange, Inc., P.O. Box 43089, St. Paul, MN 55164	June 24, 1963.
1691-82	Rodenticide Zinc Phosphide	Chemical Compounding Corporation, 680 Elton Avenue, Riverhead, NY 11901	June 29, 1961.
1990-487	Sure Death Brand Weapon 4E	Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116	June 25, 1968.
1990-497	Noraben Herban-Amiben Liquid Slurry Mixture	do	June 25, 1971.
1990-501	Ethion 4EC	do	Dec. 13, 1971.
3051-70	ACCO Cattle Dust Bag	Agricultural Products Company, Inc., P.O. Box 698, Mesquite, NM 88048	June 29, 1970.
3134-22	Evsco 15CC Ceramite	Evsco Pharmaceutical Corporation, 115 Fourth Ave., Needham Hts., MA 02194	Sept. 16, 1966.
3618-7	Industrial Brand 72½ Chlordane Emulsifiable Concentrate	Industrial Colloids & Chemicals, Inc., P.O. Box 1946, Knoxville, TN 37901	Apr. 5, 1957.

Registration No.	Product name	Registrant	Date registered
5481-104	Nematocide Granules 50	AMVAC Chemical Corporation, 4100 East Washington Boulevard, Los Angeles, CA 90023.	July 18, 1972.
5967-76	Dibrom Kelthane Dust No. 4-3	Moyer Chemical Company, P.O. Box 945, San Jose, CA 95108	Aug. 24, 1973.
7476-1	Alg-Away	General Development Corporation, P.O. Box 3675, Milwaukee, WI 53217	Jan. 14, 1963.
7501-20	Gustafson Thriom Technical	Gustafson, Inc., P.O. Box 220065, Dallas, TX 75222	May 29, 1980.
9691-22	Mixed Grain Bait for Field Mice	Mammal Survey & Control Service, 216 N. Tillamook St., Portland, OR 97227	Feb. 12, 1981.
9691-23	Mixed Grain Bait for Field Mice (Zinc Phosphide 2.0%)	do	Do.
9779-7	Riverside Ethion 4 Dust	Riverside Chemical Company, P.O. Box 1828, Sioux City, IA 51102	Aug. 23, 1967.
9936-9	Grace Fertilizer Contains 0.8% Di-System	W. R. Grace & Company, 100 North Main St., Memphis, TN 38101	Feb. 7, 1968.
11556-3	Co-Ral Parasiticide 15% Concentrate	Bayvet, P.O. Box 390, Shawnee Mission, KS 66201	Oct. 14, 1971.
11556-9	Baymix 2 Feed Premix (Medicated)	do	Dec. 29, 1971.
11556-10	Baymix 50 Feed Premix (Medicated)	do	Do.
11556-22	Co-Ral Dog Pressurized Spray	do	Do.
11556-26	Co-Ral (Coumaphous) Livestock Insecticide Spray	do	Do.
11556-49	Co-Ral (Coumaphous) 50% Dust Base	do	May 5, 1976.
33313-14	Wellgro Systemic Fertilizer Contains Di-Syston	Blakeley-Wellgro, Inc., P.O. Box 26, Wellington, CO 80549	July 14, 1970.
45639-36	Torak Emulsifiable Concentrate Insecticide & Miticide	BFC Chemicals, Inc., P.O. Box 2867, Wilmington, DE 19805	Apr. 13, 1973.
45639-44	Torak 50% Wettable Powder Insecticide	do	Nov. 25, 1974.
45639-45	Torak-P Emulsifiable Concentrate Insecticide	do	Do.
45639-46	Torak G Emulsifiable Concentrate Insecticide	do	Do.
45639-47	Torak An Insecticide for Formulating Use	do	June 3, 1977.

The Agency has agreed that such cancellation shall be effective April 9, 1982, unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for 1 year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Production of these products as pesticide formulations after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued, may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "(OPP-66090)" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in the Document Control Office, Room E-107, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended 86 Stat. 973 89 Stat. (751, 7 U.S.C. 136))

Dated: February 25, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 82-6243 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL-2068-6; PP 1G2471/T350]

Diamond Shamrock Corp. Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the fungicide 2,4,5,6-tetrachloroisophthalonitrile and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on the raw agricultural commodity almonds with a label restriction against feeding treated hulls to livestock. The temporary tolerance was requested by Diamond Shamrock Corporation.

DATE: This temporary tolerance expires December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Production Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: Diamond Shamrock Corporation, 1100 Superior Ave., Cleveland, OH 4414, has requested the establishment of a temporary tolerance for residues of the fungicide 2,4,5,6-tetrachloroisophthalonitrile and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on the raw agricultural commodity almonds at 0.05 part per million (ppm), with a label restriction against feeding treated hulls to livestock.

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 677-EUP-21 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporay tolerance has been established on the condition that the pesticide be used accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experiemental use permit

2. Diamond Shamrock Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA of the Food and Drug Administration.

This tolerance expires December 31, 1983. Residues in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience of scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Fleaxibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a subtstantial number of small entities. A certification statement to this effect was published in the **federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: February 25, 1982.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-6247 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL-2068-3; F-91B]

Union Carbide Corp.; Filing of Pesticide Petition; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Union Carbide Corp. has amended a pesticide petiton (PP 8F2043) to propose establishment of tolerances for residues of the insecticide/nematocide 2-methyl-2-(methylsulfonyl)propanal *O*-[(methylamino)carbonyl]oxime in or on certain raw agricultural commodities.

ADDRESS: Written comments to: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of February 27,1978 (43 FR 8029), which announced that Union Carbide Corp., P.O. Box 12014, TW Alexander Drive, Research Triangle Park, NC 27709 had submitted pesticide petition 8F2043 to the EPA proposing that tolerances be established for residues of the insecticide/nematocide 2-methyl-2-(methylsulfonyl)propanal *O*-[(methylamino)carbonyl]oxime in or on certain raw agricultural commodities.

Union Carbide Corp. has submitted an amendment to the petition to include proposed tolerances for the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.01
Cattle, meat	.01
Cattle, mbyp	.01
Goats, fat	.01
Goats, meat	.01
Goats, mbyp	.01
Hogs, fat	.01
Hogs, meat	.01
Hogs, mbyp	.01
Horses, fat	.01
Horses, meat	.01
Horses, mbyp	.01
Milk	.002
Sheep, fat	.01
Sheep, meat	.01
Sheep, mbyp	.01

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: February 24, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs

[FR Doc. 82-6244 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-32-M

[AD-FRL-2069-3]

Approval of Revised Compliance Schedules for Control of Volatile Organic Compounds From Certain Can Coating Operations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice restates the Environmental Protection Agency (EPA) policy to approve extensions of State Implementation Plan compliance schedules for controlling emissions of volatile organic compounds from certain processes in can manufacturing plants.

FOR FURTHER INFORMATION CONTACT: Leo Stander, Control Programs Development Division (MD–15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5516.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency will approve extensions of compliance schedules for the control of volatile organic compounds from certain processes in can manufacturing plants. Such extensions will be approved for sheet base coat and end sealing compound coating processes in circumstances where they will facilitate the expeditious conversion to low solvent technology. These extensions may be granted for a period up to 1985 where an expeditious, legally enforceable compliance program has been developed consistent with reasonable further progress requirements and the ozone control strategy as defined in the State Implementation Plan and with other applicable provisions of the Clean Air Act.

Dated: February 14, 1982.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 82-6498 Filed 3-9-82; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL HOME LOAN BANK BOARD

[No. AC–159]

Continental Federal Savings and Loan Association; Oklahoma City, Okla.; Final Action Approval of Conversion Applications

Dated: March 5, 1982.

Notice is hereby given that on February 5, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 82–90 approved the application of Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, 3 Townsite Plaza, 120 East 6th Street, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-6482 Filed 3-9-82; 8:45 am]

BILLING CODE 6720-01-M

Federal Savings and Loan Advisory Council; Meeting

March 5, 1982.

Pursuant to section 10(a) of Pub. L. 92–463, entitled the Federal Advisory Committee Act, notice is hereby given of the Meeting of the Federal Savings and Loan Advisory Council on Tuesday, April 13 and Wednesday, April 14, 1982. The meeting will commence at 9:00 a.m. each day. The meeting will be held at the Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C., Bank Board Conference Room, Sixth Floor.

Tuesday, April 13

9:00 a.m.—Opening Remarks—Review of Topics and Subcommittee Assignments
9:30 a.m.—Subcommittee begin Deliberations
S&L Ownership and Concentration of Control
Short Term Government Support Efforts
Pension Funds and Mortgage Financing
Federal Home Loan Bank Systems
12:00 None—Lunch

1:30 p.m.—Subcommittee Resume Deliberations
3:00 p.m.—Subcommittee Begin Formulation of Resolutions

Wednesday, April 14

9:00 a.m.—Subcommittee Complete Work on Resolutions
10:30 a.m.—Council Votes on Proposed Resolutions
12:00 Noon—Lunch
1:30 p.m.—Resume Vote on Resolutions
3:00 p.m.—Present Resolutions to the Board Members
5:30 p.m.—Adjourn

The meeting of the Federal Savings and Loan Advisory Council is open to the public.

Richard T. Pratt,

Chairman.

[FR Doc. 82-6476 Filed 3-9-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-162]

Highland Federal Savings and Loan Association, Los Angeles, Calif.; Final Action; Approval of Conversion Applications

Dated: March 5, 1982.

Notice is hereby given that on February 22, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 82-122 approved the application of Highland Federal Savings and Loan Association, Los Angeles, California for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-6483 Filed 3-9-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-160]

Home Federal Savings and Loan Association, Tucson, Ariz.; Final Action; Approval of Conversion Applications

Dated: March 5, 1982.

Notice is hereby given that on February 18, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 82-107 approved the application of Home Federal Savings and Loan Association, Tucson, Arizona, for permission to convert to the stock of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-6484 Filed 3-9-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-156; Correction]

Home Federal Savings and Loan Association, of Deming, Deming, N. Mex.; Final Action Approval of Conversion Applications

Dated: March 5, 1982.

Notice is hereby given that on February 2, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 82-69 approved the application of Home Federal Savings and Loan Association, of Deming, Deming, New Mexico, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Little Rock, 1400 Tower Building, Little Rock, Arkansas 72201.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-6485 Filed 3-9-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-157]

Keene Co-Operative Bank, Keene, N.H.; Final Action; Approval of Conversion Applications

Dated: March 5, 1982.

Notice is hereby given that on February 4, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 82-87 approved the application of Keene Co-Operative Bank, Keene, New Hampshire, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Boston, One Federal Street, 30th Floor, Boston, Massachusetts.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-6486 Filed 3-9-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-158]

Local Federal Savings and Loan Association, Oklahoma City, Okla.; Final Action; Approval of Conversion Applications

Dated: March 5, 1982.

Notice is hereby given that on February 5, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 82-89 approved the application of Local Federal Savings and Loan Association, Oklahoma City, Oklahoma, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, 3 Townsite Plaza, 120 East 6th Street, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-6487 Filed 3-9-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-163]

Mid-State Federal Savings and Loan Association, Ocala, Fla.; Final Action; Approval of Conversion Applications

Dated: March 5, 1982.

Notice is hereby given that on February 24, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 82-132 approved the application of Mid-State Federal Savings and Loan Association, Ocala, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan

Bank of Atlanta, Coastal State Building, 269 Peachtree Street, N.W., Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-6488 Filed 3-9-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-161]

Washington Federal Savings and Loan Association Seattle, Wash; Final Action; Approval of Conversion Applications

Dated: March 5, 1982.

Notice is hereby given that on February 22, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 82-124 approved the application of Washington Federal Savings and Loan Association of Seattle, Washington, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Seattle, 600 Stewart Street, Seattle, Washington 98101.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-6489 Filed 3-9-82; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of a South Carolina State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 28, 1982 in Atlanta, Georgia to reconsider our decision to disapprove South Carolina State plan amendment 81-9.

CLOSING DATE: Request to participate in the hearing as a party must be received by March 25, 1982.

FOR FURTHER INFORMATION, CONTACT: Lawrence Ageloff, Hearing Officer, Bureau of Program Policy, 1-G-5 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8260.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to deny a South Carolina State plan amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a denial of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer on or before March 25, 1982, in accordance with additional requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with additional requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter relates to limiting the number of Medicaid-payable days in skilled nursing facilities and intermediate care facilities based on the number of beds in each facility that were Medicaid-occupied as of April 1, 1981. Essentially, the proposal would establish a cap based on Medicaid utilization levels on that date, even though the facility may have additional beds that are certified for participation in the Medicaid program. The Health Care Financing Administration contends that the proposed State plan amendment would violate existing statutory and regulatory requirements under the Medicaid program.

The notice to South Carolina announcing an administrative hearing to reconsider our denial of its State plan amendment reads as follows:

March 2, 1982.

Mr. Virgil L. Conrad,

Commissioner, South Carolina Department of Social Services,

P.O. Box 1520, Columbia, South Carolina

Dear Mr. Conrad: This is to advise you that your letter of January 29, 1982, requesting a reconsideration of the decision to disapprove South Carolina State plan amendment 81-9 was received on February 1, 1982. This amendment would freeze Medicaid utilization of skilled nursing facility and intermediate care facility services by limiting each facility's payable patient days based on the number of beds in each facility that were occupied by Medicaid patients as of April 1, 1981. You have requested a reconsideration of whether this plan amendment conforms to the Social Security Act and pertient regulations.

I am scheduling a hearing on your request to be held on April 28, 1982 at 10:00 a.m. in the 7th Floor Conference Room, 101 Marietta Tower, Spring and Marietta Streets, Atlanta; Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. Please let him know if these arrangements present any problems. He can be reached on (301) 594-8260.

Sincerely yours,

Carolyne K. Davis, Ph. D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance program No. 13.714, Medical Assistance Program)

Dated: March 2, 1982.

Paul Willging

Acting Administrator, Health Care Financing Administration.

[FR Doc. 82-6378 Filed 3-9-82; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alabama; Coal Production

AGENCY: Bureau of Land Management, Eastern State Office.

ACTION: Notice deleting Jefferson County from the Alabama Subregion of the Southern Appalachian Coal Production Region and opening the county to leasing by application.

SUMMARY: On November 9, 1979, the Department of the Interior established the Alabama Subregion of the Southern Appalachian Coal Production Region for the management of Federal coal (44 FR 65196-65197). The subregion originally included Fayette, Tuscaloosa, and Walker Counties, and the western portion of Jefferson County. Information acquired since the establishment of this subregion indicated that the volumes of Federal coal in Jefferson County and the degree of industry interest in this coal do not justify inclusion of this county in a Federal coal production region as outlined in 43 CFR 3420. In accordance with 43 CFR 3420.3-1(a)(1), this notice deletes that portion of Jefferson County currently within the Alabama Subregion of the Southern Appalachian Coal Production Region. Further, this notice designates Federal coal reserves in Jefferson County as open to leasing by application in accordance with 43 CFR 3425.

FOR FURTHER INFORMATION CONTACT: Bibi Giorlando, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304 ((703) 235–3630).

SUPPLEMENTARY INFORMATION: The expected benefits of the action outlined above are a savings in administrative costs to the Federal government and a more responsive leasing process for local coal operators.

Applications under 43 CFR 3425 will be accepted by BLM to lease Federal coal in Jefferson County, Alabama. Three copies of each application submitted should be filed at the following address: Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. Information on procedures for leasing by application is available from this and other BLM offices.

Rolla E. Chandler,

Acting Eastern States Director.

[FR Doc. 82-6403 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on April 6, 1982.

The meeting will begin at 9:00 a.m. and conclude at 12:00 noon Pacific Standard Time, in Room 227 in the Federal Building at 211 E. 7th, Eugene, Oregon.

The main subject on the agenda will be the scoping of alternatives and issues for the Environmental Impact Statement on the Timber Management Plan for the Upper Willamette-Siuslaw Sustained Yield Units. The Council will hear a report on the public EIS scoping meeting held April 5, the previous day, and provide its own comments on the EIS scoping.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 a.m. and 12:00 noon on April 6, 1982, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, 1255 Pearl Street, Eugene, Oregon 97401, by March 30, 1982. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection during regular business hours within 30 days following the meeting.

Dated: March 1, 1982.

Dwight L. Patton,

District Manager.

[FR Doc. 82-6428 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 6410]

Oregon; Termination of Classification for Multiple Use Management

1. By order the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on September 24, 1970 (35 FR 14858), 31,825.11 acres of public lands under the jurisdiction of the Bureau of Land Management were classified for multiple use management pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18) and the regulations in 43 CFR Part 2460. The lands are located in Curry County, Oregon.

2. Pursuant to 43 CFR 2461.5(c)(2), the classification is terminated in its entirety on March 10, 1982.

3. The public lands involved remain withdrawn for multiple use management purposes by Public Land Order No. 5490 of February 12, 1975, and will therefore not be open to appropriation under the agricultural land laws (43 U.S.C. Ch. 9, 25 U.S.C. 334). Subject to the provisions of other existing withdrawals and classificiations, the lands have been and continue to be open to all other forms of appropriation, including the United States mining laws and mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 26, 1982.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82-6426 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

[W-50061]

Wyoming; Notice of Coal Lease Offering by Sealed Bid

March 1, 1982.

Department of the Interior, Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001. Notice is hereby given that at 2:00 p.m., April 7, 1982, certain coal resources in the lands hereinafter described in Carbon and Sheridan Counties, Wyoming, will be offered for competitive lease by sealed bid of $25.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended, and the Department of Energy Organization Act of August 4, 1977 (91 Stat. 565, 42 U.S.C. 7101). However, no bid will be accepted for less than fair market value as determined by the authorized officer.

The sale will be held in the third floor Conference Room, 2515 Warren Avenue, Cheyenne, Wyoming. No bids received after 1:00 p.m., on April 7, 1982, will be considered.

Coal Offered: Consists of the coal recoverable by underground mining methods from the A to D zone of the Finch group, the G seam of the Finch group, the E seam of the Blue group and the Johnson seam in the following described land located approximately twelve (12) miles southeast of Hanna, Wyoming:

6th P. M., Wyoming

T. 21 N., R. 79 W.,
Sec. 8, all;
Sec. 18, lots 1, 2, 3, 4, E½ and E½W½, (all);
Sec. 20, N½ and SW¼;
Sec. 30, lots 1, 2, 3, 4, E½ and E½W½, (all).

6th P. M., Wyoming

T. 21 N., R. 80 W.,
Sec. 12, all;
Sec. 14, all;
Sec. 22, all;
Sec. 24, all;
Sec. 26, all;
Sec. 28, W½ and SE¼;
Sec. 32, E½, and SE¼SW¼;
Sec. 34, all.

Containing 7,065.75 acres

The estimated total reserves are 103 million short tons. The average coal quality is as follows: BTU—11,200/lb., Sulfur—0.5 and Ash—8. percent. (This would classify the coal as high volatile C bituminous under ASTM Specification D 388–66.) The A to D zone of the Finch group averages 16.5 feet over 1,702.00 acres of the described lands; the G seam of the Finch group averages 6.9 feet over 2,560.00 acres; the E seam of the Blue group averages 3.3 feet over 3,542.00 acres; and the Johnson coal bed averages 22.5 feet thick over all the described lands.

The tract lies within the Hanna and Carbon Basins known recoverable coal resource area (KRCRA), Carbon County, Wyoming.

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States.

Notice of Availability: Bidding instructions are included in the Detailed Statement of the Lease Sale. A copy of the Statement and of the proposed coal lease are available at the Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those portions identified as proprietary by the commentor and meeting exemptions stated in the Freedom in Information Act, are available for public inspection at the above address on the fourth floor.

James H. O'Connor,

Acting State Director.

[FR Doc. 82-6427 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

Las Vegas District Resource Area Boundary Realignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Information.

SUMMARY: This is to serve notice that the boundary between the Caliente Resource Area and the Stateline-Esmeralda Resource Area in the Bureau's Las Vegas (NV) District has been realigned to the Clark County-Lincoln County boundary. All public lands in the northeast portion of Clark County (the Virgin Valley Planning Unit) previously administered by the Caliente Resource Area, are now administered by the Stateline-Esmeralda Resource Area. The Northern boundary of the Caliente Resource Area and the Southern boundary of the Stateline Esmeralda Resource Area remain unchanged.

For further information about, or to conduct business pertaining to, the BLM administered lands in Clark County, Nevada please contact:

William T. Civish, Area Manager, 300 East Stewart Street, 2nd Floor, Las Vegas, Nevada, (702) 385-6627;
or write

William T. Civish, Area Manager, Stateline-Esmeralda Resource Area, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126.

For information about, or to conduct business pertaining to, BLM administered lands in Lincoln County in the Caliente Resource Area please contact:

Darwin G. Anderson, Area Manager, BLM Office, U.S. Highway 93, Caliente, Nevada, (702) 726-3141;
or write

Darwin G. Anderson, Area Manager, Caliente Resource Area, P.O. Box 237, Caliente, Nevada 89008.

Dated: February 25, 1982.

Kemp Conn,

District Manager.

[FR Doc. 82-6363 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

[M 17858]

Montana; Termination of Proposed Withdrawal

March 2, 1982.

1. The Bureau of Land Management, United States Department of Interior, filed application for withdrawal of the following described land from all forms of appropriation under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws. The Notice of Proposed Withdrawal was published in the **Federal Register**, Volume 38, Number 35 on page 4792 of the issue of February 22, 1973.

The applicant agency has cancelled its application in its entirety.

Principal Meridian

T. 7 N., R. 46 E.,
Sec. 14, lots 6 and 7;
Sec. 15, lot 3;
Sec. 22, lots 1, 4, and 5;
Sec. 23, lots 2 and 3.

The area described contains 131.92 acres in Custer County.

2. Therefore, pursuant to the regulations contained in 43 CFR 2091.2-5(b)(1), at 8 a.m. on April 20, 1982, such land will be relieved of the segregative effect of the above mentioned application.

Inquiries concerning these lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-6362 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Closed Basin Division, San Luis Valley Project, Colo.; Public Hearings on Draft Supplement to Final Environmental Statement and on Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands)

Pursuant to section 102(2)(C) of the National Environment Policy Act of 1969, the Department of the Interior, Bureau of Reclamation, has prepared a draft supplement to the final environmental statement for the Closed Basin Division of the San Luis Valley Project. This draft supplement (DES 82-6, dated February 11, 1982) was made available to the public on February 12, 1982.

The Closed Basin Division is a multiple-purpose project designed to salvage ground water now being lost to evaporation and deliver it to the Rio Grande through a system of laterals and a canal. Recreational development and enhancement of fish and wildlife resources will also result.

The supplemental statement is necessary to present a revised plan to mitigate project effects. Additional data gathered and analyzed indicate that less mitigation is required than originally proposed.

The revised mitigation plan provides for acquisition, development, and management of the Russell Lakes Wildlife Management Area as a replacement for the previously proposed Mishak National Wildlife Refuge. This change reduces the amount of private lands to be acquired from more than 10,000 acres to about 3,100 acres.

Public hearings will be held at 7:30 p.m. on April 13, 1982, in Alamosa, Colorado, on the Adams State College campus (in the Carson Auditorium at the College Center) and at 7:30 p.m. on April 14, 1982, at Saguache, Colorado, in the Mountain Valley School gymnasium, 403 Pitkin Avenue. The purpose of these hearings is twofold—to receive views and comments from interested organizations and individuals relating to the environmental impacts of the project and to provide the public with information on the effect this project will have on wetlands (Executive Order 11990) and flood plains (Executive Order 11988). The hearings will give the public an opportunity to participate in the decisionmaking process.

Oral statements at the hearing will be limited to 10 minutes. Speakers will not trade their time to obtain a longer oral presentation; however, the hearings officer may allow any speaker to provide additional oral comment after all persons wishing to comment have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request whenever possible; and any scheduled speaker not present when called will lose his/her privilege in the scheduled order, and his/her name will be recalled at the end of the scheduled speakers. Requests for scheduled presentations will be accepted through April 9, 1982, and any subsequent requests will be handled on a first-come-

first-served basis following the scheduled presentation.

Organizations or individuals desiring to present statements at the hearing should contact the Bureau of Reclamation, 714 South Tyler Street, Suite 201, Amarillo, Texas 79101, telephone (806) 378–5400, extension 599, and announce their intention to participate. Written comments from those unable to attend and from those wishing to supplement their oral presentation at the hearing should be received by April 23, 1982, for inclusion in the hearing record.

Dated: March 4, 1982

Eugene Hinds,

Assistant Commissioner, Bureau of Reclamation.

[FR Doc. 82-6366 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

The areas listed below appear to qualify for designation as national natural landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to § 62.4 (d)(1) of 36 CFR Part 62, written comments concerning the potential designation of these areas as natural landmarks may be forwarded to the Associate Director, Science and Technology, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or requests for additional time or information should be received no later than May 10, 1982.

Dated: February 16, 1982.

Richard H. Briceland,

Associate Director, Science and Technology.

New Jersey

Passaic County

Great Falls of Paterson-Garrett Mountain; the Garrett Mountain site, 309 acres located adjacent to the City of Paterson, is proposed as an addition to the Great Falls of Paterson National Natural Landmark. Together, these two areas provide an excellent illustration of the jointed basaltic lava flow which began a period of extrusion and intrusion throughout eastern North America in the early Mesozoic, influencing present day landforms in this region.

New Jersey/New York

Bergen County (NJ)/Rockland County (NY)

Palisades of the Hudson; this 2,620-acre site is located along the west side of the Hudson River from the George Washington Bridge north to Sparkhill, NY. This is the best example of a thick diabase sill in the United States, displaying excellent examples of columnar jointing, olivine formation, and thermal metamorphism.

Oklahoma

Alfalfa County

Great Salt Plains; this 31,380-acre site, located 2.5 miles east of Cherokee, is administered by the U.S. Fish and Wildlife Service as Salt Plains National Wildlife Refuge. It is the largest inland saline basin in the Great Plains, providing one of the few remaining habitats for many migrating waterfowl.

Texas

Anderson County

Catfish Creek; this 3,140-acre site is located within the Engling State Wildlife Management Area and is 20 miles northwest of Palestine. It is the best example of the few remaining undisturbed riparian habitats of the Western Gulf Coastal Plain, supporting a number of rare wildlife species.

[FR Doc. 82-6478 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore Advisory Commission, South Wellfleet, Mass.; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App. 1 § 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held at 1:30 p.m. on Friday, March 26, 1982, at the Headquarters Building, Cape Cod National Seashore.

The Commission was established pursuant to Pub. L. 91–383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The members of the Advisory Commission are as follows:

Dexter M. Keezer, Truro
Francis R. King, Wellfleet
Nathan Malchman, Provincetown
Barbara S. Mayo, Provincetown
Joshua A. Nickerson, Chatham
David F. Ryder, Chatham
Sherrill B. Smith, Jr., Orleans
Clifford H. White, Wrentham
Elizabeth F. Worthing, Eastham
Paul F. Nace, Jr., Woods Hole

At the meeting the Commission will consider the following: Recommendations of the Commission on the Analysis of Water Resource Management Alternatives (with Environmental Assessment).

The meeting is open to the public. It is expected that 50 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, telephone (617) 349–3785. Minutes of the meeting will be available for public information and copying four weeks after the meeting at the Office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

February 24, 1982.

[FR Doc. 82-6477 Filed 3-9-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[AB 72 SDM]

Rail Carriers; Sacramento Northern Railway; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, § 1121.23, that the Sacramento Northern Railway has filed with the Commission its amended color-coded system diagram map in docket No. AB 72 SDM. The Commission on February 12, 1982, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section

of Dockets, by requesting docket No. AM 72 SDM.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-6401 Filed 3-9-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924,10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply whith the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-79576. By decision of February 26, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to NEVADA GENERAL TRANSPORTATION, INC., of Draper, UT, of Certificate No. MC-138274 (Sub-No. 45)X, issued February 19, 1982, to PAYNE MOTOR LINES, INC., of Draper, UT, which authorizes the transportation of *food and related products,* between points in Ada County, ID, on the one hand, and, on the other, points in AZ, CA, CO, IL, IA, UT,KS, MN, MO, NE, OR, WA, and WI.

Notes.—(1) Transferee holds authority under MC-146464 and sub-numbers thereunder. (2) This notice is supplemental to the Federal Register notice of February 4, 1982 at page 5366, which published the January 20, 1982 decision authorizing the transfer of other authority in this proceeding.

MC-FC-79628. By decision of February 18, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 2 approved the transfer to United Cargo Express, Inc. of Fort Worth, TX, of Certificates No. MC-133805 (and Permits No. MC-133805 (Sub-No. MC-149555F issued between April 14, 1971 and May 26, 1981 and Lone Star Carriers, Inc. of Tolar, TX authorizing transportation (1) as a motor common carrier over irregular routes transporting *meats* and *related products, clay, frozen bakery goods, textiles and textile piece goods, tile, steel shot, foodstuffs, canned and preserved foodstuffs, containers and container lids, auto supply store merchandise, coal briquets, lighter fluid, hickory chips and barbeque items, discount and variety store merchandise, furniture, china, flatware, cookware, glassware, chemicals and materials and supplies used to distribute chemicals, plastic and burlap articles, general commodities, plastic film and articles, corrugated boxes and materials and supplies used to manufacture and distribute such plastic and corrugated items, auto cleaner and polish, cardboard displays, toilet preparations and materials, and supplies used in the manufacture and distribution of toilet preparations, paint and caulking compounds and materials and supplies used to manufacture paint and caulking supplies;* between specific points in the U.S. and between points in the U.S., generally and (2) as a motor contract carrier over irregular routes transporting (a) *meats, meat byproducts, meat products and articles distributed by meat packing houses;* (b) *foodstuffs,* and (c) *materials, equipment and supplies* used to manufacture and distribute the commodities in (a) and (b) between points in the U.S. under continuing contracts with Swift & Independent Packing Co. of Chicago, IL; and *meat, meat products, meat by-products and articles distributed by meat packing houses* between points in the U.S. under continuing contracts with Freezer Services, Inc. *Condition: Transferor also seeks to transfer No. MC-133805 (Sub-No. 66), currently pending. Transferee shall file a petition for substitution as applicant in that proceeding as condition to approval of the instant transaction. Applicant's representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Road, Fort Worth, TX 76112.

Note.—(1) The above descriptions of commodities and territories are general and the specific descriptions are available at the Interstate Commerce Commission's Washington, DC and Fort Worth, TX offices; (2) Application for TA has been filed.

MC-FC-79642. By decision of March 2, 1982 issued under 49 U.S.C 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to EVERMAN'S INCORPORATED, of Humeston, IA, of Certificate Nos. MC-143257 and MC-143257 (Sub-Nos. 2, 3, and 4X), issued to CHAMBERS, LTD., of Corydon, IA, which authorize the transportation of (A) (1) (a) *grain drying equipment and grain bins,* and (b) *parts and accessories* for the commodities in (a) above, from Corydon, IA, to points in the U.S. (except AK, HI, and IA); and (2) *materials and supplies* (except commodities in bulk) used in the manufacture and distribution of the commodities in (1) above, in the reverse direction; (B) (1) *cosmetic body care products;* (2) *health food products,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between the facilities of Sasco Cosmetics, Inc., at or near Dallas, TX, on the one hand, and, on the other, points in the U.S.; (C) (1) *horticultural equipment, implements, and tools; (2) plastic and rubber products;* and (3) *chemicals and related products,* between the facilities of Ross Daniels, Inc., at points in IA, on the one hand, and, on the other, points in the U.S. in and west of MN, IA, MO, AR, and LA; and (D) (1) *chemicals and related products,* and (2) *food and related products,* between Dallas, Tarrant, Denton, Collin, Rockwall, Kaufman, and Ellis Counties, TX, on the one hand, and, on the other, points in IA, IL, and MN. Representative: Larry Knox, 600 Hubbell Bldg., Des Moines, IA 50309.

Notes.—TA has not been filed. Transferee is not a carrier.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-6375 Filed 3-9-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision Notice; Finance Applications

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: March 4, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

MC-F-14804, filed February 10, 1982. J. C. LOVELACE, an individual, (Lovelace) (2222, E. Grauwyler Rd, Irving, TX 75061)—Continuance in Control—Trans-Overland Xpress, Inc. (Trans-Overland) (297 County Line Rd., Midlothian, TX 76065). Representative: Ralph W. Pulley, Jr., 102 Metropolitan Savings Tower, 5944 Luther Lane, Dallas, TX 75225. Lovelace seeks authority to continue in control of Trans-Overland. Lovelace presently controls TOX Holdings, Inc., a non-carrier holding company with a wholly-owned subsidiary, Texas Oklahoma Express, Inc. Texas Oklahoma Express, Inc., is a common carrier operating pursuant to authority issued in MC 116004 and sub-numbers thereunder. Trans-Overland has been granted authority in MC 151607, which authorizes operations as a contract carrier, transporting *general commodities* between points in the United States, under continuing contract(s) with Seal-Right Co., Inc. of Kansas City, KS, Western Auto Supply Co., of Kansas City, MO, Standard T Chemical Co., Inc., of Dallas, TX and Sears, Roebuck and Co., of Dallas, TX. Trans-Overland has four applications pending in Subs 1, 2, 3 and 4.

MF-F-14806, filed February 12, 1982. Applicants: SMITH BROTHERS TRUCKING, INC., North Third Street, Bardstown, KY 40004—Purchase (Portion)—Rapier Smith, North Third Street, Bardstown, KY 40004; Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602. Smith Brothers Trucking, Inc. seeks authority to purchase a portion of the interstate operating rights of Rapier Smith. B. L. Smith, Sr., B. L. Smith, Jr., Charles R. Smith, Francis X. Smith, Carl P. Smith, and William J. Smith join in the application as the individuals in control of Smith Brothers Trucking, Inc. and seek authority to acquire control of said rights through the transaction. Approval is sought for the transfer of the following interstate common carrier authority in MC 139006: (a) Sub 24—general commodities serving facilities of Owens-Illinois, Inc. in and east of MN, IA, NE, KS, OK, and TX, (b) Sub 25—food and related products between designated points and areas in AR, KY, IL, LA, MI, NJ, CA, NY, OH, TX, PA, MD, FL, AL and GA, (c) Sub 26—such commodities as are dealt in by grocery and food business and agricultural feed business houses between points in and east of MN, IA, MO, KS, OK, and TX, (d) Sub 28—general commodities serving facilities of Rand McNally and subsidiaries at all points in US, (e) portion of Sub 29X—general commodities over regular route between Bardstown, KY and Chaplin, KY; plastic and paper articles and building materials between Nelson County, KY, on the one hand, and, on the other, points in and east of MN, IA, KS, NE, OK, and TX; furniture, fixtures and metal products serving facilities of Leggett & Platt in the US; food and related products between designated points and areas in MI and OH, on the one hand, and, on the other, points in and east of WI, IA, MO, AR, and LA; general commodities serving facilities of Essex Group and subsidiaries in US; general commodities serving facilities of Plough, Inc. and subsidiaries in and east of MN, IA, NE, KS, OK, and TX; food and related products between points in KY and TN and designated points in IL, NJ, AR and LA, on the one hand, and, on the other, points in and east of MN, IA, MO, KS, OK, and TX; containers between Logan County, IL, on the one hand, and, on the other, IA, IN, KY, MI, MO, and OH; food and related products between Lawrenceburg, IN, Louisville, KY and Marion County, KY, on the one hand, and, on the other, Atlanta, GA;

food and related products between Indianapolis, IN, on the one hand, and, on the other, KY, MI, IL, NY, and MO, (f) Sub 31—plastic articles serving facilities of Mobil Chemical Co. in the US, (g) Sub 32—food and related products, motor oil, and liquid cleaner between Lowndes County, MS, on the one hand, and, on the other, points in the US, (h) authority which may issue from all pending and future applications in MC 139006 including Sub 3—general commodities between points in and east of ND, SD, NE, KS, OK, and TX; Sub 34—agricultural chemicals between points in the US; Sub 36—plastic and plastic articles between points in the US; and Sub 37—general commodities serving Holiday Inn Products Services Division and vendors in the US. Smith Brothers Trucking, Inc. holds no interstate authority but individuals controlling it also control Distillery Transfer Service, Inc. (MC 67996 and Subs thereunder). One of the controlling individuals, Charles R. Smith, also control transferor proprietorship Rapier Smith. His common control of Distillery Transfer Service, Inc. and Rapier Smith has previously been approved in MC–F–12356. B. L. Smith, Sr., B. L. Smith, Jr., Charles R. Smith, Francis X. Smith, Carl P. Smith and William J. Smith have filed directly related application for approval of their continuance in control of Smith Brothers Trucking, Inc., Distillery Transfer Service, Inc., and proprietorship Rapier Smith. No application for TA has been filed.

[FR Doc. 82-6396 Filed 3-9-82; 8:45 am]
BILLING CODE 7035-01-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 Ofice 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–194

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 160767 (Sub-3–1 TA), filed February 26, 1982. Applicant: LADD TRANSPORTATION, INC., One Plaza Center, P.O. Box HP–3, High Pont, NC 27261. Representative: James M. Iseman, Jr., Esq., 1001 West Fourth Street, Winston Salem, NC 27101. *Contract carrier;* irregular routes; *commodities as are dealt in and used by retail department stores and trading stamp redemption stores* between points in the Continental U.S. under continuing contract with The Sperry & Hutchinson Company, Inc., of New York, NY. Supporting shipper: The Sperry & Hutchinson Company, Inc., 330 Madison Ave., New York, NY 10017.

MC 156998R (Sub-3–2 TA), filed: February 26, 1982. Applicant: DEWITT SPARKS, d.b.a. SPARKS TRUCKING, 811 Creekway Drive, Lenior, NC 28645. Representative: Dewitt Sparks, 811 Creekway Drive, Lenior, NC 28645. *Hazardous waste (Bulk and drums)* between Spruce Pine ;and Lenoir, NC and points in: AL, CT, DE, FL, GA, IL, IN, KY, MD, MI, NH, NJ, NY, OH, PA, SC, TN, VA, WV, WI. Supporting shipper: Caldwell Systems, Mt. Herman Rd., Lenoir, NC 28645.

MC 140902 (Sub-3–11 TA), filed: February 26, 1982. Applicant: DPD, INC., 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant). *Contract;* irregular; *Refractories and materials and supplies used in the manufacture and installation thereof* from Claysburg, Salina and Sproul, PA and Warren, OH to Lackawanna and Buffalo, NY under continuing contract(s) with General Refractories Company. Supporting shipper: General Refractories Company, 225 City Line Avenue, Bala Cynwayd, PA 19004.

MC 145906 (Sub-3–4 TA), filed: February 26, 1982. Applicant: GENERAL TRUCKING CO., INC., P.O. Box 269, Columbia TN 38401. Representative: Edward C. Blank II, P.O. Box 1004, Columbia, TN 38401. *Metal products and materials, equipment and supplies used in the manufacture, sale or distribution thereof,* between points in IA and MD on the one hand, and TN on the other. Supporting shippers: Peachtree Trading, Inc., P.O. Box 740, Columbia, TN; L and S Metals and Processing, Inc., P.O. Box 1058, Columbia, TN 38401.

MC 145154 (Sub-3–11 TA), filed: February 26, 1982. Applicant: YOUNG'S TRANSPORTATION CO., 3401 Norman Berry Drive, Suite 246, East Point, GA 30344. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W., Washington, D.C. 20005. *Foodstuffs, and materials and supplies used in the manufacture and distribution thereof,* between the facilities of Fiesta Foods, Inc., at or near Dallas and San Antonio, TX, Denver, CO, Los Angeles and San Francisco, CA, and Atlanta, GA, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, NE, KS, OK, AR, and LA. Supporting Shipper(s): Fiesta Foods, Inc., 310 West Mockingbird, Dallas, TX 75247

MC 136291 (Sub-3–4TA), filed February 26, 1982. Applicant: CUSTOMIZED PARTS DISTRIBUTION, INC., 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant). Contract; irregular; *Bakery ingredients and food items handled by grocery warehouses* from New Prague, MN to Chicago, IL and Detroit, MI under continuing contract(s) with International Multifoods Corporation. Supporting shipper: International Multifoods Corporation, International Multifoods Building, Eighth and Marquette, Minneapolis, MN 55402.

MC 136291 (Sub-3–3TA), filed February 25, 1982. Applicant: CUSTOMIZED PARTS DISTRIBUTION, INC., 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant). Contract; irregular; *Bakery ingredients* from Minneapolis, New Prague and Rush City, MN and Chicago, IL to Detroit, MI under continuing contract(s) with DSM Food Products, Inc. Supporting shipper: DSM Food Products, Inc., 7800 Intervale, Detroit, MI 48238.

MC 152544 (Sub-3–14TA), filed February 25, 1982. Applicant: CYPRESS TRUCK LINES, INC., 1746 East Adams Street, Jacksonville, FL 32202. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Building and construction materials,* between points in York County, PA; Tarrant County, TX; Solano County, CA; and Kane County, IL on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: W. R. Meadows of Georgia, Inc., 4765 Frederick Drive, Atlanta, GA 30336.

MC 159818 (Sub-3–1TA); filed February 26, 1982. Applicant: HAYWOOD TRANSIT, INC., Rt. 2, Box 331, Canton, N.C. 28716. Representative: Arthur F. Huber (same address as applicant). *Contract:* Irregular: *Passengers and their baggage in Charter and special operations* beginning and ending in points in Haywood County, NC and Knoxville, TN. Under continuing contract with the Haywood Co. and Maggie Valley Area Chambers of Commerce. Supporting shipper: Haywood County, jointly with Maggie Valley Area Chambers of Commerce, P.O. Box 125, Waynesville, NC 28716.

MC 160762 (Sub-3–1TA), filed February 26, 1982. Applicant: BAND BUSSES, INC., Rt. 7, Box 521, Gadsden, AL 35903. Representative: James H. McGinnis, Route 7, Box 521, Gadsden, AL 35903. *Passengers and their baggage in round trip special and charter operations* beginning and ending at points in Montgomery, Autauga, Etowah, Jefferson, Marshall, Calhoun, Cherokee and DeKalb Counties in AL also Covington, GA and Knox county TN and extending to points in the U.S. (excluding AK and HI). Supporting shipper(s): There are seven statements of support which may be examined at the ICC Regional Office, Altanta, GA.

MC 160763 (Sub-3–1TA), filed February 26, 1982. Applicant: SWANSON INDUSTRIES, INC., 1204 Turner McCall Blvd., Rome, GA 30161. Representative: Robert A. Swanson, Route 1, Floyd Springs Rd., Armuchee, GA 30105. *Passengers and their baggage, in special and charter operations,* between points in AL, GA, NC, and TN. Supporting shipper(s): Rome Tourist and Convention Commission, Civic Center, Rome, GA 30161 and World Travel Agency, 430 Broad St., P.O. Box 1393, Rome, GA 30161.

MC 155013 (Sub-3–4TA), filed March 3, 1982. Applicant: FREIGHTMASTER, INC., P.O. Box 488, Taylorsville, NC 28681. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. *Tile* from points in NC, OH, CA, GA, VA, and Plant City, FL and Owensboro, KY to points in IL and MI. There are five (5) supporting shippers whose statements may be examined at the I.C.C. Regional Office, Altanta, GA.

MC 160835 (Sub-3–1TA), filed March 3, 1982. Applicant: McCURRY CONSTRUCTION CO., INC., Frazier Road, P.O. Box 3448, Cleveland, TN 37311. Representative: M. C. Ellis, % Chattanooga Freight Bureau, Inc., 1001 Market Street, Chattanooga, TN 37402. *Contract carrier;* irregular: *fertilizer, chemicals, soil conditioners, animal and poultry feed, and materials, supplies and equipment used in the manufacture and distribution thereof,* between points in Bradley County, TN, on the one hand, and, on the other, Birmingham, Florence, Huntsville, Montgomery, Muscle Shoals, and Tuscaloosa, AL, Orlando, Quincy, and Tampa, FL, Augusta, Marietta, Savannah, and Stone Mountain, GA, Charlotte and Greensboro, NC, Charleston and Spartanburg, SC, and Virginia Beach, VA, under continuing contract(s) with Beaty Feed & Hardware Co., Inc., and Beaty Fertilizer and Chemcial, Inc., of Cleveland, TN. Supporting shippers: Beaty Feed & Hardware Co., Inc., 650 Wildwood Avenue, Cleveland, TN 37311 and Beaty Fertilizer and Chemical, Inc., P.O. Box 3352, Cleveland, TN 37311.

MC 159333 (Sub-3–2TA), filed March 2, 1982. Applicant: McINVALE FREIGHT LINES, INC., 5965 Hwy. 18 S., Jackson, MS 39209. Representative: W. M. McInvale (same as applicant). *General commodities (except Class A & B explosives), commodities in bulk, commodities of unusual value, household goods and those requiring the use of special equipment,* between the facilities of Streamline Shippers Assn., Los Angeles, CA, on the one hand, and, on the other, points in AL, GA, LA, MS, OK, TN, and TX. Supporting shipper: Streamline Shippers Assn., 970 E. Third St., Los Angeles, CA 90013.

MC 160678 (Sub-3–1TA), filed March 2, 1982. Applicant: AL CORDEIRO, d.b.a., CORDEIRO TRUCKING, 713 N.W. 6th Avenue, Dania, Florida 33004. Representative: Bernard C. Pestcoe, Esq., 201 Alhambra Circle, Suite 511, Coral Gables, Fl 33134. *Contract* Carrier: Irregular: *Class A, B, and C explosives and electric blasting caps, primers, detonation cord, aluminum, micro-balloons, Q-cells, perlite, typar and/or similar construction fabrics, to be transported between points in the state of AL, TN and FL.* Supporting shipper: Florida Explosives, Inc., P.O. Box 4921, Hialeah, FL 33014.

MC 151375 (Sub-3–4TA), filed March 2, 1982. Applicant: COMPUTER TRANSPORT OF GEORGIA, INC., 6105 Perdue Drive, S.W., Atlanta, GA 30336. Representative: Bruce E. Mitchell, Esq., 3390 Peachtree Rd., N.E., Suite 520, Atlanta, GA 30326. *Duplicating machines, computers, typewriters, instruments, and photographic goods; related materials, equipment and supplies,* between Baltimore, MD, and points in MD and VA. Supporting shipper: Xerox Corporation, 3000 Des Plaines Ave., Des Plaines, IL 60018.

MC 160537 (Sub-3–1TA), filed March 2, 1982. Applicant: LUALLEN TRUCKING COMPANY, INC., 8456 Newman Street, Douglasville, GA 30134. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237. *Metal products, paper and paper products, plastic articles, cleaning compounds and furniture,* between points in GA, on the one hand, and, on the other, points in the states of AL, AR, CT, FL, GA, IL, IA, KS, KY, LA, MA, MD, MI, MN, MO, MS, NC, NE, NJ, NY, OH, OK, PA, SC, TN, TX, VA, WI and WV. Supporting shippers: There are nine (9) statements in support of the application, which may be examined at ICC Regional Office, Atlanta, GA.

MC 160068 (Sub-3–1TA), filed March 1, 1982. Applicant: MOBILE CHECK EXCHANGE, INC., 2660 Springhill Avenue, Mobile, AL 36601. Representative: J. B. Ward (same address as above). *Money, currency, coin, bullion, precious metals, negotiable and non-negotiable securities, negotiable and non-negotiable bank checks, valuable papers, and other valuables requiring special handling and securities, auditing and accounting media, data processing media, business records, processed and unprocessed film and legal documents* between Harrison, Hancock, Stone and Pearl River Counties, MS and Orleans Parish, LA. Supporting shipper: Hancock Bank, 2500 14th Street, Gulfport, MS 38395.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 114284 (Sub-5–15TA), filed February 22, 1982. Applicant: FOX-SMYTHE TRANSPORTATION CO., P.O. Box 82307, Oklahoma City, OK 73148. Representative: M. W. Thompson (same). *Food and Related Products,* (1) From Cactus, TX to points in AZ, CA, MS, SD, and TN. (2) From Guymon, OK to points in AR, CO, IL, IA, KS, LA, MN, MO, MS, TN, and WI. Supporting

shipper: Swift Independent Packing Company, 115 West Jackson Boulevard, Chicago, IL 60604.

MC 115669 (Sub-5–16TA), filed February 22, 1982. Applicant: DAHLSTEN TRUCK LINE, INC., P.O. Box 95, Clay Center, NE 68933. Representative: Vayle Hayes (same address as applicant). *Malt beverages, related advertising materials and materials and supplies used in the manufacture and distribution of malt beverages,* between pts in Houston County, GA, on the one hand, and, on the other, pts in KS and OK. Supporting shipper: Pabst Brewing Company, Highway 247 Spur, Pabst, GA 31069.

MC 117765 (Sub-5–29TA), filed February 22, 1982. Applicant: HAHN TRUCK LINE, INC., P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same as applicant). *Malt Beverages, related advertising material and materials and supplies (except commodities in bulk) used in the manufacture and distribution of malt beverages,* between Houston County, GA on the one hand, and, on the other points in AR, IA, KS, MO and OK. Supporting shipper: Pabst Brewing Company, Highway 247 Spur, Pabst, GA 31069.

MC 135861 (Sub-5–19TA), filed February 22, 1982. 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; *General commodities (except classes A & B explosives, household goods, and commodities in bulk in tank vehicles),* between pts in the U.S., under continuing contract(s) with Standard Brands Paint Co., Inc., and its subsidiaries. Supporting shippper: Standard Brands Paint Co., Inc., 4300 West 190th Street, Torrance, CA 90509.

MC 135861 (Sub-5–20TA), filed February 23, 1982. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Food and related products,* between points in the U.S., under continuing contract(s) with Bartons Candy Corporation, Brooklyn, NY. Supporting shipper: Bartons Candy Corporation, 80 DeKalb Avenue, Brooklyn, NY 11201.

MC 135861 (Sub-5–21TA), filed February 23, 1982. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Coaxial cable, and materials, equipment and supplies used in the manufacture and distribution of coaxial cable,* between points in the U.S., under continuing contract(s) with Capscan Cable Co., Inc. Supporting shipper: Capscan Cable Co., Inc., Halls Mill Road, Freehold, NJ 07728.

MC 139973 (Sub-5–14TA), filed February 22, 1982. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, Fulton, Mo 65251. Representative: Ronald R. Adams or Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Magazines, catalogs, periodicals, newspaper supplements, inserts, and printed matter,* between the facility utilized by Southern State Periodical Shippers, Inc., at or near New Orleans, LA, on the one hand, and, on the other, pts in AL, AR, LA, FL, MS, TN, and TX. Supporting shipper: Southern State Periodical Shippers, Inc., 300 Jefferson Highway, Suite 304, Jefferson, LA 70121.

MC 148832 (Sub-5–10TA), filed February 22, 1982. Applicant: DELTA MOTOR FREIGHT, INC., 1616 Rowe Boulevard, Poplar Bluff, MO 63901. Representative: Ronald D. Dodds (same address as applicant). *Paper, Paper Products, and Related Materials* between Sikeston, MO on the one hand, and, on the other, Selma, Montgomery, Fayette, and Birmingham, AL; Paragould, AR; Colorado Springs, CO; Atlanta, Columbus, and Rossville, GA; Carbondale, Granite City, and Olney, IL; Evansville and Ft. Wayne, IN; Shreveport, New Iberia, New Orleans, and Metairie, LA; Topeka, KS; Fulton and London, KY; Jackson, Oxford, Kosciusco, and Canton, MS; Ardmore, Enid, and Oklahoma City, OK; Arlington, Covington, Knoxville, and Nashville, TN; Dallas, Tyler, Houston, and Texarkana, TX; and Bristol, VA. Supporting shipper Potlatch Corporation, Sikeston, MO 63801.

MC 152971 (Sub-5–2TA), filed February 22, 1982. Applicant: DEEP SOUTH FREIGHT LINES, INC., 6308 Boutall Street, Metairie, LA 70003. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. Contract, irregular; *paper and paper products, and materials, equipment and supplies used in the menufacture and distribution of such commodities,* between Washington and West Feliciana Parishes, LA, on the one hand, and, on the other, pts in AL, AR, FL, GA, IN, LA, MS, NC, SC, TN, TX, VA and WV, under continuing contracts with Crown Zellerbach Corporation, Bogalusa, LA. Supporting shipper: Crown Zellerback Corporation, P.O. Box 1060, Bogalusa, LA 70427.

MC 157680 (Sub-1–TA), filed February 22, 1982. Applicant: PAUL ZIRKLE, d.b.a. ZIRKLE TRUCK LINE, 9021 SW 79th, Auburn, KS 66402. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L. Topeka, KS 6661. *Iron and steel articles and fabricated metal items,* between pts and places in Shawnee and Osage Counties, KS on the one hand and Pts in OK, TX and CO on the one hand. Supporting shippers: Topeka Foundry & Iron Works Co. Inc., 300 Jackson, Topeka, KS 66603 (or P.O. Box 147, Topeka, KS 66601); Gerald Garrett, d.b.a. Garrett Ranch Supply, R.R. 2, Carbondale, KS 66414.

MC 160063 (Sub-5–1TA), filed February 22, 1982. Applicant: B & R TRUCKING CO., INC., 420 Gimblin Road, St. Louis, MO 63147. Representative: Ronnie E. St. Arbor (Same address as applicant). *General commodities having a prior or subsequent movement by rail,* between St. Louis, MO and pts in its commercial zone, on the one hand, and, on the other, rail ramps at North Jefferson City, MO. Supporting shipper(s): Missouri, Kansas, Texas Railroad Company, 101 E. Main St., Denison, TX 75020.

MC 160427 (Sub-5–1TA), filed February 22, 1982. Applicant: MELVIN R. WHITE, Route 1, Savannah, MO 64485. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105–1961. *Clips and crushed cars* from Lincoln, NE to Kansas City, MO and its commercial zone. Supporting shipper: Northwestern Metal Co., P.O. Box 81826, Lincoln, NE 68501.

MC 160650 (Sub-5–1TA), filed February 22, 1982. Applicant: OSBORNES TRUCKING, INC., 3908 Wilbarger, Vernon, TX 76384. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. Contract: Irregular, *General Commodities (except classes A and B explosives or hazardous materials)* between OK and TX on the one hand, and, on the other, pts in the states of AR, CO, IL, IN, IA, KS, MO, MN, NE, OH, OK, TN, TX and WI. Restricted to shipments originating at or destined to the facilities of Osborne Distributing Co., Inc. and its subsidiaries—COD, Inc. and DLO, Inc. Supporting shipper: Osborne Distributing Co., Inc., 3908 Wilbarger Street, Vernon, TX 76384.

MC 160656 (Sub-5–1 TA), filed: February 22, 1982. Applicant: T. P. LEASING, INC., Post Office Box 5450, North Little Rock, AR 72119. Representative: L. Ann Henderson, 2500 McCain Blvd., Suite 103, North Little Rock, AR 72116. *(1) Fiberglass insulation in rolls and bags; (2) electrical appliances, equipment and supplies, televisions, stereos and video equipment in cartons; (3) paper products in pallets or bundles and cans in cartons or pallets; (4) beer; (5) Aluminum Ventilating products, roof louvers,*

turbines and shutters, parts and accesories used in the manufacture and distribution thereof; (1) between Pulaski County, AR, and the States of TX, LA, MS, MO, OK, and KS, (2) between Little Rock, AR, and the States of TX, LA, OK, MD, IL, KY, and VA, (3) between Pulaski County, AR, and the States of TX, LA, MS, MO, OK, and KS, (4) between Tarrant County, TX, and Pulaski County, AR, (5) between Jacksonville, AR, and points in AR, TX, KY, LA, MS, MO, TN, and KS. Supporting shippers: Seven.

MC 160663 (Sub-5–1 TA), filed: February 22, 1982. Applicant: ALL-WAYS INTERSTATE TRUCKING CO., P.O. Box 2564, Iowa City, IA 52244. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Contract irregular: *General Commodities, (except Household goods and Classes A and B Explosives),* Between Pts in the U.S. under continuing contract(s) with Fleetway Stores, Inc. and Stokes Ellis Canning Co. Supporting shippers: Stokes Ellis Canning Co., 1575 Alcott So., Dever, CO 80204 and Fleetway Stores, Inc., 655 Hollywood Blvd. Iowa City, IA 52240.

MC 160665 (Sub-5–1 TA), filed: February 22, 1982. Applicant: GOLDENROD DISTRIBUTION COMPANY, 1221 South 39th Street, St. Louis, MO 63110. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102. *Aluminum and glass building products, equipment materials and supplies used in the installation and assembly of aluminum and glass building products; aluminum and glass scrap,* between Phoeniz, AZ; Los Angeles, Oakland and San Francisco, CA; Denver, CO; Miami, FL; Atlanta, GA; Chicago and Morris, IL; Lafayette IN; Davenport, IA; Kansas City, KS; New Orleans, LA; Baltimore, MD; St. Louis, MO; St. Paul, MN; New York, NY; Oklahoma City, OK; Portland, OR; Philadelphia and Pittsburgh, PA; Dallas and Houston, TX; Salt Lake City, UT and Seattle, WA. Supporting shipper: H. H. Robertson/Supplies Products Division, St. Louis, MO.

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 158037 (Sub-6–2TA), filed February 25, 1982. Applicant: ALMAC OF ARIZONA, INC., 2831 W Indian School Rd, Phoenix, AZ 85017. Representative: Stanford E. Lerch, 650 N. Second Ave., Phoenix, AZ 85003. *Contract, carrier* irregular routes: *Equipment, materials and other Property of The Mountain States Telephone and Telegraph Company,* between points in CO, WY, under continuous contract with said company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Mountain States Telephone and Telegraph Co., 930 15th St, Denver, CO 80202.

MC 156827 (Sub-6–2TA), filed February 24, 1982. Applicant: RALPH H. BENSON dba BENSON TRUCKING, P.O. Box 262, Pico Rivera, CA 90660. Representative: Ralph H. Benson (same address as applicant). *Contract Carrier:* Irregular routes: *Fireplaces, Barbeques, Grills and Ventilators and parts and accessories for same,* between Riverside County, CA and points in AR, AZ, CO, ID, KS, LA, MO, MS, MT, NM, NV, OK, OR, TN, TX, UT and WA for 270 days. Supporting shipper: Temtex Products, Inc., 23560 Oleander, Perris, CA 92370.

MC 134387 (Sub-6–30TA), filed February 26, 1982. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Ave., South Gate, CA 90280. Representative: Patricia M. Schnegg, 707 Wilshire Blvd., Ste. 1800, Los Angeles, CA 90017. *General Commodities* (except household goods as defined by the Commission in Class A & B explosives and commodities in bulk) from points in CA to points in OR, WA and ID. Restricted to traffic moving on bills of lading issued by Washington-Oregon Shippers Cooperative Association, for 270 days. Supporting shippers: Washington-Oregon Shippers, Cooperative Association, Inc., 200 W. Thomas St., 5th Fl., Seattle, WA 98119.

MC 160760 (Sub-6–1TA), filed February 22, 1982. Applicant: DAVID L. LORD d.b.a. DAV-GLO INTERNATIONAL CO., 3065 S. E. Condor St., Gresham OR., 97030. Representative: David L. Lord (same as applicant). *Contract Carrier,* Irregular routes: *Malt Beverages,* from Seattle, WA., to Gresham, OR., for the account of Manchesters Distributors, for 270 days. Supporting shipper: Manchesters Distributors, 620 N. E. Kelly, Gresham, OR., 97030.

MC 160759 (Sub-6–1TA), filed February 22, 1982. Applicant: JAMES B. GORDON, JR., d.b.a. GORDON TOURS, 2516 Young Ave., Thousand Oaks, CA 91360. Representative: James B. Gordon, Jr. (same as applicant), *Contract carrier,* irregular route, *Youth and adult charter passenger groups,* from Thousand Oaks, CA (and area within 50 miles) to points in the U.S., for 180 days. Supporting shippers: None.

MC 115067 (Sub-6–2TA), filed February 25, 1982. Applicant: INDEPENDENT MOTOR TRANSPORT, 32455 Hwy 34, Tangent, OR 97389. Representative: James L. Kampstra (same as applicant). *Contract Carrier,* irregular routes: (1) *Food Products,* from Seattle, WA to Eugene, McMinnville, and Portland, OR for the account of Fisher Mill, Inc., (2) *Food Products,* between the facilities of Oregon Freeze Dry Foods, Inc., at Albany, OR, on the one hand, and, on the other, points in CA, OR, and WA., (3) and (4) *General Commodities, (except Class A and B explosives, household goods and commodities in bulk),* between points in OR and WA for the accounts of Washington-Oregon Shippers Cooperative Association, Inc., and Pacific Northwest Perishable Shippers Association, for 270 days. Supporting shippers: Fisher Mill, Inc., 2801 NW Nela, Portland, OR 97210; Oregon Freeze Dry Foods, Inc., 770 W 29th, Albany, OR; Washington-Oregon Shippers Cooperative Association, Inc., and Pacific Northwest Perishable Shippers Association, 200 W Thomas St., Seattle, WA 98119.

MC 160761 (Sub-6–1TA), filed February 24, 1982. Applicant: M & M CHARTER BUS SERVICE, INC., 4714 Crenshaw Blvd., Los Angeles, CA 90043. Representative: James D. McCarns (same as applicant). *Passengers and their baggage* in charter and special service operations from Los Angeles County, CA extending to points in AZ, CO, NM, NV, OR, UT, WA, and return, for 180 days. Supporting shippers: There are 6 supporting shippers. Their statements may be examined in the Regional Office listed above.

MC 154223 (Sub-6–1TA), filed February 26, 1982. Applicant: ROLAND J. MONTBRAND AND SONS TRUCKING, 718 Coal Ave, SW, Albuquerque, NM 87102. Representative: Roland J. Montbrand, 720 Coal Ave, SW, Albuquerque, NM 87102. *Contract,* irregular; *Iron and Steel articles and metal products* From: Albuquerque, NM; Houston, TX; Los Angeles, CA; and points in UT and CO. To: Phoenix and Tucson, AZ and El Paso, Odessa and Brownwood, TX, for the account of Rio Grande Steel Co., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Rio Grande Steel Co., 7100 Second St. NW, Albuquerque, NM 87107.

MC 157626 (Sub-6–3TA), filed February 22, 1982. Applicant: NAVAJO EXPRESS, INC., 5150 Brighton Boulevard, Denver, CO 80216. Representative: Charles J. Kimball, 1600 Sherman St. #665, Denver, CO 80203. *Contract carrier,* irregular routes, *food and related products,* from the facililties of Packers' Cold Storage, Inc., at or near

Laramie, WY to points in the U.S., except AK and HI, under continuing contract with Packers' Cold Storage, Inc., for 270 days. An underlying ETA application seeks 120 days authority. Supporting shipper: Packers' Cold Storage, Inc., 310 East Walnut Ave., Fullerton, CA, 92632.

MC 160700 (Sub-6–1TA), filed February 26, 1982. Applicant: R & B MOVING & STORAGE CO. d.b.a. BROADWAY MOVING & STORAGE CO., 4830 Monaco, Commerce City, CO 80022. Representative: Bruce Luckett, 13100 Willow Lane, Golden, CO 80401. *Household Goods* having a prior or subsequent movement in containers between all points in CO and the CO State Boundary lines and restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization of such traffic for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Lowry Air Force Base, Lowry AFB, CO 80230.

MC 158675 (Sub-6–2TA), filed February 22, 1982. Applicant: REMICK TRUCKING LTD., 215 E. 37th, Boise ID 83704. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701. *Contract carrier,* Irregular routes: *Sand,* from Emmett, ID to points in AZ, CA, CO, ID, MT, NV, OR, UT and WA, for the account of Martin Marietta Aggregates, for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper: Martin Marietta Aggregates, Two Crossroads of Commerce Building, Rolling Meadows, IL 60008.

MC 160745 (Sub-6–1TA), filed February 22, 1982. Applicant: ARLYN ROWAN TRUCKING, 425 S. Lincoln Ave., Fleming, CO. 80728. Representative: Arlyn Rowan (Same as applicant). *Clay, Concrete, Glass* or *Stone products,* from points in McPherson and Franklin Counties, KS to points in Weld, Larimer, Boulder, Denver, Adams, Jefferson, Logan, Arapahoe, Morgan Counties, CO and Laramie County, WY. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Cowan Concrete Products, Inc. D.B.A. Mobile Premix Inc., P.O.B. 1647, Greeley, CO. 80632.

MC 150318 (Sub-6–3TA), filed February 26, 1982. Applicant: TAYLOR WAREHOUSE & TRUCKING COMPANY, INC., 14615 Anson Ave., Santa Fe Springs, CA 90670. Representative: William J. Monhein, P.O. Box 1756, Whittier, CA 90609. *Contract carrier,* irregular routes: (1) *Sanitary napkins,* from Santa Fe Springs, CA, to Denver, CO; Boise, ID; Chicago, Elk Grove Village, and Milan, IL; Las Vegas, Reno, Sparks, and Stateline, NV; Oklahoma City, OK; Houston, TX; and Salt Lake City, UT; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of sanitary napkins, (a) from Rosser, GA; Middleton, MA; Midland, MI; New York, NY; and points in NJ and WI to Santa Fe Springs, CA, and (b) from Middleton, MA; New York, NY; and points in NJ to King of Prussia, PA, for 270 days. An underlying ETA seeks 120-days authority. Supporting shipper: International Consumer Disposables, Inc., 13930 Mica St., Santa Fe Springs, CA 90670.

MC 160774 (Sub-6–1TA), filed February 25, 1982. Applicant: TRANSCO SERVICES, INC., P.O. Box 20133, Phoenix, AZ 85036. Representative: David Robinson, 7975 N. Hayden Rd., Scottsdale, AZ 85258. *Contract carrier,* irregular routes, *paving and roadbuilding equipment, materials and parts,* between points in the U.S. under continuing contract with Crafco, Inc., of Chandler, AZ, for 270 days. An underlying ETA application seeks 120 day authority. Supporting shipper: Crafco, Inc., 6975 W. Crafco Way, Chandler, AZ 85224.

MC 148616 (Sub-6–3TA), filed February 25, 1982. Applicant: TRANSPORT WEST, INC., P.O. Box 2015, Eugene, OR 97402. Representative: Gene E. Cook (Same as Applicant). *Contract Carrier,* Irregular routes: *Metal Products, Machinery, Building Materials, and Commodities used in the Manufacture of the Above,* between the facilities of West Coast Steel Fabricators, Inc., at Eugene, OR, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY, for the account of West Coast Steel Fabricators, Inc., for 270 days. Supporting shipper: West Coast Steel Fabricators, Inc., P.O.B. 2326, Eugene, OR 97402.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-6395 Filed 3-9-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in

interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–36

Decided: February 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating in part.)

MC 12741 (Sub-1), filed February 22, 1982. Applicant: HOLIDAY TOURS, INC., 3801 N. Piedras, El Paso, TX 79930. Representative: Harvey Meston (same address as applicant) (915) 566–8621. As a broker at El Paso, TX, in arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, in special or charter operations, between points in the U.S. (including AK and HI).

MC 76191 (Sub-2), filed February 10, 1982. Applicant: WM. PENN HIGHWAY EXPRESS, INC., 225 W. Howard St., Stowe, PA 19464. Representative: Jerry Hugo (same address as applicant) (215) 327–4500. Transporting *general commodities* (except classes A and B explosives), between Philadelphia, PA, and New York, NY, on the one hand, and, on the other, points in Montgomery, Berks, and Chester Counties, PA.

MC 105461 (Sub-121), filed February 16, 1982. Applicant: HERR'S MOTOR EXPRESS, INC., P.O. Box 8, Quarryville, PA 17566. Representative: Robert R. Herr (same address as applicant) (717) 786–2181. Transporting *such commodities* as are dealt in or used by food, grocery, and drug business houses, between those points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 123310 (Sub-25), filed February 18, 1982. Applicant: DOUG ANDRUS DISTRIBUTING, INC., 1820 W. Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701 (208) 343–3071. Transporting *metal products, building materials, and lumber and wood products,* between points in AZ, CA, CO, ID, MT, NE, NM, OR, UT, WA, and WY.

MC 127061 (Sub-5), filed February 22, 1982. Applicant: L. C. WALSON, 501 Main Street, P.O. Box 56, Dover, ID 83825. Representative: L. C. Walson (same address as applicant) (208) 263–3607. Transporting *poles, piling, lumber and wood products, and machinery,* between points in ID, WA, MT, OR, CA, NV, UT, AZ, NM, CO, NE, WY, SD, and ND.

MC 133891 (Sub-2), filed February 22, 1982. Applicant: ARMSTRONG MOVING & STORAGE, INC., P.O. Box 1460, Lubbock, TX 79408. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408 (806) 763–9555. Transporting *household goods, furniture, electronic equipment and fixtures,* between points in TX, NM, AZ, CA, CO, OK, WY, KS, MO, AR, LA, NV, and TN.

MC 139380 (Sub-11), filed February 19, 1982. Applicant: STIDHAM TRUCKING, INC., P.O. Box 308, Yreka, CA 96097. Representative: O. L. Stidham (Same address as applicant) (916) 842–4161. Transporting *building materials, wood products, millwork, insulation, woodpulp, paperboard, and cartons,* between points in the U.S., under continuing contract(s) with Louisiana-Pacific Corporation, of Portland, OR.

MC 139771 (Sub-4), filed February 18, 1982. Applicant: GAFCO, INC., 1041 West 45th St., Norfolk, VA 23508. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., N.W., Washington, DC 20005 (202) 296–3555. Transporting *building materials,* between points in the U.S. (except AK and HI), under continuing contract(s) with Hey'di American Corporation, of Virginia Beach, VA.

MC 142011 (Sub-4), filed February 12, 1982. Applicant: LEISURE TIME TOURS, 4 Houvenkoph Road, Mahwah, NJ 07430. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. Over regular routes, transporting *passengers and their baggage, and express and newspapers,* in the same vehicle with passengers, (1) between Mahwah, NJ, and junction access road and NJ Hwy 202, from Mahwah, over US Hwy 202 to junction Darlington Ave., then over Darlington Ave., to Pulis Ave., then over Pulis Ave., to Franklin Lakes Park & Ride, then over access road to junction NJ Hwy 22, and return over the same route; (2) between Wycoff, NJ, and the Garden State Shopping Plaza, NJ., from Wycoff over Wycoff Ave., to junction Goffle Rd., then over Goffle Rd., to junction NJ Hwy 208, then over NJ Hwy 208 to junction NJ Hwy 4, then over NJ Hwy 4, to the Garden State Shopping Plaza, and return over the same route; and (3) between the Garden State Shopping Plaza, NJ, and New York, NY, from Garden State Shopping Plaza (a) over NJ Hwy 17 to US Hwy 80, then over US Hwy 80 to junction US Hwy 95, then over US Hwy 95 to junction US Hwy 495, then over US Hwy 495 to the Lincoln Tunnel, then thru the Lincoln Tunnel to New York, NY, and return over the same route; and (b) over NJ Hwy 4 to the Garden State Parkway, then over the Garden State Parkway to junction US Hwy 80 and return over the same route, serving all intermediate points in routes (1), (2) and (3) above. Note: Applicant intends to tack this authority with its existing regular-route authorty in MC 142011.

MC 142631 (Sub-4), filed: February 18, 1982. Applicant: L. PEABODY TRUCKING, INC., 2490 Elton St., Baldwin Park, CA 91776. Representative: Mark S. Gray, 235 Peachtree St. NE., Suite 1200, Atlanta, GA 30303, (404) 522–2322. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Benlin Distribution Services, Inc., of Buffalo, NY.

MC 148151 (Sub-5), filed: February 22, 1982. Applicant: RAY BELLEW & SONS, INC., 7810 Almeda Genoa Rd., Houston, TX 77034. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, TX 77024, (713) 827–1407. Transporting (1) *Mercer commodities* and (2) *earth drilling machinery and equipment,* between points in TX, on the one hand, and, on the other, points in AR, LA, and NM.

MC 150270 (Sub-1), filed: February 22, 1981. Applicant: PEIRONE PRODUCE COMPANY, East 524 Trent Avenue, Spokane, WA 99202. Representative: James I. Morrow (same address as applicant), (509) 838–6473. Transporting (1) *ceramic tile,* (2) *food and related products,* (3) *plastic bags,* and (4) *plastic bottles,* between points in the U.S., under continuing contract(s) with Quarry Tile Company, of Spokane, WA, in (a) above, 2–J Produce, of Missoula, MT, in (2) above, Friedman Bag Company, of Los Angeles, CA, in (3) above, and Olympic Foods, Inc., of Spokane, WA, in (4) above.

MC 151000 (Sub-2), filed: February 22, 1982. Applicant: WILFORD P. DONNELLY, d.b.a. TUFFERNELL TRUCKING, P.O. Box 526, Chadron, NE 69337. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *food and related products,* between points in NE and SD, on the one hand, and, on the other, points in AR, CO, KS, IA, IL, MN, MO, NE, NY, OK, PA, SD, TN, TX, WA and WI.

MC 160210, filed January 22, 1982. Applicant: VERNON M. DUNHAM, 424 N 6th St., Millville, NJ 08322. Representative: Vernon M. Dunham (same address as applicant), (609) 825–7333. As a broker, at Millville, NJ, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, beginning and

ending at points in Cumberland County, NJ, and extending to points in PA, MD, DE, NJ, NY, and DC.

MC 160581, filed February 16, 1982. Applicant: PILGRIM TRANSPORT, INC., 610 West 138th Street, Riverdale, IL 60627. Representative: Carl L. Steiner, 29 South LaSalle Street, Chicago, IL 60603, (312) 236–9375. Transporting *metal products,* between Newport and Wilder, KY, on the one hand, and, on the other, those points in the U.S. on and east of U.S. Hwy 85. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) from common control to team 1, Room 6358.

MC 160631, filed February 18, 1982. Applicant: ORCHARD VIEW COMMUNITY EDUCATION, 2310 Marquette Avenue, Muskegon, MI 49442. Representative: Patrick G. Shafer (same address as applicant), (616) 773–3231. As a broker at Muskegon, MI, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, in special or charter operations, between points in Muskegon County, MI, on the one hand, and, on the other, points in the U.S. (including AK and HI).

MC 160640, filed February 19, 1982. Applicant: BRODHEAD GRAIN TRUCKING CO., INC., Rt. 1, Brodhead, WI 53520. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *such commodities* as are dealt in or used by farmers, farm suppliers and dealers, and agricultural cooperatives, between points in the U.S., under continuing contract(s) with Howard A. Krupke, d.b.a. Brodhead Grain Co., of Brodhead, WI.

Volume No. OP 1–38

Decided: March 2, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 59150 (Sub-197), filed February 23, 1982. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose St., Jacksonville, FL 32206. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., 311 W. Duval St., Jacksonville, FL 32202 (904) 353–9707. Transporting *general commodities* (except classes A and B explosives), between the facilities of United States Gypsum Company, its subsidiaries and affiliates, in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 79550 (Sub-13), filed February 23, 1982. Applicant: ERSKINE TRUCKING, INC., 6210 Center Rd., Lowellville, OH 44436. Representative: E. H. van Deusen, P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting (1) *metal products,* (2) *machinery,* (3) *building materials,* (4) *clay, concrete, glass, or stone products, and* (5) *chemicals and related products* (except commodities in bulk and classes A and B explosives), between points in the U.S.

MC 85401 (Sub-3), filed February 25, 1982. Applicant: BELLINGHAM SUMAS STAGES, INC., P.O. Box 648, Sumner, WA 98390. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055–3273, (206) 235–1111. Transporting *passengers and their baggage* in the same vehicle with passengers, in special or charter operations, between points in WA, on the one hand, and, on the other, points in the U.S.

MC 92371 (Sub-6), filed February 22, 1982. Applicant: SUNCREST TRANSPORTATION, INC., d.b.a. SHEARERS EXPRESS, P.O. Box 189, Commercial Drive, Oneonta, NY 13820. Representative: Raymond A. Richards, 35 Curtice Pk, Webster, NY 14580, (716) 265–9510. Transporting *textile mill products; pulp, paper and related products, chemicals and related products; rubber and plastic products; clay, concrete, glass or stone products; and wood products,* between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada.

MC 105350 (Sub-36), filed February 22, 1982. Applicant: NORTH PARK TRANSPORTATION CO., 5150 Columbie St., Denver, CO 80216. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264, (303) 861–4028. Transporting *general commodities* between those points in the U.S. in and west of WI, IL, MO, AR, and LA. Condition: To the extent that the certificate in this proceeding authorizes the transportation of classes A and B explosives, it will expire 5 years from the date of issuance.

MC 119741 (Sub-313), filed February 22, 1982. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., N.W., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant), (515) 576–6831. Transporting *machinery,* between points in Williams County, OH, on the one hand, and, on the other, points in the U.S.

MC 121630 (Sub-6), filed February 23, 1982. Applicant: LEMORE TRANSPORTATION, INC., d.b.a. ROYAL TRUCKING CO., 1420 Royal Industrial Way, Concord, CA 94520. Representative: Daniel W. Baker, 100 Pine St., Suite 2550, San Francisco, CA 94111, (415) 986–1414. Transporting *such commodities* as are dealt in by manufacturers, distributors, retailers and wholesalers of food, groceries and home products, between points in the U.S. (except AK and HI), under continuing contract(s) with The Clorox Company, of Oakland, CA, and its subsidiaries.

MC 129410 (Sub-30), filed February 19, 1982. Applicant: BONCOSKY TRANSPORTATION, INC., 1301 Industrial Drive, Algonquin, IL 60102. Representative: Carl L. Steiner, 29 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *oils,* between points in the U.S., under continuing contract(s) with Palmco, Inc., of Portland, OR.

MC 134701 (Sub-9), filed February 25, 1982. Applicant: J-V INCORPORATED, 723 E. 8425 S., Sandy, UT 84070. Representative: Irene Warr, 311 S. State St., Suite 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting *metal products* between points in the U.S., under continuing contract(s) with Sherritt Gordon Mines Limited, of Edmonton, Canada.

MC 135861 (Sub-101), filed February 25, 1982. Applicant: LISA MOTOR LINES, INC., PO Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103, (817) 332–4718. Transporting *such commodities* as are dealt in or used by a manufacturer and distributor of coaxial cable, between points in the U.S., under continuing contract(s) with Capscan Cable Co., Inc., of Freehold, NJ.

MC 135861 (Sub-102), filed February 25, 1982. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, (817) 332–4718. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Bartons Candy Corporation, of Brooklyn, NY, and H Bar K Meat Processors, Inc., of Fort Worth, TX.

MC 141751 (Sub-5), filed February 22, 1982. Applicant: M.P.C. TRUCKING, INC., Cold Stream Road, Kimberton, PA 19442. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, (215) 561–1030. Transporting *general commodities* (except classes A and B

explosives and household goods), between Philadelphia, PA, and points in Chester County, PA, Bergen County, NJ, and Saratoga County, NY, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 141791 (Sub-4), filed February 23, 1982. Applicant: MONTGOMERY TRUCKING COMPANY, a Corporation, P.O. Box 21, Wellston, OH 45692. Representative: Andrew Jay Burkholder, 275 E. State St., Columbus, OH 43215, (615) 228–8575. Transporting *food and related products* between the facilities used by Jeno's, Inc., at points in the U.S. (except AK and HI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145790 (Sub-7), filed February 25, 1982. Applicant: SKILLETT & SONS, INC., Rush Center, KS 67575. Representative: Erle W. Francis, 719 Capitol Federal Bldg., Topeka, KS 66603, (913) 232–0601. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Fuller Brush Company, of Great Bend, KS.

MC 146121 (Sub-2), filed February 24, 1982. Applicant: BAY CARTAGE COMPANY, 1122 East Barney, Muskegon, MI 49444. Representative: William H. Heritage, Jr., 400 Calder Plaza Bldg., Grand Rapids, MI 49503, (616) 774–8031. Transporting *foundary materials, equipment, and supplies,* between points in the U.S. (except AK and HI), under continuing contract(s) with Carpenter Brothers, Inc., of Muskegon, MI.

MC 150240 (Sub-2), filed February 22, 1982. Applicant: FREIGHT SALES, INC., 477 James Parkway, P.O. Box 1176, Newark, OH 43055. Representative: James R. Stiverson, 1396 W. Fifth Ave., P.O. Box 12241, Columbus, OH 43212, (614) 481–8821. Transporting *petroleum and petroleum products,* between points in the U.S., under continuing contract(s) with (1) River Oil Co., of Marietta, OH, (2) Eagle Oil Company, of Columbus, OH, (3) Englefield Oil Co., of Newark, OH, and (4) Michels Oil Company, of Pennsboro, WV.

MC 152261 (Sub-4), filed February 24, 1982. Applicant: M. W. ETTINGER, INC., 2711 Fairview Avenue North, Roseville, MN 55113. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440 (612) 542–1121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S.

MC 152640 (Sub-2), filed February 25, 1982. Applicant: RAPID DISTRIBUTION SERVICE, INC., 2392 N. Dupont Highway, Dover, DE 19901. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth St., NW., Washington, DC 20005, (202) 296–3555. Transporting *such merchandise* as is dealt in or distributed by variety and retail department stores, between points in the U.S. (except AK and HI), under continuing contract(s) with McCrory Stores, a Division of McCrory Corporation, of York, PA, and Otasco, Inc., a subsidiary of McCrory Corporation, of Tulsa, OK.

MC 153680 (Sub-1), filed February 23, 1982. Applicant: DEE AND VEE MAHAN TRUCKING, Route 2, Box 179½ G, Elwood, NE 68937. Representative: Max H. Johnston, PO Box 6597, Lincoln, NE 68506, (402) 488–4841. Transporting *meat, meat products, meat by-products, and articles distributed by meat packinghouses,* (1) between points in Dawson County, NE, on the one hand, and, on the other, points in the U.S. (except CO, IL, IA, KS, MO, TX, and WI); and (2) between points in Buffalo County, NE, on the one hand, and, on the other, points in AZ, CA, FL, OK, TN and TX.

MC 155371 (Sub-1), filed February 22, 1982. Applicant: JERRY L. ELLIS, d.b.a. JERRY L. ELLIS TRUCKING COMPANY, 505 Metcalf, Mansfield, TX 76063. Representative: Clint Oldham, 623 South Henderson, 2nd Floor, Fort Worth, TX 76104, (817) 332–4415. Transporting *metal products,* between points in TX, on the one hand, and, on the other, points in AR, KS, LA, OK, NM, and TX.

MC 156331 (Sub-1), filed February 25, 1982. Applicant: MD ASSOCIATES, 3220 Phillips Highway, Jacksonville, FL 32207. Representative: Sol H . Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632–2300. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Mobil Oil Corporation, of Fairfax, VA, and Container Corporation of America, W. F. Hall Printing Company, and Montgomery Ward & Co., all of Chicago, IL.

MC 157910 (Sub-1), filed February 22, 1982. Applicant: ALPHA OMEGA LINE, INC., 739 Vandalia, St. Paul, MN 55114. Representative: Samuel Rubenstein, P.O Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *food and related products,* between points in MN, MO, and ND, on the one hand, and, on the other, points in AR, IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, OK, SD, TN, and WI.

MC 160680, filed February 22, 1982. Applicant: L.G.H. TRUCKING, INC., 710 Ventura St. N., Salem, OR 97303. Representative: John A. Anderson, Suite 801— The 1515 Building, 115 S. W. 5th Avenue, Portland, OR 97201, (503) 227–4586. Transporting (1) *pulp, paper and related products,* and (2) *food and related products,* between points in OR, on the one hand, and, on the other, points in WA, ID, and CA.

MC 160720, filed February 24, 1982. Applicant: ELMER FARMER, d.b.a. ELMER FARMER CO., Route 7, Clinton Hwy, Powell, TN 37849. Representative: John M. Norris, P.O. Box 2665, Knoxville, TN 37901–2665, (615) 546–7470. Transporting *transportation equipment,* between points in the U.S., (except AK and HI), under continuing contract(s) with General Motors Acceptance Corporation, of Knoxville, TN.

MC 160750, filed February 24, 1982. Applicant: JOHN Q. STOKER, RAMON G. STOKER and HERBERT A DODGE, d.b.a. S-K TRUCKING, P.O. Box 350, Arlington #2, Council, ID 83612. Representative: Ramon G. Stoker, (same address as applicant), (208) 253–4581. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Silver King Mines, Inc., of Salt Lake City, UT.

Volume No. OP3–039

Decided: March 2, 1982.
By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 1515 (Sub-305), filed February 24, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: R. L. Wilson (same as applicant), (602) 248–5016. Over regular route, transporting *passenger and their baggage and express and newspapers* in the same vehicle with passengers, between Kingman, AZ, and the CA–AZ State line: From Kingman over U.S. Hwy 93 to junction AZ Hwy 68, then over AZ Hwy 68 to junction AZ Hwy 95, then over AZ Hwy 95 to Bullhead City, then over AZ Hwy 95 to the CA–AZ State line, and return over the same route, serving all intermediate points.

MC 9644 (Sub-17), filed February 22, 1,982. Applicant: HAYES TRUCK LINE, INC., 1410 Intercity Trafficway, P.O. Box 4018, Kansas City, MO 64101. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between the

facilities of The Clorox Company and its subsidiaries, at points in AR, CO, IL, IA, KS, LA, MO, NE, OK, TN, TX and WY, on the one hand, and, on the other, points in AR, CO, IL, LA, KS, LA, MO, NE, OK, TN, TX and WY.

MC 15735 (Sub-39), filed February 23, 1982. Applicant: ALLIED VAN LINES, INC., P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681–8378. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with international Business Machine Corporation of Armonk, NY.

MC 35295 (Sub-13), filed February 11, 1982. Applicant: AMERICAN TRANSFER CO., P.O. Box 1226, Fresno, CA 93715. Representative: Marvin Handler, 100 Pine St., Ste. 2550, San Francisco, CA 94111, (415) 986–1414. A. Over *regular routes*, transporting *general commodities* (except classes A and B explosives and household goods), (1) between San Francisco and Roseville: From San Francisco over Interstate Hwy 80 to junction CA Hwy 65, then over CA Hwy 65 to Roseville; (2) between Roseville and Marysville, over CA Hwy 65; (3) between junction CA Hwy 4 and Interstate Hwy 80, near Pinole, and Stockton, over CA Hwy 4; (4) between junction Interstate Hwy 580 and Interstate 80 and junction Interstate Hwy 5 and Interstate Hwy 580, near the Stanislaus/San Joaquin county line, over Interstate Hwy 580; (5) between junction Interstate Hwy 205 and Interstate Hwy 580 and Interstate Hwy 5, and Interstate Hwy 205, over Interstate Hwy 205; (6) between junction CA Hwy 120 and Interstate Hwy 5, and Sonora: From junction CA Hwy 120 and Interstate Hwy 5, over CA Hwy 120 to junction CA Hwy 108, over CA Hwy 108 to Sonora; (7) between Mendota and Cedar Grove, over CA Hwy 180; (8) between junction CA Hwy 152 and Interstate Hwy 5 and CA Hwy 99 and Interstate Hwy 5, over Interstate Hwy 5; (9) between Maricopa and junction CA Hwy 166 and CA Hwy 99, over CA Hwy 166; (10) between junction CA Hwy 198 and Interstate Hwy 5, and junction CA Hwy 99 and CA Hwy 198, over CA Hwy 198; (11) between junction CA Hwy 65 and CA Hwy 198 and junction CA Hwy 99 and CA Hwy 198, over CA Hwy 198; (12) between junction CA Hwy 33 and Interstate Hwy 5 southeast of Tracy, over CA Hwy 33 to Maricopa; (13) between Redding and San Ysidro, over Interstate Hwy 5; (14) between Redding and Wheeler Ridge, over CA Hwy 99; (15) between San Francisco and Los Angeles, over U.S. Hwy 101; (16) between Fresno and Mono Hot Springs, over CA Hwy 168; (17) between junction CA Hwy 41 and Interstate Hwy 5 and junction CA Hwy 41, over CA Hwy 41; (18) between Paso Robles and Last Hills, over CA Hwy 46; (19) between Santa Margarita and junction Interstate Hwy 5 and CA Hwy 58, over CA Hwy 58, serving all intermediate points on routes 1 through 19, and serving points in Shasta, Tehama, Glenn, Butte, Colusa, Sutter, Yuba, Placer, Sacremento, San Joaquin, Santa Clara, Monterey, Tulare, Kings, Ventura, Los Angeles, Orange, Riverside, San Diego, San Bernardino, Kern, Santa Barbara, San Luis Obispo, San Benito, Madera, San Mateo, San Francisco, Marin, Contra Costa, Solano, Fresno, Merced and Stanislaus Counties, CA, as off-route points in conjunction with the above described regular routes, and (B) over irregular routes, transporting *commodities in bulk*, between (a) points in CA and ID and (b) between points in CA and ID, on the one hand, and, on the other, points in CA, AZ, CO, ID, MT, NV, OR, TX, UT, WA, and WY. Conditions: Issuance of a certificate is subject to prior or coincidental cancellation, at applicant's written request of Certificate of Registration No. MC–35295 Sub 12.

MC 46614 (Sub-14), filed February 23, 1982. Applicant: BLUE & WHITE LINES, INC., 516 West Plank Rd., Altoona, PA 16602. Representative: Robert J. Brooks, Suite 1111, 1828 L St. NW., Washington, DC 20036, (202) 466–3892. Transporting *passengers and their baggage*, in charter and special operations, between points in the U.S., under continuing contract(s) with Blue & White Travel Agency, Inc., of Altoona, PA.

MC 106074 (Sub-190), filed February 24, 1982. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy. 221, S., Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328, (404) 256–4320. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. in and south of CA, AZ, CO, NE, IA, MN, WI, MI, OH, PA, and NJ.

MC 110104 (Sub-3), filed February 22, 1982. Applicant: MELVIN ASTON TRUCKING COMPANY, INC., 2101 E. Galbraithe Rd., Cincinnati, OH 45237. Representative: James W. Muldoon, 50 W. Broad St., Columbus, OH 43215, (614) 464–4103. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Cincinnati, OH, on the one hand, and, on the other, points in the U.S.

MC 117765 (Sub-326), filed February 22, 1982. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, Oklahoma City, OK 73147. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106, (405) 528–3884. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AR, CO, IA, IL, IN, KS, KY, LA, MI, MN, MO, MS, NE, ND, NM, OH, OK, SD, TN, TX, WI, and WY.

MC 117765 (Sub-327), filed February 23, 1982. Applicant: HAHN TRUCK LINE, INC., 100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant), (405) 943–8533. Transporting *malt beverages*, between points in Houston County, GA, on the one hand, and, on the other, points in AR, IA, KS, MO, and OK.

MC 117954 (Sub-32), filed February 22, 1982. Applicant: H. L. HERRIN, JR., P.O. Box 1106, Metairie, LA 70004. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202, (316) 265–2634. Transporting *cheese and dairy products*, between points in Marathon and Brown Counties, WI, on the one hand, and, on the other, points in AL, AR, LA, MS, OK, TN, and TX.

MC 121284 (Sub-2), filed February 22, 1982. Applicant: ZONE CARTAGE, INC., 611 Main Ave., S.W., Warren, OH 44483. Representative: Lewis S. Witherspoon, 2455 No. Star Rd., Columbus, OH 43221, (614) 486–0448. Transporting *general commodities* (except classes A and B explosives and household goods), (1) between points in OH, (2) between points in CT, DE, IL, IN, KS, KY, MD, MA, MI, MO, NJ, NY, OH, OK, PA, RI, WV, WI and DC, and (3) between points in OH, on the one hand, and, on the other, points in GA, NC, SC, TN and VA.

MC 129124 (Sub-37), filed February 24, 1982. Applicant: SAMUEL J. LANSBERRY, INC., P.O. Box 58, Woodland, PA 16881. Representative: John C. Fudesco, Suite 960, 1333 New Hampshire Ave., NW., Washington, D.C. 20036, (202) 659–5157. Transporting *commodities in bulk*, (1) between points in NY, on the one hand, and, on the other, points in IL, MI, and WV; and (2) between points in PA, on the one hand, and, on the other, points in DE, NC, VA, and WV.

MC 134484 (Sub-34), filed February 24, 1982. Applicant: EDWARDS BROS., INC., P.O. Box 1684, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 523–1382. Transporting *general*

commodities (except classes A and B explosives, and household goods), between points in the U.S., under continuing contract(s) with Howells, Inc., of Salt Lake City, UT.

MC 135924 (Sub-34), filed February 22, 1982. Applicant: SIMONS TRUCKING CO., INC., 3851 River Rd., Grand Rapids, MN 55744. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *lumber and wood products,* between points in Beltrami County, MN, on the one hand, and, on the other, points in the U.S.

MC 136635 (Sub-69), filed February 22, 1982. Applicant: WHITEFORD TRUCK LINES, INC., 640 West Ireland Rd., South Bend, IN 46680. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345, (404) 321–1765. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of containers and container closures, between the facilities of Brockway Glass Company, Inc., at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 136635 (Sub-70), filed February 23, 1982. Applicant: WHITEFORD TRUCK LINES, INC., 640 West Ireland Rd., South Bend, IN 46680. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345, (404) 321–1765. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of plumbing equipment, materials, and supplies, vanities, vanity cabinets, and plastic articles, between points in Stark County, OH, and the facilities of Universal-Rundle Corporation, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 140205 (Sub-13), filed February 23, 1982. Applicant: MOUW TRANSPORTATION, INC., 307 Maple Dr., Sibley, IA 50249. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *food and related products,* between points in Osceola, Johnson and Muscatine Counties, IA, on the one hand, and, on the other, points in CA, CO, IL, KS, MN, MO, ND, NE, OH, PA, SD and WI.

MC 140635 (Sub-34), filed February 23, 1982. Applicant: ADAMS LINES, INC., 2619 N St., Omaha, NE 68107. Representative: John L. Hornung (same address as applicant), (402) 733–6292. Transporting *general commodities* (except classes A and B explosives), between the facilities of the Purex Corporation, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 143154 (Sub-14), filed February 23, 1982. Applicant: A & S TRUCKING, P.O. Box 4027, Missoula, MT 59806. Representative: Charles A. Murray, Jr., 2822 Third Ave. N., Billings, MT 59101, (406) 252–4165. Transporting *such commodities* as are dealt in by grocery business houses, between points in MT, ID, WA, OR, CA, UT, WY, and CO, on the one hand, and, on the other, points in MT, ID, WA, OR, CA, UT, WY, CO, NM, TX, MN, MD, IL, OH, IN, WI, and IA.

MC 144715 (Sub-22), filed February 23, 1982. Applicant: ANDERSON & WEBB TRUCKING CO., INC., P.O. Box 1523, 770 W. Lebanon St., Mt. Airy, NC 270301523. Representative: Michael Corder (same address as applicant), (800) 334–9187. Transporting *food and related products,* between points in Woodbury County, IA, Dakota County, NE, and Lyon County, KS, on the one hand, and, on the other, points in SC, FL, GA, TN, WV, AZ, CA, NV, OR, and WA.

MC 145695 (Sub-11), filed February 22, 1982. Applicant: MAZCO SYSTEMS, INC., 140 Grand Street, Carlstadt, NJ 07072. Representative: Roy A. Jacobs, 550 Mamaroneck Avenue, Harrison, NY 10528, (914) 835–4411. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in the U.S. (except AK and HI), under a continuing contract(s) with Pfizer Inc., of New York, NY.

MC 151395 (Sub-10), filed February 23, 1982. Applicant: SNEAKER FREIGHT LINE, INC., P.O. Box 768, Conley, GA 30027. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202, Atlanta, GA 30345, (404) 321–1765. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of paints, highway marking materials and coatings, industrial coatings, and highway safety and maintenance products and equipment, between the facilities of Prismo Universal Corporation and its affiliates, Universal Road Marking, Inc., Transmark, Inc., and Redland Limited, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 152435, filed February 22, 1982. Applicant: STONE LOAD DELIVERY CO., INC., R.R. 2, Harrisonville, MO 64701. Representative: James E. Thompson Jr., P.O. Box 280 Law Bldg., Harrisonville, MO 64701, (816) 884–3238. Transporting *cement, fly ash, rock, sand and related commodities,* between points in the U.S., under continuing contract(s) with Gebhardt Concrete, of Butler, MO, Cass County Concrete, and Limpus Quarries, Inc., both of Harrisonville, MO.

MC 155755, filed February 22, 1982. Applicant: WILLIAM L. GARRETT, d.b.a. W. L. Garrett Trucking, 2501 Blackstone CT., Bakersfield, CA 93304. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 872–1106. Transporting (1) *Mercer commodities and metal products,* (2) *such commodities* as are dealt in or used by manufacturers of pipe, (3) *lumber and wood products,* between points in the U.S., under continuing contract(s) with (1) Hopper, Inc., (2) Polaris Pipe Co. and (3) Pacific Wood Preserving of Bakersfield, Inc., all of Bakersfield, CA.

MC 158055 (Sub-1), filed February 22, 1982. Applicant: PEMBROKE TRANSPORTATION CORP., 15 Baldwin Avenue, Massena, NY 13662. Representative: Zoe Ann Pace, Suite 2372, One World Trade Center, New York, NY 10048, (212) 432–0940. Transporting *metal products, and pulp, paper and related products,* between points in St. Lawrence County, NY, on the one hand, and, on the other, points in the U.S. in and east of TX, OK, KS, NE, SD and ND.

MC 158845 (Sub-1), filed February 22, 1982. Applicant: JERRY SMITH d.b.a. JERRY SMITH TRANSFER, P.O. Box 69, Magnolia St., Geneva, GA 31810. Representative: F. Lee Champion, III, P.O. Box 2525, Columbus, GA 31902, (404) 324–4477. Transporting *plastics and related products,* between points in the U.S., under continuing contract(s) with Buck Plastics Company, of Columbus, GA.

MC 159055, filed February 22, 1982. Applicant: WHITTLESEA BELL LUXURY LIMOUSINE, 1910 Industrial Rd., Las Vegas, NV 89102. Representative: Michael W. Dyer, 50 W. Liberty, Suite 610, Reno, NV 89501, (702) 322–4200. Transporting *passengers and their baggage,* limited to the transportation of no more than 7 passengers (including the driver) in one vehicle at one time, beginning and ending at points in Clark County, NV, and extending to points in CA, AZ, and UT.

MC 159075, filed February 22, 1982. Applicant: WILLIAM P. JONES d.b.a. JONES BROS. TRUCKING, 2400 Old Fort Road, Missoula, MT 59801. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Transporting *iron and steel articles,* between Chicago, IL, and points in Grayson County, TX, Peoria, Woodford, and Tazewell Counties, IL, and Santa Clara and Alameda Counties, CA, on the one hand, and, on the other, points

in AZ, CA, ID, IL, MT, NM, NE, ND, OR, PA, SD, TX, WA, and WY.

MC 159075 (Sub-1), filed February 22, 1982. Applicant: WILLIAM P. JONES d.b.a. JONES BROS. TRUCKING, 2400 Old Fort Rd., Missoula, MT 59801. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *lumber,* between points in Ferry County, WA, on the one hand, and, on the other, points in IA, IL, MN, ND, SD, and WI.

MC 160594, filed February 22, 1982. Applicant: JAMES YARBROUGH, Rt. 1, Box 34, Iowa Park, TX 76367. Representative: James Yarbrough (same address as applicant), (817) 592–4904. Transporting *clay, concrete, glass or stone products,* between points in Wichita County, TX, on the one hand, and, on the other, points in Commanche, Caddo, and Cotton Counties, OK.

MC 160654, filed February 22, 1982. Applicant: MILAN RACANOVIC d.b.a. MILAN TOURS, 22070 Miller Ave., Euclid, OH 44119. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076, (201) 322–5030. As a *broker* at Euclid, OH, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* between points in the U.S. (including AK and HI).

MC 160674, filed February 22, 1982. Applicant: PIONEER PIPE STRINGING, INC., 925 S. Main, Suite 203, Grapevine, TX 76051. Representative: J. Michael Alexander, 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237–2385, (214) 339–4108. Transporting *metal products,* between points in the U.S. (including AK, but excluding HI).

MC 160675, filed February 22, 1982. Applicant: HUSTLER EXPRESS, INC., P.O. Box 1307, Calumet City, IL 60409. Representative: William D. Brejcha, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603, (312) 263–1600. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Chicago, IL, and points in McHenry County, IL, on the one hand, and, on the other, points in U.S.

MC 160715, filed February 23, 1982. Applicant: MOJAC, INC., 185 Island Rd., Circleville, OH 43113. Representative: E. H. van Deusen, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting (1) *petroleum, natural gas and their products,* and (2) *chemicals and related products* (except classes A and B explosives), between points in OH, on the one hand, and, on the other, points in IL, IN, KY, MI, NY, OH, PA, and WV.

MC 160724, filed February 24, 1982. Applicant: GEORGE L. HILL, P.O. Box 2536, 325 Pennsylvania Ave. SE., Washington, DC 20013. Representative: George L. Hill (same address as applicant), (202) 546–7550. As a *broker,* at Washington, DC, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* beginning at points in Washington, DC, and extending to points in the U.S.

Volume No. OP5–52

Decided: March 2, 1982.

By the Commission, Review Board No. 3. Members Krock, Joyce, and Dowell.

MC 79658 (Sub-16), filed February 23, 1982. Applicant: ATLAS VAN LINES, INC., 1212 St. George Road, P.O. Box 509, Evansville, IN 47710. Representative: Robert C. Mills (same address as applicant), (812) 424–2222. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with International Business Machines Corporation, of Armonk, NY.

MC 87178 (Sub-1), filed February 23, 1982. Applicant: ORVILLE H. ANDERSON ELLIOTT TRANSFER COMPANY, Fergus Falls, MN 56537. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108, (701) 237–4223. Transporting *household goods* as defined by the Commission, between points in IA, MN, ND, SD, and WI.

MC 134328 (Sub-10), filed February 22, 1982. Applicant: D & G TRUCKING CO., INC., P.O. Box 1004, Wynne, AR 72398. Representative: James N. Clay, III, P.O. Box 9508, Memphis, TN 38109, (901) 774–9992. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Musco Olive Products, Inc., of Orland CA.

MC 140889 (Sub-26), filed February 24, 1982. Applicant: FIVE STAR TRUCKING, INC., 4720 Beidler Rd., Willoughby, OH 44094. Representative: Ignatius B. Trombetta, One Public S., Suite 1001, Cleveland, OH 44113, 216–589–0448. Transporting *textile mill products,* between points in the U.S. under continuing contract(s) with B & V Distributing, Inc. of Valley View, OH.

MC 141318 (Sub-17), filed February 23, 1982. Applicant: WEATHER SHIELD TRANSPORTATION, LTD., P.O. Box LTD, Medford, WI 54451. Representative: Robert S. Lee, 1600 TCF Tower, 121 South 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting (1) *urethane foam products,* under continuing contract(s) with Lear Siegler, Inc., of West Chicago, IL, (2) *clay, concrete, glass or stone products,* under contract(s) with Double Seal Glass Company, Inc., of Flint, MI, (3) *such commodities* as are dealt in by manufacturers and distributors of heating, ventilation and air conditioning products, under continuing contract(s) with Interstate Energy Systems, Ltd., of Milwaukee, WI, and (4) *such commodities* as are dealt in or used by distributors of lumber, plywood and millwork, under continuing contract(s) with Metropolitan Lumber Company, of Oakbrook, IL, between points in the U.S.

MC 145058 (Sub-7), filed February 22, 1982. Applicant: THOMAS PRODUCE COMPANY OF MOUNT AIRY, INC., P.O. Box 16707, Greensboro, NC 27406. Representative: Michael F. Morrone, 1150 17th St. NW, Suite 1000, (202) 457–1124. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), between points in Clarke County, GA, on the one hand, and, on the other, points in MN, IA, MO, AR, LA, ND, SD, NE, KS, OK, MT, WY, CO, NM, TX, ID, UT, AZ, WA, OR, NV, and CA.

MC 143229 (Sub-4), filed February 8, 1982. Applicant: ANDERSON CARTAGE CO., INC., 4040 Holly St.—Unit #10, Denver, CO 80216. Representative: James P. Kirkhope, P.O. Box 15296, Fort Wayne, IN 46885, (219) 422–8884. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with American Shippers, Inc., of Fort Wayne, IN. CONDITION: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(a) or submit an affidavit, indicating why such approval is unnecessary, to the Secretary's office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 5, Room 6370.

MC 145108 (Sub-63), filed February 22, 1982. Applicant: BULLET EXPRESS, INC., P.O. Box 289, Bay Ridge Station, Brooklyn, NY 11220. Representative: Robert L. Van Buren (same address as applicant), (212) 492–7332. Transporting *chewing gum and confectionery products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Wm. Wrigley Jr. Company of Chicago, IL.

MC 146898 (Sub-7), filed February 22, 1982. Applicant: MICKS SERVICE INC., 2146 Camanche Ave., P.O. Box 838, Clinton, IA 52732. Representative: Carl E. Munson, 469 Fischer Bldg., P.O. Box 796, Dubuque, IA 52001, (319) 557–1320.

Transporting *foodstuffs and related products* between points in the U.S. (except AK and HI), under continuing contract(s) with the Erie Casein Company, Inc., of Erie, IL.

MC 147769 (Sub-2), filed February 23, 1982. Applicant: SHORE AIR FREIGHT SERVICE, INC., P.O. Box 18302, Baltimore, MD 21240. Representative: Marshall Kragen, 1919 Pennsylvania Ave NW., Suite 300, Washington, DC 20006, 202–466–3778. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between Baltimore, MD, on the one hand, and, on the other, points in Cecel, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester and Somerset Counties, MD, and DE.

MC 148158 (Sub-17), filed February 22, 1982. Applicant: CONTROLLED DELIVERY SERVICE, INC., 17295 E. Railroad Ave., City of Industry, CA 91749. Representative: Robert L. Cope, 1730 M St. NW., Suite 501, Washington, DC 20036, 202–296–2900. Transporting *food and related products,* between points in the U.S.

MC 148589 (Sub-9), filed February 22, 1982. Applicant: STOREY TRUCKING COMPANY, INC., P.O. Box 126, Henegar, AL 35978. Representative: Blaine Buchanan, 1012 James Bldg., Chattanooga, TN 37402, 615–267–1135. Transporting (1) *carpets and rugs,* under continuing contract(s) with Coronet Industries, Inc., of Dalton, GA: (2) *floor coverings including wood,* under continuing contract(s) with Pacific Floor Supply, Inc. of Emeryville, CA: (3) *paper and paper products, and floor coverings,* under continuing contract(s) with Fargo Paper Company, Inc. of Fargo, ND; (4) *polypropylene and polypropylene products,* under continuing contract(s) with Synthetic Industries, Inc. of Chickamauga, GA; and (5) *rubber and rubber products,* under continuing contract(s) with Mohawk Tire and Rubber Company of Hudson, OH, between points in the U.S.

MC 152509 (Sub-21), filed February 22, 1982. Applicant: CONTRACT TRANSPORTATION SYSTEMS CO., 1370 Ontario St., Cleveland, OH 44101. Representative: J. L. Nedrich (same address as applicant), (216) 566–2677. Transporting *lead-acid storage batteries, battery plates, and related products,* between points in the U.S., under continuing contract(s) with Alco Battery Co., Inc., of Lithonia, GA.

MC 155779 (Sub-3), filed February 22, 1982. Applicant: DIAMONDHEAD FREIGHT SYSTEM, INC., P.O. Box 462, Decatur, IN 46733. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204, (217) 638–1301. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in IL, IN, MI, and OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 156509 (Sub-1), filed February 23, 1982. Applicant: W.M.M. COMPANY, INC., P.O. Box 80, Goshen, OR 97401–1043. Representative: Wilford L. Main, 2299 Willona Dr., Eugene, OR 97401, 503–485–4255. Transporting *building materials,* between points in CA, NV, OR, and WA.

MC 160689, filed February 23, 1982. Applicant: BOATS & THINGS TRUCKING CO., INC., 1505 Sherbrook Rd., Chesapeake, VA 23223. Representative: John W. Perry, Sr. (same address as applicant), (804) 487–0925. Transporting *general commodities* (except classes A and B explosives), between Portsmouth, VA, on the one hand, and, on the other, Norfolk, Chesapeake, Virginia Beach, Hampton, Newport News, and Suffolk, VA, and points in York County, VA.

MC 160678, filed February 22, 1982. Applicant: AL CORDEIRO d.b.a. CORDEIRO TRUCKING, 713 Northwest 6th Ave., Dania, FL 33004. Representative: Bernard C. Pestcoe, 201 Alhambra Circle, Suite 511, Coral Gables, FL 33134, 305–445–9668. Transporting (1) *classes A, B and C explosives,* and (2) *plastic and/or polypropylene fabrics,* between points in the U.S. under continuing contract(s) with Florida Explosives, Inc. of Hialeah, FL. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring five (5) years from the date of issuance of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–6398 Filed 3–9–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be

construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–37

Decided: February 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating in part).

MC 95211 (Sub-2), filed February 22, 1982. Applicant: JOE FORTUNER, 99 South Main Street, Carbondale, PA 18407. Representative: Joseph A. Keating, Jr., 121 South Main Street, Taylor, PA 18517, (717) 344, 8030. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 159101 (Sub-1), filed February 18, 1982. Applicant: FREEMAN'S TRUCKING COMPANY, 919 K St., Tacoma, WA 98405. Representative: Marvin P. Freeman, 8350 6th Ave., Tacoma, WA 94365, (206) 564–8122. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditions* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160651, filed February 22, 1982. Applicant: MOVE AMERICA, INC., 2 Olmstead Place, Norwalk, CT 06855. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785–0024. As a *broker* of *general commodities* (except household goods), between points in the U.S.

Volume No. OP1–39

Decided: March 2, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 160671, filed February 22, 1982. Applicant ROBERT H. COTTON, 6710 Doncaster Dr., Gladstone, OR 97027. Representative: Robert H. Cotton (same address as applicant), (503) 654–9972. Transporting *food and other edible products and byproducts intended for human consumption* (except alcholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of of the motor vehicle in such vehicle, between points in the U.S.

MC 160691, filed February 22, 1982. Applicant: TIM KENNEDY TRUCKING, 912 Knottingham Drive, §2A, Schaumburg, IL 60172. Representative: Tim Kennedy (same address as applicant), 312–980–3639. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160700, filed February 22, 1982. Applicant: R & B MOVING & STORAGE CO., d.b.a. BROADWAY MOVING & STORAGE CO., 4830 Monaco, Commerce City, CO 80022. Representative: Bruce Luckett, 13100 Willow Lane, Golden, CO 80401, (303) 233–0706. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

Volume No. OP3–040

Decided: March 3, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 141094 (Sub-11), filed February 22, 1982. Applicant: ACME TRUCKING, INC., 109 E. Main St., Newark, OH 43055. Representative: Frank L. Calvary, 3066 N. Star Rd., Columbus, OH 43221, (614) 459–4248. Transporting *general commodities,* between South Haven, Cableton, Covert, and Toquin, MI, Abbeville, College Hill, Holly Springs, Hudsonville, Lamar, McClary, Michigan City, Oxford, Spraggins, Taylor, Waterford, Water Valley, Arm, Oakville, Hathorn, and Columbia, MS, Bolivar, Conger, Hickory Valley, Malesus, Medon, Middleburg, Toone, Rose Hill, Beach Bluff, Luray, Lexington, Dresden, Ralston, Martin, Gibbs, Riverside, Jordania, Scottsboro, Steel City, Ashland City, Chapmansboro, Fox Bluff, Doddsville, Hickory Point, New Providence, Kenwood, and Edgoten, TN, Broughton, Dales, Equality, Havoline, Junction, Shawneetown, Graymont, and Flanagan, IL, Barton, Bergoo, Hylow Mine, and Webster Springs, WV, Badger, Westgate, Sumner, Fredericksburg, Alta Vista, Elma, Riceville, McIntyre, and Centerville, IA, Elkton, Sargeant, Waltham, Hayfield, West Concord, Nerstrand, and Dennison, MN, Tea, Lennox, Davis, Viborg, and Irene, SD, Nelson, NE, Wayland, Kahoha, Granger, Arbela, Memphis, Downing, and Lancaster, MO, Joliet, Boyd, Roberts, and Red Lodge, MT, Benton, Thompsonville, and Masonville, KY, Elsinore, CA, Weston and Parrott, GA, Henrietta, NC, Edgefield and Furman, SC, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 152144 (Sub-2), filed February 23, 1982. Applicant: COMBINED TRANSPORT, INC., P.O. Box 3667, Central Point, OR 97502. Representative: Kenneth R. Mitchell, 2320A Milwaukee WY, Tacoma, WA 98421, (206) 383–3998. Transporting for or on behalf of the United States Government *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munition), between points in the U.S.

MC 160704, filed February 22, 1982. Applicant: RICHARD L. MONG, d.b.a. EATMORE MARKET, 312 S. Broadway, Greenville, OH 45331. Representative: (Same as above) (513) 548–2520. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160735, filed February 24, 1982. Applicant: CALIFORNIA CROWN INDUSTRIES, INC., 3863 Arvidson, Rd., Chino, CA 91710. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, (213) 277–2323. Transporting, for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between point in the U.S.

Volume No. OP4–75

Decided: March 3, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher and Williams.

MC 147036 (Sub-3), filed February 22, 1982. Applicant: R–D TRANSPORT CO., INC., P.O. Box 229, Winchendon, MA 01475. Representative: Charles Biter, 59 Harrison Dr., Fairless Hills, PA 19030, (215) 493–8424. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 160756, filed February 25, 1982. Applicant: CARL K. WILLIQUETTE, d.b.a. GREAT LAKES INDEPENDENTS, 2806 River View Dr., Green Bay, WI 54303. Representative: Wayne W.

Wilson, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP5–51

Decided: March 1, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 160409 (Sub-1,), filed February 22, 1982. Applicant: SOUTHERN NEVADA MOVERS, INC., 1037 East Colton Ave., Las Vegas, NV 89030. Representative: Mike Pavlakis, P.O. Box 646, Carson City, NV 89702, (702) 882–0202. Transporting *used household goods* for the account of the United States Government, incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between point in the U.S.

MC 160618 filed February 18, 1982. Applicant: JAMES MORTON WARE, d.b.a. WAREXPRESS TRUCKING CO., 4205 Selkirk Dr. West, Fort Worth, TX 76109. Representative: A. William Brackett, 623 South Henderson, 2nd Floor, Fort Worth, TX 76104, 817–332–4415. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160638, filed February 19, 1982. Applicant: GERALD BARNARD, Rt. 1, Wakita, OK 73771. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, 405–424–3301. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160648, filed February 19, 1982. Applicant: HENRY ALFONSO, 94 Maplewood Dr., Halifax, MA 02338. Representative: Henry Alfonso (same address as applicant), 617–293–7470. As a broker of *general commodities* (except household goods), between points in the U.S.

MC 160659, filed February 19, 1982. Applicant: A J TABONE AGENCY INC., 107 Seventh North St., Room 143, Liverpool, NY 13088. Representative: Anthony J. Tabone, 9 Jefferson St., Auburn, NY 13021, 315–252–8109. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP5–53

Decided: March 2, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 141898 (Sub-5), filed February 22, 1982. Applicant: ROBERTS EXPRESS, INC., P.O. Box 7162, Akron, OH 44306. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. (614) 481–8821. Transporting *shipments* weighing 100 pounds or less, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–6397 Filed 3–9–82; 8:45 am]

BILLING CODE 7035–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–117]

Certain Automotive Visors; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: March 3, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82–6470 Filed 3–9–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–116]

Certain Drill Point Screws for Drywall Construction; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: March 3, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82–6471 Filed 3–9–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–86 Through 119, 701–TA–121, 701–TA–123 Through 144, 701–TA–146, 701–TA–147, 731–TA–53 Through 65, and 731–TA–67 Through 86 (Preliminary)]

Certain Steel Products From Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West German

On March 3, 1982, the Commission's determinations in these investigations and the views of Chairman Alberger, Vice Chairman Calhoun, and Commissioners Stern and Eckes were published in the Federal Register (47 FR 9087). The views of Commissioner Eugene J. Frank follow.

Views of Commissioner Eugene J. Frank

I. Overview

First, I would like to note that the statute and legislative history in title VII investigations require the Commission in its preliminary determinations for both antidumping and countervailing duty investigations to exercise only a low-threshold test based upon the best information available to it at the time of such determination that the facts reasonably indicate that an industry in the United States could *possibly* be suffering material injury, threat thereof, or material retardation.[1]

The 45-day preliminary injury determination compressed time period was, in my view, intended by Congress to screen those petitions where it was readily apparent, albeit based on a necessarily incomplete record, that there was no indication of possibly establishing injury even with adequate time, a thorough and fully developed investigation and record, and comprehensive hearing before the Commission. As Chairman Alberger stated in testimony on November 12, 1981, before the House Ways and Means Trade Subcommittee:

The "reasonable indication of material injury" standard is low enough that it does not force domestic industries to present more than a prima facie case before there is a full adjudication.

Such a standard applies equally to antidumping and countervailing duty investigations inasmuch as the statutory language is the same and given the intent of Congress for subsidy cases to follow the general practices of the ITC under the antidumping law.

Of course, it is important to keep in mind that the Traiff Act of 1930 and its legislative history are quite clear that the "material injury" to be ascertained

[1] H.R. Report No. 96–317, 96th Cong., 1st Sess., p. 52 (1979).

in these investigations is defined to mean harm which is "not inconsequential, immaterial, or unimportant".[2] Section 771(7)(B) of the Act provides factors the Commission shall consider, among other factors:

(i) the volume of imports of the merchandise which is the subject of the investigation,

(ii) the effect of imports of that merchandise on prices in the United States for like products, and

(iii) the impact of imports of such merchandise on domestic producers of like products.[3]

Within the context of evaluating the volume of imports of the merchandise which is subject to the investigation and its effect on prices, in assessing impact in the affected industry, the language of the statute makes it clear that economic factors cited therein are not all-inclusive to wit: "* * * the Commission should evaluate all relevant economic factors which have a bearing on the state of the industry, including but not limited to * * *"[4] Legislative history on this point is also quite clear:

In determining whether an industry is materially injured, as that phrase is used in the bill, the ITC will consider, to the extent permitted by information submitted to it in a timely manner, the factors set forth in section 771(7) (C) and (D) together with any other factors it deems relevant.[5]

There is also recognition in the Statute and legislative history that discretion necessarily must be given to the Commission to determine the significane to be assigned to a particular factor within the framework of other facts of each specific case.

Neither the presence nor the absence of any factor listed in the bill can necessarily give decisive guidance with respect to whether an industry is materially injured, and the significance to be assigned to a particular factor is for the ITC to decide.[6]

It is expected that in its investigation the Commission will continue to focus on the conditions of trade, competition, and development regarding the industry concerned.[7]

A word on the issue of causation is pertinent, because I feel there is some misunderstanding about just what is required by law in this crucial area in these preliminary investigations. The causation element is that material injury must be "by reason of" the subsidized or less-than-fair-value imports: the linkage language "by reason of" directing an examination of the effects of such imports on the domestic industry. Legislative history makes it clear that Congress did not intend for the Commission in examining whether a causal link exists, to weigh injury which might be incurred from such imports against other factors which may be contributing to overall injury to an industry, although it should take into account evidence alleging such harm which was attributed to such imports was attributable to other factors. Moreover, the petitioner is not required to "bear the burden of proving the negative" that material injury is in fact *not caused* by such other factors. Further, the Commission is not required to make any precise mathematical calculations with respect to the harm associated by other factors.[8] Finally to quote directly from the House Report:

In short, the Committee does not view overall injury caused by unfair competition, such as dumping, to require as strong a causation link to unfairly competitive imports as would be required for determining the existence of injury under fair trade conditions.[9]

I would like to emphasize an important point, namely, that the Commission's charge in these *preliminary investigations* in evaluating the impact of alleged unfair imports, within the framework of the aforementioned discretion accorded it in analyzing relevant factors and establishing a causation link, must be undertaken within the less rigorous standard that the facts on the record and information available to it *reasonably indicate* that the affected domestic industry could *possibly be suffering material injury, threat thereof, or material retardation.*[10]

This less rigorous standard which was, as I have said earlier, intended by Congress in my view to be applied in a 45-day compressed time frame to screen petitions devoid of any merit where there was no indication of possibly establishing injury even with adequate time, must be applied with caution and equity, not in an arbitrary or capricious fashion, with the reasons set forth adequately documented. Yet we are to face a problem in the staff report on which the Commission relies in its determinations for these 92 steel investigations (during which there was a considerable volume of data and submissions tendered the Commission by a sundry number of parties), of material omissions of corroborated information on a number of critical factors that the Commission responsibly should take into consideration before eliminating products and countries involved in these investigations from proceeding to the final stage, permitting the Administering Authority (Commerce) to continue its investigations on a preliminary basis for these products including:

- Lack of sufficient data on production capabilities and utilization of capacity for all products and countries cited in these investigations (bearing particularly on the issue of threat and potential surges of unfairly traded imports to the U.S.);
- Related to the previous, the lack of comprehensive data on the capability of foreign producers having integrated operations to switch to other finished products which may be excluded from further investigation by the Commission and Administering Authority;
- Lack of data on other international markets' (in addition to the U.S.), present and potential demand served or to be served by such products and related pricing patterns and other pertinent economic factors;
- No work or analysis or even recognition given to potential impacts on net revenues, profits, employment, lost economic opportunities if certain products were eliminated and countries excluded due to de minimis considerations. An important corollary consideration here is the concentration in the domestic market in a number of these products by large integrated producers where loss of gross revenues on a marginal basis have a more pronounced effect on the front end of the steel making process characterized by high capital investment and concomitant high fixed costs. Even with respect to certain steel bar products in which integrated firms have less market presence that are characterized by high value-added in finishing, many firms producing these products include such products in a fairly broad product spectrum, and in the case of electric furnace operations nonetheless have high fixed costs at the raw-steel end to cover;

[2] Report on H.R. 4537 of the Senate Committee on Finance, p. 88.

[3] 19 U.S.C. 1677(7)(B).

[4] 19 U.S.C. 1677(7)(C).

[5] Report on H.R. 4537 of the Senate Committee on Finance, p. 88.

[6] Id., and 19 U.S.C. § 1677(7)(E).

[7] Senate report, p. 88.

[8] Report of the House Ways and Means Committee on H.R. 4537, p. 47.

[9] Id.

[10] Although, having found a reasonable indication of material injury by reason of these imports in these investigations, I did not reach the issue of threat, nonetheless data and trends with respect to certain products, which appeared incomplete in these preliminary investigations along with the record to reach that determination, still point to the possibility of future determinations of threat if a full investigation were able to provide more comprehensive data on e.g. Foreign Capacity. In this respect, I will discuss the issue of threat from time to time in these views.

• Lack of acceptable information on prices and lost sales upon which to draw definitive conclusions. Discussions on pricing trends between imported and domestic products utilizing producer price, unit value indices and trigger prices can be misleading and are less than comprehensive. The Producer Price Index is based on list prices and may not reflect changes in actual transaction prices. Unit value indices may vary with time not only due to prices but also to changes in the specific type of steel being imported (including quality considerations). Data and indices presented on transaction prices (i.e., average net selling price for specific products from domestic producers and importers) are average weighted prices charged in different transactions. There is nothing that corroborates conclusively the representativeness of the transactions and products selected and credibility of sources utilized that would justify relying on such data to compare trends in levels of importers' and domestic producers' prices and/or on a country-by-country basis. Also direct inquires of purchasers for information on delivered prices paid in specific transactions, based on information at hand on a limited number of products, not in most cases representing total country coverage and from sources where their degree of market participation is not disclosed, cannot be relied upon in terms of comprehensiveness or representativeness. Also terms and conditions of credit extended for such transactions are not included in such data. In terms of lost sales, coverage of allegations was less than complete, and for the most part, in my judgement confirmed results were not representative. Sources for this information were not disclosed, their relationship if any, to foreign and domestic producers, nor was their market participation cited. I believe acceptance of such information in terms of prices received and magnitude of sales, in the absence of hard documented data from Customs and/or examination of actual invoices for such transactions, in order to reach determinations as to whether underselling occurred and, if so, the tonnage and countries involved, is not appropriate. Telephone inquiries with parties able to make verbal representations as to transactions could be questioned and could be considered incomplete and impervious to accountability.

Although one could argue with reason that such issues could not be covered comprehensively in a 45-day investigation by a staff hardpressed to complete the task at hand, information was lacking for the most part, for some reason, particularly with respect to foreign capacity for products/countries involved and with respect to price data. With regard to pricing data, for the purpose of these preliminary investigations in recognition of the low threshold standard, I have been compelled to rely on the record and petitioner allegations of unfair pricing practices and concomitant margins of underselling (including that submitted to the administering authority (Commerce)) which have not been conclusively refuted to date, as part of my determinations. Obviously, such a procedure and reliance devoid of staff corroboration would be manifestly unjustified in a final investigation process as it would be inconsistent, in my view, with the more rigorous standards required in final determinations of injury. I will, however, when I feel it germane, allude from time to time to certain information obtained by staff in certain products which show certain indications of pricing patterns which albeit less than complete, are at least worthy of mention. I do not believe, however, that the intent of Congress was to penalize petitioners who have demonstrated potentially meritorious cases in the preliminary stage that are worthy of continuation, for an inability to obtain certain information in satisfactory form and substance in critical areas such as price, particularly when substantial potential economic consequences are at stake as is the case in these steel investigations. As stated before, I believe the legislative history permits the Commission the discretion to take into consideration and weigh information and economic factors *or the lack thereof* in its deliberations and determinations.

The issue of cumulation with regard to the imported products subject to these preliminary investigations, has been addressed extensively in various memoranda of the General Counsel submitted to the Commission, as well as in briefs and statements submitted by various parties.[11] Within each of the nine product categories, the impact of comparable imported articles from as many of the respondent nations that produce and export the products in question to the United States, has been cumulated. I believe the record amply corroborates the fungibility of the articles in question and therefore their comparability in terms of "like product" and being of the same class or kind of merchandise.

Arguments have been presented that the Commission should address the cumulation question in a well-reasoned set of criteria. I believe this is a logical and correct approach. I believe that the statute, as well as other pertinent economic factors, permit the Commission to take into consideration the cumulative injury caused by all alleged unfairly traded imports. The emphasis is the possible resulting injury, not a narrow focus on the procedures and methods employed, although they should and are being considered. The nature of the industry in both the United States, as well as in those countries subject to these preliminary investigations, is such that a focus purely constrained by market considerations within a like product basis, may obscure the reality that producers can shift within a finished product category in response to demand conditions. For example, producers will allocate more raw steel capacity to specific finishing mills depending on end-market conditions, decisions which are governed by several factors such as demand, prices, profit margins, inventory of that specific product, and working capital requirements. The suggested criteria that cumulation is appropriate if the dumped or subsidized imports concerned all compete or impact upon the *same market* could be an impossible requirement. It assumes end-users' demand and the character and nature of end users to be constant which it is not, and ignores the dynamics of the uses of these steel products and the particular needs they satisfy.

Whether the steel products being imported are directed to the same end users or same geographical market, or whether they pass through the same or different channels of distribution, or whether they are priced similarly, the fact that these penetrate contemporaneously or sequentially according to the same demand patterns, is important. However, this recommended criteria ignores the fact that these imported articles within the same product categories can be directed to other end users and other geographical markets, perhaps under not similar terms and conditions and prices rather quickly, depending on the prevailing conditions and patterns of trade, resulting in not inconsequential injury. For example, alloy steel bar shipped mostly to satisfy oil-country goods needs, can tomorrow be shipped for automotive or industrial machinery or heavy construction equipment end-use application. The law and the intent of Congress, cover, in my judgment, the fact that unfairly traded imports of "a

[11] See e.g., GC–E–337, GC–F–028, GC–F–034.

class or kind of merchandise" from one or many sources, will have the same injurious impact on the domestic industry. It has been asserted by some respondents that even if we could cumulate import data in these preliminary investigations, it would not be appropriate to cumulate imports of certain products from certain countries, because these imports are so minimal as not in themselves contributing to material injury. I do not agree with this contention because if it were applied consistently, assuming one could reasonably define what is minimal (aside from the questionability of applying the same definition to different finished product lines with varying historical tonnage consumption patterns and uses and characteristics), an industry could be impaired by a significant level of imports from numerous sources, yet have no remedy under trade laws, inasmuch as none of these sources would be construed to account per se for the injury. As indicated before, the application of a standard of what would be considered to be minimal on a volume basis across product lines, appears to be questionable and arbitrary. For example, the loss of a 5,000 ton order of cold-rolled alloy steel bar is usually of greater economic and financial consequence compared with a loss of similar size order of hot-rolled carbon steel sheet. Therefore, I believe it makes no sense to excuse voluntarily ab initio even for screening purposes allegedly unfairly imported products by national origin on a de minimis basis when the problem is the totality of all such imports.

Condition of the U.S. Steel Industry

Steel production in the United States is characterized by concentration in terms of raw steelmaking capacity in large integrated firms, with the seven largest firms accounting for about 75 percent of raw steel produced in 1980.[12] Mini mills making steel with electric furnaces, and specializing in a more narrow-product range, have increased their share of steel shipments, accounting for an estimated 12 to 15 percent of total U.S. steel shipments in 1980. Capacity utilization measured in raw steel production has declined from 86.8 percent in 1978 to 72.8 percent in 1980. In the last quarter of 1981, capacity utilization was about 63 percent.[13] In recent years several producers have closed steel-producing facilities and others have announced they will be purchasing substantial amounts of semifinished steel from offshore sources to be processed in their finishing mills. Of note, McLouth Steel Corp. (the 10th largest U.S. steel producer) recently filed for protection under the Bankruptcy Act. Raw steel production in the U.S. in 1980 fell to the lowest level in the last decade, dropping to 112 million tons. The domestic industry's share of world production of raw steel similarly declined from 19.6 percent in 1973 to 14.1 percent in 1980. Net shipments by domestic producers of all steel mill products in 1981 totaled 81 million tons, about 4 percent more than 1980 shipments, but considerably lower than the 94.2 million ton average annual net shipment levels registered over the 1971–80 period inclusive. U.S. producers' shipments of carbon steel mill products subject to these investigations, fell from 58.2 million tons in 1979 to 45.7 million tons in 1980, representing a 21-percent decline. U.S. producers' shipments of the alloy steel mill products subject to these investigations decreased to 2.1 million tons in 1980 from the 2.9 million tons in 1978 and 1979, or by 28 percent. U.S. steel exports, however, showed an increase from 2.8 million net tons in 1979 to 4.1 million in 1980, with the largest share, approximately 47 percent, going to Latin America. Imports of all products subject to these investigations in 1978 amounted to approximately 20.8 million tons, declining in 1979 to 17.3 million tons and in 1980 to approximately 15.3 million tons. U.S. imports for consumption from the countries subject to these investigations for the products covered by these investigations amounted to about 7 million tons in 1978, 5.3 million tons in 1979, and about 4 million tons in 1980.

However, cumulative comparative 10-month 1980 and 1981 data for these same products from respondent countries, which were not presented in the Staff Report in aggregate form, as submitted by certain petitioners citing Department of Commerce/Wharton sources, show totals of such imports for these comparable periods increasing by over 736,000 tons, representing a 22-percent increase over the total for 1980, reaching over 4 million tons in the past 10 months. This 1981 10-month level exceeded the approximately 4 million ton levels reached for all of 1980.[14] Certain petitioners, citing the same sources, indicate that imports of the accused products from the respondent nations in the aggregate, as a share of aggregate domestic consumption, rose from 4.7 percent in the first quarter of 1981, to 7.2 percent in the second quarter, and to 10.7 percent in the third quarter. Correspondingly, shipments of the same products by domestic steel producers as a share of aggregate domestic consumption fell from 89.2 percent in the first quarter to 85.4 percent to 80.8 percent in the third quarter 1981.[15]

Total employees engaged in the production and sale of iron and steel products as compiled by the AISI decreased from 508,600 in 1974 to 453,200 in 1979. In 1980, this total went down from 453,200 to 398,800. Furthermore, AISI statistics indicate that average number of employees for the month of October 1981 was down further to 380,000.[16] As of December 26, 1981, over 76,000 steelworkers were on layoff status as compared with about 24,000 in May 1981. Also, a large number of steelworkers were working a short work week in 1981, increasing from 2,536 as of the end of May, to 16,388 as of December 26, 1981.[17]

Total labor costs per hour increased from $14.30 in 1978 for wage employees, to $18.45 in 1980. The average annual increase in 1971 to 1980 was 12.8 percent. Productivity, as measured by the Bureau of Labor Statistics Productivity Index, which showed an increase from 1975 to 1979, went down in 1980 and registered only a 1.3-percent average annual increase in the 1971–80 period.

Net sales for 1980 of 17 U.S. producers accounting for an estimated 82 percent of total U.S. production of raw steel in 1980 were $35.4 billion down 9 percent from 1979's $38.9 billion level. Operating profit for the same period showed an even more drastic decline, dropping from $1.6 billion to 723 million, or by 55 percent. Cash flow from operations for these same companies was reduced by over 27 percent in 1979–80, dropping from $3 billion to $2.2 billion. Capital expenditures for these 17 firms have been increasing each year from 1978 to 1980. At the same time, the ratio of operating profit to net sales has gone down from 5 percent in 1978 to 4.1 percent in 1979, to a dangerously low 2.0 percent in 1980, representing a decline of 60 percent for this critical ratio during that period. Similarly, adverse financial

[12] I–4 Staff Report. Unless otherwise indicated, all data in this section were obtained from the accompanying staff report.

[13] Data reported on a weekly basis by the American Iron and Steel Institute (AISI) to the media.

[14] Brief of Cravath, Swaine & Moore, attorneys for petitioners Republic Steel, Inland Steel, J&L, National Steel, Cyclops (hereinafter "group of five"), pp. 190–191.

[15] Id. pp. 244–245.

[16] AISI "Steel Employment News" release dated Nov. 10, 1981.

[17] Brief of Cravath, Swaine & Moore, attorneys for the group of five, p. 182, citing Ms. Janet Nash of AISI as source.

experience was reported for 18 selected producers, which provided usable data for operations which produced carbon steel products from 1978 to 1980. Although there was some improvement in net operating profit and net sales in 1981 for these firms, accounting for 80 percent of U.S. producers' shipments of carbon steel mill products subject to these investigations, operating profit margins were still well below 1978 and 1979 results, and many more firms reported operating losses. Profit-and-loss experience of 10 U.S. producers of alloy steel products accounting for 61 percent of U.S. shipments of such products evidenced improvement over 1980 on their gross and operating profits, but operating profits at 2.2 percent of sales were below 1978 levels of 2.7 percent, and, in any event, did not represent a satisfactory return. Comparative data for the domestic producers of all steel products under investigation indicate that with the exception of those producing hot-rolled alloy steel bar and cold-formed alloy steel bar they showed lower returns on their operations than did either all manufacturing companies or all durable goods producers for January-September 1981. In 1980, producers of hot-rolled alloy steel bar also registered lower returns on operations than did all manufacturing companies or durable goods producers. Of the nine products under investigation, producers of six products experienced negative operating profit ratios in 1980. In the more recent 1981 period, six of the nine products involved similarly showed negatiave operating profit ratios. For 1978 and 1979, producers of only one of these products evidenced a negative operating ratio.

I believe, consistent with my recent determinations on *Hot-Rolled Carbon Steel Sheet From France* and *Hot-Rolled Carbon Steel Plate From Belgium, Brazil, and Romania,*[18] that the markets for these steel products are largely price sensitive, particularly in a period of falling domestic consumption for many of these products, which further exacerbates the potential impact of increased volumes of imports on prices.

Testimony by an experienced steel marketing executive has emphasized that, particularly in times of weak demand, price is the overriding factor in purchasing decisions over and above reliability, quality, service, proximity of source, etc. This particular testimony claims that no producer from Europe can make a product or quality because of particular facilities that domestic producers cannot make.[19] The fact that product differentiation is not an issue, further underscores the importance of price as the determining factor in the steel business, and this reaccentuates the role that alleged subsidized or less-than-fair-value imports play in facilitating the obtainment of larger domestic market shares by foreign producers, to the detriment of the domestic industry. Furthermore, looking strictly at lost sales allegations may obscure the fact that competing domestic producers may have had to discount significantly in order to make sales and preserve cash flow.

The whole history of the domestic steel industry bears testimony to the fact that the demand for steel is inelastic. Fierce price competition in periods of slack demand has never expanded the demand for steel products. It has, however, changed the vendors, whichever one has the lowest quote. In periods of peak demand, premium prices have never affected final demand—witness 1974, when premium prices were readily accepted by end users over a large spectrum of products without a corresponding weakening of demand.

Definition of the Domestic Industries

Pursuant to sections 771(4)(A) and 771(10) of the Tariff Act of 1930, I have determined the scope of the domestic industries involved in these investigations to be the nine different categories of steel products alleged to be sold at less than fair value or subsidized from Belgium, Brazil, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, Romania, and the United Kingdom as well as two countries for which the Commission is not charged with making an injury determination, Spain and the Republic of South Africa, as more fully detailed in respective descriptions of the product, its uses, characteristics, and methods of manufacture in the Report. These nine steel product categories are:

(1) hot-rolled carbon steel plate.
(2) hot-rolled carbon steel sheet and strip.
(3) cold-rolled carbon steel sheet and strip.
(4) galvanized carbon steel sheet.
(5) carbon steel structural shapes.
(6) hot-rolled carbon steel bar.
(7) hot-rolled alloy steel bar.
(8) cold-formed carbon steel bar.
(9) cold-formed alloy steel bar.

On the basis of the information before me in these preliminary investigations, I have found each of the nine separate product categories to constitute a "like product," each of which possesses separate physical characteristics of size, shape, or composition and uses and serves markets that generally do not compete with one another; therefore, I have found that there are nine domestic industries involved in these investigations defined by these nine product categories.

Since the act prescribes such a domestic industry approach in these investigations, I believe, in ascertaining injury to the domestic industry affected in the conduct of these investigations, it is appropriate to consider as a relevant factor in all of these investigations the basic, commonsense economic reality of the impact of such imports on the domestic steel industry in general. This is why I have provided a summary glance at the state of the domestic steel industry which shows that it is not in good health.

Individual product lines in the nine categories, each of which makes up a separate industry in compliance with the Act, cannot be examined in a caccum. In six of the nine product lines, the "industry" is heavily concentrated by the sizable market presence of large integrated producers. In the three other products which are high value-added finished products more typically characterized in market presence by mini mills and fabricators, you still have to look back to the raw-steel end, regardless of its source—whether by an electric furnace operation contained in the same facilities or via purchased semifinished steel for a fabricating operation

The steel industry has been accurately depicted as a capital intensive industry with the bulk of capital dollars, around 70 percent at the "front end," i.e., the hot-metal/raw-steel end. In an industry characterized by high fixed costs (in recent years a considerable portion of which emanated from government regulatory mandated facility improvements that while promulgating perhaps socially desirable results in pollution control and OSHA do not possess positive incremental cash flow benefits), an integrated producer's economic behavior whether pushing the steel through the flow-line to a finished good or to a semifinished state for sale to intermediaries such as steel service centers, fabricators, etc., must exhibit a rational concern for maximizing overall profits and favorable levels of capacity utilization rather than a focus on profits on any one line or product category.

[18] Investigation No. 701-TA-65 (Preliminary), January 1982, USITC Publication 1206; investigations Nos. 701-TA-83 and 84 (Preliminary) and investigation No. 731-TA-51 (Preliminary), January 1982, USITC Publication 1207.

[19] Written testimony of Mr. William F. Ewart, Senior Vice President, National Steel Corporation, before the USITC.

Scrutiny of aggregate raw steel capacity utilization and overall financial experience is therefore of paramount importance; and in the end result, such an approach supersedes technical accounting distinctions and allocations on a product-line basis, in assessing the viability of an industry of significance to the U.S. not only from an economic standpoint but from a national security standpoint. Consequently, accounting profits booked on a product-line basis may in fact be illusory, e.g., based on arbitary cost allocations, artificial inventory profits or on unrealistic depreciation schedules in view of replacement costs. Further, even if profits are in fact based on intrinsic economic reality, a microeconomic approach would dictate viewing tonnage on a marginal revenue product/marginal cost basis: that is, with an "industry," narrowly defined, booking profitable margins, the opportunity costs associated with potential lost tonnage of the product or at depressed or suppressed prices are magnified when associated with the overall high level of fixed costs that have to be covered on a raw-steel operating basis. Also, in financial analytical terms this approach recognizes that there is a high degree of operating leverage which magnifies gains on the bottom line when operating capacity rates increase incrementally but conversely increases losses when such rates incrementally decline past "break-even levels."

Therefore, in the conduct of these preliminary investigations, I have taken into consideration in my analyses of the effect of such imports on the "nine" industries defined, their impact on the overall condition of the steel industry. To do otherwise in my view would be indulging in analytical myopia as well as ignoring the effects and impacts other economic considerations which I consider relevant are having on this basic industry, some of which are allegedly caused by this increased volume and penetration of imports.

I would close by saying that the steel industry has many problems confronting it aside from the issues of alleged unfairly traded imports before the Commission in these investigations which are well-known and bear no repetition here. I must reiterate my previous discussion that the Statute does not require a weighing of such other factors against the factor of whether material injury to the affected domestic industry has been caused by unfairly traded imports in establishing the requisite causal linkage. I have taken such factors into consideration in my analyses.

I believe the following statement of Commissioner Stern set forth in her views concerning the preliminary investigation of *Certain Carbon Steel Products* in May 1980 is germane to the issues of material omission of critical information for these investigations: "In preliminary cases, I must base my determination as much on what information the Commission has not been able to gather (but has expectations of developing in a full scale investigation) as on the information before me." [20]

I feel however, that the record and information before me provides a reasonable indication that an industry in the United States could possibly be suffering material injury in these preliminary investigations by reason of allegedly unfairly traded imports from the countries cited and have made my determinations accordingly as set forth herein.

A final word is appropriate here. The magnitude of injury incurred by the basic steel industry and the segment of the industrial base of the United States dependent upon it is readily discernible. The steel industry has been impacted financially and, as a result, is going through a period of self-liquidation. Numerous plants have been closed and companies have gone bankrupt. Questions are now being asked as to the extent of the erosion of our industrial base and possible national security problems. Tens of thousands of steelworkers' jobs have been permanently lost. Unemployment continues to run rampant and dozens of communities dependent upon the steel industry or its suppliers are facing difficult times. Total direct and indirect steel unemployment is now estimated to be in excess of 300,000 jobs which, aside from personal injury, also has a damaging negative impact on this Nation's effort to balance its budget. Imports continue to come in at record levels, putting additional pressure on the industry financially, thus jeopardizing its modernization program as well as creating severe and continuing hardship for steelworkers and further impacting this Nation's balance of trade.

A preliminary finding that there is *not* a reasonable indication that imports are causing material injury (or threat thereof) to the domestic industry in the majority or all of the cases before the Commission would be a determination *without the benefit of:*

1. Proper analysis with necessary financial and technical information and understanding about the structure of the basic steel industry relative to cumulation issues, which as staff has advised me, the Report does not take into account;

2. Proper and complete internal analysis of the impact of lost gross revenues which are marginal and what their impact would be on net revenues and profits, particularly in an industry characterized by high fixed costs such as steel. Testimony was presented by Dr. Lawrence Klein, a Nobel Prize-winning economist, who did such an analysis that indicated there would be a more pronounced effect on net revenues. The analysis of the impact of lost gross revenues on net margins coupled with a detailed financial study which would include such points as breakeven analysis, etc., are particulary important when considering an import from a country of a product representing a comparatively small or diminutive percentage of import penetration;

3. Detailed financial analyses other than mere reporting of revenues and income. Based on the premise that the steel industry is being self-liquidated, proper financial analysis then would confirm in many cases that although a profit may have been earned, it may be inadequate and as a result the facility could go into liquidation due to high replacement or modernization cost;

4. Availability of documented price data on imports. Any mention of price or price levels would be mere speculation unless the price data on the imports were supplied by Customs;

5. Proper documentation on lost sales information. The Commission in making its decisions was not in a position to comment on lost sales. When rendering an opinion, any comment or weight given to the Commission's data on lost sales would be mere speculation in that Commission Staff advised they were hastily put together, and therefore could be inaccurate and have no value;

6. Complete information on production capabilities of foreign producers for products and countries covered by these investigations and other international markets and related economic factors served by these products.

II. Hot-Rolled Carbon Steel Plate

In the investigations on hot-rolled carbon steel plate (invs. Nos. 701–TA–86 through 93 and 731–TA–53 through 60), I conclude that there is a reasonable indication that allegedly dumped and/or subsidized imports from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United

[20] Statement of reasons of Commissioner Paula Stern in investigations Nos. 731–TA–18–24 (Preliminary), *Certain Carbon Steel Products From Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, and the United Kingdom*, p. 41.

Kingdom, and West Germany are causing material injury to the domestic industry.

Condition of the Domestic Industry

About 15 firms produce hot-rolled carbon steel plate in the United States, operating approximately 30 establishments in which carbon steel plate is produced throughout the U.S., but centered primarily in Pennsylvania and the Great Lakes area. Domestic production is highly concentrated, with the four largest producers, accounting for 70 percent of total domestic producers' shipments in 1980, being fully integrated firms that provide a wide range of steel will products.[21]

There is a reasonable indication that the domestic hot-rolled carbon steel plate industry is in poor health. Domestic production, which rose from 5,576,000 tons in 1978 to 5,897,000 tons in 1979, fell markedly to 5,564,000 tons in 1980 and 5,161,000 tons in 1981. The industry's practical capacity declined significantly from 9,713,000 tons in 1979 (having increased from 8,987,000 tons in 1978) to 9,051,000 tons in 1981 while capacity utilization during the 1978–81 period registered a substantial uninterrupted decline from a 62-percent level in 1978, to a 57-percent level in 1981. Although there were some additions to practical capacity, notably at Bethlehem Steel's Chestertown, Indiana, facilities in 1978, there have been a number of closures of carbon steel steel plate facilities during the period, most recently in February 1981 the permanent shutdown of Jones & Laughlin Steel's only plate mill and a hot strip mill in Pittsburgh, Pennsylvania.[22]

U.S. producers' shipments of carbon steel plate, which increases 3 percent from 1978 to 1979, fell 8 percent annually in 1980 and 1981, registering a 12 percent overall decline during the 1978–81 period, from 6,588,000 tons to 5,772,000 tons, with exports by producers accounting for less than 2 percent of total shipments and intracompany and intercompany shipments remaining relatively stable at 6 percent of total annual shipments during the same period.[23] U.S. consumption of carbon steel plate also showed a significant uninterrupted decline from 8,452,000 tons in 1978 to 7,651,000 tons in 1980, and to an estimated 7,439,000 tons in 1981, representing a 12-percent overall decrease.[24]

Employment of production and related workers in the carbon steel plate sector fell from 19,143 workers in 1979 to 18,469 workers in 1980 and even more precipitously to 16,937 workers in 1981. Similarly, hours paid for production and related workers showed and almost 14 percent decline from 1979 to 1981, from 38,896 hours to 33,570 hours.[25] Productivity data on tons per hour quantity basis remained unchanged from 1980 to 1981, having registered a 1.5-percent increase in 1980. Hourly compensation, however, increased continuously during the 1978–81 period; thus unit labor costs showed marked increases during the period, from $91 per ton in 1978 to $123 per ton in 1981, having not been offset by improved labor productivity.[26]

Although the 10 firms which furnished profit-and-loss data (accounting for 89 percent of total 1980 U.S. producers' shipments) showed aggregate profitability both on gross and operating profit bases, profitability remained extremely low and could be characterized as less than satisfactory. Operating profit margins, reaching 4 percent in 1978, declined to 1.4 percent in 1980, though increased to 2.3 percent in 1981. Indeed, six firms sustained operating losses in 1980 and four firms sustained such losses in 1979 and 1981.[27]

Reasonable Indication of Material Injury by Reason of Imports

During the 1978–80 period, about 10 percent of total U.S. imports of all carbon steel mill products were accounted for by imports of carbon steel plate products. Although such imports declined from 2.0 million tons in 1978 to 1.3 million tons in 1979, they increased to 1.6 million tons in 1980, and showed even more significant increases on an 11-month January–November 1980 and 1981 comparative period basis, with 1.7 million tons imported during January–November 1981, compared with 1.4 million tons imported during the corresponding 1980 period. The ratio of imports from all sources to apparent domestic consumption decreased from 23.4 percent in 1978 to 15.9 percent in 1979, but subsequently increased to 20.5 percent in 1980 and 24.9 percent in January–November 1981, with the ratio of imports to U.S. producers' shipments following a similar trend.[28]

Imports from all countries subject to countervailing duty and antidumping investigations to the United States of hot-rolled carbon steel plate have evidenced substantial increases in terms of quantity, value, and relative to apparent domestic consumption during the recent period. Such imports, which registered at levels of 1,194,000 tons ($291,888,000 in value) in 1978, having declined to 673,000 tons ($207,229,000 in value) in 1979, increased to 961,000 tons ($308,598,000) in 1980. Comparative January–November 1980 and 1981 data show imports of 869,000 tons in the 1980 period ($277,878,000 in value) increasing markedly to 1,116,000 tons ($409,444,000 in value) in the corresponding 1981 period. Likewise, such imports evidenced significant increases in penetration during this period of basically declining domestic consumption, with market penetration by such imports increasing from 8.5 percent in 1979 to 12.5 percent in 1980. Comparative January-November 1980 and 1981 data evidence even more dramatic trands, with 11-month 1980 penetration at 12.4 percent compared with the corresponding 1981 period registering a 16.0 percent penetration figure. The ratio of those imports to U.S. producers' shipments manifest similar patterns, showing figures of 9.9 percent in 1979, 15.4 percent in 1980, with 1980 and 1981 11-month comparative levels of 15.2 percent and 20.7 percent, respectively. Examining comparative data with respect to these relationships and import levels for the last two quarters for 1980 and 1981 disclose similar trends.[29]

Pricing information on imported hot-rolled carbon steel plate in these investigations warrants further investigation.

Worthy of some comment, at least during the preliminary phase of these investigations, was the result of direct inquiries of purchasers to furnish the *delivered prices* they paid in specific transactions for four imported and domestically produced hot-rolled carbon steel plate products. With one-third of the 66 purchasers responding, 22 providing price information on domestically produced hot-rolled carbon steel plate and 18 providing price information on certain imported plate from these countries, without knowing the degree of participation in the domestic market of these purchasers, it would be difficult to characterize the results as representative and certainly the data arrayed is not comprehensive. However, there is an indication of material underselling in certain instances worthy of further scrutiny.[30]

My comments concerning lost sales data are subject to my concerns in this area set forth in the overview. With

[21] Report at II–6.
[22] Report at II–7 and II–8.
[23] Report at II–12.
[24] Report at II–9 and II–10.
[25] Report at II–15 and II–16.
[26] Report at II–18.
[27] Report at II–19.
[28] Report at II–10, II–28.
[29] Report at II–28 through II–38.
[30] Report at II–52.

respect to lost sales, the staff was able to investigate in the time available 32 of 273 specific allegations of lost sales, with over 360,000 tons involved, and found price to be the major reason for purchasing the imported product in all 27 allegations confirmed.[31] Allegations of lost sales from the three largest foreign suppliers of such merchandise in the U.S. market in 1980 and 1981 were discussed in the report. Coverage of these allegations was incomplete no doubt due to the time-frame involved, but the small number that were checked and confirmed indicated that price in most instances was the overriding factor in purchasing decision, although in a number of instances, purchasers claimed they purchased the foreign product at trigger prices.[32]

The carbon steel plate industry appears highly price sensitive, and even more so during periods of stagnant or declining demand. Buyers usually are quite cognizant of prevailing market prices and are in a postion to play off competing domestic and foreign offers. Low prices obtained by one firm, foreign or domestic, may have a broad-ranging impact on the market.

I believe information on pricing patterns, although obviously less than complete, coupled with the allegations of petitioners in these investigations submitted for the record which have not been conclusively refuted by respondents, evidences a reasonable indication of possible price suppression and depression by reason of underselling attributable to allegedly dumped and subsidized imports which merits further investigation.

Accordingly, I conclude that there is a reasonable indication that the domestic industry has suffered material injury by reason of allegedly LTFV and subsidized imports.

III. Hot-Rolled Carbon Steel Sheet and Strip

In the investigations on hot-rolled carbon steel sheet and strip (investigations Nos. 701–TA–94 through 101 and 731–TA–61 through 67), I conclude that there is a reasonable indication that allegedly dumped and/or subsidized imports from Belgium, Brazil (except strip), France, Italy, Luxembourg, the Netherlands, the United Kingdom (except strip), and West Germany are causing material injury to the affected U.S. industry.

Condition of the Domestic Industry

About 20 firms in the United States produce hot-rolled carbon steel sheet in approximately 40 mills, and the principal producers can be characterized as largely integrated operations with the 6 largest U.S. producers of raw steel accounting for almost 70 percent of total U.S. producers' shipments of hot-rolled sheet and strip (as reported by AISI) in 1980. Hot-rolled sheet was the second largest finished carbon steel product manufactured by the U.S. steel industry in 1980.[33]

There is a reasonable indication that the domestic hot-rolled carbon steel sheet and strip industry is in poor health. U.S. production and practical capacity figures which increased substantially in 1979, reaching levels of 12.6 million tons and 19.4 million tons, respectively, fell markedly in 1980 to under 10 million tons and 18.8 million tons, respectively. Figures for 1981, while showing increases in production and capacity levels to 11.4 million tons and 19.4 million tons, respectively, must be tempered with a realized capacity utilization rate of 59.0 percent, significantly less than 1978's 65.7 percent level and representing less than satisfactory utilization, although an improvement over 1980's 52.5 percent rate.[34] U.S. Producers' shipments showed similar trends, declining substantially in 1980 from 15 million tons to 11.5 million tons, and increasing to 12.6 million tons in 1981, still down 16 percent from the 1978 level. Comparative fourth quarter 1980 and 1981 results, however, show a 28 percent dropoff in 1981 shipments from corresponding 1980 levels. Exports of hot-rolled carbon steel sheet and strip accounted for about 3 percent of annual U.S. exports of all carbon steel mill products during the 1978–80 period, with January–November 1981 tonnage approximately the same reported for the corresponding 1980 period. Canada was the principal export market for hot-rolled sheet and strip, receiving approximately 50 percent of such exports from January 1978 to November 1981.[35]

Apparent U.S. consumption of these products declined about 27 percent from 18.3 million tons in 1978 to 13.3 million tons in 1980. Although consumption during the January–November 1981 period increased by 15 percent to 13.7 million tons over the corresponding 1980 period, these levels are substantially less than 1978 and 1979 levels. The share of the market supplied by domestic producers increased from 1978 to 1979 and remained stable in 1980 to January–November 1981, with imports yet maintaining almost 15 percent penetration on a domestic consumption basis and over 17 percent with respect to domestic shipments. However, quarterly comparative data for 1980–81 through the third quarter indicate that, following a decline in market penetration of imports from 17.6 percent in April–June 1980 to 7.4 percent in January–March 1981, this trend changed abruptly as imports almost doubled their share of the market and continued to increase their share in July–September 1981 to 17.4 percent with respect to apparent domestic consumption, and, as producers' shipments declined, to over 20 percent with respect to domestic shipments.[36]

Inventories, though representing on a yearend basis about 6 percent of producers' total annual shipments in each of the 1978–81 periods, showed a substantial 14-percent increase on an end-of-year basis in 1981 from 1980 levels.[37]

Employment of production and related workers in the hot-rolled carbon steel sheet and strip sector increased from 23,103 to 25,400 in 1979, dropped almost 20 percent to 20,432 in 1980, and increased almost 10 percent in 1981 to 22,404, a level nonetheless almost 12 percent below 1979 employment levels. Hours paid for production and related workers followed a similar trend, at the end of 1981 down almost 14 percent from 1979 levels. Hourly compensation increased steadily from 1978 to 1980 with minimal changes in productivity resulting in a unit labor cost per ton increase from $60.98 in 1978 to $78.83 in 1980. However, labor productivity showed an almost 5 percent increase in 1981 over what it was in 1980, which mitigated hourly compensation increases of only half 1979–80 increases, resulting in a much lower increase, 4 percent, in unit labor costs in 1981 to $81.81 per ton.[38]

Financial experience on a profit-and-loss basis reported by nine producers accounting for (in terms of 1980 shipments) about 83 percent of U.S. producers' shipments evidenced most unsatisfactory results. Aggregate operating profit declined from $162 million (4.8 percent of net sales) to $95 million in 1979 (2.4 percent of net sales), notwithstanding an increase in net sales of hot-rolled carbon steel sheet and strip from $3.3 billion in 1978 to $4.0 billion in 1979. Although net sales in 1981 increased to $4.0 billion from $3.1 billion

[31] Report at II–52 and II–53.
[32] Report at II–53 and II–54.
[33] Report at III–6 through III–8.
[34] Report at III–9.
[35] Report at III–9 through III–12.
[36] Report at III–6.
[37] Report at III–11.
[38] Report at III–13 through III–15.

in 1980, reporting firms sustained significant operating losses of $232 million (or 7.5 percent of net sales) in 1980 and $139 million (or 3.5 percent of net sales) in 1981. Six firms reported losses in 1981, and 8 in 1980, compared with five and four firms so reporting in 1978 and 1979, respectively.[39]

Reasonable Indication of Material Injury by Reason of Imports

During the 1978–80 period, imports from all sources of hot-rolled carbon steel sheet and strip accounted for about 15 percent of total U.S. imports of all carbon mill products. About 2.0 million tons ($637 million) were imported in January–November 1981, compared with 1.8 million tons ($509 million) during the corresponding months of 1980. All imports of these products had declined from 3.4 million tons in 1978 to 1.9 million tons in 1980. Imports from all countries subject to these investigations provided 54 percent of total imports in 1980.[40]

Domestic market penetration by imports of hot-rolled sheet and strip from all sources declined from 18.4 percent in 1978 to 14.7 percent in 1980 and during the January–November 1981 period accounted for about the same share of the U.S. market; but on a quarterly basis, such imports have evidenced a greater degree of penetration in 1981, rising from a low of 7.4 percent in January–March to 17.4 percent in July–September.[41]

Although such imports of hot-rolled carbon steel sheet and strip from all countries subject to these investigations declined from 2.2 million tons in 1978 to 1.1 million tons in 1980, during the January–November 1981 period, levels hit 1.2 million tons, representing a 9-percent increase from those in the corresponding period of 1980. In terms of market share with respect to apparent domestic consumption similar trends were discerned: 1978, 12.2 percent, 8.0 percent in 1980 and 8.5 percent in January–November 1981. However, on a quarterly basis more dramatic trends are apparent: such imports increased rapidly from 89,000 tons in January–March 1981 to 415,000 tons in July–September, and levels for October–December of 515,000 tons were double the amount imported in the corresponding quarter of 1980. Market share by these imports also increased substantially from 2.5 percent in January–March 1981 to 11.1 percent in July–September 1981.[42] As a percentage imports evidenced a similar pattern, climbing from 2.6 percent in January–March 1981 to 13.1 percent in July–September.[43]

Pricing information on imported hot-rolled carbon steel sheet and strip warrants further investigation. Direct inquiry of purchasers of these products to supply data on actual transactions in 1981 was somewhat illuminating but appears hardly representative. Some trends were discerned: for example, margins of underselling of these products were manifest in a number of instances, although differences in such margins were seen among source countries and by location of the purchaser; in several instances the price of the imported product exceeded the domestic price; in general average margins of underselling were smaller on sales to end-user customers.[44]

My observations on lost sales data obtained are subject to my aforementioned concerns in this area. A total of 16 specific allegations of lost sales of hot-rolled carbon steel sheet to imports were investigated by the staff. Ten purchasers indicated lower price as the principal factor in their purchasing decisions.[45] Further inquiry into this area is definitely warranted.

The carbon steel sheet and strip sector appears highly price sensitive, even more so during periods of stagnant or declining demand. Buyers usually are quite cognizant of prevailing market prices and are in a position to play off competing domestic and foreign offers. Low prices obtained by one firm, foreign or domestic, may have a broad-ranging impact on the market.

I believe information on pricing patterns, albeit obviously less than comprehensive and complete, coupled with the allegations of petitioners in these investigations which have not been conclusively refuted by respondents, evidences a reasonable indication of possible price suppression and depression by reason of underselling attributable to allegedly dumped and/or subsidized imports which merits further investigation.

Accordingly, I conclude that there is a reasonable indication that the domestic industry has suffered material injury by reason of allegedly LTFV and/or subsidized imports.

IV. Cold-Rolled Carbon Steel Sheet and Strip

In the investigations on cold-rolled carbon steel sheet and strip (Investigations Nos. 701–TA–102 through 109 (Preliminary) and 731–TA–68 through 74 (Preliminary) I conclude there is a reasonable indication that allegedly dumped and/or subsidized imports from Belgium, Brazil (except strip), France, Italy, Luxembourg, the Netherlands, the United Kingdom (except strip), and West Germany are causing material injury to the affected industry.

Condition of the Domestic Industry

According to the AISI, 16 domestic companies have the capacity to produce cold-rolled carbon steel sheet and 31 companies have the capacity to produce cold-rolled carbon steel strip. Eight carbon steel producers accounted for over 75 percent of total U.S. shipments of these products in 1980.[46]

There is a reasonable indication that the domestic cold-rolled carbon steel sheet and strip industry is in poor health. U.S. production of cold-rolled carbon steel sheet and strip which remained stable at 13.2 million tons in 1978 and 1979 declined 22 percent to 10.3 million tons in 1980. Although production increased to 11.2 million tons in 1981, this was still 2 million tons and 15 percent below 1978 levels. Domestic production capacity during the 1978–81 period evidenced a slight 2-percent increase, but capacity utilization during the same period fell significantly, from 84.7 percent in 1978 to 64.8 percent in 1980, increasing somewhat in 1981 to 70.4 percent.[47]

U.S. producers' shipments of cold-rolled carbon steel sheet and strip declined steadily from 18.2 million tons in 1978 to 13.4 million tons in 1980, though accounting steadily for about 20 percent of aggregate domestic shipments of all carbon steel mill products.

In 1981, U.S. producers' shipments increased to 14.5 million tons, increasing 8.4 percent from what they were in 1980, but still representing a 19.9-percent decline from 1978 shipment levels. Moreover, on a quarterly basis, U.S. producers' shipments declined sharply from 4.3 million tons in April–June 1981 to 2.8 million tons in October–December, and fourth quarter 1981 levels represented a 26.7-percent decline from corresponding fourth quarter 1980 shipments.[48]

Exports of cold-rolled carbon steel sheet and strip ranged from 3 to 5 percent of annual U.S. exports of all carbon steel mill products during 1978–80, but made up less than 1 percent of total domestic shipments. Such exports declined from 120,000 tons in 1978 to

[39] Report at III–16.
[40] Report at III–21.
[41] Report at III–6.
[42] Report at III–22 and III–23.
[43] Report at III–29.
[44] Report at III–30 through III–41, and app. J.
[45] Report at III–41.
[46] Report at IV–5 through IV–8.
[47] Report at IV–10.
[48] Report at IV–11.

103,000 tons in 1979, but then rebounded in 1980 to 124,000 tons. However, exports during the January–November 1981 period were 67,000 tons, 43 percent below the level of exports in the corresponding period of 1980. Canada was the primary export market for these products during this period, although in 1980 Brazil surfaced as an important market, accounting for 31 percent of exports.[49]

U.S. producers' inventories, which evidenced an irregular decline from 878,394 tons in 1978 to 774,488 tons in 1980, increased 9.3 percent on an end-of-year basis from December 31, 1981, to 846,870 tons.[50]

Employment of production and related workers in the cold-rolled carbon steel sheet and strip sector increased from 37,632 to 39,223 in 1979, but declined 18.3 percent to 32,050 in 1980. Employment of such workers increased, however, 10.1 percent to 35,303 in 1981, but this still represented a 6-percent decline from 1978 levels and a 10-percent decline from 1979 figures.[51] Some industry observers claim an appropriate industry benchmark "full employment" figure is the average employment attained in the 1973 and 1974 period, which for these products was 52,000.[52] Using this benchmark, employment levels for 1981 are off benchmark levels by over 32 percent. Hours paid for production and related workers followed the same trend as employment. Wages paid to such workers increased by 17 percent over the 1978–81 period, while productivity declined each year, resulting in a 48-percent overall increase in unit labor cost per ton during this period.[53]

Financial experience on a profit-and-loss basis reported by nine producers (accounting for in terms of 1980 U.S. producers' shipments 77 percent) manifest the poor health of this industry. Aggregate gross profits which were $236 million in 1978 (5.0 percent of net sales) on $4.7 billion of net sales declined in 1979 to $180 million on $5.3 billion of net sales (3.4 percent) hitting red ink at losses of $264 million on $4.2 billion in net sales (9.2 percent of net sales) in 1980 and losses of $149 million on $4.9 billion (5.9 percent of net sales) in 1981. Likewise losses on an operating profit (loss) basis were recorded in 1980 and 1981 at $383 million and $293 million, respectively. Eight and seven firms reported operating losses in 1980 and 1981, respectively, compared with three firms in 1978 and four firms in 1979.[54]

Reasonable Indication of Material Injury by Reason of Imports

During 1978–80, imports from all sources of cold-rolled carbon steel sheet and strip accounted for 10 to 15 percent of total U.S. imports of all carbon steel mill products. Such imports declined each year from the 1978 level of 3.2 million tons to 2.4 million tons in 1979 and 1.5 million tons in 1980, although subject merchandise imports increased to 1.6 million tons in 1981. Imports from all countries subject to these investigations accounted for 60 percent of total imports in 1980. In relation to U.S. consumption, imports of cold-rolled carbon steel sheet and strip from all sources declined from 15 percent in 1978 to 10 percent in 1980 and January–November 1981; but on a quarterly basis in 1981 imports have taken a larger share of the market, rising from a low of 5 percent in January–March to 12 percent in July–September.[55]

Although imports of cold-rolled carbon steel sheet and strip from all countries subject to these countervailing and antidumping investigations steadily declined from 1.7 million tons in 1978 to 671,000 tons in 1980, imports during January–November 1981 increased to approximately 831,000 tons, after netting out imports of cold-rolled carbon steel sheet from the United Kingdom and cold-rolled carbon steel sheet from Brazil which were excluded from these investigations, as compared with approximately 591,000 tons during the corresponding period of 1980. Value represented by such imports during the January–November 1980 and 1981 periods (including those imports from the United Kingdom and Brazil excluded from the investigations, which represented approximately 0.4 percent and 2.1 percent of total imports from respondent countries for the 1980 and 1981 periods, respectively) was approximately $215 million and $334 million, respectively.[56] Looking at such imports on a quarterly basis during the 1980 and 1981 period reveals some dramatic trends. Imports of 403,000 tons in the last quarter of 1981 were double the comparable 1980 quarter and, for the comparable July to December 1980 and 1981 period, imports increased 97 percent from 366,000 tons to 721,000 tons. A figure representing market penetration of such imports as a share of apparent U.S. consumption on a percentage basis was not available for the fourth quarter 1981, but third quarter 1980 and 1981 comparative results evidence a significant increase in market share taken by such imports from 4.8 percent to 7.6 percent which appears more representative of trends in this respect than comparative January–November 1980 and 1981 overall penetration figures which were 4.4 percent and 5.5 percent, respectively, still representing an increase.[57]

Although there is no doubt that recent market conditions in, for example, the automotive and construction industries have reduced demand for steel sheet and have had a dampening effect on prices, this has, I believe, rendered the domestic industry even more vulnerable on economic and financial bases to the effects of increased imports of such a price sensitive product allegedly subsidized and/or sold at less than fair value. Results of Commission inquiries from domestic producers and importers to supply data on actual transaction prices and on average net selling prices paid by steel purchases, while hardly comprehensive or even perhaps representative and though mixed, show indications of greater than an inconsequential degree of such imported products underselling domestic products and deserve further inquiry. Staff investigation of specific allegations of lost sales of cold-rolled carbon steel sheet to imports was less than complete and I cannot at this time draw any definite conclusions one way or another from the results cited in the report.[58]

I believe information on pricing patterns, although less than complete, coupled with the allegations of petitioners which have not been conclusively refuted by respondents, evidences a reasonable indication of possible price suppression and depression by reason of underselling attributable to alleged dumped and/or subsidized imports which warrants further investigation.

Accordingly, I conclude that there is a reasonable indication that the domestic industry has suffered material injury by reason of allegedly LTFV and/or subsidized imports.

V. Galvanized Carbon Steel Sheet

In the investigations on galvanized carbon steel sheet (investigations Nos. 701–TA–110 through 116 (Preliminary) and 731–TA–75 through 81 (Preliminary)), I conclude that there is a reasonable indication that allegedly dumped and/or subsidized imports from

[49] Report at IV–11 and IV–12.
[50] Report at IV–13.
[51] Report at IV–14.
[52] Brief of testimony of Eugene L. Stewart, Esq., on behalf of Bethlehem Steel, 2/3/82, citing AISI and U.S. Dept. of Labor/BLS as sources, p. 123.
[53] Report at IV–14 through IV–16.
[54] Report at IV–17.
[55] Report at IV–5 and IV–24 through IV–26.
[56] Report at IV–28.
[57] Report at IV–25 and IV–27.
[58] Report at IV–35 through IV–43 (please refer to my observations in the overview section on lost sales data).

Belgium, France, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany are causing material injury to the domestic industry.

Condition of the Domestic Industry

The bulk of U.S. production of galvanized carbon steel sheet is accounted for the seven largest integrated steel producers in the United States, with production concentrated in the North Central and Midwestern regions of the United States.[59]

There is a reasonable indication that the domestic galvanized carbon steel sheet industry is in poor health. Apparent U.S. consumption declined from 8.7 million tons in 1978 to 6.5 million tons, down 25 percent. While consumption during January–November 1981 of 6.8 million tons amounted to a 13 percent greater level than the corresponding 1980 period, such levels still represent a lower level of demand for these products than in 1978 and 1979.[60] U.S. production of these products reported by firms responding to Commission questionnaires (usable data by producers accounted for 73 percent of total shipments of galvanized sheet in 1980) increased slightly from 4.5 million tons in 1978 to 4.7 million tons in 1979, fell to 3.7 million tons in 1980 and increased to 4.4 million tons in 1981. Capacity during the period, which had increased from 6.2 million tons in 1978 to 6.7 million tons in 1979, declined to 1978 levels in 1981, with capacity utilization rates dropping precipitously from 72.7 percent in 1978 to 59.4 percent though rebounding to 70.7 percent for 1981,[61] still a less than satisfactory operating rate. U.S. producers' shipments of galvanized carbon sheet which accounted for approximately 7 percent of aggregate shipments of all carbon steel mill products in the 1978–80 period, declined steadily from 6.4 million tons in 1978 to 5.2 million tons in 1980, or by 19 percent. Net shipments increased in 1981 12 percent to 5.8 million tons but this figure still represented a 10-percent overall decline from 1978 shipment levels.[62] Examining 1981 domestic producer's shipments on a quarterly basis shows an even more marked decline from 1.6 million tons in January–March to 1.1 million tons the last quarter of 1981, representing a 26 percent drop from corresponding 1980 fourth quarter levels.[63]

Further, such indicators for this industry can be misleading. As an example, on the west coast, which is called the Western Region, domestic galvanizing capacity approximates 600,000 tons made up of Pinole Point, 150,000 tons, Kaiser Steel, 200,000 tons, and U.S. Steel, the balance. Market for galvanized in this region was approximately 900,000 tons in 1980 and has dropped to approximately 800,000 in 1981. The Western Region is a shortage region relative to galvanized sheet. Despite shortage conditions, Kaiser Steel is contemplating shutting down its galvanizing line and Pinole is currently running at 40 percent of capacity. Its not that the market or demand is not there but offshore competition with allegedly steep discounts estimated to be $50 per ton below domestic prices is claimed to be taking away the volume. Pinole could possibly discount more to obtain an order but financially if it did it would not survive. A company such as Pinole or any company can make some profit but can still go bankrupt if the conditions continue, because as an example a coating line when originally installed costs approximately $2 million but eventually must be replaced. Today if it were replaced, it would cost $20 million.

Yearend inventories of galvanized carbon steel sheet increased from 318,000 tons in 1977 to 377,000 tons in 1979, declining somewhat to 349,000 tons in 1980, but surging to 450,000 tons in 1981, the highest level during the period.[64]

The average number of production and related workers producing galvanized sheet which increased slightly from 13,123 in 1978 to 13,883 in 1979, declined by 13 percent to 12,046 in 1980, and increased again by 15 percent in 1981 to 13,919, representing an overall 6-percent increase for the period. Hours paid for such workers also followed a similar trend, yet for the overall period showed a smaller increase of 2.4 percent. Total compensation paid to such workers increased 43 percent during the period while labor productivity declined by 5 percent, forcing unit labor costs per ton up 47 percent.[65]

Financial experience on a profit-and-loss basis by producers (accounting for 73 percent of U.S. producers' shipment in 1980) are further manifestation of the poor health of this industry. Althrough net sales increased irregularly during 1978–81 from $2.0 billion to $2.4 billion in 1981 (having dropped to $1.9 billion 1980), operating profits which increased from $108 million in 1978 to $135 million in 1979, plunged to operating losses recorded at $91 million in 1980 (negative 4.8 percent) and $29 million in 1981 (negative 1.2 percent). The number of firms reporting operating losses increased from 3 in 1978 and 1979, to 6 in 1980 and 5 in 1981.[66]

Reasonable Indication of Material Injury by Reason of Imports

During the 1978–80 period, all imports of galvanized carbon steel sheet, which accounted for between 8 and 12 percent of total U.S. imports of all carbon steel mill products, declined each year from 2.3 million tons to 2.1 million tons in 1979 and 1.3 million tons in 1980 and 1981. As a share of U.S. consumption, such imports also declined from 27 percent in 1978 to 21 percent in 1980, but in 1981 on a quarterly basis, have taken a larger share of the market, rising from a low of 10 percent in January–March to 22 percent in July–September.[67]

Imports of galvanized sheet from all countries subject to these investigations which had declined steadily from 717,000 tons in 1978 to 276,000 tons in 1980 (from 8.3 percent of apparent domestic consumption in 1978 to 4.3 percent in 1980), increased 8 percent in 1981 to 299,000 tons. On a quarterly basis such imports increased consistently from 25,000 tons in January–March 1981 to 149,000 tons in October–December 1981, with respective market penetration data relative to apparent domestic consumption jumping from 1.4 percent the first quarter of 1981 to 4.8 percent in July–September 1981.[68] During January–November 1980–81 corresponding periods such imports on a value basis increased 11 percent from $101 million to $112 million.[69] Such imports with respect to U.S. producers' shipments also mirrored penetration levels on a consumption basis, looking at 1981 quarterly data, increasing from 1.7 percent of U.S. producers' shipments for the January–March 1981 quarter to 6.1 percent for the July–September 1981 quarter.[70]

Data supplied by Cravath, Swaine & Moore, attorneys for certain Petitioners [71] citing Department of Commerce/AISI/Wharton as sources, comparing first half of 1981 import penetration of these products of 1.8 percent with July through October 1981 monthly data on import penetrations reveal even greater penetration levels, reaching 8.0 percent for the month of

[59] Report at V–8.
[60] Report at V–3 and V–4.
[61] Report at V–7.
[62] Report at V–8.
[63] Report at V–8.
[64] Report at V–10.
[65] Report at V–11 through V–13.
[66] Report at V–14.
[67] Report at V–19 and V–4, table V–2.
[68] Report at V–20 through V–23.
[69] Report at V–24.
[70] Report at V–29.
[71] The "group of five", Republic Steel, Inland Steel, J&L, National Steel, and Cyclops.

October 1981 for such imports of galvanized sheet.[72]

Pricing data obtained on comparative imported and domestic products and lost sales information of a meaningful nature were incomplete and I believe no definitive conclusion can be drawn from what were obtained by staff. However, in viewing the financial experience and other adverse indicators of the industry, in particular the poor gross margins and adverse financial results in general undoubtedly even more accentuated during the last half of 1981 and exacerbated in terms of price sensitivity for these products by recent declines in end-use markets such as the automotive and construction industries, coupled with the allegations of petitioners in this respect which have not been conclusively refuted at this point, I believe there is a reasonable indication of possible price suppression and depression by virtue of such imports which warrants further investigation.

Accordingly, I conclude that there is a reasonable indication that the domestic industry has suffered material injury by reason of allegedly LTFV and/or subsidized imports.

VI. Carbon Steel Structural Shapes

In these investigations on carbon steel structural shapes,[73] I conclude that there is a reasonable indication that allegedly dumped and/or subsidized imports from Belgium, the Federal Republic of Germany, France, Luxembourg, the United Kingdom, and Brazil are causing material injury to the affected U.S. industry.

Condition of the Domestic Industry

The principal domestic firms producing this product (accounting for an 85-percent share of 1980 U.S. producers' shipments of carbon steel structural shapes) are integrated producers, rolling a wide range of shapes, with the remaining producers (minimills), rolling small angles, channels, and standard beams on an assortment of bar or light structural mills. The condition of the U.S. industry producing carbon steel structural shapes has declined since 1979. Production increased somewhat from 1978 to 1979, but dropped from 4.1 million tons in 1979 to 3.7 million tons in 1981, representing a decline of about 10 percent.[74] Domestic shipments also increased slightly from 1978 to 1979, but declined from 4.5 million tons in 1979 to 4.1 million tons in 1980 and 4 million tons in 1981, despite the fact that apparent U.S. consumption which in 1980 declined 8 percent to 5.7 million tons from 1979 levels, had increased on a January–November 1980 and 1981 comparative basis 8 percent to 5.5 million tons. U.S. producers' shipments during the second half of 1980 and 1981 showed an 11-percent decline from approximately 2 million tons to 1.8 million tons.[75] Exports of this product, accounting for about 4 percent of aggregate exports of all carbon steel mill products during 1978–80 accounted for less than 3 percent of net domestic shipments in 1980.[76]

Capacity for the production of structural shapes declined from 6.4 million tons to 6.3 million tons between 1979 and 1981. Utilization of available capacity dropped during that period, from 64.4 percent to 58.2 percent.[77] U.S. producers' yearend inventories remained relatively constant throughout the 1978–81 period, at roughly 6 percent of total annual shipments.[78]

Employment of all persons and production and related workers in domestic establishments producing structural shapes rose with increased production in 1979, but fell significantly in 1980 and 1981 as production and domestic shipments declined. Employment levels of such workers in 1981 were 10.7 percent below levels in 1979. The number of hours worked similarly declined, although total compensation to production and related workers continued to increase, albeit at a much lower pace than from 1978 to 1979.[79]

The lack of profitability of the stuctural shapes industry is striking. The domestic industry producing structural shapes recorded a loss in every year from 1978 to 1981.[80] The operating loss declined from $25 million in 1978 to $4 million in 1979, then ballooned to $62 million in 1980 and $66 million in 1981. Net sales for the comparable years were $1.1 billion in 1978 increasing to $1.3 billion in 1979 and remaining flat at about $1.3 billion in 1980 and 1981. The ratio of operating loss to net sales decreased from 2.2 percent in 1978 to 0.3 percent in 1979, then increased markedly to 4.7 percent in 1980 and 4.9 percent in 1981. Four firms out of the U.S. producers accounting for 78 percent of total shipments of structural shapes in 1980 reported operating losses in 1978 and 1979, increasing to five firms in 1980 and 1981.[81]

Reasonable Indication of Material Injury by Reason of Imports

During the 1978–80 period, imports of structural shapes made up about 10 percent of total U.S. imports of all carbon steel mill products. Such imports from all sources amounted to 1.8 million tons ($445 million in value) in 1978, 1.9 million tons ($579 million) in 1979, and 1.7 million tons ($575 million) in 1980. January–November 1981 figures of such imports showed an increase to 1.9 million tons ($668 million) compared with 1.6 million tons ($521 million) imported during the 1980 corresponding period. Imports from all countries subject to these investigations accounted for 47 percent of total imports in 1980 with other principal suppliers, Japan (36 percent) and Canada (15 percent).[82]

Imports from all countries subject to these investigations declined steadily from 899,000 tons in 1978 ($218 million in value) to 806,000 tons in 1980 ($258 million), but increased substantially by 32 percent to 1,065,000 tons in 1981 ($369 million value for 1.01 million tons through November).[83] Market penetration by these imports in terms of apparent domestic consumption increased rapidly also from 12.7 in October–December 1980 quarter to 19.8 percent in the July–September 1981 quarter. Such penetration by imports had been as low, relatively speaking as 11.8 percent in the January–March 1980 quarter. Such imports for the corresponding July–December 1980 and 1981 periods increased from 397,000 tons to 511,000 tons, respectively, representing a 28.7 percent increase.[84]

Price trends based on average selling prices requested of domestic producers and importers for six carbon steel structural shape products selected to be "representative" appear inconclusive but there are some indications of underselling and sales lost due to underselling by such imports from all countries investigated except Brazil that warrant further scrutiny.[85] The data developed here nevertheless cannot be described as comprehensive in coverage but do provide some indication of a

[72] Jan. 11, 1982, brief of Cravath, Swaine & Moore, vol. II., p. 247.

[73] Investigations Nos. 701–TA–117 through 119 (Preliminary), 701–TA–121 (Preliminary), 701–TA–123 and 124 (Preliminary), and 731–TA–82 to 86 (Preliminary).

[74] Report at VI–4 and VI–7.

[75] *Id.* at VI–3 and VI–8.

[76] *Id.* at VI–9 and VI–10.

[77] *Id.* at VI–7.

[78] *Id.* at VI–10 and VI–11.

[79] *Id.* at VI–11 through VI–14.

[80] Profit-and-loss data were received from seven firms accounting for 78 percent of U.S. shipments in 1980.

[81] Report at VI–16.

[82] Report at VI–23.

[83] Report at VI–24, Table VI–16, Table VI–17 at p. VI–26, and Table VI–18 at p. VI–27, Table VI–19, at VI–29. There are some minor mathematical inconsistencies in comparing totals of data which are arrayed differently on these tables.

[84] Report at VI–26.

[85] Report at VI–32 through VI–51.

possible pattern of underselling such imports. I believe such data coupled with the allegations of petitioners which have not been conclusively refuted evidence a reasonable indication of possible price suppression and depression by reason of underselling attributable to allegedly dumped and/or subsidized imports which merits further investigation.

Accordingly, I conclude that there is a reasonable indication that the domestic industry has suffered material injury by reason of allegedly LTFV and/or subsidized imports.

VII. Hot-Rolled Carbon Steel Bar

In the investigations on hot-rolled carbon steel bar (investigations Nos. 701–TA–125 through 129, 701–TA–146, and 701–TA–147 (Preliminary)), I conclude that there is a reasonable indication that allegedly subsidized imports from Belgium, Brazil, France, Italy, Luxembourg, the United Kingdom, and West Germany are causing material injury to the affected industry.

Condition of the Domestic Industry

U.S. producer shipments have remained level for steel service centers and distributors from 1979 to the first 9 months of 1981, and declined slightly for machinery, industrial equipment, and tools market. The auto sector has been the largest user of hot-rolled carbon steel bar, although use of this product by this sector has declined from 1979 through the first 9 months of 1981. U.S. producers' net shipments of hot-rolled carbon steel bars were approximately 5.9 million tons in 1970, declining to a little over 4 million tons in 1980, and increasing to 4.2 million tons in 1981.[86]

Hot-rolled carbon steel bars are produced in the U.S. by three types of producers: integrated steel companies, mini-mills, and steel rerollers which purchase steel billets from abroad or domestic sources, and then roll these into bars. The major producers are the integrated mills. There are over 50 companies with capacity to produce carbon steel bars, and to operate approximately 92 mills in the U.S. There are more than 50 importers of this product from the countries subject to these preliminary investigations. These import firms in many cases, are owned by or affiliated with steel producers in the countries subject to these investigations. Ratio of imports to domestic consumption has been increasing since 1979, and in the last two quarters of 1981 these increases accelerated to 10.3 percent and 11.2 percent from 6.5 percent and 8.4 percent of the first two quarters of 1981. Apparent consumption and shipments increased in 1981 from what they were in 1980. Imports also increased, especially during the second half of 1981, just when shipments were going down as well as when consumption was going down.[87] Capacity utilization by domestic producers has fallen severely from 68.1 percent in 1978 to 66.6 percent in 1979, and to 50.7 percent in 1980, improving slightly in 1981 to 52.9 percent. Capacity utilization in 1981 was about 14 percentage points less than in 1979 and U.S. production in 1981 was 24 percent less than production in 1979.[88] Exports of hot-rolled carbon steel has accounted for only 3 percent of annual U.S. exports during the 1978 to 1980 period. For 1981, exports were higher than in 1980. Inventories at the end of 1981 were down to their lowest levels in the last 5 years.[89]

The number of workers producing hot-rolled carbon steel bar declined from 20,272 in 1978 to 19,677 in 1979, falling sharply to 14,396, representing a 27 percent curtailment in 1980, and then increasing slightly in 1981 to 14, 579. Hours paid for workers producing this specific product line fell from 41.1 million in 1978 to 27.6 million in 1980, but increasing to 28.3 million in 1981.[90] Value of wages paid for production and related workers in hot-rolled carbon steel bars were up in 1981 from what it was in 1980. Labor productivity increased by about 2 percent annually in 1978–81. Hourly compensation and unit labor costs although higher in 1981 than 1980, increased at lower percentages than for the previous 2 years, with increases in those two labor cost factors increasing at half the increases registered in 1980.[91]

Net sales for firms producing about 91 percent of total U.S. producers shipments of hot-rolled carbon steel bar had decreased in 1980 to $1.6 billion from $2.2 billion in 1979. Net sales increased in 1981 to $1.9 billion but these 11 firms' combined results manifested operating losses in both 1980 and 1981, with at least 6 firms individually reporting operating losses in each year. Capital expenditures of firms supplying data to the Commission for the production of hot-rolled carbon steel bars rose substantially from $158 million in 1978 to $253 million in 1980, and then declined in 1981 to $225 million. Research and development expenditures that were up in 1978 and in 1979 to $2.0 million and $2.1 million, respectively, were reported to have declined in 1981 to $1.5 million.[92]

Reasonable Indication of Material Injury by Reason of Imports

Imports from all sources of hot-rolled carbon steel bar as a percentage of apparent U.S. consumption, have increased in both 1980 and 1981.[93] Imports from the EC in January–November 1981 amounted to 132,000 tons or 73 percent more than imports in January–November 1980. The ratio of EC imports to apparent U.S. consumption of hot-rolled carbon steel bar remained at about 2 percent during the 1978 to 1980 period, but then rose to 3.1 percent in the first 11 months of 1981.[94] Market penetration by the countries subject to the investigations in this product in the aggregate increased in 1981. Japan is still the largest exporter to the U.S. in the 1978 to November 1981 period of this product. The EC was second, and Canada third. Imports of hot-rolled carbon steel bars from the countries subject to these countervailing duty preliminary investigations and also Spain and South Africa, had been going down in 1979 and in 1980. Then in 1981 they increased sharply from 134,325 tons in 1980 to 194,377 tons in 1981.[95] This increase was sharply concentrated in the last three quarters of 1981, when these imports accounted for 55,797, 58,916 and 60,645 tons, respectively, after a first quarter of only 19,019 tons. For example, imports of hot-rolled carbon steel bars in the January–November 1981 period amounted to 13,000 tons from Belgium and Luxembourg, compared with 8,000 tons during the corresponding period of 1980 In the case of France for the same period, such imports increased from 3,000 tons to 5,000 tons in 1981. These 5,000 tons were brought into the U.S. market during an 11 month period in 1981, while in 1980 for the entire year 4,000 tons of this product were imported. Italy, though importing less than 500 tons for this period, still increased imports in tons and value from the corresponding period of 1980. United Kingdom almost doubled their imports in terms of tonnage, from 53,000 tons in the 1980 11-month period (January to November) to 102,000 tons. West Germany also increased tons imported, from 11,000 tons to 12,000 tons for the same 11-month period. Brazil, though it reduced tons imported for the

[86] Report at VII–7.

[87] Report at VII–4, table VII–2.

[88] Report at VII–6.

[89] Report at VII–10.

[90] Report at VII–10.

[91] Report at VII–13.

[92] Report at VII–14.

[93] Report at VII–5 and VII–21.

[94] Report at VII–22.

[95] Report at VII–23, table VII–16.

comparable 11-month period by a considerable amount, the unit value per ton was lower than all other importers subject to these investigations and its imports in the last quarter of 1981 increased sharply from what they were in the last quarter of 1980.[96]

Several allegations were made of lost sales, and also purchases were made from foreign producers because of corporate relationships with steel producers in those countries. Price is the influential factor in purchasing this product, and these products appear highly price sensitive, even more so during periods of stagnant or declining demand.

Information on comparative pricing patterns between domestic and imported products and countries involved is incomplete, but there are indications of underselling and of possible price suppression and depression that merit further scrutiny. I believe the information at hand, albeit incomplete, coupled with the allegations of Petitioners in these investigations submitted for the record at this point which have not been conclusively refuted point to a reasonable indication of possible price suppression and depression by underselling attributable to allegedly subsidized imports which merits further investigation.

Accordingly, I conclude that there is a reasonable indication that the domestic industry has suffered material injury by reason of allegedly subsidized imports.

VIII. Hot-Rolled Alloy Steel Bar

Introduction

In the investigation on hot-rolled alloy steel bars (investigations Nos. 701–TA–130 through 133 (Preliminary)) I conclude that there is a reasonable indication that the domestic industry is being materially injured by reason of allegedly subsidized imports of hot-rolled alloy steel bar from France, Italy, the United Kingdom, and West Germany.

Condition of the Domestic Industry

Some 34 firms produce hot-rolled alloy steel bars in the United States. During the 1978 to 1981 period the overall decreases in production, capacity, capacity utilization,[97] quantity of shipments,[98] employment of production and related workers in establishments producing hot-rolled alloy steel bar, paid hours worked,[99] and inconsistency in attained operating profits and operating profits as a percent of sales,[100] are only part of the reasons that the U.S. industry producing hot-rolled alloy steel bar as covered by this analysis, is vulnerable to the effects of and has possibly experienced material injury from collective imports from all countries subject to the referenced investigation numbers.

Reasonable Indication of Material Injury by Reason of Imports

These imports from countries subject to these investigations rose very sharply from a depressed 11-month 1980 total of 8,406 tons to 49,147 tons in the first 11 months of 1981. In comparison, the full year 1979 level was only 12,067 tons. Including inflation, the value of these imports also rose significantly for the same comparsion periods.[101] Collectively imports from France, Italy, the United Kingdom, West Germany, Spain, and South Africa—all cited countries—accounted for 35 percent of imports in the January–November 1981 period, when such imports peaked in terms of both volume and share of imports. There was a general rise in imports in each quarter of 1981 as compared with the respective quarter in 1980.[102] The penetration of imports from all countries subject to countervailing duty investigations as a percent of apparent U.S. consumption rose slightly from the 1978 year share of 1.7 percent to an 1981 11-month share of 2.1 percent and 2.5 percent in the third quarter 1981. However, it is important to note that such imports had only attained penetration levels of 0.5 percent of domestic consumption in 1979 and 1980.[103]

As I indicated in the overview, the Commission's comparison of indexes for producer prices, trigger prices, and unit values of imports has its limitations because of discounts or premiums that may exist relative to producers' list prices and other factors. Unit value of imports may also reflect changes in actual product mixes within hot-rolled alloy steel bar, and acceptable data from Germany were not available.[104] Only limited transaction price information was obtained by the Commission in this preliminary investigation. In these analyses, it is not certain whether the samples contacted are representative of the indsutry. No purchasers reported prices for imported hot-rolled alloy steel bar.[105] Certainly more investigation of pricing is required in my opinion.

Capacity details on foreign capabilities to produce hot-rolled alloy steel bars, the relative available markets abroad, availabilities of internal markets from growth in each foreign producing country and other information was lacking and does not justify in this respect discontinuance of the investigations. A preliminary investigation attempts to assess the possibility of present injury and imminent threat of material injury. Continuation of this investigation based upon the cumulated impact of the cited countries is appropriate because past small increases in market penetrations can be quickly altered upward as can prices. Also data on importers' inventories of these products were incomplete.

Although certain industry indicators appear mixed, I believe the industry is vulnerable to effects of and has possibly suffered material injury from evident increased imports allegedly unfairly traded and is not in good health. I must also recognize that much information including that bearing on threat is missing. I therefore determine there is a reasonable indication that the domestic industry producing hot-rolled alloy steel bar is possibly suffering material injury by reason of allegedly unfairly traded imports. I rely on the "low-threshold" intended by Congress to allow continuation of these preliminary investigations into final determinations, if the facts so warrant.

IX. Cold-Formed Carbon Steel Bar

With regard to the six countervailing duty investigations involving cold-formed carbon steel bar,[106] I determine that there is a reasonable indication of material injury by reason of the allegedly subsidized imports from Belgium, Brazil, France, Italy, the United Kindgom, and West Germany.

Condition of the Domestic Industry

The facilities manufacturing cold-formed carbon steel bar have been faced in the years 1980 and 1981 with demand that was substantially lower than in the previous 2 years, with apparent consumption of 1.3 million tons in January–November 1981, though 9 percent higher than the corresponding 1980 levels, still considerably below 1.8 million tons in 1978 and 1.9 million tons in 1979. Some 40 firms produce cold-

[96] Report at table VII 20, at VII–28.
[97] Report, table VIII–3.
[98] *Id.* Table VIII–4.
[99] *Id.* table VIII–6.
[100] *Id.* table VIII–9. Nine firms accounting for about 62 percent of U.S. producer shipments.
[101] *Id.* table VIII–11.
[102] *Id.* at VIII–25.
[103] *Id.* tables VIII–14 and VIII–16. This includes also Spain and South Africa statistics.
[104] *Id.* table VIII–17.
[105] *Id.* at VIII–29.
[106] Investigations Nos. 701–TA–134 to 139 (Preliminary).

formed carbon steel bar in the United States. Only two large integrated steel producers, Republic Steel and Jones & Laughlin Steel produce these products, accounting for less than one-third of total U.S. producers' shipments of these products in 1981, but still a considerable portion. The rest of the firms are basically electric furnace/mini-mill and fabricator operations.[107] U.S. production of the product fell sharply from 1979 to 1980 from 1 million tons to 738,000 tons. While production was up in 1981 to 796,000 tons, the increase still left production levels 24 percent below the 1979 mark.[108] Shipment data reveal a similar trend, showing a 7 percent rise from 1978 to 1979, then a precipitous drop of almost one-third in 1980. Total domestic shipments then rebounded somewhat in 1981, but still represented a 28-percent decline from 1979 levels.[109]

Capacity to produce cold-formed carbon steel bar fluctuated throughout the period from 1.3 million tons in 1978, reaching its highest level, 1.4 million tons, in 1981. Because of lagging production and shipment levels in 1980 and 1981, capacity utilization dropped sharply after 1979, falling to 56 percent in 1981.[110] U.S. producers' inventories of the product remained fairly constant throughout the period at 10 to 12 percent of annual shipments.[111]

Employment trends followed the trends in production. The average number of workers engaged in producing the product increased 2 percent from 1978 to 1979, then fell 24 percent in 1980 but also fell an additional 4 percent in 1981. Employment of such workers in 1981 of 2,731 represented a 25-percent decline from 1978 employment levels. Hours paid for workers engaged in producing cold-formed carbon steel bar declined 30 percent from 1979 to 1980 and a further 1 percent in 1981. Total wages and compensation in 1980 and 1981 were also well below 1979 levels. Labor productivity fluctuated markedly during the 1978–81 period rising by 3 percent in 1979, declining slightly in 1980 and rising by 6 percent in 1981, but was outpaced substantially by gains in hourly compensation of 14 percent in 1979 and 1980 and 10 percent in 1981. Unit labor costs thus increased even more substantially or 32 percent during the period on a per ton basis.[112]

U.S. producers' profitability has suffered in the last 2 years as well.[113] Net sales grew from $393 million in 1978 to $467 million in 1979, then declined radically in 1980. Rising sales in 1981 amounted to $411 million, still well below the level of 1979. Operating profits were $16 million in 1978 and $19 million in 1979, or 4.1 percent of net sales in both years. However, losses of $7 million and $5 million were sustained in 1980 and 1981, respectively. These losses amounted to 1.9 percent and 1.2 percent of net sales. While only one firm reported operating losses in 1978 and none reported losses in 1979, four suffered losses in 1980, and three in 1981.[114]

Resonable Indication of Material Injury by Reason of Imports

During the 1978–80 period, imports from all sources of cold-formed carbon steel bar comprised less than 1 percent of total U.S. imports of all carbon steel mill products, and fell from 141,000 tons in 1978 to 86,000 tons in 1980. However, during the January–November 1981 period 120,000 tons, a 58 percent increase over the comparable 1980 period, were imported. Market penetration by such imports with respect to apparent U.S. consumption decreased from 7.8 percent in 1978 to 5.0 percent in 1979, but subsequently increased to 6.5 percent in 1980, and jumped to 9.0 percent in the January–November 1981 period. The uptrend for such imports is even more pronounced in examining 1980 and 1981 quarterly data which indicate that such imports rose irregularly from 24,000 tons in the first quarter 1980 to a peak of 36,000 tons a quarter in the last two quarters of 1981, showing a dramatic increase in penetration from 5.7 percent in January–March 1980 to 11.9 percent in October–December 1981.[115] The principal supplier of cold-formed carbon steel bar to the U.S. during January 1978 to November 1981 was Japan, accounting for 57 percent of total imports during the period with the EC supplying an aggregate of 26 percent of such imports.[116]

Imports from all countries subject to these investigations and from Spain and South Africa similarly showed dramatic increases both in absolute levels and relative to domestic consumption. After having declined steadily from 42,509 tons in 1978 to 23,818 tons in 1980, such imports increased dramatically in 1981, 150 percent, from 1980 levels to 59,633 tons. Likewise import market penetration which stood at 2.3 percent in 1978 as a share of apparent domestic consumption declined to 1.6 percent in 1979, stood at 1.8 percent in 1980, and jumped to an estimated 4.2 percent for the 1981 period.[117] Quarterly figures for the 1980–81 period evidence the surge in such imports from 4,298 tons in the third quarter of 1980 to over 16,000 tons in the third and fourth quarters of 1981 with July–December 1981 levels of 32,974 tons having increased over three times from the corresponding 1980 6-month period levels. Market penetration of such imports during the 1980 and 1981 period on a quarterly basis increased quarterly from 1.6 percent of apparent domestic consumption in the third quarter of 1980 to an estimated 5.5 percent for the fourth quarter of 1981.[118] In terms of value, such imports to the U.S. increased from $10.3 million to $33.3 million during the January–November 1980 to 1981 comparative periods.[119]

Data on prices of imported and domestic products and lost sales were quite incomplete with product and country coverage hardly comprehensive, but there are instances of possible underselling by these imports which warrant further investigation should final investigations be conducted.[120]

These data, coupled with allegations of petitioners in this respect which have not been conclusively refuted by respondents, evidence a reasonable indication of possible price suppression and depression by reason of underselling by such imports which merits further investigation.

Accordingly, I conclude that there is a reasonable indication that the domestic industry has suffered material injury by reason of allegedly subsidized imports.

X. Cold-Formed Alloy Steel Bar

In the countervailing duty investigations Nos. 701–TA–140 to 144 (Preliminary) on cold-formed alloy steel bar, I determine that there is a reasonable indication of material injury by reason of imports from Belgium, the Federal Republic of Germany, France, Italy, and the United Kingdom.

Condition of the Domestic Industry

During the 1978 to 1981 period the decreases in production,[121] capacity utilization,[122] employment of production and related workers in establishments

[107] Report at IX–4 through IX–7.
[108] Report, table IX–4, and IX–9.
[109] *Id.* at IX–9 and IX–10.
[110] *Id.*, Table IX–4.
[111] *Id.*, at IX–12.
[112] *Id.* at IX–12 to IX–15. It should be noted that U.S. producers submitting usable data in this regard accounted for 39 percent of total shipments in 1980.
[113] Profit-and-loss figures were submitted by four firms accounting for about 42 percent of U.S. shipments in 1980.
[114] *Id.* at IX–16.
[115] Report at IX–19, Table IX–16.
[116] Report at IX–19.
[117] Report, table IX–12.
[118] *Id.*
[119] Report, table IX–14.
[120] Report at X–34 and IX–35.
[121] Report, table X–3.
[122] *Id.*

producing cold-formed alloy steel bar,[123] paid hours worked,[124] flattened operating profits,[125] and flattened operating profits as a percent of sales (though at first glance seemingly favorabl)[126] are only part of the reasons that the U.S. industry producing cold-formed alloy steel bar, as covered by this analysis, is vulnerable to the effects of and has possibly experienced material injury from collective imports from all countries subject to these countervailing duty investigations.

Reasonable Indication of Material Injury by Reason of Imports.

Such imports rose from a full-year 1978 quantity of 25,668 tons to an 11-month 1981 total of 42,066 tons. The share of apparent U.S. consumption more than doubled from 7.9 percent in 1978 to 16.1 percent for the first 11 months of 1981.[127]

Purchasers contacted by the Commission regarding cold-formed alloy steel bar prices failed to provide information regarding specific prices of imported bars.[128] Selection of overall unit value of imports can be misleading if particular kinds of cold-formed alloy steel bars imported change between the periods measured. Producer price indexes can be misleading if based on list prices and changes in discounts or premiums from list prices are not reflected. Hence, the usefulness of price index comparisons such as those in table X–18 of the Report and the limited response to the Commission's efforts to get information in these preliminary investigations argue for obtaining more facts and continuing the investigations in this regard. When a set of different indexes is selected it is important to review pertinent domestic and international economic trends during the years selected in order to make a fair judgment on what year the index is based upon as well as what beginning and terminal years are selected for change measurement.

A few observations are in order with respect to seemingly mixed indicators of the industry's health. It is not enough to say that a product lines' profit as a percent of sales is above the average profits recorded for manufacturing concerns in the United States or to assume all capital investment in plant and equipment is for cash-generating productive improvements. As in any analysis of the condition of an industry, a particular product must not be divorced from the component, in view of the contribution it has in overall companies' viability. Also, age of equipment and recent levels of depreciation writeoff influence profit levels, that are perhaps misleading and illusory from an intrinsic economic standpoint.

Also, it is not appropriate to have unresolved questions regarding the claimed misclassification of imports from France relative to cold-formed alloy bars.[129]

In the case of the cold-formed alloy steel bar industry, national security and other critical considerations that are economic factors of relevance must be addressed. The industry's petition is not fivolous nor marginal in my judgment. Weaking demand in many steel products and for U.S. raw steel produced in general in the fourth quarter of 1981 and so far during the first quarter of 1982 provides an economic context pertinent in reviewing this industry's condition during these preliminary investigations. There is a reasonable indication that U.S. firms producing cold-formed alloy steel bar did not maintain the more favorable operating rates and financial results that existed in the first half of 1981. Undue reliance on yearly average comparisons to say that a particular profit picture is extremely healthy may neglect quarterly changes and trends and how these must be related to overall companies' viability.

Even conditions which some may indicate contributed during the 1978 through 1981 period to an above average profit picture do not cover *in toto* the present or future threats of material injury which may reasonably exist because of impacts from allegedly subsidized cold-formed alloy steel bar exports from an accumulated group of countries. Additionally, it is important to note such profitability data were obtained from three firms accounting for only about 45 percent of total producers' shipments in 1980 of these products. It is important to state here, also, that end-of-period inventories of imports from all sources rose sharply from a 1980 level of 5,156 short tons to a 1981 level of 16,949 short tons.[130] This inventory accumulation represents an overhang which could disrupt the United States market. The effective capacity of foreign countries to export to the United States and other foreign markets is not even adequately referred to in the Report, nor is there detail on their own internal demand and other pertinent economic factors such as pricing patterns. These considerations have a bearing on the issue of threat to the domestic injury.

Although certain industry indicators appear mixed, I believe the industry is not in good health and is vulnerable to effects of and is possibly suffering material injury from evident increased imports. As stated, much data pertaining that bearing on threat is missing. I therefore determine that there is a reasonable indication that the domestic industry producing cold-formed alloy steel bars is possibly suffering material injury by reason of allegedly unfairly traded imports. I am relying on the "low-threshold" intended by Congress to allow continuance of these preliminary investigations into final determinations, if the facts so warrant.

XI. Conclusion

I conclude that there is a causal link between the allegedly subsidized and/or allegedly LTFV imports for all the products and from all those countries part of these investigations, with the material injury experienced by the domestic industry. The principal bases for my affirmative determinations are the significant cumulative impact that these alleged unfair imports have had on the operations and financial condition of the domestic producers, adverse employment trends, depressed levels of utilization of capacity, and their possible considerable influence in prices, which have had a material adverse effect on the condition of the respective domestic industries covered by these preliminary investigations, as well as the injurious effects to the overall health of the U.S. steel industry, which I believe is a relevant factor to consider in these preliminary investigation.

Issued: March 5, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-6472 Filed 3-9-82; 8:45 am]

BILLING CODE 7020-02-M

[123] *Id.*, table X–6.

[124] *Id.*

[125] *Id.*, table X–9.

[126] *Id.* Firms reporting accounted for only about 45 percent of total producer shipments of such product.

[127] *Id.* table X–11. Countries include Belgium, France, Italy, United Kingdom, West Germany and Spain.

[128] *Id.* X–32 through X–38.

[129] *Id.* at X–26 through X–32.

[130] *Id.* table X–10.

NATIONAL COMMISSION ON SOCIAL SECURITY REFORM

Meeting

AGENCY: National Commission on Social Security Reform.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forth-coming meeting of the National Commission on Social Security Reform.

This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: March 26, 1982: 9:30 a.m. to 1:30 p.m.

ADDRESS: Room 5110, Dirksen Senate Office Building, Washington, D.C. 20510.

FOR FURTHER INFORMATION CONTACT: Robert J. Myers, Executive Director, 736 Jackson Place NW., Washington, D.C. 20503, Telephone—(202) 395–5132.

SUPPLEMENTARY INFORMATION: The National Commission on Social Security Reform is established by Executive Order No. 12335 dated December 16, 1981 to provide appropriate recommendations to the Secretary of Health and Human Services, the President, and the Congress on long-term reforms to put Social Security back on a sound financial footing.

The meeting of the Commission is open to the public. The proposed agenda includes:

Discussion of method of computation of Social Security benefits.

Discussion of Social Security financing issues.

Discussion of staff papers on short-term and long-term financing of the Social Security system.

Such new business as the chairman or the membership may put before the Commission.

Records are kept of all Commission proceedings, and are available for public inspection at the office of The Executive Director, National Commission on Social Security Reform, 736 Jackson Place NW., Washington, D.C. 20503.

Robert J. Myers,

Executive Director.

[FR Doc. 82-6394 Filed 3-9-82; 8:45 am]

BILLING CODE 3115-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Inter-Arts Panel (Artists Colonies); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-arts Panel (Artists Colonies) to the National Council on the Arts to be held on March 25, 1982, from 10:00 a.m.–4:00 p.m. in room 1340 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code. Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 1, 1982.

[FR Doc. 82-6364 Filed 3-9-82; 8:45 am]

BILLING CODE 7537-01-M

Theater Panel (Large Companies, Companies With Short Seasons); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Panel (Large Companies, Companies with Short Seasons) to the National Council on the Arts to be held on March 28, 1982, from 10 a.m.–5:30 p.m., on March 29, and March 30, 1982, from 9 a.m.–5:30 p.m., in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 2, 1982.

[FR Doc. 82-6365 Filed 3-9-82; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Application for License To Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public Notice of Receipt of an Application" please take notice that the Nuclear Regulatory Commission has received the following applications for import licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H St., NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed on or before April 9, 1982. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

The table below lists the import applications.

Dated this 4th day of March at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Acting Assistant Director, Export/Import and International Safeguards, Office of International Programs.

FEDERAL REGISTER—IMPORTS

Name of applicant, Date of application, Date received, application No.	Material type	Material in kilograms		End-Use	Country of destination
		Total element	Total isotope		
Exxon Nuclear Corp., Feb. 26, 1982, Mar. 2, 1982, ISNM82004.	3.4% Enriched Uranium	55,000	1,870	UF_6 will be fabricated by Exxon into fuel assemblies & reexported for use in the Biblis A Reactor.	From Netherlands.
Exxon Nuclear Corp., Feb. 26, 1982, Mar. 2, 1982, ISNM 82005.,	3.4% Enriched Uranium	66,000	2,224	UF_6 will be fabricated by Exxon into fuel assemblies & reexported for use in the Biblis B Reactor.	From USSR.

[FR Doc. 82-6440 Filed 3-9-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-528A, 529A, 530A]

Arizona Public Service Co.; Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters

The Commission has received the following additional advice, pursuant to section 105c of the amended Atomic Energy Act of 1954, from the Attorney General of the United States, dated February 11, 1982, with respect to the construction permit application for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3.

You have requested our advice pursuant to the provisions of Section 105c of the Atomic Energy Act of 1954, as amended, in regard to a transfer of ownership interest in the above referenced units by Salt River Project Agricultural Improvement and Power District ("SRP") to the Los Angeles Department of Water and Power ("LADWP") and to the Southern California Public Power Authority ("SCPPA").[1] Under the proposed transfer, LADWP will acquire a 5.7 percent interest, and SCPPA will acquire a 5.91 percent in each of the three 1270 megwatt units. The Palo Verde Nuclear Generating Station ("PVNGS") is located near Phoenix, Arizona. LADWP and the members of SCPPA are California utilities.

LADWP has been the subject of antitrust review on three previous occasions. The most recent occasion was in connection with LADWP's participation in PVNGS Units 4 and 5. The Department of Justice advised the Nuclear Regulatory Commission by letter dated February 22, 1979 that the participation of LADWP in PVNGS Units 4 and 5 would not create or maintain a situation inconsistent with the antitrust laws.[2]

Some of the members of SCPPA were the subject of antitrust review in connection with the Sundesert Nuclear Plant, and the San Joaquin Nuclear Project. On November 24, 1975 the Department advised that no hearing was required in connection with the Cities of Anaheim, Glendale, Riverside and Pasadena participating in the San Joaquin Nuclear Project. On September 2, 1977 the same advice was given in connection with the four cities participating in the Sundesert Nuclear Plant. We advised on July 17, 1978 that participation by the City of Burbank in the Sundesert Project would not require an antitrust hearing. We also advised on January 31, 1980, that participation by the Cities of Anaheim and Riverside in San Onofre Nuclear Generating Company, Units 2 and 3, would not require an antitrust hearing.

Our review of the information submitted in connection with the current application, as well as other relevant information, has disclosed no evidence that would warrant a change of our earlier advice with respect to LADWP, or the members of SCPPA that were the subject of prior antitrust review. We are not aware of any evidence that the other members of SCPPA have engaged in any conduct that might warrant further antitrust scrutiny. Accordingly, it is the Department's view that no antitrust hearing is necessary with respect to the proposed transfers of ownership.

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requrests for hearing shall be filed by (30 days) either (1) by delivery to the NRC Docketing and Service Branch at 1717 H Street NW., Washington, D.C. or (2) by mail or telegraom addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

For the Nuclear Regulatory Commission.

Argil Toalston,

Acting Chief, Antitrust and Economic Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 82-6435 Filed 3-9-82; 8:45 am]

BILLING CODE 7590-01-M

[1] The SCPPA is an entity formed pursuant to California law for the purpose of financing, acquiring, constructing, maintaining, and operating generation and transmission projects. The members of, and their percentage particpating in SCPPA are: Los Angeles Department of Water (62%), City of Burbank (4%), City of Glendale (4%), City of Pasadena (4%), City of Riverside (5%), City of Anaheim (7.5%), City of Banning (1%), City of Vernon (4.5%), and Imperial Irrigation District (6%).

[2] LADWP was also the subject of antitrust review in connection with the Sundesert Nuclear Plant, Units 1 and 2 and the San Joaquin Nuclear Project. In both reviews the Department advised that antitrust hearings were not required.

[Docket No. 50-366]

Georgia Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 26 to Facility Operating License No. NPF-5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, which revised Technical Specifications (TSs) for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2 (the facility) located in Appling County, Georgia. The amendment is effective as of the date of issuance.

This amendment revises the Technical Specification surveillance requirements needed to determine the operability of the source range monitors during periods of core alteration.

The application for the amendment 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 amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment 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 not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated January 22, 1982, (2) Amendment No. 26 to License No. NPF-5, 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, NW., Washington, D.C. and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. 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 26th day of February, 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-6436 Filed 3-9-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 76 to Facility Operating License No. DPR-46 issued to Nebraska Public Power District (the licensee), which revised the Technical Specifications for operation of the Cooper Nuclear Station, located in Nemaha County, Nebraska. The amendment is effective as of its date of issuance

These changes to the Technical Specifications involve changes that correct pump flow rates for testing the Low Pressure Coolant Injection subsystem.

The application for the amendment 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 amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment 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 not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated January 25, 1982, (2) Amendment No. 76 to License No. DPR-46, and (3) the Commission's letter to the licensee dated March 3, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305. 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 3rd day of March 1982.

For the Nuclear Regulatory Commission.

Domenic B.Vassallo,

Chief Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-6437 Filed 3-9-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Issuance of Amendments to Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 54 and 48 to Facility Operating License Nos. DPR-42 and DPR-60 issued to Northern States Power Company (the licensee), which revised Technical Specifications for operation of Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 (the facilities) located in Goodhue County, Minnesota. The amendments are effective as of the date of issuance.

The amendments delete Appendix B (Environmental Technical Specifications) from the operating licenses and include in Appendix A certain reporting requirements which were included in Appendix B.

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 prepared an Environmental Impact Appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated May 1973.

For further details with respect to this action, see (1) the application for amendments dated April 24, 1981, (2) Amendment Nos. 54 and 48 to License Nos. DPR-42 and DPR-60, and (3) the Commission's related Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental Conservation Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401. 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 26th day of February, 1982.

For the Nuclear Regulatory Commission.

R. A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-6438 Filed 3-9-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-256]

Public Service Company of Colorado; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 25 to Facility Operating License No. DPR-34 issued to the Public Service Company of Colorado, which revised Technical Specifications for operation of the Fort St. Vrain Generating Station (the facility) located in Platteville, Colorado. The amendment is effective as of the date of issuance.

The amendment modifies the license to permit possession of additional sources and revise the Technical Specifications to: (1) Specify the period of time and conditions under which the Unit Auxiliary Transformer can be removed from service with the reactor at power, (2) substitute the requirement for an Annual Operating Report with an Annual Occupational Exposure Report and a Monthly Operating Report, (3) allow manual reset of the 30% bistables for operation at less than 30% but greater than 10% power, (4) require

operability of snubbers when the reactor is at power, (5) establish an upper time limit for loss of voltage to 480 volt buses and the method to be used during surveillance testing, (6) substitute outdated requirements with those that comply to 10 CFR 20.103, (7) revise the method of performing thermocouple testing, (8) specify the testing of carbon sample cannisters as per NRC requirements, and (9) include two additional snubbers.

The applications for the amendment comply 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 amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment 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 not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated January 20, 1978, April 14, 1978, May 9, 1978, June 19, 1979, July 24, 1980, and December 31, 1980; (2) Amendment No. 25 to Facility Operating License No. DPR–34; and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Greeley Public Library, City Complex Building, Greeley, Colorado. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 2d day of March, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82–6439 Filed 3–9–82; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Advisory Committee on Shareholder Communications; Meeting

This is to give public notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I., 10(a), that the Securities and Exchange Commission Advisory Committee on Shareholder Communications will conduct meetings on March 22 and 23, 1982 at the Belmont Conference Center, 655 Belmont Woods Road, Elkridge, Maryland, beginning at 9:00 a.m. each day.

The purposes of the meetings are to consider recommendations with respect to: (1) Improving existing procedures relating to distribution of proxy material and annual reports; (2) Improving existing proxy voting procedures; (3) Improving existing procedures relating to distribution of non-proxy corporate communications; and (4) The feasibility of providing a means for issuers to identify the beneficial owners of street or other nominee held securities.

Further information may be obtained by contacting: Gregory H. Mathews, Division of Corporation Finance, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549, (202) 272–2589.

Dated: March 4, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–6473 Filed 3–9–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18534; File No. SR–CBOE–82–5]

Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Change

March 4, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 22, 1982, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change, among other things, would specifically provide that the exercise limits governing options on Treasury bonds and notes would apply to the duration of the "when-issued" period for the underlying securities, *i.e.*, the period between the auction and issuance of the underlying securities. The current CBOE exercise limits prescribe the maximum number of Treasury options contracts that can be exercised over any consecutive five business day period. The proposed rule change also would provide that the exercise limits could not be exceeded during the when-issued period, which generally exceeds five business days.

The proposed rule change also would revise the Government securities option margin rule and the related definition of "covered" so that "mini-series" options may offset and may be offset by, standard-sized options on the same underlying Government security. The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that the change will assist in the implementation and operation of the Exchange's Government securities options markets and protect investors and the public interest.

In order to assist the Commission in determining whether to approve the proposed rule change or 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 submission on or before March 31, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–CBOE–82–5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendment also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–6371 Filed 3–9–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18535; File No. SR-CBOE-82-4]

Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Change

March 4, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 22, 1982, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would conform several provisions of the Exchange's rules relating to GNMA options to previously adopted parallel Exchange rules relating to Government securities options. The statutory basis for this proposed rule change is Section 6(b)(5) of the Act in that the change will assist the implementation and operation of the Exchange's GNMA and Government securities options markets and protect investors and the public interest.

In order to assist the Commission in determining whether to approve the proposed rule change or 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 submission on or before March 31, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-82-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-6372 Filed 3-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18529; File No. SR-MCC-82-2]

Midwest Clearing Corp.; Effectiveness of a Proposed Rule Change

March 3, 1982.

The Midwest Clearing Corporation ("MCC") submitted a rule change on February 8, 1982, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 that provides a detailed statement of the buy-in procedures used by MCC. MCC has restated, for the benefit of its participants, current procedures with respect to when and how a buy-in notice may be submitted and executed.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the securities Exchange Act of 1934.

Publication of the submission is expected to be made in the **Federal Register.** Interested persons are invited to submit written data, views and agruments concerning the submission on or before March 31, 1982. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to file No. SR-MCC-82-2

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George. A. Fitzsimmons,

Secretary.

[FR Doc. 82-6373 Filed 3-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18531; SR-MSTC-82-1]

Midwest Securities Trust Co. ("MSTC"); Order Approving Proposed Rule Change

March 3, 1982.

On January 27, 1982, MSTC filed with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, a proposed rule change that would permit MSTC participants to settle their institutional trades automatically through a link with Depository Trust Company's Institutional Delivery System ("IDS"). The proposal also would permit MSTC to discontinue its Participant Delivery System, which is similar to IDS.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by publication of Securities Exchange Act Release No. 18462 (February 1, 1982) and by publication in the **Federal Register** (47 FR 5829, February 8, 1982). No letters or comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-6374 Filed 3-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18533; SR-PSE-81-26]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 4, 1982.

The Pacific Stock Exchange, Inc. ("PSE"), 301 Pine Street, San Francisco, California 94104, submitted on January 8, 1982, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Rule II, section 3(g) of the PSE rules, relating to specialists accepting orders before the opening. The proposed amendment requires a specialist to accept round lot orders for executions prior to the reopening of a stock in which trading has been halted until two

minutes prior to the reopening of trading by the specialist.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 18412, January 12, 1982) and by publication in the **Federal Register** (47 FR 4794, February 2, 1982). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-6375 Filed 3-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18530; SR-SCCP-81-7]

Stock Clearing Corp. of Philadelphia ("SCCP"); Order Approving Proposed Rule Change

March 3, 1982.

On December 9, 1981, SCCP filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rules 19b-4 thereunder, a proposed rule change that would amend SCCP's buy-in rules. The proposed rule change (i) permits SCCP participants to buy-in securities against SCCP and (ii) provides for the extension of time for executing buy-ins when securities subject to a buy-in notice are delayed in transfer.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 18375, December 24, 1981) and by publication in the **Federal Register** (46 FR 63441, December 31, 1981). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-6376 Filed 3-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22410; 70-6706]

New England Electric System; Proposal Relating to Short-Term Bank Borrowings, Issuance of Commercial Paper, and Request for Exception From Competitive Bidding

March 3, 1982.

In the matter of New England Electric System, Granite State Electric Company, Massachusetts Electric Company, The Narragansett Electric Company, New England Power Company, and New England Power Service Company, 25 Research Drive, Westborough, Massachusetts 01581.

New England Electric System ("NEES"), a registered holding company, and five of its subsidiaries, Granite State Electric Company ("Granite"), Massachusetts Electric Company ("Mass Electric"), the Narragansett Electric Company ("Narragansett"), New England Power Company ("NEP") and New England Power Service Company ("NEPSCO") have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(a), 43, 45(a), 50(a)(2), 50(a)(3) and 50(a)(5) thereunder.

The above-named subsidiaries propose to borrow from NEES, banks, and a system money pool currently in operation, and/or to issue commercial paper. Granite, Mass Electric, Naragansett, NEP and NEPSCO seek authorization to borrow through March 31, 1983 up to an aggregate outstanding principal amount of borrowings not to exceed $5,500,000, $32,000,000, $8,000,000, $230,000,000 and $6,000,000, respectively. The proceeds of the proposed borrowings are to be used to pay outstanding notes to banks, dealers in commercial paper, NEES and/or borrowings from the money pool, to provide new money for capitalizable expenditures (or reimburse the treasury therefor), to refund maturing bonds pending permanent financing, and for other corporate purposes.

The bank borrowings would be from a group of 41 banks, evidenced by notes maturing in less than one year from the date of issuance. Borrowings may be under compensating balances or fee arrangements equivalent to such compensating balance requirements. The effective interest cost of such borrowings will not be greater than the effective interest cost of borrowings at the bank's base or prime lending rate with compensating balance requirements of 10% of the line of credit and 10% of the borrowings thereunder. Borrowings may also be negotiated without compensating balances or fee arrangements at an effective interest cost not exceeding the effective interests costs under compensating balances or fee arrangements. Fixed rate borrowings may be made having no prepayment privileges, for periods not exceeding 30 days. Such rates may be greater than the then current base or prime lending rate, but in no event greater than the above limit on effective interest cost. Based on compensating balance requirements of about 10 to 20%, or fees equivalent thereto, the effective interest cost of bank borrowing would be approximately 18.3% to 20.6% per annum, based on a base lending rate of 16½%.

Borrowings from NEES would be at an effective interest cost equal to the base or prime lending rate of the First National Bank of Boston and would be evidenced by notes maturing in less than one year from the date of issuance. The borrowing companies may prepay their notes to NEES, in whole or in part, with borrowings from banks or the pool or from the sale of commercial paper. Except for borrowings at a fixed interest rate, borrowings from banks may be prepaid, in whole or in part, with borrowings from NEES, the pool, or the sale of commercial paper. In the event of borrowings from banks at a higher interest rate or the sale of commercial paper at a higher effective interest cost, to prepay notes to NEES, NEES will credit the borrowers for any excess interest from the date of issuance of the new notes or commercial paper to the normal maturity date of the notes to NEES being prepaid. Conversely, in the event of borrowings from NEES to prepay notes to banks, the interest rate of the notes issued to NEES will be the lower of (1) the interest rate of the notes being prepaid or (2) the prime interest rate in effect, but with respect to (1) only to the maturity date of the notes so prepaid, and thereafter at the prime interest rate in effect at the time the new notes are issued.

Mass Electric and NEP propose to issue and sell commercial paper during the period through March 31, 1983 directly to Lehman Commercial Paper

Incorporated ("Lehman") and/or A.G. Becker & Co., Incorporated ("Becker"), dealers in such commercial paper. The dealers will reoffer the commercial paper to not more than 100 of their institutional customers on non-public lists. If any purchaser wishes to resell prior to maturity the dealer, pursuant to an oral repurchase agreement, will repurchase the paper for resale to others on such lists.

The commercial paper will be in the form of unsecured promissory notes having varying maturities not exceeding 270 days. The terms of the commercial paper do not provide for prepayment prior to maturity. The commercial paper will be purchased by Lehman and/or Becker from the issuer at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for the particular maturity at which prime commerical paper of comparable quality is sold by public utility issuers to commercial paper dealers. Lehman, and/or Becker will initially reoffer the commercial paper at a discount rate not more than ⅛ of 1% per annum less than the prevailing discount rate to the issuer.

The effective interest cost to the issuer on such paper will not exceed the effective interest costs at the time of issue for borrowings from the First National Bank of Boston, except that, in order to obtain maximum flexibility, commercial paper may be issued with a maturity of not more than 90 days from the date of issue with an effective cost in excess of such effective interest cost.

The borrowing companies propose to reduce their need for outside borrowing through the continued use of a money pool. Under the money pool, surplus funds that may be available from day to day in the treasuries of certain of the NEES System subsidiaries are used to make loans to subsidiaries in need of short-term funds. Each member will determine each day, on the basis of cash flow projections, the amount of surplus funds it has available for contribution to the pool. The surplus funds are turned over to NEPSCO which administers the pool as agent ("Agent") for the member companies. NEES may not borrow funds from the pool or loan funds to the pool.

Loans from the pool are made pursuant to open account advances. Evidence of indebtedness is not prepared for each pool transaction unless a lending subsidiary requests such evidence, in which case, a promissory note will be issued. Loans are made first to the borrower paying the highest rate for outside funds. If two or more members are paying the same rate, loans are made to them equally until the needs of one are met. All short-term borrowing needs of members are met by surplus funds in the pool to the extent such funds are available. All loans made from the pool are made payable on demand and may be prepaid by the borrower without penalty.

Borrowing companies pay a monthly rate based upon the rate the borrower would otherwise have to pay an outside lender. Those companies without the ability to issue commercial paper pay the monthly average of the floating base rate of The First National Bank of Boston. Those companies able to issue commercial paper will pay the weighted monthly average of the rates on outstanding commercial paper of all subsidiaries. During any month when no such commercial paper is outstanding, the rate is the monthly average of the rate for high grade 30-day commercial paper sold through dealers by major corporations as published in the *Wall Street Journal.*

Each member receives as interest that fraction of the total interest received by the pool equal to the ratio of the surplus funds the member has contributed to the total surplus funds in the pool. Such interest is computed on a monthly basis. Each member may withdraw for operational purposes any of its surplus funds at any time without notice. If there are more surplus funds in the pool than are necessary to meet the borrowing needs of the members, the Agent invests the excess on behalf of the pool in certain instruments permitted by Massachusetts law. It is anticipated that lenders to the pool will receive a higher return on their investments than they otherwise would. Borrowers obtain reduced fees due to a reduced need for bank lines of credit.

Mass Electric and NEP request an exception from the competitive bidding requirements of Rule 50, pursuant to subparagraph (a)(5), for the issuance and sale of commercial paper because (1) the commercial paper to be issued will have maturities of not more than nine months, (2) the effective interest cost thereon will not exceed the effective interest costs at the time of issue for borrowings from the First National Bank of Boston (except commercial paper issued with a maturity of not more than 90 days), (3) the current rates for commercial paper are readily ascertainable, and (4) it is not practical to publish invitations for bids for commercial paper.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Any interested persons wishing to comment or request a hearing should submit their views in writing by March 29, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-6368 Filed 3-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22409; 70-6712]

Northeast Utilities; Proposed Increase in Number of Authorized Common Shares and Order Authorizing Solicitation of Proxies in Connection Therewith

March 3, 1982.

Northeast Utilities ("Northeast"), P.O. Box 27, Hartford, Connecticut 06101, a registered holding company, has filed a declaration with this Commission pursuant to section 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 62 thereunder.

Northeast proposes to increase from 100,000,000 to 130,000,000 the Company's total number of authorized common shares, par value $5. The authorized number is fixed from time to time by shareholder resolution. Of the 100,000,000 shares currently authorized, 79,001,844 were issued and outstanding as of December 31, 1981. As of that date an additional 9,874,024 authorized but unissued shares were reserved for issuance under Northeast's Dividend Reinvestment and Common Share Purchase Plan. Northeast also anticipates financing additional equity capital requirements for its operating subsidiaries and possibly issuing shares in the future to fund its Tax Reduction Act Employee Stock Ownership Plan. Northeast believes the increased authorization is necessary to give it sufficient flexibility in the timing and amount of future equity financings.

The proposal to increase authorized common shares will be submitted for shareholder consideration and action at

the next Annual Meeting to be held on May 25, 1982. In connection therewith, Northeast proposes to solicit proxies from its shareholders. Adoption of the proposal requires the affirmative vote of the holders of a majority of the oustanding common shares. Northeast has filed preliminary copies of the proxy solicitation material and requests the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

It appears that the declaration insofar as it relates to the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62.

It is ordered, therefore, that the declaration insofar as it relates to the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hering should submit their views in writing by March 29, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-6389 Filed 3-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22408; 70-6701]

Southern Co., et al.; Proposed Issuance and Sale of Short-Term Notes to Banks and Commercial Paper to Dealers; Capital Contributions by Holding Company to Subsidiaries; Request for Exception From Competitive Bidding

In the matter of the Southern Company, 64 Perimeter Center East, Atlanta, Georgia 30346, Georgia Power Company, 333 Piedmont Avenue, N.E., Atlanta, Georgia 30302; and Mississippi Power Company, 2992 West Beach Boulevard, Gulfport, Mississippi 39501.

The Southern Company ("Southern"), a registered holding company, and Georgia Power Company ("Georgia"), and Mississippi Power Company ("Mississippi"), electric utility subsidiaries of Southern, have filed an application-declaration and an amendment thereto with this Commission pursuant to Sections 6, 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(2), and 50(a)(5) promulgated thereunder.

The applicant-declarants propose to issue and sell from time to time, prior to April 1, 1983, short-term notes to banks and commercial paper to dealers up to the following aggregate principal amounts at any one time outstanding: Southern, $100,000,000; Georgia, $625,000,000; Mississippi, $94,000,000.

Such notes will be issued from time to time as funds are required prior to April 1, 1983. The maximum short-term debt authorizations for Georgia, Gulf and Mississippi will be automatically reduced by the amount of net cash proceeds these companies receive from the sale of long-term debt and/or preferred stock. However, the short-term debt authorization will not be reduced below those amounts authorized under Section 6(b) of the Act.

Southern has obtained commitments from four international banks for an aggregate principal amount $100,000,000. Each commitment extends to December 31, 1982 and is subject to renewal in accordance with its terms. A commitment fee of ¼% per annum on undrawn amounts is payable for each commitment. Borrowings will, at Southern's option, bear interest at an effective rate of (a) ½% per annum over the lender's floating prime rate or (b) a margin over the London Interbank Offered Rate ("LIBOR"). Swiss Bank Corporation also offers borrowings at ½% per annum over its prime rate on the date of the advance, fixed for 90 days. Borrowings under option (a) are prepayable by Southern at any time without premium or penalty. The commitments, and the interest rates and periods under option (b) are:

Bank	Commitment (in millions)	Margin over LIBOR (percent)	Loan periods
Barclays Bank International	$40	¾	30 to 180 days.
Swiss Bank Corporation	20	¾	30 to 180 days.
Credit Suisse	20	¾	30, 60 or 90 days.
Union Bank of Switzerland	20	½	one to 6 months.

Advances under option (b) from Credit Suisse and the Union Bank of Switzerland are not prepayable. Prepayment of advances from Barclays Bank International Limited and the Swiss Bank Corporation is conditioned on payment of a compensatory premium, usually equal to the difference between the interest that would have been earned to maturity on the prepaid amount and the interest to maturity from relending such amount. The maximum term for borrowings under option (a) is one year, 180 days for Swiss Bank Corporation, or if earlier, the expiration date of the commitment.

Southern will borrow from these banks under the available option providing the lowest effective cost for the borrowing period. Assuming 50% usage of the commitment of each bank and a prevailing prime interest rate or LIBOR of 16%, the effective cost of borrowings (including commitment fees) under these facilities would be as follows: Under option (a), the effective cost from each bank would be 16.75%. Under option (b), the effective cost of borrowings from Union Bank of Switerland would be 16.75% and the effective cost of borrowings from the other facilities would be 17.00%. Southern would not use option (b) unless the LIBOR was such that the related cost was less than the cost under option (a).

Georgia has obtained commitments from ten banks for revolving credit aggregating $550,000,000 for the period from October 1, 1981, through December 31, 1984. The commitment of each bank is evidenced by a separate agreement with Georgia. Each borrowing by Georgia under revolving credit agreement will be evidenced by a master promissory note to be dated the date of borrowing, to mature not more than 270 days (but not later than the expiration of the lending bank's commitment) after the date of issue. Such notes will be prepayable, in whole or in part, at any time without penalty or premium. The revolving credit agreements have been separately negotiated with each of the several banks and, consequently, the pricing terms, interest rates and fees payable by Georgia pursuant to each commitment vary.

Under each agreement Georgia is obligated to pay a commitment fee. The fee is determined by multiplying the unused portion of the commitment by a specified fraction or fractions of a percent (ranging from .375 to .5%).

The rates of interest for revolving credit borrowings vary in one instance based on the amount of aggregate

borrowings outstanding from the lending bank and may rise in the last two commitment years. Under each agreement the annual interest rate will either be equal to, or a percentage multiple of, or plus a specified number of basis points in excess of, a prescribed floating base rate, such as the prime rate or a higher money market rate. Under one agreement, if borrowings exceed 25% of the commitment, a facility fee equal to a fraction of a percentage of the commitment is payable.

Assuming a prime rate of 16% per annum and full usage, the highest effective cost under the revolving credit arrangements would be 16.50% in the first year and 16.80% in the second year and 17.0% in the third year. Assuming 50% usage and a 16% prime rate, the highest effective interest cost would be 17.48% in the first through third years. The ten bank weighted average based on full usage would be 16.055% in the first year and rise to 16.246 in the third year. Georgia may reduce such fees by maintaining balances with the banks.

Georgia may at any time without penalty terminate or reduce the commitment of any bank, provided that no bank's commitment may be reduced to an amount less than the outstanding principal amount of borrowings from such bank at the time of reduction. Each year Georgia expects to extend the commitments for an additional year and to renegotiate commitment terms.

In addition to the above described specific bank borrowing arrangements, the applicant-declarants, except Southern, propose to borrow from other banks within the authorized limits. These bank borrowings will be evidenced by either notes dated as of the borrowing date or the initial borrowing date for master notes. The notes will mature 9 months or less after the date of issue, will be prepayable in whole or in part without penalty or premium, and will be at the prevailing prime rate plus the maintenance of compensating balances of up to 10% of the undrawn amounts and up to 20% of amounts borrowed (or comparable fees in lieu of balances). The maximum effective interest cost of amounts so borrowed under such a facility would be 20% based on an assumed prevailing prime interest rate of 16%. A list of these banks and the principal amount of borrowing from each bank has been provided to the Commission.

The applicants-declarants, including Southern, propose to sell commercial paper within the aggregate principal limit set forth above for each company. The commercial paper will be in the form of promissory notes with varying maturities not to exceed 270 days. Such notes will not by their terms be prepayable prior to maturity.

The commercial paper will be sold directly to or through the following commercial paper dealers: The First Boston Corporation for Southern; Salomon Brothers Inc. for Georgia; and A.G. Becker & Co. Incorporated for Mississippi. The discount or interest rate will not exceed the annual discount rate prevailing at the issuance date of commercial paper of comparable quality and maturity. However, no notes of more than 90 day maturity will be issued at an effective interest cost exceeding that issuer's effective interest cost for bank borrowings of at least equal principal amount. Except for a commission not to exceed ⅛ of 1% per annum payable to the dealer as principal for the issure, no commission or fees will be paid. However, the dealer may reoffer such commercial paper at a discount rate of ⅛ of 1% per annum less than the prevailing interest rate to the issuer or at an equivalent cost if sold on an interest bearing basis.

The dealer will offer the commercial paper to not more than 200 institutional customers of the dealer identified and designated in a nonpublic list prepared in advance by the dealer. It is expected that the commercial paper of the applicant-declarants will be held by customers to maturity. However, if they wish to resell prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase the commerical paper and reoffer the same to others on the customer list.

Southern proposes to use the bank and commerical paper borrowings, treasury funds and other external funds to make capital contributions to Georgia and Mississippi, as well as to Alabama Power Company ("Alabama") and Gulf Power Company ("Gulf"), two other electric utility subsidiaries of Southern. Such funds will also be used to pay Southern's indebtedness when due, to make loans to Southern Company Services, Inc., and to serve other corporate purposes. Southern proposes to make capital contributions from the effective date of the Commission's order herein through March 31, 1983 in amounts not to exceed the following:

Company	Amount
Alabama	$140,000,000
Georgia	280,000,000
Gulf	8,000,000
Mississippi	8,000,000

The funds will be used by the subsidiaries for financing in part their respective construction programs and for other corporate purposes. Part or all of the net proceeds of any long-term financing will be applied to pay or reduce the principal amount of outstanding short-term borrowings.

Except as may be otherwise authorized by the Commission, any short-term borrowings of the applicant-declarants outstanding hereunder after March 31, 1983 will be retired (1) from internal cash resources or from the proceeds of equity financing in the case of Southern and (2) from internal cash resources and/or from the proceeds of long-term debt or equity financing in the cases of the other applicant-declarants.

The applicant-declarants seek an exception from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph (a)(5) thereof for the issuance of commerical paper because the commercial paper will have maturities not in excess of 270 days, current commercial paper rates for prime borrowers are published in daily financial publications and it is impractical to invite competitive bids for commercial paper.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 26, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarants at addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the applicant-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-6370 Filed 3-9-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[SBLC No. 02/B-0022]

FB Small Business Lending Corp.; Filing of Application for Eligibility Determination as a Small Business Lending Company

An application for Eligibility Determination as a Small Business Lending Company has been filed by FB Small Business Lending Corp. (Applicant), 20 Exchange Place, New York, New York 10005, with the Small Business Administration pursuant to § 120.4(b) of SBA Regulations (13 CFR 120.4(b) (1981)), promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the Applicant will be engaged *solely*, in the making of loans to small business concerns, in participation with SBA, and in accordance with applicable SBA Regulations.

The Applicant will be incorporated under the laws of the State of Delaware, and it will commence operations with initial capitalization of $500,000. The proposed owner of 100 percent of the Applicants' outstanding Common Stock, par value $1 per share, is FB Lending Corporation, 20 Exchange Place, New York, New York 10005, an indirect wholly-owned subsidiary of First Boston, Inc., 30 South 17th Street, Philadelphia, PA 19103.

The Applicant intends to conduct its operations on a nationwide basis commencing with the Baltimore/Washington, New York and Puerto Rico areas, and to sell in the Secondary Market, SBA's guaranteed portions of loans to small business concerns.

The Officers and Directors of the Applicant are:

Frances P. Jenkins, Jr., Chairman, 17 Westorchard Road, Chappaqua, New York 10514

William P. McCauley, President, 161 East 61st Street, #15M, New York, New York 10021

Michael D. Goth, Executive Vice President, 1001 Wilson Blvd., #206, Arlington, Virginia 22209

A. Bruce Cleveland, Managing Director, 1701 North Kent Street, #1105, Arlington, Virginia 22209

Patricia McCole, Secretary, 157 H Main Street, Little Falls, New Jersey 07424

Mark S. Finston, Director, 303 E 83d Street, Apt. 219, New York, New York 10028

John E. Toffolon, Director, 245 E 63d Street, Apt. 1116, New York, New York 10021

Harry A. Bello, 1839 STA. Isabel Reparte Romang, Rio Piedras, Puerto Rico 00926.

Matters involved in SBA's consideration of the application include the general business reputation and character of management, and the probability of successful operation of the corporation under their management, including profitability and financial soundness, in accordance with the Small Business Act and the Regulations promulgated thereunder.

Notice is hereby given that all interested parties may, not later than March 25, 1982 submit to SBA written comments on the proposed Applicant and/or its management. Any such communication should be addressed to: Wayne S. Foren, Director, Office of Lender Relations & Certification, Small Business Administration, 1441 L Street NW., Room 720, Washington, D.C. 20416.

A copy of this Notice shall be published in the four (4) regional editions of the *Wall Street Journal*.

Catalogue of Federal Domestic Assistance Program No. 59.012 Small Business Loans)

Dated: March 3, 1982.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 82-6480 Filed 3-9-82; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 03/03-5150]

Washington Finance and Investment Corp.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) has been filed by Washington Finance and Investment Corporation (applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1981).

The officers, directors and stockholders of the applicant are as follows:

Nicolas M. Salgo, Fairviewlakes, No. 21B, Ocean Reef, Key Largo, Florida 33037, Chairman of the Board 50 percent Stockholder

Chang H. Lie, 1430 Lady Bird Drive, McLean, Virginia 22101, President, Director, 50 percent Stockholder

Yong S. Choe, 7412 Eldorado Street Mclean, Virginia 22101 Vice President, Director

John K Grarey, 124 Fourth Street, N.E., Apt. 2, Washington, D.C. 20002, Vice President Treasurer, Director

Sun H. Lee, 13028 Country Ridge Drive, Germantown, Maryland 20767, Secretary.

The applicant, a District of Columbia corporation with its principal place of business located at 600 New Hamphire Avenue, N.W., Room 818, Washington, D.C. 20037, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of 10,000 shares of common stock.

The applicant will conduct its activities primarily in the District of Columbia, Northern Virginia, and suburban Maryland.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under this management, including adequate profitability and financial soundness, in accordance with the small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than March 25, 1982 submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Washington, D.C.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 5, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-6481 Filed 3-9-82; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 47
Wednesday, March 10, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Commodity Futures Trading Commission	1, 2
Federal Deposit Insurance Corporation	3, 4
Federal Reserve System	5
National Labor Relations Board	6
Securities and Exchange Commission	7

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, March 12, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S 360-82 Filed 3-8-82; 9:17 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, March 19, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., eight floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S 361-82 Filed 3-8-82; 9:18 am]

BILLING CODE 6351-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 15, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 8, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S 365-82 Filed 3-8-82; 12:28 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 15, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Citibank (Delaware), a proposed new bank, to be located at One Rodney Square, Wilmington, Delaware.

Application for consent to purchase assets and assume liabilities and to establish one branch:

Northwest Bank, Seattle, Washington, for consent to purchase the assets of and assume the liability to pay deposits made in the Inglewood Village Branch of City Bank, Lynnwood, Washington, and to establish that office as a branch of Northwest Bank.

Request for an extension of time to establish a branch:

Oregon Mutual Savings Bank, Portland, Oregon, for an extension of time within which to establish the approved branch on Pacific Highway two blocks south of the intersection with Park Street, Tigard, Oregon.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Sidley & Austin, Chicago, Illinois, in connection with the receivership of the The Des Plaines Bank, Des Plaines, Illinois.

Kaye, Scholer, Fierman, Hays, & Handler, New York, New York, in connection with the receivership of American Bank & Trust Company, New York, New York.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchase of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 8, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-364-82 Filed 3-8-82; 12:27 pm]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Monday, March 15, 1982.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: March 5, 1982.

James McAfee,

Assistant Secretary of the Board.

[S-363-82 Filed 3-8-82; 9:50 am]

BILLING CODE 6210-01-M

6

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10 a.m., Monday, March 8, 1982.

PLACE: Board Conference Room, sixth floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: To consider candidates for Regional Director, Region 6, Pittsburgh, Pennsylvania and other personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570; Telephone: (202) 254-9430.

Dated: March 5, 1982.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[S 362-82 Filed 3-8-82; 9:31 am]

BILLING CODE 7545-01-M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the Week of March 15, 1982, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Thursday, March 18, 1982, at 9:00 a.m., followed by a closed meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Shad and Commissioner Loomis, Evans, Thomas and Longstreth voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Thursday, March 18, 1982, at 9:00 a.m., will be:

Consideration of wether to issue a notice of intention to cancel, pursuant to section 203(h) of the Investment Advisers Act of 1940, the registrations of certain investment advisers who have failed to keep their registrations current and either cannot be located or have not responded to staff efforts to obtain their voluntary withdrawal. For further information, please contact Gene A. Gohlke at (202) 272-2024, or Paul J. Heaney at (202) 272-2057.

The subject matter of the closed meeting scheduled for Thursday, March 18, 1982, following the 9:00 a.m. open meeting:

Access to investigative files by Federal, State or Self-Regulatory authorities.
Litigation matters.
Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Freedom of Information Act appeal.
Application for re-entry into employment in the securities industry.
Opinion.

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: Bruce Mendelsohn at (202) 272-2091.

March 5, 1981.

[S. 366-82 Filed 3-8-82; 12:28 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
March 10, 1982

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Under Federal Program for Georgia

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 910

Surface Coal Mining and Reclamation Operations Under Federal Program for Georgia

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Final rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM or the Office), U.S. Department of the Interior adopts final regulations amending 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.

EFFECTIVE DATE: April 9, 1982.

ADDRESSFS: 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 and copying during regular business hours at the addresses below. Copies of the proposed and final regulations may also be obtained at the following addresses.

Administrative Record Room, Office of Surface Mining, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902

Administrative Record Room, Room 5315L, Office of Surface Mining, Department of the Interior, 1100 L St., N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Assistant Regional Director, 530 Gay Street, S.W., Knoxville, Tennessee 37902 (615–637–8060).

SUPPLEMENTARY INFORMATION: This document contains final rules through which the Director of OSM (the Director) will regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State of Georgia. Also included are the comments received, their disposition and discussion of changes made in developing final rules from those that were proposed.

Good cause is found for making these rules effective immediately because surface mining operations are presently taking place in the State. The State does not regulate the operations and unless OSM has a program in effect no effective enforcement can occur. Furthermore, the Surface Mining Act in section 504(a) required a Federal program for a State by June 3, 1980, if it, like Georgia, failed or refused to submit a program for the assumption of regulatory responsibility.

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 in which such operations are occurring or may be expected to occur. OSM promulgated national permanent program regulations in 30 CFR Chapter VII which establish the minimum standards 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 15312–15463 (March 13, 1979). Corrections were published at 44 FR 15485 (March 14, 1979), 44 FR 49673–49687 (August 24, 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 41 FR 75302 (December 19, 1979), 45 FR 77440–77447 (December 31, 1979), 45 FR 2626–2629 (January 11, 1980), 45 FR 25998–26001 (April 16, 1980), 45 FR 33926–33927 (May 21, 1980), 45 FR 39446–39447 (June 10, 1980), 45 FR 52306–52324 (August 6, 1980), 45 FR 54752–54753 (August 18, 1980), 45 FR 58780–58786 (September 4, 1980), 45 FR 64908–64909 (October 1, 1980), 45 FR 73945–73946 (November 7, 1980), 45 FR 76932 (November 20, 1980), 45 FR 82084–82100 (December 12, 1980, and 45 FR 83166–83169 (December 17, 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 remained certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980.

OSM considered the reasons for these suspensions and remands in drafting the proposed Georgia program regulations. In some cases, OSM proposed new language in the Georgia program regulations. The basis for this language was explained in the discussion accompanying the proposed rules. A list of all the suspended and remanded Federal regulations, along with a statement of proposed disposition within the context of the Federal program for the State of Georiga, was set forth in the proposed rules under "Disposition of Suspended and Remanded National Permanent Program Regulations." This list identified those provisions that the Secretary did not include in the proposed Georgia program and, for subject areas where rules were being proposed, the language proposed in order to render the Georgia program legally sufficient. These determinations were made only for the Georgia Federal program, in view of conditions in the State of Georgia. This language does not supersede, 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.

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 entered on August 21, 1979, by 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 occur 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 had not submitted 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, these final rules are issued to promulgate 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 statute 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 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. Except with respect to the regulation of operations affecting less than two acres, the Federal program promulgated herein for the regulation of surface mining is pervasive with regard to coal mining. To the extent that the Georgia Surface Mining Act of 1968 regulates surface coal mining, it is preempted and superseded by this Federal program. In no instance are the standards of the Georgia Act more stringent than those of the Federal Act or regulations. The Georgia Act is no longer applicable to the regulation of coal exploration or surface coal mining operations in the State of Georgia, except to the extent of its application to operations affecting two acres or less.

Similarly, the rules and regulations of the Georgia Department of Natural Resources, Environmental Protection Division, concerning land reclamation after coal mining are preempted and superseded 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. In no instance do they establish more stringent standards than the Federal Act or regulations. These rules and regulations will no longer be applicable to surface coal mining operations to the extent that they affect surface coal mining, except with respect to operations affecting less than two acres.

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 "Addresses."

Public Participation

Throughout the development of the final rules upon which a permanent Federal program to regulate coal exploration and surface coal mining and reclamation operations in Georgia is based, OSM solicited and gave consideration to the comments and recommendations received from the public. In development of these rules for the Georgia program, OSM initially published a notice of intent to promulgate a Federal program for Georgia in the **Federal Register** on May 16, 1980 (45 FR 32328–32331). Two comments were received and discussed in the preamble to the proposed rules. On September 15, 1980, OSM published proposed rules in the **Federal Register** (45 FR 61120–61248) which would establish a Federal program in Georgia.

The public comment period on the proposed rules extended until November 21, 1980. A public hearing was held in Atlanta, Georgia, on November 18, 1980. All comments received were considered and are discussed in the preamble below, and are available for review at places listed above under "Addresses."

OMB Review

The record-keeping and reporting requirements of the final rules are the same as the national permanent program regulations which were cleared by the Office of Management and Budget (OMB). 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 OMB, with accompanying notices in the **Federal Register**, in accordance with the requirements of 44 U.S.C. 3507. Those recordkeeping and reporting requirements which are applicable to Federal programs are included in the administrative record at GA–7. Clearance numbers are assigned as follows:

OMB Clearance Numbers

Section and Clearance No.

910.701—N/A
910.761—1029–0029
910.762—N/A
910.764—1029–0030
910.770—N/A
910.776—1029–0033
910.787—N/A
910.800—1029–0043
910.805—1029–0044
910.806—1029–0045
910.809—N/A
910.815—N/A
910.840—1029–0051
910.843—1029–0052
910.845—1029–0053

Other Information

OSM has determined that the final rules are not major as defined in Executive Order 12291. The "Determination of Effect" document prepared by OSM is available for inspection in the administrative record at the address 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).

It has been determined that the rules will not have a significant effect on a substantial number of small entities pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 605(b). A substantial number of small entities in the State will not be affected significantly by promulgation of the rules because there are few operators of surface and underground coal mines in the State. It is expected that in the future coal production in the State will remain of minor importance.

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. Special environmental conditions have been identified. 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. 1531 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 final rules, OSM reviewed existing State statutes and regulations and incorporated 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 final 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 insurance companies and Georgia Code Ann. Sections 41 A–1306 and 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 CFR 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 were identified by section and discussed in detail in the preamble to proposed rules for the Georgia Federal program.

The final 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 promulgated portions of 30 CFR Subchapter M, Training Program for Blasters and Members of Blasting Crews and Certification Program for Blasters as published in the **Federal Register**, December 12, 1980 (45 FR 82084–82100). The Office will amend the Georgia program to incorporate the applicable provisions of 30 CFR Subchapter M six months after the complete subchapter has been promulgated.

Technical literature cited by OSM in the preamble to the permanent regulatory program (44 CFR 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 numbering system of the national permanent program regulations has been incorporated into the numbering system for the final rules of the Georgia Federal 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 alphabetically. The program for the State of Georgia is assigned Part 910.

In addition to the final rules published herein, the Federal regulatory program for the State of Georgia includes 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.

Disposition of Public Comment and Other Changes From the Proposed Program

Only those proposed regulations which were the subject of public comment or otherwise changed are discussed below. For a detailed discussion of rules not discussed here the reader is referred to the September 15, 1980, **Federal Register** (45 FR 61120–61131). Some comments on the proposed Georgia program were received after the official close of the public comment period but were considered in the development of the final rules. Consideration of these comments did not create an administrative burden for the agency or cause any delays in the development of the program.

General

(Subparts 910.701 through 910.707)

910.701–5 Definitions

The Consolidation Coal Company (Consol) commented that Class II and III roads should not be defined on the basis of length of use, but rather on the nature of use, as proposed. Consol contends that it is not appropriate to designate a road which will be used infrequently, in good weather, by light vehicles (e.g., to monitor environmental stations) as a higher class road simply because it will exist for the life of the mine. In fact, Consol points out, the surface of such roads is often naturally covered by volunteer vegetation, especially in the eastern U.S., because of lack of traffic. However, Consol also feels that approving Class III roads on a case by case basis is overly restrictive. Consol maintains that exploration roads should not have to be approved since only a notice of intent must be filed under § 910.776–11 for exploration under 250 tons and Class III roads do not constitute substantial disturbance of the natural land surface and therefore do not require approval under § 910.776–15(a).

The Office feels that approving Class III roads on a case by case basis is not overly restrictive because it affords the Office the opportunity of considering each, and making the classification designation in accordance with each site's special conditions.

For roads used in exploration activities where less than 250 tons of coal is removed, the applicant is required to file a notice of intent and a general map of the area. The requirement at 30 CFR 910.815–15(c)(2), that if the road is used over six months the operator must obtain approval has been deleted.

The Office feels that it is necessary to approve plans for exploration roads which will be used to remove more than 250 tons of coal. Since there is no maximum limit for use of exploration roads the Office feels it is necessary to know the location of roads that may be frequently traveled. Road construction and use can affect the soil mantle, soil loss, on-site productivity, water control, water quality and soil stability.

The State of Georgia, Department of Natural Resources (DNR) commented that the conclusion which stated "In no instance is the Georgia Act more stringent than the Federal act or regulations" is incorrect. The Georgia DNR points out that the Georgia Surface Mined Land Reclamation Program requires all sites where coal may be mined to obtain a permit, unlike the Federal act which exempts mine sites of two acres or less. Georgia would like the more stringent provision of the Georgia Act to be incorporated into the Federal program.

Support for Georgia's contention that the Georgia Act is more stringent, and therefore should be included in the Federal program, can be found in Sections 504(g) and 505 (a) and (b). These Sections state that any State statute which is more stringent shall not be construed as being inconsistent. However, in Section 528(2) of the Act it clearly states that SMCRA will not apply to surface mining operations which affect two acres or less.

Section 528(2) takes precedence over Sections 504 and 505. None of the provisions of the Act may be applied to surface coal mining operations affecting less than two acres.

The inability of OSM to regulate mining on less than two acres does not preclude the State of Georgia from regulating those surface mining operations.

910.701–14 Availability of Records

The location of records for public review has been changed from the county courthouse to the OSM field office to reflect OSM's intent to open a field office in Georgia near the mining area. Location of records in an OSM office rather than the county courthouse will facilitate timely and consistent placement and maintenance of the files. In addition, OSM personnel will be more readily available to interested parties for assistance in finding information.

Areas Unsuitable for Mining

(Subparts 910.761 through 910.764)

910.761–5 Definitions

The Consolidation Coal Company (Consol) felt that the definition of public road should include the criterion of the public's right to use the road. Consol contends that the regulation is to protect the road and the right the public has to use the road. Therefore, the definition should not include persons that do not have a right to use the road even though they may use it. Further, the cases cited in the preamble deal with criminal actions and personal liability. However, according to Consol, OSM's responsibility just includes protecting the environment as related to coal mining, not protecting the public health and safety related to coal mining, which is the Mine Safety and Health Administration's responsibility.

Despite the comment, a review of Georgia statutes reveals a definition of "public road" in Ga. Code Ann. § 95A–104 which is closely similar to that which was proposed in § 910.761–5. Under the Act, § 505, a State statute which sets more stringent standards cannot be construed as inconsistent with it. In the absence of Federal law (see *Wilson* v. *Omaha Indian Tribe*, 99 S.Ct. 2529 (1979)), the principal basis for interpretating a term is State law. The public road definition established by State statute should be the most assured means of determining whether the public has a right to use a road. Therefore, the definition in the State statute is being adopted as not only consistent with the intent of the Act, but also as the best means of making a determination of the public's right to use a road.

The Illinois State Museum noted that §§ 910.761–11(b) and 910.761–12(e)(1) would contravene the Programmatic Memorandum of Agreement (PMOA) as well as the National Historic Preservation Act (NHPA) Section 106 and 30 CFR 770.12(c) and 30 CFR 786.11(c)(1), which require approval of agencies not only with jurisdiction over cultural resources but also agencies with interest in such resources. The National Park Service (NPS) also felt that the State Historic Preservation Officer should have approval or disapproval authority of permit applications where cultural resources are affected.

Proposed §§ 910.761–11(b) and 910.761–12(e)(1) are taken verbatim from 30 CFR 761.11(c) and 761.12(e)(1), except that the words "or a statutory or regulatory responsibility for" were omitted from proposed § 910.761–12(e)(1). These words were suspended by administrative decision in connection with litigation insofar as they would apply to privately owned places listed on the National Register of Historic Places in addition to publicly-owned places. See 44 FR 67942. These Sections are consistent with 30 CFR 770.12(c) and 30 CFR 786.11(c)(1) which correspond to §§ 910.770–12(c) and 910.786–1(c)(1). OSM feels that the concerns of the Illinois State Museum and NPS are alleviated by § 910.770–12(c) which provides that the permit application be coordinated with other agencies with responsibilities under several enumerated statutes including the National Historic Preservation Act of 1966. Additionally, § 910.786–11(c)(1) provides that written notification be sent to any "* * * governmental agencies with jurisdiction over or an interest in the area of the proposed operations, including * * * historic preservation agencies."

With respect to the commenter's concern that proposed rules 910.761–11(b) and 910.761–12(e)(1) interfere with

the PMOA, OSM will not establish procedural guidelines for the Georgia federal program through a PMOA. We assume the PMOA to which the reader referred is that signed May 23, 1980. That PMOA applies only to approved state regulatory programs, not to federal programs for states. Because of limited coal mining in Georgia, each application for an exploration approval or a mining permit will be handled on a case by case basis in accordance with the procedures set forth under Section 106 of the National Historic Preservation Act (NHPA).

910.761–12 Procedures

The National Park Service (NPS) commented that when cultural resources will be affected by the proposed operation, the regulation should explicitly state that the State Historic Preservation Officer (SHPO) must be forwarded a complete copy of the permit application and that the SHPO must approve the proposed operation.

Proposed regulation 910.786–11(c)(2) requires that all Federal, state or local agencies which may have jurisdiction over any park or historic place in the area be notified of the proposed operation. Proposed operations that will adversely affect any publicly owned park or places include in the National Register of Historic Places must first be approved by the Federal, State or local agency with jurisdiction as provided in 910.786–19(e).

The Illinois State Museum points out that the proposed rules do not provide for field inspections by OSM personnel for those permit areas for which information is complete. As explained above, OSM will follow the procedures prescribed under Section 106 of NHPA on a case by case basis.

910.762–11(6) Criteria for Designating Lands as Unsuitable

A provision is included here which permits the Director to establish additional discretionary criteria for determining whether lands within the State should be designated as unsuitable for mining. The Director's authority is based on 30 CFR 762.12.

910.764–17 Procedures: Hearing Requirements

Section 910.764–17(b)(2) requires the Office to give notice of a hearing to consider a petition to have an area designated as unsuitable for surface coal mining to persons with an ownership or other interest in the area covered by the petition. Language in this Section has been modified to require the Office to give notice by regular mail rather than certified mail. The Office has determined from recent experience that providing notice of a hearing by certified mail is often an enormous burden. The revised rule will still insure that interested citizens will receive adequate notification and relieve the Office of an unwarranted burden.

910.764–19 Procedures: Decision

Section 910.764–19(b) reflects similar modification, requiring the Office to send the final decision on a petition to the petitioner and other parties by regular mail rather than by certified mail.

Permits and Coal Exploration Approvals

(Subparts 910.770 through 910.795)

910.771–25 Permit Fees

Any person interested in applying for a permit should contact the OSM official listed above under FOR FURTHER INFORMATION CONTACT, for information on the fee pending promulgation of a rule setting a fee schedule.

910.776–12 General Requirements: Exploration of More Than 250 Tons

The Consolidation Coal Company (Consol), asserts that the information required under §§ 910.776–12(a)(3), 910.779–12(b), 910.779–24(i), 910.783–12(b), and 910.783–24(i) should be requested by OSM from Federal, State or local cultural and preservation agencies rather than from the operator. The requirement is for all proposed operations to take into account the effect on any site which may be eligible for or listed on the National Register of Historic Places. In addition the NPS maintains that if a cultural resource survey is necessary for the identification process, the OSM, as the regulatory authority, is responsible for conducting the survey.

It is the responsibility of the permit applicant to establish its entitlement to a permit. *See* Sections 102, 507, 508, and 510 of the Act. As required by Section 106 of the National Historic Preservation Act of 1966, (16 U.S.C. 470f), the Federal agency is responsible for taking into account the effect of the undertaking on those places listed on or eligible for listing on the National Register. OSM is implementing this responsibility by requiring the applicant to identify and describe all such known resources on the site. This is consistent with the Act.

The NPS asserted that a provision should be included which would restrict public dissemination of information identifying historic, archeological or Indian burial site locations if such disclosure might result in vandalism to these sites.

Under the National Historic Preservation Act of 1966, 16 U.S.C. 470a(a)(4), the Secretary may withhold from disclosure information relating to the location of sites or objects listed on the National Register whenever it is determined that disclosure would create a risk of destruction or harm to such sites or objects. This non-disclosure provision was broadened in the amendments to the Act passed on December 12, 1980, Pub. L. 96–515, section 304. Now information concerning sites eligible for inclusion may be withheld.

The NPS comment is well taken. However, the availability of information is dealt with under other regulations, 43 CFR Part 2, implementing the Freedom of Information Act, 5 U.S.C. 552. No revision of the proposed rule to which the comment is addressed, § 910.776–12(b)(2), is being made because the public notice of coal exploration is only to describe the general area, not a specific one on which a determination can be made of whether any historic resource is at risk. Nevertheless, a new subsection, (c), is being added to § 910.776–17 and § 910.786–17 to allow for the withholding of cultural resource information when it is determined that its disclosure would create a substantial risk of harm, theft or destruction to such resources.

910.776–13 Applications: Approval or Disapproval of Explorations of More Than 250 Tons

The Georgia Department of Natural Resources (DNR) believed that the references to "adverse effect" to cultural resources used throughout the regulations were undefined because the steps leading to the determination of "adverse effect" are not described and because it appears that an adverse effect to cultural resources would precipitate automatic disapproval of the exploration. The DNR maintained that compliance with the regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) does not necessarily mean permit disapproval even if an adverse effect would result.

The Office does not believe its procedures for compliance with the National Historic Preservation Act or the regulations of the Advisory Council on Historic Preservation should be included in the Georgia program regulations. The Office recognizes that a finding of adverse effect would not automatically cause permit disapproval but believes the proposed language properly shows that the Office has discretion in this regard. However, a minor editorial change has been made to

the final rules; regulatory authority was changed to Office to clarify that the OSM is responsible.

The DNR also stressed OSM's responsibility for addressing existing mines and accompanying resources as possibly eligible for the National Register.

The Office recognizes this as its responsibility under the National Historic Preservation Act. The Office, however, does not believe its compliance procedures should be detailed in these rules.

910.779–12 General Environmental Resources Information

The Advisory Council on Historic Preservation, the Illinois State Museum, the Georgia Department of Natural Resources, and the National Park Service (NPS) commented that the phrase "eligible for listing on" was not included in §§ 910.779–12(b), 910.779–24(i), 910.783–12(b), and 910.783–24(i). This omission is contrary to OSM's discussion of suspended regulations in the preamble of the Georgia regulations. The Illinois State Museum, the Council, and NPS feel this omission would impair OSM's responsibility in implementing Section 106 of the National Historic Preservation Act of 1966 which requires that each Federal agency head take into account the effects of project approval on properties eligible for or listed on the National Register of Historic Places.

The Georgia DNR further noted that "eligible" listings are published by the Federal Register as well as listed properties, which makes the listing an available resource. NPS, in addition, felt that the phrase should also be included in 30 CFR 910.761–11(b) and 910.776–12(3).

By administrative decision as a result of the permanent program regulations litigation, the phrase "or eligible for listing on" was suspended from the national permanent program, as published in the Federal Register (44 FR 67942). As discussed in the preamble to the Georgia rules the phrase was to be reproposed in §§ 910.776–12(a)(3), 910.779–12(b), 910.779–24(i), 910.783–12(b) and 910.783–24(i). However, it was only reproposed in § 910.776–12(a)(3). This oversight has been corrected for the final rules and the phrase has been inserted in all those Sections.

NPS, in addition, felt that the phrase should also be included in 30 CFR 910.761–11(b) and 910.776–12(3). The Office assumes that NPS' reference to 910.776–12(3) was an intended reference to 30 CFR 910.776–12(a)(3). The phrase is included in that section. The phrase is not proposed in Section 910.761–11(b) because the Office believes that the SMCRA does not provide authority for prohibiting mining on places "eligible for listing" on the National Register of Historic Places.

The Georgia DNR inquired whether cultural resources identification is necessary for both exploration and coal mining operation activities. Indentification of cultural and historical resources is required for permit applications for surface coal mining and reclamation operations and for approval of exploration activities in which more than two hundred fifty tons of coal will be removed. Identification of cultural and historical resources is not required for exploration activities during which less than two hundred fifty tons of coal will be removed. Coal exploration activities removing less than two hundred fifty tons are authorized by Section 512 of SMCRA and do not require approval.

Identification of cultural and historic resources is a required part of the application for a mining permit or an application for exploratory operations affecting more than 250 tons. Exploration requirements relative to cultural and historic resources are covered in §§ 910.776–12(a)(3)(i) and 910.776–13(b)(3). Surface and underground mining requirements relative to cultural and historic resources are covered in §§ 910.779–12(b) and 910.783–12(b) respectively.

NPS also suggested that information on cultural resources which does not meet national criteria should be included in the permit application. This comment also applies to 30 CFR 910.783–12.

The Office believes this suggested change would go beyond the authorization of SMCRA and the National Historic Preservation Act and would not be consistent with the language in the national permanent program regulations published March 13, 1979.

910.779–20 Fish and Wildlife Resources Information

910.780–16 Fish and Wildlife Plan

Consol claims that the information requirements of §§ 910.779–20, 910.780–16, 910.783–20, and 910.784–21 concerning fish and wildlife data should be obtained by OSM and not the permit applicant. These sections require the applicant to submit a study of fish and wildlife, and a fish and wildlife reclamation plan. Consol points out that these provisions were remanded by court decision in the national permanent program litigation and should not be included in the Georgia Federal program.

As discussed in the comment under Section 910.776–12 above, it is OSM's position that it is the permit applicant's burden and responsibility to establish its entitlement to a permit.

OSM is proposing these requirements to comply with other applicable Federal statutes, including the Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661–666c, and the Endangered Species Act, as amended, 16 U.S.C. 1531. Authority for the fish and wildlife provisions is found in Section 702 of SMCRA.

The Georgia DNR requested notification of discoveries of protected species of plants or wildlife by permit applicants. Also, the State wishes to be notified if ginseng is identified on a permit area.

The Office will notify the DNR of any protected species of plants or wildlife discovered by applicants for permits. The Georgia Ginseng Protection Act of 1979 set forth requirements for harvesting, exporting, and registering ginseng dealers. Applicants for permits should be aware of this law and include the presence of ginseng in the permit area as required by § 910.780–16.

910.780–21 Reclamation Plan: Protection of Hydrologic Balance

The Tennessee Valley Authority (TVA) questioned the omission in Section 910.780–21 of requiring the plan for treatment of discharges to meet the standards of 30 CFR 910.816–21, or other applicable State and Federal laws, whichever is more stringent. This comment would also apply to 30 CFR 910.784–14.

The reference to other applicable State and Federal laws was omitted as no such laws were identified which contained standards more stringent than those set forth in 30 CFR 910.816–12. However, this regulation has been revised to provide that the plan for treatment set limits on pollutant discharges according to the more stringent of either 30 CFR 910.816–48 or other applicable State and Federal laws. In the event that more stringent State or Federal laws regarding pollutant discharges become applicable, the more stringent standards would apply.

910.780–31 Protection of Public Parks and Historic Places

The Advisory Council on Historic Preservation commented that it is their understanding from a meeting on October 2, 1980, with OSM's Office of State and Federal Programs that OSM will assume direct responsibility for compliance with Section 106 of the National Historic Preservation Act (16

U.S.C. Sec. 470f, as amended, 90 Stat. 1320). In addition, based on information furnished by the applicant OSM would identify all historic and cultural properties within the area of potential environmental impact and consider any potential effects to eligible or listed properties in its review of permit applications, as required by 36 CFR Part 800. The Council commented that it assumes that since the program is Federally administered by OSM, OSM will abide by the Programmatic Memorandum of Agreement (PMOA) of May 23, 1980, between the Council, OSM, the Bureau of Land Management, the Geological Survey, and the National Conference of State Historic Preservation Officers.

As stated in the proposed rules, 30 CFR 910.770–12(c), the Federal program will provide for the coordination of review and issuance of permits with the applicable requirements of the National Historic Preservation Act of 1966. However, as stated in the preamble to the proposed rulemaking, OSM will not establish guidelines for Georgia through a PMOA. Instead, because of limited coal mining in Georgia, each exploration and application for a mining permit will be handled on a case-by-case basis. The Council concurs with this policy and no change in the regulation is needed.

910.783–25 Cross Section Maps and Plans

Consol asserts the map and plan information requirements concerning coal seams and overburden in § 910.783–25 (c), (h) and (i) are not necessary to make a determination regarding protection of the hydrologic balance. Consol claims that detailed geologic descriptions of the overburden are only required for those areas where the overburden will be removed down to the level of the coal seam (30 CFR 910.783–14(a)(1)). This is not the case where the possibility of subsidence is a concern. A map requirement for a coal seam and overburden description is not necessary for determination of waste handling procedures. In addition, in Consol's view the location of all existing waste disposal areas plotted on a map is not necessary to determine whether the location chosen for waste disposal is the best, if indeed waste will be disposed of in the permit area. If run of mine coal is to be transported to a processing facility at a location other than the mine site, information on existing waste disposal sites in the permit area is of no value whatsoever.

The office believes that the waste-handling mapping requirements found in 30 CFR 910.783–25 (c) and (i) are necessary to ensure that waste handling associated with underground mines is well planned and to provide uninterrupted use of existing pollution control facilities located near the underground mining operations. As discussed in the preamble to the permanent program (44 FR 15045, 15069), knowledge of the nature of the coal seam, the overburden and underlying strata and the location of waste, spoil and associated facilities is necessary to evaluate the impacts that the proposed operation will have on the surface.

The information requested in 30 CFR 910.783–25 (c) and (h) will help identify measures to mitigate the effects of acid mine drainage and other pollutants from underground mines. Water infiltration into the mine through the mine roof from existing mine areas, overlying strata, boreholes and fracture zones may react with air and pyrite within the mines to cause acid and other pollutant drainage. Thus, knowledge of the nature, depth and thickness of the overburden and of the location of existing or previously mined areas will aid the office in determining, for example, how to reduce fracturing in the overlying stata. The information required by § 910.783–25 (c) and (h) will thus serve to indicate whether the operator can comply with Section 516(b)(9) of the Act, 30 U.S.C. 1266(b)(9), which requires the minimization of disturbances to the hydrologic balance by, among other things, avoidance of acid or other toxic mine drainage, and with 30 CFR 910.817–41 through 910.17–55, which set forth the performance standards designed to protect the hydrologic balance.

Finally, the information required by 30 CFR 910.783–25 is necessary for the Office to evaluate fully the applicant's ability to comply with the subsidence performance standards in 30 CFR 910.817–121. The long-range effects of past underground mining and the geology and technology of proposed mine sites must be considered in evaluating future mining activities. The Office must have at its disposal data on weakened bedrock, potentially deformed coal and overburden rock tensions, and tilt and fault zones susceptible to collapse. Discussion of the need for this information is presented in the preamble to the subsidence performance standards (44 FR 15273).

Bond and Insurance Requirements

(Subpart 910.800 through 910.808)

910.807–11 Procedures for Seeking Release of Performance Bond

The U.S. Forest Service recommended that provisions be made for early release of performance bonds on increments within research plots so that responsibility for the research plot could be assumed by an appropriate Federal agency.

The Office is currently reviewing a petition for rule change to the permanent regulatory program on this subject (45 FR 41166). The Office has elected not to change the Georgia rule until after the proposed rule change to the national regulations is finally considered.

910.808–14 Determination of Forfeiture Amount

Consol objects to the inclusion of the provision in 910.808–14(b) which allows bond forfeiture funds to include expenses for administration associated with the conduct of reclamation. The regulation states that an amount sufficient to "* * * offset costs and administrative expenses associated with the conduct of reclamation * * *" will be put in an escrow account by the Office. This provision, Consol claims, is contrary to the court decision which states that "Nowhere does the Act authorize use of the excess bond to pay the administration costs of part of the State program" (Dist. Ct. opinion, February 26, 1980, at pp. 44–45).

The Act authorizes the bond to be "sufficient to assure the completion of the reclamation plan." Section 509(a) includes contracting expenses that OSM may incur in order for the reclamation to be performed by a contractor.

Future rulemaking will be proposed in order that the portion of the bond that is not needed for contract completion of the reclamation plan, including any administrative contracting costs, will be returned to the permittee. This is consistent with the National Coal Association's contention in the litigation that the unused portion of the bond should be returned to the operator. Covering administrative costs is consistent with § 805.11(a)(2) of the national permanent program regulations and Section 509(a) of the Act.

Performance Standards

(Subparts 910.815 through 910.828)

910.816–41 Hydrologic Balance: General Requirements

The Georgia DNR requested OSM to reevaluate its view that no regionally significant water quality problems have been identified which would require OSM to set forth additional water quality standards. The DNR was especially concerned with the influence of mining activities on the water quality of the Little River and Lake Lahusage.

The Office agrees with the concept of protecting valuable natural resources, such as Lake Lahusage, and that potential damage to this lake might be given consideration or attention on individual permit applications because of its unique or recreational qualities or other factors. However, no special condition concerning the mentioned parameters have been identified which would indicate this lake to be more sensitive or susceptible than other similar lakes.

The information and planning requirements necessary to obtain a surface coal mining permit are expected to insure that OSM is aware of any expected impact of coal mining activities on the river and lake in question. Sections 910.816–41 and § 910.817–41 require surface and underground coal mining activities to be planned to mimimize water pollution in addition to meeting state and federal effluent limitations. These regulations will provide authority for OSM to consider the water quality of Lake Lahusage in reviewing an applicant's plan for protecting the hydrologic balance.

910.816–42 Hydrologic Balance: Water Quality Standards and Effluent Limitations

The U.S. Environmental Protection Agency (U.S. EPA) and TVA noted that a table has been omitted immediately following § 910.816–42(a)(3)(ii). The Office has included this table setting forth effluent limitations in its final rules.

The first sentence, § 910.816–42(b), has been reworded to omit redundant language in response to a comment by the U.S. EPA.

910.816–46 Hydrologic Balance: Sedimentation Ponds

The Tennessee Valley Authority (TVA) commented that the term "adequate" to describe the necessary minimum storage volume of sedimentation ponds could lead to inconsistencies in enforcement. In addition, the requirement that "sediment shall be removed from sedimentation ponds," found in paragraph (h), is vague. TVA feels the more detailed requirements found in the permanent program regulations should be used.

30 CFR 816.46 (b) and (h), the language on which the proposed rules were based, were suspended by court order. In order for OSM to comply with the court order, the Georgia rules require that sedimentation ponds provide an adequate minimum sediment storage volume and that sediment be removed from the pond. Determination of adequacy will be made on a site-specific basis. These Sections are to be used in the interim until OSM can amend the permanent program regulations and, subsequently, the Georgia rules in order to establish a more detailed requirement.

910.816–48 Hydrologic Balance: Acid Forming and Toxic Forming Spoil

TVA noticed an erroneous citation within § 910.816–48(b). This citation has been corrected from § 910.86–103 to § 910.816–103.

910.816–71 Disposal of Excess Spoil: General Requirements

The U.S. EPA suggested that the use of the word "degraded" in § 910.816–71(a), in reference to both surface and ground waters, is ambigous.

The language in this rule is the same as that found in the national permanent program and the Office does not beleive a revision for the Georgia program is necessary. The word "degrade" is intended to be broad in scope and is synonymous with "adversely affect" as it is used in other regulations such as 30 CFR 910.816–48.

910.816–97 Protection of Fish, Wildlife, and Related Environmental Values

The Georgia DNR requested information from OSM in the event of a fish kill so that they may recover damages from the responsible parties.

OSM will provide information concerning any fish kills which are alleged to be the result of surface coal mining operations to the Environmental Protection Division of the Georgia Department of Natural Resources.

910.816–111 Revegetation: General Requirements

TVA recommended that § 910.816–111 be modified to include more specific requirements for preparation, mixture, and seed requirements for revegetation.

30 CFR 816.111 which provides the authority for this section, does not require specifications for preparation, mixture, and seed requirements. The suggested change has not been included as the performance standards set forth in § 910.816–111 are sufficient to achieve the objectives of the regulations and to allow mine operators flexibility in achieving revegetation standards. OSM will recommend methods for achieving revegetation standards.

910.816–116 Revegetation: Standards for Success

The U.S. Forest Service suggested revising § 910.816–116 to add a standards for succeess of revegetation on areas planted with a mixture of herbaceous and woody species.

Section 910.816–116(b)(1) provides for measurement of ground cover and productivity by comparison with approved reference areas or by standards set forth in technical guides approved by OSM. The standards suggested by the Forest Service are already incorporated in § 910.816–116(d)(2) as an alternative standard for measuring the success of revegetation on certain small minesites. The requested change was rejected. Paragraphs (b)(1) and (d)(2) insure adequate standards for success of revegetation on areas planted with herbaceous and woody species.

910.816–117 Revegetation: Tree and Shrub Stocking of Forest Land

The Georgia DNR Disagrees with the requirement to establish a stocking equal to or greater than 450 trees or shrubs per acre. The DNR maintains that such a requirement is not applicable to the eastern United States where, under wet, humid conditions, a greater stocking of forest stands is desirable.

The Office agrees that stocking greater than 450 trees/acre may be desirable. However, the minimum requirements as set forth in § 910.816–117(b) are consistent with 30 CFR 816.117(b) and are considered adequate to accomplish soil stabilization and other reclamation requirements. Therefore, no change is needed. Permittees will also establish successful revegetation in accordance with § 910.816–116(b)(2)(iv) which provides for comparison of the permittee's revegetation efforts with an undisturbed reference area.

30 CFR 910.817–101(b)(1) and 910.817–102 Backfilling and grading

Consol asserted that flexibility should be incorporated in the standards for approximate original contour (AOC) for surface disturbance areas of any underground mine, including those which will begin operation in the future. Consol claims that an underground mine will generally be in existence for several decades, during which surface disturbance areas may become naturally vegetated and stabilized. Plans can still be proposed in permit applications for new mines to return to AOC, but if at the end of the mine's life any areas meet the criteria of § 910.817–102(a)(3) (i) through (iii) the operator should be granted the same flexibility that may be applied to existing underground mines. This, Consol claims, is in accordance with the District Court opinion of May 26, 1980.

OSM feels that the proposed language addresses Consol's concern. The language speaks in general terms of underground mines. This means all underground mines. The regulation does not differentiate between existing mines and mines which may not begin operation until some future date. Thus, the flexibility suggested is contained in regulations.

30 CFR 910.816–133 Postmining land use

The term "range" has been deleted from § 910.816–133(c)(9) on proposals for changing premining land uses because there is no range land in the State.

Several changes have been made in the rules as the result of amendments in the permanent program rules on which the Georgia program rules are based. Public comment was afforded on those revisions. Therefore, separate comment now is considered unnecessary. The changes are as follows: (1) § 910.785–17 which establishes a grandfather provision for prune farmlands is revised to incorporate the final rulemaking published on September 29, 1981, 46 FR 47720; and (2) §§ 910.816–71 and 910.817–71 are revised to adopt the rulemaking of July 17, 1981, 46 FR 37232, which added a subsection (o) to allow for the disposal of excess spoil from an upper bench to a lower one by gravity transport.

Dated: February 5, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

Part 910 is added to read as follows:

PART 910—GEORGIA

Sec.

910.1 Scope.

Subpart 910.701—General

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.

Sec.

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

910.762–4 Responsibility.
910.762–5 Definitions.
910.762–11 Criteria for designating lands as unsuitable.
910.762–13 Land exempt from designation as unsuitable for surface coal mining operations.
910.762–14 Exploration of land designated as unsuitable for surface coal mining operations.

Subpart 910.764—Process for Designating Areas Unsuitable for Surface Coal Mining Operations

910.764–3 Authority.
910.764–13 Procedures: Petitions.
910.764–15 Procedures: Initial processing, recordkeeping, and notification requirements.
910.764–17 Procedures: Hearing requirements.
910.764–19 Procedures: Decision.
910.764–23 Public information.

Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems

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.
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.

Sec.

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 Requirements for Reclamation and Operation Plan

910.780–11 Operation plan: General requirements.
910.780–12 Operation plan: Existing structures.
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.
910.780–21 Reclamation plan: Protection of hydrologic balance.
910.780–23 Reclamation plan: Postmining land uses.
910.780–25 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.
910.780–27 Reclamation plan: Surface mining near underground mining.
910.780–29 Diversions.
910.780–31 Protection of public parks and historic places.
910.780–33 Relocation or use of public roads.
910.780–35 Disposal of excess spoil.
910.780–37 Transportation facilities.

Subpart 910.782—Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

910.782–13 Identification of interests.
910.782–14 Compliance information.
910.782–15 Right of entry and operation information.

Sec.

910.782–16 Relationship to areas designated unsuitable for mining.
910.782–17 Permit term information.
910.782–18 Personal injury and property damage insurance information.
910.782–19 Identification of other licenses and permits.
910.782–20 Identification of location of public office for filing of application.
910.782–21 Newspaper advertisement and proof of publication.

Subpart 910.783—Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

910.783–11 General requirements.
910.783–12 General environmental resources information.
910.783–13 Description of hydrology and geology: General requirements.
910.783–14 Geology description.
910.783–15 Ground water information.
910.783–16 Surface water information.
910.783–17 Alternative water supply information.
910.783–18 Climatological information.
910.783–19 Vegetation information.
910.783–20 Fish and wildlife resources information.
910.783–21 Soil resources information.
910.783–22 Land use information.
910.783–24 Maps: General requirements.
910.783–25 Cross sections, maps, and plans.
910.783–27 Prime farmland investigation.

Subpart 910.784—Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan

910.784–11 Operation plan: General requirements.
910.784–12 Operation plan: Existing structures.
910.784–13 Reclamation plan: General requirements.
910.784–14 Reclamation plan: Protection of hydrologic balance.
910.784–15 Reclamation plan: Postmining land uses.
910.784–16 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.
910.784–17 Protection of public parks and historic places.
910.784–18 Relocation or use of public roads.
910.784–19 Underground development waste.
910.784–20 Subsidence control plan.
910.784–21 Fish and wildlife plan.
910.784–22 Diversions.
910.784–23 Maps and plans.
910.784–24 Transportation facilities.
910.784–25 Return of coal processing waste to abandoned underground workings.
910.784–26 Air pollution control plan.

Subpart 910.785—Requirements for Permits for Special Categories of Mining

910.785–13 Experimental practices mining.
910.785–14 Mountaintop removal mining.
910.785–15 Steep slope mining.
910.785–16 Permits incorporating variances from approximate original contour restoration requirements for steep slope mining.

Sec.

910.785–17 Prime farmlands.
910.785–18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining operations.
910.785–20 Augering.
910.785–21 Coal processing plants or support facilities not located within the permit area of a specified mine.
910.785–22 In situ processing activities.

Subpart 910.786—Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

910.786–5 Definitions.
910.786–11 Public notices of filing of permit applications.
910.786–12 Opportunity for submission of written comments on permit applications.
910.786–13 Right to file written objections.
910.786–14 Informal conferences.
910.786–15 Public availability of information in permit applications on file with the Office.
910.786–17 Review of permit applications.
910.786–19 Criteria for permit approval or denial.
910.786–21 Criteria for permit approval or denial: Existing structures.
910.786–23 Permit approval or denial actions.
910.786–25 Permit terms.
910.786–27 Conditions of permits: General and right of entry.
910.786–29 Conditions of permits: Environment, public health, and safety.

Subpart 910.787—Administrative and Judicial Review of Decisions on Permit Applications

910.787–11 Administrative review.
910.787–12 Judicial review.

Subpart 910.788—Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits

910.788–3 Responsibilities.
910.788–5 Definitions.
910.788–11 Review of outstanding permits.
910.788–12 Permit revisions.
910.788–13 Permit renewals: General requirements.
910.788–14 Permit renewals: Completed applications.
910.788–15 Permit renewals: Terms.
910.788–16 Permit renewals: Approval or denial.
910.788–17 Transfer, assignment, or sale of permit rights: General requirements.
910.788–18 Transfer, assignment, or sale of permit rights: Obtaining approval.
910.788–19 Requirements for new permits for persons succeeding to rights granted under a permit.

Subpart 910.795—Small Operator Assistance

910.795–1 Scope.
910.795–2 Objective.
910.795–3 Authority.
910.795–4 Responsibilities.
910.795–5 Definitions.
910.795–11 Small operator assistance program initiation procedures.

Sec.

910.795–12 Program services.
910.795–13 Eligibility for assistance.
910.795–14 Filing for assistance.
910.795–15 Application approval, and notice.
910.795–16 Data requirements.
910.795–17 Qualified laboratories.
910.795–18 Assistance funding.
910.795–19 Applicant liability.

Bond and Insurance Requirements

Subpart 910.800—General Requirements for Bonding of Surface Coal Mining and Reclamation Operations

910.800–5 Definitions.
910.800–11 Requirement to file a bond.
910.800–12 Requirement to file a certificate of liability insurance.
910.800–13 Responsibilities.

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.
910.801–4 Responsibilities.
910.801–11 Applicability.
910.801–12 Amount of bond required.
910.801–13 Period of liability.
910.801–14 Form of bond.
910.801–15 Applicability of other sections.
910.801–16 Subsidence and mine drainage.
910.801–17 Bond forfeiture.

Subpart 910.805—Amount and Duration of Performance Bond

910.805–11 Determination of bond amount.
910.805–12 Minimum amount.
910.805–13 Period of liability.
910.805–14 Adjustment of amount.

Subpart 910.806—Form, Conditions, and Terms of Performance Bonds and Liability Insurance

910.806–11 Form of the performance bond.
910.806–12 Terms and conditions of the bond.
910.806–13 Escrow bonding.
910.806–14 Self-bonding.
910.806–15 Replacement of bonds.
910.806–16 Terms and conditions for liability insurance.
910.806–17 Combined surety/escrow bonding.

Subpart 910.807—Procedures, Criteria and Schedule for Release of Performance Bond

910.807–11 Procedures for seeking release of performance bond.
910.807–12 Criteria and schedule for release of performance bond.

Subpart 910.808—Performance Bond Forfeiture Criteria and Procedures

910.808–11 General.
910.808–12 Procedures.
910.808–13 Criteria for forfeiture.
910.808–14 Determination of forfeiture amount.

Subpart 910.815—Performance Standards—Coal Exploration

910.815–11 General responsibility of persons conducting coal exploration.
910.815–13 Required documents.

Sec.

910.815–15 Performance standards for coal exploration.
910.815–17 Requirement for a permit.

Subpart 910.816—Performance Standards—Surface Mining Activities

910.816–11 Signs and markers.
910.816–13 Casing and sealing of drilled holes: General requirements.
910.816–14 Casing and sealing of drilled holes: Temporary.
910.816–15 Casing and sealing of drilled holes: Permanent.
910.816–21 Topsoil: General requirements.
910.816–22 Topsoil: Removal.
910.816–23 Topsoil: Storage.
910.816–24 Topsoil: Redistribution.
910.816–25 Topsoil: Nutrients and soil amendments.
910.816–41 Hydrologic balance: General requirements.
910.816–42 Hydrologic balance: Water quality standards and effluent limitations.
910.816–43 Hydrologic balance: Diversion and conveyance of overland and shallow ground water flows and ephemeral streams.
910.816–44 Hydrologic balance: Stream channel diversions.
910.816–45 Hydrologic balance: Sediment control measures.
910.816–46 Hydrologic balance: Sedimentation ponds.
910.816–47 Hydrologic balance: Discharge structures.
910.816–48 Hydrologic balance: Acid-forming and toxic-forming spoil.
910.816–49 Hydrologic balance: Permanent and temporary impoundments.
910.816–50 Hydrologic balance: Ground water protection.
910.816–51 Hydrologic balance: Protection of ground water recharge capacity.
910.816–52 Hydrologic balance: Surface and ground water monitoring.
910.816–53 Hydrologic balance: Transfer of wells.
910.816–54 Hydrologic balance: Water rights and replacement.
910.816–55 Hydrologic balance: Discharge of water into an underground mine.
910.816–56 Hydrologic balance: Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities.
910.816–57 Hydrologic balance: Stream buffer zones.
910.816–59 Coal recovery.
910.816–61 Use of explosives: General requirements.
910.816–62 Use of explosives: Pre-blasting survey.
910.816–64 Use of explosives: Public notice of blasting schedule.
910.816–65 Use of explosives: Surface blasting requirements.
910.816–67 Use of explosives: Seismograph measurements.
910.816–68 Use of explosives: Records of blasting operations.
910.816–71 Disposal of excess spoil: General requirements.
910.816–72 Disposal of excess spoil: Valley fills.
910.816–73 Disposal of excess spoil: Head-of-hollow fills.

Sec.

910.816–74 Disposal of excess spoil: Durable rock fills.
910.816–79 Protection of underground mining.
910.816–81 Coal processing waste banks: General requirements.
910.816–82 Coal processing waste banks: Site inspection.
910.816–83 Coal processing waste banks: Water control measures.
910.816–85 Coal processing waste banks: Construction requirements.
910.816–86 Coal processing waste: Burning.
910.816–87 Coal processing waste: Burned waste utilization.
910.816–88 Coal processing waste: Return to underground workings.
910.816–89 Disposal of non-coal wastes.
910.816–91 Coal processing waste: Dams and embankments: General requirements.
910.816–92 Coal processing waste: Dams and embankments: Site preparation.
910.816–93 Coal processing waste: Dams and embankments: Design and construction.
910.816–95 Air resources protection. [Reserved]
910.816–97 Protection of fish, wildlife, and related environmental values.
910.816–99 Slides and other damage.
910.816–100 Contemporaneous reclamation.
910.816–101 Backfilling and grading: General requirements.
910.816–102 Backfilling and grading: General grading requirements.
910.816–103 Backfilling and grading: Covering coal and acid- and toxic-forming materials.
910.816–104 Backfilling and grading: Thin overburden.
910.816–105 Backfilling and grading: Thick overburden.
910.816–106 Regrading or stabilizing rills and gullies.
910.816–111 Revegetation: General requirements.
910.816–112 Revegetation: Use of introduced species.
910.816–113 Revegetation: Timing.
910.816–114 Revegetation: Mulching and other soil stabilizing practices.
910.816–115 Revegetation: Grazing.
910.816–116 Revegetation: Standards for success.
910.816–117 Revegetaton: Tree and shrub stocking for forest land.
910.816–131 Cessation of operations: Temporary.
910.816–132 Cessation of operations: Permanent.
910.816–133 Postmining land use.
910.816–150 Roads: Class I: General.
910.816–151 Roads: Class I: Location.
910.816–152 Roads: Class I: Design and construction.
910.816–153 Roads: Class I: Drainage.
910.816–154 Roads: Class I: Surfacing.
910.816–155 Roads: Class I: Maintenance.
910.816–156 Roads: Class I: Restoration.
910.816–160 Roads: Class II: General.
910.816–161 Roads: Class II: Location.
910.816–162 Roads: Class II: Design and construction.
910.816–163 Roads: Class II: Drainage.
910.816–164 Roads: Class II: Surfacing.

Sec.

910.816–165 Roads: Class II: Maintenance.
910.816–166 Roads: Class II: Restoration.
910.816–170 Roads: Class III: General.
910.816–171 Roads: Class III: Location.
910.816–172 Roads: Class III: Design and construction.
910.816–173 Roads: Class III: Drainage.
910.816–174 Roads: Class III: Surfacing.
910.816–175 Roads: Class III: Maintenance.
910.816–176 Roads: Class III: Restoration.
910.816–180 Other transportation facilities.
910.816–181 Support facilities and utility installations.
910.816–200 Interpretative rules related to general performance standards.

Subpart 910.817—Performance Standards—Underground Mining Activities

910.817–11 Signs and markers.
910.817–13 Casing and sealing of exposed underground openings: General requirements.
910.817–14 Casing and sealing of underground openings: Temporary.
910.817–15 Casing and sealing of underground openings: Permanent.
910.817–21 Topsoil: General requirements.
910.817–22 Topsoil: Removal.
910.817–23 Topsoil: Storage.
910.817–24 Topsoil: Redistribution.
910.817–25 Topsoil: Nutrients and soil amendments.
910.817–41 Hydrologic balance: General requirements.
910.817–42 Hydrologic balance: Water quality standards and effluent limitations.
910.817–43 Hydrologic balance: Diversions and conveyance of overland flow and shallow ground water flow.
910.817–44 Hydrologic balance: Stream channel diversions.
910.817–45 Hydrologic balance: Sediment control measures.
910.817–46 Hydrologic balance: Sedimentation ponds.
910.817–47 Hydrologic balance: Discharge structures.
910.817–48 Hydrologic balance: Acid-forming and toxic-forming materials.
910.817–49 Hydrologic balance: Permanent and temporary impoundments.
910.817–50 Hydrologic balance: Underground mine entry and access discharges.
910.817–52 Hydrologic balance: Surface and ground water monitoring.
910.817–53 Hydrologic balance: Transfer of wells.
910.817–54 [Reserved]
910.817–55 Hydrologic balance: Discharge of water into an underground mine.
910.817–56 Hydrologic balance: Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities.
910.817–57 Hydrologic balance: Stream buffer zones.
910.817–59 Coal recovery.
910.817–61 Use of explosives: General requirements.
910.817–62 Use of explosives: Preblasting survey.
910.817–65 Use of explosives: Surface blasting requirements.

Sec.

910.817–67 Use of explosives: Seismographic measurements.
910.817–68 Use of explosives: Records of blasting operations.
910.817–71 Disposal of underground development waste and excess spoil: General requirements.
910.817–72 Disposal of underground development waste and excess spoil: Valley fills.
910.817–73 Disposal of underground development waste and excess spoil: Head-of-hollow fills.
910.817–74 Disposal of underground development waste and excess spoil: Durable rock fills.
910.817–81 Coal processing waste: General requirements.
910.817–82 Coal processing waste banks: Site inspection.
910.817–83 Coal processing waste banks: Water control measures.
910.817–85 Coal processing waste banks: Construction requirements.
910.817–86 Coal processing waste: Burning.
910.817–87 Coal processing waste: Burned waste utilization.
910.817–88 Coal processing waste: Return to underground workings.
910.817–89 Disposal of non-coal wastes.
910.817–91 Coal processing waste: Dams and embankments: General requirements.
910.817–92 Coal processing waste: Dams and embankments: Site preparation.
910.817–93 Coal processing waste: Dams and embankments: Design and construction.
910.817–95 Air resources protection. [Reserved]
910.817–97 Protection of fish, wildlife and related environmental values.
910.817–99 Slides and other damage.
910.817–100 Contemporaneous reclamation.
910.817–101 Backfilling and grading: General requirements.
910.817–102 Backfilling and grading: General grading requirements.
910.817–103 Backfilling and grading: Covering coal and acid- and toxic-forming materials.
910.817–106 Regrading or stabilizing rills and gullies.
910.817–111 Revegetation: General requirements.
910.817–112 Revegetation: Use of introduced species.
910.817–113 Revegetation: Timing.
910.817–114 Revegetation: Mulching and other soil stabilizing practices.
910.817–115 Revegetation: Grazing.
910.817–116 Revegetation: Standards for success.
910.817–117 Revegetation: Tree and shrub stocking for forest land.
910.817–121 Subsidence control: General requirements.
910.817–122 Subsidence control: Public notice.
910.817–124 Subsidence control: Surface owner protection.
910.817–126 Subsidence control: Buffer zones.
910.817–131 Cessation of operations: Temporary.
910.817–132 Cessation of operations: Permanent.

Sec.

910.817–133 Postmining land use.
910.817–150 Roads: Class I: General.
910.817–151 Roads: Class I: Location.
910.817–152 Roads: Class I: Design and construction.
910.817–153 Roads: Class I: Drainage.
910.817–154 Roads: Class I: Surfacing.
910.817–155 Roads: Class I: Maintenance.
910.817–156 Roads: Class I: Restoration.
910.817–160 Roads: Class II: General.
910.817–161 Roads: Class II: Location.
910.817–162 Roads: Class II: Design and construction.
910.817–163 Roads: Class II: Drainage.
910.817–164 Roads: Class II: Surfacing.
910.817–165 Roads: Class II: Maintenance.
910.817–166 Roads: Class II: Restoration.
910.817–170 Roads: Class III: General.
910.817–171 Roads: Class III: Location.
910.817–172 Roads: Class III: Design and construction.
910.817–173 Roads: Class III: Drainage.
910.817–174 Roads: Class III: Surfacing.
910.817–175 Roads: Class III: Maintenance.
910.817–176 Roads: Class III: Restoration.
910.817–180 Other transportation facilities.
910.817–181 Support facilities and utility installations.
910.817–200 Interpretative rules related to general performance standards.

Subpart 910.818—Special Performance Standards—Concurrent Surface and Underground Mining

910.818–4 Responsibilities.
910.818–11 Applicability.
910.818–13 Compliance with variance terms.
910.818–15 Additional performance standards.

Subpart 910.819—Special Performance Standards—Auger Mining

Subpart 910.823—Special Performance Standards—Operations on Prime Farmland [Reserved]

Subpart 910.824—Special Performance Standards—Mountaintop Removal [Reserved]

Subpart 910.826—Special Performance Standards—Operations on Steep Slopes

910.826–11 Applicability.
910.826–12 Steep slopes: Performance standards.
910.826–15 Steep slopes: Limited variances.
910.826–16 Steep slopes: Multiple seam.

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.
910.827–12 Coal processing plants: Performance standards.

Subpart 910.828—Special Performance Standards—In Situ Processing

910.828–11 In situ processing: Performance standards.
910.828–12 In situ processing: Monitoring.

Inspection and Enforcement Procedures

Subpart 910.842—Federal Inspections

910.842–11 Federal inspections.

Sec.

910.842–12 Citizens' requests for Federal inspections.
910.842–13 Right of entry.
910.842–14 Review of adequacy and completeness of inspections.
910.842–15 Review of decision not to inspect or enforce.
910.842–16 Availability of records.

Subpart 910.843—Federal Enforcement

910.843–11 Cessation orders.
910.843–12 Notices of violation.
910.843–13 Suspension or revocation of permits.
910.843–14 Service of notice of violation and cessation orders.
910.843–15 Informal public hearing.
910.843–16 Formal review of citations.
910.843–17 Lack of information.
910.843–18 Inability to comply.
910.843–19 Injunctive relief.

Subpart 910.845—Civil Penalties

910.845–11 How assessments are made.
910.845–12 When penalty will be assessed.
910.845–13 Point system for penalties.
910.845–14 Determination of amount of penalty.
910.845–15 Assessment of separate violations for each day.
910.845–16 Waiver of use of formula to determine civil penalty.
910.845–18 Procedures for assessment conference.
910.845–19 Request for hearing.
910.845–20 Final assessment and payment of penalty.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 910.1 Scope.

This Part contains all rules applicable only within Georgia that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

Subpart 910.701—General

§ 910.701–1 Scope.

(a) Subparts 910.701–910.848 set forth and identify 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.*

§ 910.701-4 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 responsible 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, with 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.

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.

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 buildings; 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 placement 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 adopted 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 or 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 Sections 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 closed 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 Weed 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 horizontal distance to a given number of units of vertical distance (e.g. 2h:1v) 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 operation 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 contains 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 Subpart 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 910.828 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 910.784–12.

(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. 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 or which does not meet a performance standard of Subparts 910.815 through 910.828 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 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 regulation 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 OSM field office in Georgia.

(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.

Areas Unsuitable for Mining

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 the highway, road, street, avenue, drive, detour, or other way open to the public and intended or used for its enjoyment and for the passage of vehicles in any county or municipality of the State of Georgia, including but not limited to the following public rights, structures, sidewalks, facilities and appurtenances incident to the construction, maintenance and enjoyment of such rights-of-way; Surface, shoulders and sides; bridges; causeways; viaducts; ferries; overpasses; underpasses; railroad grade crossing; tunnels; signs; signals; markings or other traffic control devices; buildings for public equipment and personnel used for or engaged in administration construction or maintenance of such ways or research pertaining thereto; wayside parks; parking facilities; drainage ditches; canals, culverts; rest areas; truck-weighing stations or check points; scenic easements and easements of light, air, view and access.

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), (e), or (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 (e) or (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 operations 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 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 listing 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.

(c) The Director may establish additional criteria, through rulemaking, for determining whether lands within the State should be designated unsuitable for surface coal mining operations.

§ 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 technologically 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 reasons 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) Local, 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 regular 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.

(a) 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 § 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 regular 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.

Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems

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 1978;

(7) Georgia Safe Dams Act of 1973;

(8) Georgia Hazardous Waste Management Act of 1979;

(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. 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 910.786–15 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 the 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 precise description or a map, at a scale of 1:24,000 or larger, sufficient to identify the area or areas on the ground within which the exploration operations are to be conducted and the distance from the area or areas to a public road and the access routes to be used;

(4) A statement of the period of intended exploration, including a description of the area to be explored;

(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 OSM field office in Georgia 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

(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 OSM field office in Georgia 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 Office 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 OSM field office in Georgia.

(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.

(c) Information pertaining to the location of historic or cultural resource may be withheld from public disclosure if a determination is made that its disclosure may create a substantial risk or harm, theft or destruction to such resources.

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, including 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 contiguous 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) Has 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 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 910.806–16 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 authority.

§ 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 or eligible for listing 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 representative of 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.

§ 910.779–22 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 sub-areas 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 sub-surface 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 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 cultural or historical resources listed or eligible for listing on 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 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 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 910.808, 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 or applicable State and Federal laws, whichever is more stringent;

(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(e).

§ 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 of 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 in 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 alternatives 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 alteration 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 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 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 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 contiguous 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 forfeiture; 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 made, 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 or eligible for listing on 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 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 §§ 910.783–13 through 910.783–16 and conform to the following:

(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.

(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)(1) 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.

(2) 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.

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.

§ 910.783-18 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 is 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 identified 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) Cite 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 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 910.817-22.

§ 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 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 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 1,000 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 areas 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 or eligible for listing 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 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 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 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.

§ 910.784-13 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 removal, 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 ground water;

(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 affected 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 910.817-93 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.* (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 proposed 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 event 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 § 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 applicable State and Federal laws, whichever is more stringent; 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; and

(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 for 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 910.817-88.

(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 operation 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 plain 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.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. This section does not apply to:

(1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(3) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(4) For purposes of this section:

(i) "Renewal" of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area, or the decision of the regulatory authority to allow incidental boundary changes to the original permit;

(ii) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(Secs. 201, 501, 527 and 529, Pub. L. 95–87 Stat. 445 (30 U.S.C. 1201))

§ 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 waters.

(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 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;

(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; and

(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 of this subpart.

(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 lands 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 accessible 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.

(c) Information pertaining to a location of historic or cultural resources may be withheld from public disclosure if a determination is made that its disclosure may create a substantial risk or harm or theft or destruction to such resources.

§ 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 CFR 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, or

(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 permit 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(b).

(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 § 910.786–17(c)(1); or

(2) Made the demonstration required by § 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 § 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 § 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 proposed 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 permittee 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 910.771–21(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 satisfactorily 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 § 910.788–12.

Subpart 910.795—Small Operator Assistance

§ 910.795–1 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—

(a) *Monitoring* means the collection of environmental data by either continuous or periodic sampling methods.

(b) *Probable cumulative impacts* means the expected total qualitative, and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.

(c) *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.

§ 910.795–11 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 area;

(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 a 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 group 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 ground 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.

(a) *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.

(b) *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—

(1) The deposit of cash in one or more federally insured accounts, payable only to the Office upon demand;

(2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and in the possession of, the Office;

(3) Negotiable certificates of deposit, payable only to the Office and in its possession;

(4) 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;

(5) A perfected, first-lien security interest in real or personal property, in favor of the Office;

(6) 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.

(c) *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.

(d) *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.

(e) *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.

(f) *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.

(g) *Working capital* means the excess of the operator's current assets over its current liabilities.

(h) *Current assets* means cash and assets that are reasonably expected to be realized in cash or sold or consumed within one year.

(i) *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.

(j) *Current ratio* means the relation of current assets to current liabilities.

(k) *Acid-test ratio* means the relation of quick assets to current liabilities.

(l) *Quick assets* means cash and current assets that can be quickly turned into cash.

(m) *Cash* means (1) all cash items except cash (i) restricted by an agreement, or (ii) described as earmarked for a particular purpose; and (2) 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.

(n) *Liquidity ratio* means the relation of cash to current liabilities.

(o) *Asset ratio* means the relation of total assets to total liabilities.

(p) *Return on investment* means the relation of net profit for the last yearly period to ending net worth.

(q) *Net worth* means preferred and common stock, all surplus accounts, and retained earnings.

(r) *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.

(s) *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 910.806–16; 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 910.806-13. 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 by 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 by 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 910.808–13(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 associated 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 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 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 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 encumbrances 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 III 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, of 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 an 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, shall have demonstrated to the satisfaction of the Office a history of financial solvency and continuous operation as a business entity prior to filing the application.

(3) 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.

(vii) Release of liability under the escrow account shall be subject to the provisions of 30 CFR Subpart 910.807.

(c) Provisions of 30 CFR Subpart 910.807 may be applied to both surety- and escrow-bond coverage during the bond term.

(d) 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 permittee 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 the 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 shall 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 permittee 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 and 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, 910.817–116, and 910.817–133 of this part, 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) of this part; 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) of this part 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.

(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. 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 of this subpart.

(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 of this subpart.

§ 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) 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) Facilitate 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) *Specifications.* Signs and markers required under this Subpart shall—

(1) Be posted 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 telephone 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 section 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 redistribution 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. 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 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) Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all Federal and State laws and regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER (MG/L), EXCEPT FOR PH

Effluent characteristics [1]	Maximum allowable [2]	Average of daily values for 30 consecutive discharge days [2]
Iron total	7.0	3.5
Manganese, total [3]	4.0	2.0
Total suspended solids	70.0	35.0
pH [4]	(5)	(5)

[1] To be determined according to collection and analytical procedures adopted by the United States Environmental Protection Agency's regulations for waste water analyses (40 CFR Part 136).

[2] Based on representative sampling.

[3] The manganese limitation shall not apply to untreated discharges which are alkaline as defined by the Environmental Protection Agency (40 CFR Part 434).

[4] Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, the Office may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

[5] Discharges of iron from new sources, as defined under 40 CFR 434.11(l), shall be limited to 6.0 mg./1-maximum allowable; 3.0 mg./1-average of daily values for 30 consecutive discharge days.

[6] Within the range 6.0 to 9.0.

(b) Any overflow increase in volume of a discharge or discharge from a bypass 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 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 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 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. 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 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 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 $1v$:$1h$, 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 Section 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.

§ 816.801–48 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 § 910.816–103, 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.

§ 816.801–49 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 land-owners 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 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 910.816–111 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.* (1) 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 surface waters 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 § 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 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 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 3 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 section 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 surface 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 decibels
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)	Maximum weight in pounds (W)
300	25
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	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 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) 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 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 § 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 § 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 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) 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.
(o) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport is permitted provided that:
(1) The operator receives the prior written approval of the regulatory authority upon demonstration by the operator that the spoil to be disposed of by gravity transport is not necessary for elimination of the highwall and return of the upper bench to approximate original contour;
(2) The following conditions and performance standards in addition to the environmental performance standards of this part are met:
(i) The highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them;
(ii) The gravity transport points are determined on a site specific basis by the operator and approved by the regulatory authority to minimize hazards to health and safety and to ensure that

damage will be minimized should spoil accidentally move downslope of the lower bench;

(iii) The excess spoil is placed only on solid portions of the lower pre-existing bench;

(iv) All excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess spoil on the lower solid bench shall consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings to ensure a long-term static safety factor of 1.3. Spoil on the bench prior to the current mining operation need not be rehandled except to ensure stability of the fill;

(v) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm. The safety berm must be removed by the operator during final grading operations;

(vi) The area of the lower bench used to facilitate the disposal of excess spoil is considered an affected area.

§ 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 million yd³.	Sandstone	10	4
Do	Shale	16	8
More than 1 million 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) 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 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.

§ 910.816–73 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 1*v*: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 disturbed 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 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 § 910.816–72(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) Specifications 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.

(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 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 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 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). Outslopes which 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 § 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 regraded 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 trials 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 soil 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 is 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) 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.

§ 910.816–116 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 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 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 area 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 within 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; wood 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)(2)(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 abandonment 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 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 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 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 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 910.816–156 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 910.816–153.

(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 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 910.816–153.

(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 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 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 performance 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 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 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 that 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, 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.

§ 910.816–156 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 material, 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 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 910.816–43 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 or 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) Full 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 data 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.* Buffer 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."

(g) *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, drillhole or borehole or well that is uncovered or exposed by mining activities within 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 § 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 drillhole 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) *Materials to be removed in this 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 § 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) Discharges of water from areas disturbed by underground mining activities shall be made in compliance with all Federal and State laws and regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER (MG/L), EXCEPT FOR pH

Effluent characteristics [1]	Maximum allowable [2]	Average of daily values for 30 consecutive discharge days [2]
Iron total [3]	7.0	3.5
Manganese, total [3]	4.0	2.0
Total suspended solids	70.0	35.0
pH [4]	([5])	[6]

[1] To be determined according to collection and analytical procedures adopted by the United States Environmental Protection Agency's regulations for waste water analysis (40 CFR Part 136).

[2] Based on representative sampling.

[3] The manganese limitation shall not apply to untreated discharges which are alkaline as defined by the Environmental Protection Agency (40 CFR 434).

[4] Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, the Office may allow the pH level in the discharge to exceed, to a small extent, the upper limit of 9.0 in order that the manganese limitations will be achieved.

[5] Discharges of iron from new sources, as defined under 40 CFR 434.11(i), shall be limited to 6.0 mg/l (maximum allowable) and 3.0 mg/l (average of daily values for 30 consecutive discharge days).

[6] Within the range 6.0 to 9.0

(b) Any overflow increase in volume of a discharge or discharge from a bypass 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 § 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.

§ 910.817–44 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.

§ 910.817-45 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 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 safely discharge the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the Office, plus any 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.

(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 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 910.817–91 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 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 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 than 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 a biological community determined according to Paragraph (c) below 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 to 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, H_z(± 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 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, 1100 L St., N.W., Washington, D.C.

(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) 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 (1) 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 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 § 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 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 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 § 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.

(o) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport is permitted provided that:

(1) The operator receives the prior written approval of the regulatory authority upon demonstration by the operator that the spoil to be disposed of by gravity transport is not necessary for elimination of the highwall and return of the upper bench to approximate original contour;

(2) The following conditions and performance standards in addition to the environmental performance standards of this part are met:

(i) The highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them;

(ii) Only underground development waste and spoil in excess of that necessary to eliminate the highwall and return the upper bench to the approximate original contour may be placed on the lower solid bench;

(iii) The gravity transport points are determined on a site specific basis by the operator and approved by the regulatory authority to minimize hazards to health and safety and to ensure that damage will be minimized should spoil accidently move down slope of the lower bench;

(iv) The excess spoil is placed only on solid portions of the lower pre-existing bench;

(v) All excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess spoil on the lower solid bench shall consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings to ensure a long term static safety factor of 1.3. Spoil on the bench prior to the current mining operation need not be rehandled except to ensure stability of the fill.

(vi) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm. The safety berm must be removed by the operator by final grading operations;

(vii) The area of the lower bench used to facilitate the disposal of excess spoil in considered an affected area.

§ 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 §§ 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 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 §§ 910.817–71 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 underground 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 submitted 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 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 sub-drainage 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 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 St., NW., Washington, D.C.

(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 910.817–22(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 910.817–117. 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 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 § 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 slope possible and to achieve 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 paragraphs (a)(3) (i) through (iii) of this section, 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 detrimental 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 (a)(3)(iv) of this section to meet the requirements of paragraphs (a)(3) (i), (ii) and (iii) of this section.

(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 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). Outslopes which 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 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 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 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 §§ 910.817–111 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 activifies 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 extent 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 extent 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 §§ 910.817–116(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 reasonably 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 this 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, schools, hospitals, courthouses and government offices, unless the Office on the basis of detailed subsurface information, 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 communities.

§ 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 are 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:

(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 land 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 grades 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 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 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 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 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 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 paragraph (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 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 910.817–43 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 or 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:

(1) The overall grade shall not exceed 1*v*:10*h* (10 percent).

(2) The maximum 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 alignment.* 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:

(i) U.S. Department of Agriculture Soil Conservation Service published data 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 910.817-22(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 no 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 or 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 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)(1) 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:

(i) Spoil;

(ii) Waste materials, including waste mineral matter;

(iii) Debris, including that from clearing and grubbing of haul road construction; and

(iv) Abandoned or disabled equipment;

(2) 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 highwall 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 disturbed 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 pre-existing 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 910.785–21 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 910.816–44.

(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 910.816–88, 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 surface 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 910.785–22, 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 identified 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 approximate 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 creates 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 in 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.

(d) 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 employees, 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 or 30 CFR 910.842-11 or 910.842-12 shall be made immediately available to the public at the OMS field office in Georgia where the mining is taking 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 910.786-15.

(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 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) 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, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in § 843.12(f). An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(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) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) where the permittee cannot abate within 90 days due to a labor strike;

(4) where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly:

(i) would cause more environmental harm than it would prevent; or

(ii) requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraph (f) (1)-(4) exist, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 843.12 (c) and (f). In determining whether or not to grant an abatement period exceeding 90 days the

authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determination made under paragraph (h) shall be in writing and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR Part 4.

(j) No extension granted under paragraph (h) may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extensions the permittee may request a further extension in accordance with the procedures of paragraph (h).

§ 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–

(i) During enforcement of this Part; or,

(ii) During the interim program and before the effective date of the Federal Program under 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, on 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.

(f) Whenever a permittee fails to abate a violation contained in a notice of violation or a cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to 30 CFR 845.15(b)(2).

§ 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.

§ 910.845–12 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.

§ 910.845–13 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 be 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 and Points

None, 0
Insignificant, 1 to 4
Unlikely, 5 to 9
Likely, 10 to 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.

(iii) *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) (i) and (ii) 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 follows:

(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 and Points

Rapid compliance, −1 to −10
Normal compliance, 0

(ii) The following definitions shall apply under 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 abated.

§ 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 910.843–13 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) In addition to the civil penalty provided for in Paragraph (a), 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 or as subsequently extended pursuant to section 521(a) of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) 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

(ii) 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;

(2) Such penalty for the failure to abate a violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to sections 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

§ 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 a 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) 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 of 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. 82-5555 Filed 3-9-82; 8:45 am]
BILLING CODE 4310-05-M

federal register

Wednesday
March 10, 1982

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Erosion and Attendant Air Pollution

Federal Register

Monday, March 10, 1980

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Erosion and Attendant Air Pollution

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

Erosion and Attendant Air Pollution

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

ACTION: Proposed rule—public hearing, correction.

SUMMARY: On February 18, 1982, the Office of Surface Mining (OSM) issued a **Federal Register** Notice for Proposed Rulemaking on 30 CFR 816.95 and 817.95 47 FR 7384–7386 (Erosion and Attendant Air Pollution).

Due to recent developments, the Lexington, Kentucky, public hearing date, place and time have been changed.

DATE: The hearing date has been changed to 6:00 p.m. (local time) on March 15, 1982.

ADDRESS: The location of the hearing in Lexington, Kentucky is hereby changed to the Harley Hotel, 2143 N. Broadway.

FOR FURTHER INFORMATION CONTACT: Robert Goldberg, P.E., Division of Engineering Analysis, (202) 343–4022.

Dated: March 9, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-6721 Filed 3-9-82; 11:51 am]

BILLING CODE 4310-05-M

Reader Aids

Federal Register

Vol. 47, No. 47

Wednesday, March 10, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual	523-5230

SERVICES

Agency services	523-4534
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8547-8748.....1
8749-8976.....2
8977-9184.....3
9185-9386.....4
9387-9804.....5
9805-9980.....8
9981-10198.....9
10199-10502.....10

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential determination:
No. 82-7 of February 10, 1982.....9805
Proclamations:
4707 (Amended by Proc. 4904).....8753
4768 (Amended by Proc. 4904).....8753
4801 (See Proc. 4904).....8753
4884 (See Proc. 4904).....8753
4887 (See Proc. 4904).....8753
4902.....8549
4903.....8751
4904.....8753
4905.....8977
4906.....9807
Executive Orders:
September 22, 1866 (Revoked by PLO 6171).....9838
June 13, 1902 (Revoked by PLO 6184).....10213
July 2, 1910 (Revoked in part by PLO 6177).....9840
March 29, 1922 (Revoked by PLO 6175).....9839
April 17, 1926 (Revoked in part by PLO 6173).....9838
3655 (Revoked by PLO 6175).....9839
3893 (Revoked by PLO 6171).....9838
5683 (Revoked by PLO 6193).....10214
11888 (Amended by EO 12349).....8749
11954 (Revoked by EO 12348).....8547
12348.....8547
12349.....8749

5 CFR

Ch. XIV.....9185
737.....9694
Proposed Rules:
831.....9470

7 CFR

29.....8979
51.....9185
301.....8982
719.....9981
907.....9188
910.....9188, 9387
959.....8551
981.....9809
1421.....9188
1435.....9194
1446.....8553
1475.....9981
1701.....9387
720.....9972
Proposed Rules:
729.....9972, 10045
985.....8784
1004.....10230
1006.....10203
1007.....10053, 10203
1011.....10203
1012.....10203
1046.....10203
1094.....10203
1096.....10203
1098.....10203
1701.....8785, 10057
2900.....8786

8 CFR

238.....8759, 9982

9 CFR

112.....8759
Proposed Rules:
92.....9854
317.....9471
381.....9471

10 CFR

1.....9983
2.....9983, 9987
14.....8983
25.....9194
95.....9194
440.....9014
790.....8555
1004.....9995
Proposed Rules:
Ch. I.....8788
794.....9017

12 CFR

204.....8987
207.....8988
217.....8987
220.....8988
221.....8988
224.....8988
303.....9810
308.....9811
701.....10199
Proposed Rules:
Ch. II.....9017
207.....8788
220.....8788
221.....8788

545.....9472, 9855
563.....9472
701.....10232, 10233

13 CFR

120.....8990

14 CFR

39.....8555–8561, 9196, 9812–9815
71.....8562, 9816, 9817
73.....8563
75.....9200, 9817
97.....9818
208.....9819
241.....9744
314.....9744
385.....9200, 10200

Proposed Rules:

21.....9360, 9859
23.....9360
36.....9360
71.....8595, 9222, 9224, 9860
75.....8596, 9222
91.....9360
121.....9360
135.....9360
139.....9360

15 CFR

376.....9201
379.....9201
385.....9201
399.....9201
904.....9820, 10200

Proposed Rules:

904.....9861

16 CFR

13.....9388, 9821
1700.....10201

Proposed Rules:

1700.....10235

17 CFR

240.....9388

Proposed Rules:

12.....9225
180.....9225
190.....8789

18 CFR

35.....8991
260.....10202
271.....8564, 8565, 10203
410.....9206

Proposed Rules:

141.....10237
271.....8596, 10237–10242
273.....8596
274.....8596

19 CFR

212.....9389

Proposed Rules:

10.....9225
18.....9225
19.....9225
24.....9225
113.....9225
125.....9225
132.....9225
142.....9225
144.....9225
177.....10058

20 CFR

Proposed Rules:

404.....8789

21 CFR

5.....8761
14.....8763
145.....9997
172.....8763
175.....9395
176.....9998
178.....9999
211.....9395
331.....9395
436.....9395
450.....9395
520.....9395
522.....9398
556.....9395
558.....8764, 8765, 9394, 9398
573.....9395
610.....9395
630.....9395
701.....9395
801.....9395

22 CFR

22.....9999
201.....8766

23 CFR

Proposed Rules:

628.....9247

24 CFR

111.....8991
200.....9206
201.....10204
203.....10205
213.....10205
234.....10205
570.....9822
885.....9206

26 CFR

26.....8995
150.....8995

Proposed Rules:

51.....9018

28 CFR

0.....9822
570.....9755, 10206
571.....9755

29 CFR

1404.....9823
2704.....10000

30 CFR

910.....0000

Proposed Rules:

Ch. VII.....10058
55.....10190
57.....10190
415.....9862
816.....10501
817.....10501

31 CFR

209.....9823

32 CFR

1 through 39.....9399
41.....10162

Proposed Rules:

299.....8791
632.....8790

33 CFR

117.....8566, 9825
140.....9366
141.....9366
142.....9366
143.....9366
144.....9366
146.....9366
147.....9366

Proposed Rules:

100.....9863
117.....8597–8599, 9864
159.....9248

34 CFR

645.....9158
646.....9150
776.....9786

35 CFR

10.....9207

36 CFR

907.....8767

Proposed Rules:

7.....8600–8605

38 CFR

36.....9826

39 CFR

111.....10206

40 CFR

6.....9827, 9831
52.....8566, 8772, 9462, 9463, 9832–9836, 10206, 10208
62.....10004
81.....10208
180.....10210–10212
122.....10006
141.....8997
180.....8998–9001
256.....9002–9005
260.....9007
264.....10006
265.....9802, 10006

Proposed Rules:

Ch. I.....9477, 9864
33.....8960
52.....9019, 9478–9481, 10058
81.....8791, 9019, 10243
85.....8606
86.....8606
122.....8792
123.....8792, 9336, 9865
124.....8792
141.....9350
142.....9796
146.....8792
180.....9025, 10244
260.....9336, 9865
262.....9336, 9865
265.....8606, 10059

41 CFR

1–4.....8774
8–1.....8777
101–26.....8779
101–37.....8777

42 CFR

447.....8567

43 CFR

3420.....9008

Public Land Orders:

1314 (Revoked by PLO 6179).....9840
1642 (Revoked by PLO 6186).....10213
3500 (Revoked in part by PLO 6194).....10215
3633 (Revoked by PLO 6191).....10214
3964 (Revoked by PLO 6178).....9840
4839 (Revoked by PLO 6195).....10215
5490 (See PLO 6178).....9840
6149.....8779
6171.....9838
6172.....9838
6173.....9838
6174.....9839
6175.....9839
6176.....9839
6177.....9840
6178.....9840
6179.....9840
6180.....9841
6181.....9841
6182.....9842
6183.....9842
6184.....10213
6186.....10213
6187.....10213
6190.....10214
6191.....10214
6193.....10214
6194.....10215
6195.....10215

Proposed Rules:

3140.....8734, 9026

44 CFR

65.....10006
67.....10006
70.....10007–10018

Proposed Rules:

67.....9865, 10059–10063, 10245

45 CFR

46.....9208
301.....8568
605.....8570

46 CFR

67.....8581
524.....10217

47 CFR

1.....9208
2.....9464
22.....10018
67.....9170
68.....10219

73.....8583, 8779–8782, 9208–9214, 10219
74.....9214
76.....8783
83.....10220

Proposed Rules:

2.....9249
15.....9249
73.....8792–8797, 9249, 9482, 10259–10261
74.....9251
81.....9249
83.....9249
90.....10064
97.....8798

49 CFR

192.....9842
1011.....9466
1033.....9010
1100.....9011
1111.....9844
1201.....9466
1206.....9466
1207.....9466
1241.....10041
1249.....9468

Proposed Rules:

171.....9346, 9865
172.....9346, 9865
387–399.....10066
391.....9256
571.....9865
1137.....8801
1310.....8801

50 CFR

611.....10227
671.....10043, 10044, 10228

Proposed Rules:

17.....9483, 9867
18.....9869
228.....9027

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 41 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/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

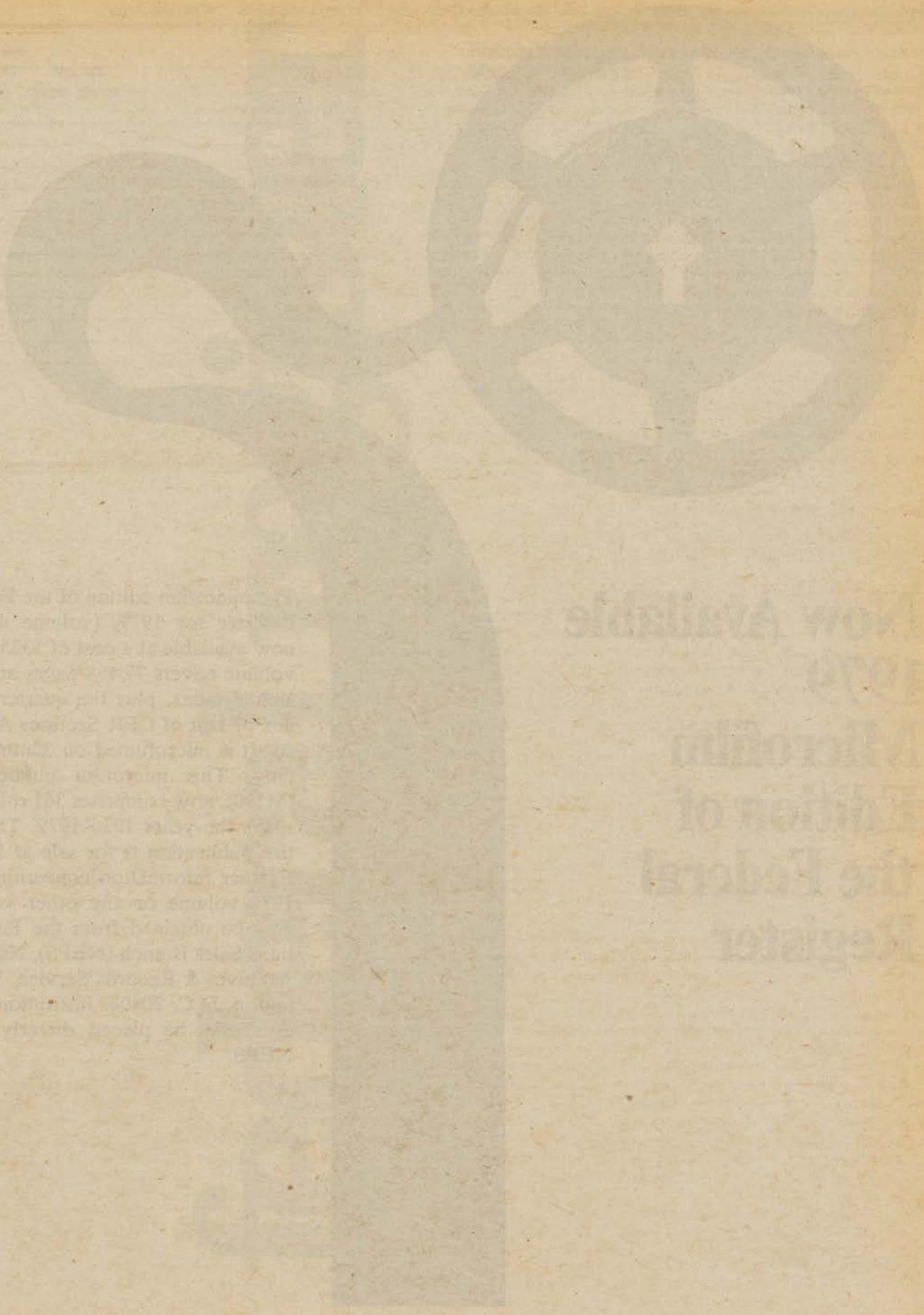
Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

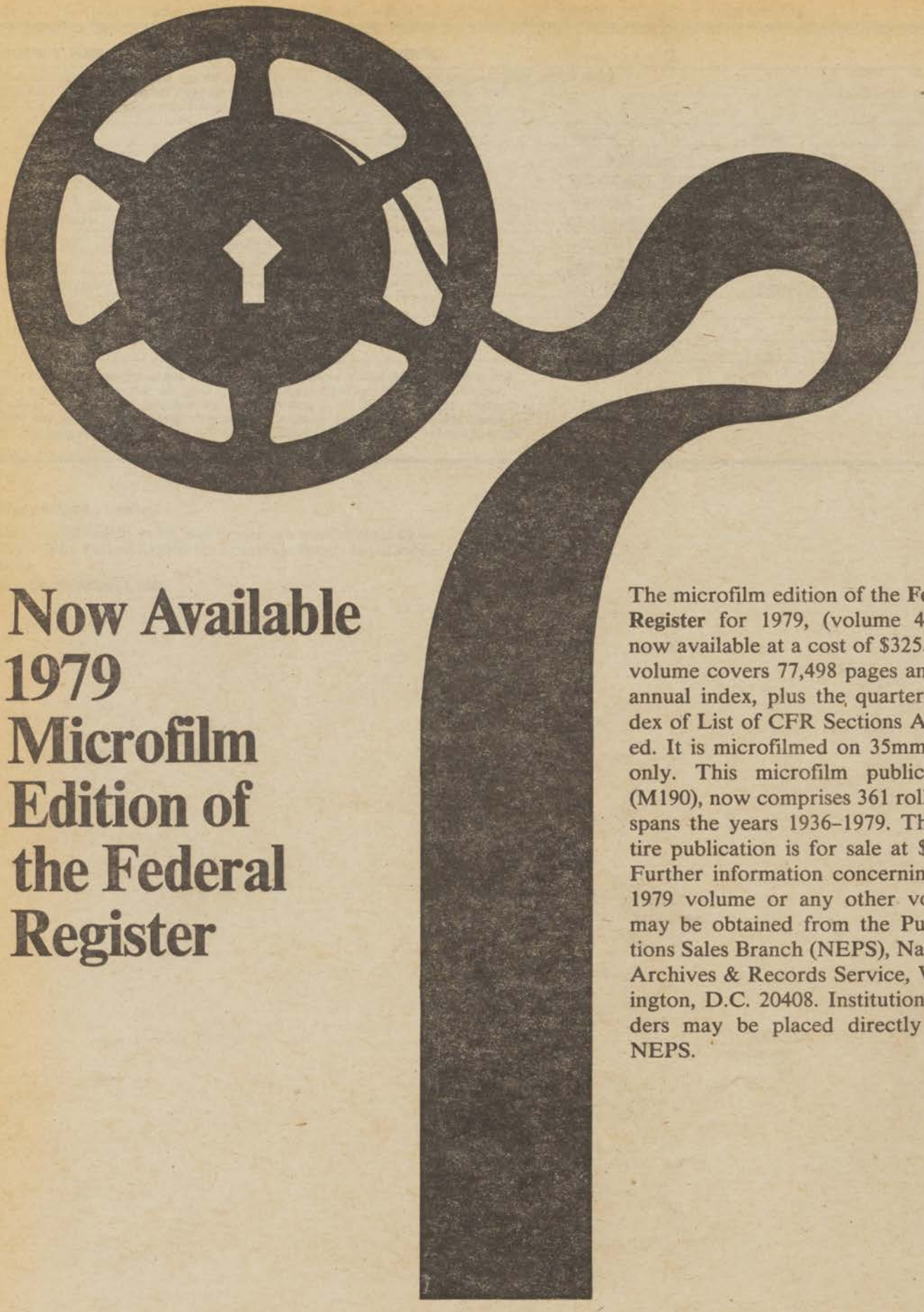
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing March 4, 1982


Now Available
1979
Microfilm
Edition of
the Federal
Register



Now Available 1979 Microfilm Edition of the Federal Register

The microfilm edition of the **Federal Register** for 1979, (volume 44), is now available at a cost of $325. This volume covers 77,498 pages and the annual index, plus the quarterly index of List of CFR Sections Affected. It is microfilmed on 35mm rolls only. This microfilm publication, (M190), now comprises 361 rolls and spans the years 1936–1979. The entire publication is for sale at $4693. Further information concerning the 1979 volume or any other volume may be obtained from the Publications Sales Branch (NEPS), National Archives & Records Service, Washington, D.C. 20408. Institutional orders may be placed directly with NEPS.