companies which write fidelity and surety bonds in the United States. It is licensed as a writing organization in 48 states, the District of Columbia and Puerto Rico, and as an advisory organization in Hawaii and Illinois. The SAA has also been designated by all states as a statistical agent for the reporting of experience developed by fidelity and surety bonds.

Section 808.12(c), as it is currently written, effectively prevents sureties from writing reclamation bonds on an incremental basis. Specifically, this section extends to the entire permit area liability under bonds posted to cover only those discrete increments of the permitted acreage set forth in the mine operator's reclamation plan. Accordingly, the regulatory authority can hold one surety liable for a reclamation failure on an increment bonded by another surety, or, conceivably, on parts of the permit for which no bond at all has been deposited.

Petitioners seek an amendment to Section 808.12(c) which would enable sureties to limit their liability to the bonded increment; therefore, paragraph 808.12(c) would be amended to read:

808.12(c) Upon default, the regulatory authority may forfeit any or all bonds deposited to complete those reclamation operations for which bonds were posted.

. . . in lieu of the existing paragraph which reads:

808.12(c) The regulatory authority may forfeit any or all bonds deposited for an entire permit area or any increment thereof in order to satisfy 30 CFR 808.11–808.14. Liability under any bond covering any increment of the permit area shall extend to the entire permit area.

This change would ensure that 808.12(c) complies with the requirements of the Act and the intent of Congress, and supports sound reclamation and protection of the environment.

Justification

The Language and Legislative History of the Act Prohibit the Regulatory Authority from Extending Liability on Incremental Bonds to the Entire Permit Area.

The Act specifically provides for incremental bonds, carefully distinguishing them from bonds deposited for the entire permit area. Section 509 provides that the bond "cover *that area of land within the permit area* upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding *increments* of surface coal mining and reclamation operations are to be initiated and conducted *within the permit area*, the permittee shall file with the regulatory authority an additional bond or bonds to *cover such increments*. . . ." (Emphasis added.) The drafters intended that incremental bonds cover a limited area, not the entire permit.

A further example of the Act's intent to distinguish between incremental bonds and bonds deposited for the entire permit area can be found in Section 509(a), which discusses the amount required for each bonded area but concludes by setting a minimum amount for a bond for the entire permit area.

Finally, just as Section 509 authorizes the bonding of discrete increments, so does Section 519 allow the release of the entire pedrformance bond before the permit is fully reclaimed. In seeking a release, the operator must place a newspaper advertisement which contains, among other things, the precise location of the land affected. Because this release can occur well before the entire permit area is reclaimed or even disturbed, the "land affected" must be less than the whole permit.

The Report of the House Committee of Interior and Insular Affairs on H.R. 25, a predecessor of the Act, contains an explanation of Section 509 which is consistent with the foregoing interpretation. Specifically, the drafters saw Section 509 as authorizing bonds which cover *part or all of the area under permit* so long as they cover that land on which the operator is conducting surface mining operations. If the bond is for *only part of a permit area*, the Report explains, it must be adjusted and increased as new portions of the permit area are disturbed or affected.[1]

This interpretation allows bonds to be limited to a particular geographical area within the permit. Indeed, the purpose behind allowing incremental bonds—to limit the surety's liability and accordingly ease the financial burden on the operator—would be defeated were the provision read otherwise.

Limiting Surety Liability to the Bonded Increment Will Support Sound Reclamation and Protection of the Environment.

Since Section 808.12(c) was originally promulgated, rulemaking and official guidance have cleared the way for a variety of bonding options, including "phased" bonds, which may be limited to an increment or encompass the entire permit. The idea behind these changes was to "fine tune" the regulations so that all parties involved—mine operators, regulators and sureties—could more precisely define their obligations and more wisely allocate their financial resources.

Section 808.12(c) as written diminishes the value of these efforts to provide bonding flexibility as it is almost wholly inconsistent with reasonable control of liability. Once a bond has been deposited for part of a permit, however discrete, the regulatory authority can forfeit it to reclaim any of the permitted acreage.[2]

Quick action is necessary since the time has passed for approval of state plans or implementation of the federal program. Kentucky's Department of Natural Resources recently issued revised incremental bonding guidelines setting forth the principle of liability emobdied in Section 808.12(c). As more states adopt the mandatory language of Section 808.12(c), it will become increasingly difficult to reverse the trend and attempt to keep the bond market open.

[1] H.R. Rep. No. 94-45, 94th Cog., lst Sess. 197 (1975).

[2] Mine operators and sureties could conceivably limit their liability consistent with Section 808.12(c) by undertaking the substantial administrative burden of treating each increment as a permit area. The need to repermit each succeeding increment, all agree, would be cumbersome, time-consuming and expensive, and confer no greater benefit than is available through this proposed amendment.

Petitioner does not require a public hearing.

[FR Doc. 81-7800 Filed 3-11-81; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[RH-FRL-1773-7]

Proposed Remedial Action Standards for Inactive Uranium Processing Sites; Instructions and Schedule for Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Information regarding public hearings.

SUMMARY: In the **Federal Register** of April 22, 1980 (45 FR 27370–75), and January 9, 1981 (46 FR 2556–2563), EPA published proposed standards for the cleanup and disposal of residual radioactive materials (mainly tailings) from inactive uranium processing sites. EPA developed these proposed standards (40 CFR Part 192) pursuant to Section 275(a) of the Atomic Energy Act, 42 U.S.C. Section 2022(a), as added by Section 206(a) of Pub. L. 95–604, the Uranium Mill Tailings Radiation Control Act of 1978. Pub. L. 95–604 requires the Department of Energy to conduct remedial actions for designated inactive uranium processing sites in accordance with standards promulgated by EPA.

We are now announcing the dates and addresses of public hearings on these proposed standards. In addition, we describe the purpose and form of the hearings, and the procedures for submitting and presenting information and comments regarding the proposed standards.

DATES: The hearings will be held on April 24, 25, 27 and 28, and May 14 and 15, 1981.

ADDRESSES: Following is the schedule for public hearings to be held in April and May 1981:

a. Salt Palace Convention Center, Room 220, Salt Lake City, Utah 84101
Friday, April 24, 9:00 AM–5:00 PM
Saturday, April 25, 9:00 AM–5:00 PM (as required)

b. Strater Hotel, 699 Main Avenue, Durango, Colorado 81301
Monday, April 27, 9:00 AM–5:00 PM
7:00 PM–10:00 PM (as required)
Tuesday, April 28, 9:00 AM–5:00 PM (as required)

c. General Services Administration Auditorium, 18th and F Streets NW., Washington, D.C. 20405
Thursday, May 14, 9:00 AM–5:00 PM
7:00 PM–10:00 PM (as required)

Friday, May 15, 9:00 AM–5:00 PM (as required)

FOR FURTHER INFORMATION CONTACT: Dr. Stanley Lichtman, Criteria and Standards Division (ANR–460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone number (703) 557–8977.

SUPPLEMENTARY INFORMATION: Public hearings on 40 CFR Part 192 (proposed) will be held as indicated above under the headings "Dates" and "Addresses." The following conditions and procedures will govern the conduct of the hearings.

1. Purpose, Type, and Scope

These hearings are to provide opportunities for people to present facts, views, and arguments to aid EPA in developing final remedial action standards under Pub. L. 95–604. The hearings will be informal and legislative in nature rather than adjudicatory or formal rulemaking hearings. Technical rules of evidence, discovery, subpoena powers, testimony under oath, and similar formalities will not apply.

Participants should confine their remarks to issues that are directly related to EPA's responsibility under section 275(a) of the Atomic Energy Act, as added by Section 206 of Pub. L. 95–604. In brief, this responsibility is to " * * * promulgate standards of general application * * * for the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials located at inactive uranium mill tailings sites and depository sites for such materials * * * ." Therefore, the hearings should focus on the adequacy and appropriateness of the standards EPA has proposed.

2. Presiding Officer and Panel

The hearings will be conducted by a presiding officer, who may be assisted by panelists. A principal responsibility of panelists will be to assist the presiding officer to clarify the testimony by eliciting views, comments, and information from participants. Panelists will not present views or respond to questions. The panelists may vary from time to time.

The presiding officer and panelists shall have the joint responsibility to assure a fair and impartial hearing and encourage the development of testimony that will contribute to informed decision-making. It will not be the function of the presiding officer or panelists to issue an opinion or to make decisions at the conclusion of the hearings. The presiding officer shall conduct the hearings in an orderly, fair, and expeditious manner and make procedural decisions. His/her functions shall include, but not be limited to, the following:

a. Regulating the course of the hearings and the conduct of participants, including establishing reasonable time limits for the hearings, establishing the sequence and length of presentations and questioning, and opening and closing each hearing session;

b. Making determinations concerning procedure and similar matters;

c. Assuring that questioning of speakers by panelists and others is consistent with the nature and purpose of these hearings;

d. Making determinations, in consultation with the panelists, of the relevance of oral testimony and questions to the purposes and scope of the hearings and, as necessary, terminating irrelevant presentations;

3. Ruling on late requests to participate;

f. Deciding how long the hearing record will remain open for written comments and additional data after the end of the oral proceedings.

3. Participation in the Hearings

Persons or organizations who wish to give presentations longer than ten minutes or present extensive data and evidence must give written notice to the Director, Criteria and Standards Division (ANR–460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460, no later than 21 days prior to the scheduled date of a hearing. The notice should include: (1) The name, address, and telephone number of the participant; (2) the hearing at which they wish to testify; (3) the organization (if any) that they will represent; (4) the amount of time requested; and (5) which aspects of the proposed standards or other issues they want to address. Oral presentations by individuals or organizations will generally be restricted to 30 minutes. Detailed or lengthy material should be summarized orally and presented in full in written submissions. Requests for longer times for oral presentations will be considered only on the basis of a detailed summary of the material to be presented. The Agency will notify participants in advance if their allocated time is less than that requested.

An opportunity will be provided each day of the hearings for persons who have not submitted a notice as specified above to make brief oral statements. A minimum period will be set aside for such statements in the agenda for each hearing, and the presiding officer may allocate additional time, as necessary. The maximum time allowed for each such statement will depend on the number of registrants and the availability of time, but will generally be no more than 5 to 10 minutes. We advise persons wishing to make such statements to register promptly at the beginning of the hearing at a facility that will be provided for that purpose.

Attendance at the hearings will be open to all members of the public, and seating will be on a first-come first-served basis.

4. Testimony and Written Submissions

a. The oral proceedings will be recorded verbatim and a transcript made available promptly for inspection and copying, as specified below under the heading "The Public Hearing Record." It will help the panelists if speakers supply written copies of their oral testimony before they give it. This is not required however.

b. Two copies of any written statements and documents on which speakers intend to base their oral statements must be submitted to the Director (see item 3, above) no later than 10 days before the beginning of the hearing in which they will testify. We would appreciate it if speakers would also provide three additional copies for the use of the panelists.

c. At the discretion of the presiding office, questions may be directed to speakers by panelists, by other speakers, and by other members of the public. Speakers may respond or not, as they wish. Such informal questioning should be designed to elicit relevant information and not repeat questions asked by others. The views of questioners should be expressed in their statements and not as prefaces to questions.

d. Members of the public who are not able to attend the hearings or prefer not to ask questions themselves may suggest questions for the presiding officer to ask of speakers. These must be submitted to the Director (see item 3, above) no later than 10 days before any hearing. The presiding officer will decide whether or not to ask these questions.

e. Members of the public may also submit comments during the post-hearing comment period set by the presiding officer. These post-hearing comments should be confined to responses to information and comments submitted at the hearings or to written comments received by the Agency.

f. In addition to these public hearings, we would appreciate any written comments on the proposed standards. Oral and written comments will be

given equal consideration in formulating final recommendations. The procedure for submitting such written comments was given in each of the **Federal Register** notices in which the proposed standards were announced (see "Summary," above). Participants in the hearings may refer to and comment on such written comments, which will be available for public inspection and copying as specified below under "The Public Hearing Record."

5. Opening Statement

At the opening of each hearing, EPA will provide a summary statement of the proposed recommendations and of the major issues involved. At that time speakers and other members of the public may ask questions of the EPA representatives in order to clarify the proposed standards and the reasons why EPA is proposing them.

6. The Public Hearing Record

The procedures for filing documents in these hearings will be specified by the presiding officer, except as already provided herein. The hearing record will include the transcript of oral statements, the questions and answers, and all written materials filed in connection with these hearings. Items in this public hearing record will be filed under EPA Docket No. A–79–25. They will be available for public inspection and copying, as soon as possible following their receipt, as the U.S. Environmental Protection Agency's Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460.

Dated: March 4, 1981.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81–7580 Filed 3–11–81; 8:45 am]

BILLING CODE 6560–28–M

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40 CFR Parts 51 and 52

[AD–FRL 1775–2]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules.

SUMMARY: EPA regulations published on August 7, 1980 (45 FR 52676) adopted a different definition of "source" for the PSD rules (which require review of new or modifed major sources in clean air areas) than for the nonattainment area new source review rules (which govern review of new or modified major sources in area where air quality does not meet Federal standards). Under the PSD rules a source is, in essence, an entire plant. Under the current nonattainment area rules a source is *either* an entire plant *or* an individual piece of process equipment within the plant. EPA is now proposing to conform the nonattainment area definition of source to that contained in the PSD rules by changing the nonattainment area definition of source to be an entire plant only. The practical significance of this change will be to reduce the coverage of nonattainment area new source review. The same change will also apply to the rules governing the construction moratorium under Section 110(a)(2)(I) of the Act (which prohibits major new construction in nonattainment area lacking EPA-approved State Implementation Plans), which will similarly shrink the coverage of the moratorium. In addition, EPA proposes to drop its current requirement that "reconstructions" be subject to nonattainment area new source review.

DATES: The deadline for submitting comments is April 13, 1981.

ADDRESS: Comments should be addressed to Michael Trutna, Standards Implementation Branch (MD–15), Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, 919–541–5292.

FOR FURTHER INFORMATION CONTACT: Michael Trutna (919–541–5292) or Eric Smith (202–755–0788).

SUPPLEMENTARY INFORMATION: On August 7, 1980 EPA published amended rules affecting PSD new source review, nonattainment area new source review and the construction noratorium. 45 FR 52676. The Prevention of Significant Air Quality Deterioration (PSD) program requires new or modified "major" [1] air pollution sources locating in areas where national ambient air quality standards (NAAQS) are being attained (or where air quality data is insufficient to determine whether or not NAAQS are being attained) to obtain construction permits which meet the requirements of Part C of Title I of the Clean Air Act. The basic purpose of the PSD program is to protect air quality in clean air areas. In areas where NAAQS are not being attained new or modified "major" [2] sources which would emit the pollutant(s) for which the area is nonattainment must obtain construction permits under Section 173 of the Act. In addition, where a nonattainment area lacks an EPA-approved State Implememtation Plan (SIP) that meets the requirements of Part D of Title I of the Act, new or modified major sources that would emit the nonattainment pollutant(s) may not construct at all. This "construction moratorium" is required by Section 110(a)(2)(I) of the Act. See 40 CFR 52.24. The definitions in EPA's regulations governing the applicability of the construction moratorium are the same as those used in the nonattainment new source review rules. 40 CFR 52.24(f).

EPA's amended rules define "source" differently for PSD and nonattainment purposes. The difference revolves around the treatment of a plant that contains a number of individual pieces of process equipment that themselves each emit more than 100 tons per year. For PSD, EPA generally defines "source" in terms of an entire plant. For the nonattainment program, however, EPA defines "source" as both the entire plant and each of those "major" pieces of process equipment within it.

An example will show how these different definitions work. Suppose that a plant has three pieces of process equipment each of which has a potential to emit about 400 tons per year. The owners of the plant decide to expand operations at one piece of equipment resulting in an increase of 70 tons per year of a criteria pollutant,[3] and they further intend to curtail operations at another piece of equipment so as to reduce emissions of the same pollutant by 70 tons per year. If the plant were subject to PSD requirements, these changes would not "modify" any "source". The plant as a whole is the source, and since the reduction at the second piece of equipment balances the increase at the first, there is no significant plant-wide increase in emissions. As noted earlier, a change at a source is not a modification subject to review unless it results in a significant overall increase in emissions. Thus, no permit would be needed. But if the plant were located in an area which is nonattainment for the pollutant involved, then each piece of process

[1] "Major" sources for PSD purpose are those which emit more than either 100 tons per year or 250 tons per year (depending on the type of source) of any pollutant. See Section 169(1) of the Act, 40 CFR 51.24(b)(1), 52.21(b)(1l).

Each new "major" source must get a permit. In addition, any modification to a major source that causes a "significant" increase in emissions must get a permit. "Significant" increases in emissions are specified at 40 CFR 51.24(b)(23)(i), 52.21(b)(23)(i).

[2] "Major" sources for nonattainment purpose are those which emit more than 100 tons per year. 40 CFR 51.13(1)(v).

The "modification" test for nonattainment areas is the same as for PSD. See 40 CFR 51.18(j)(1)(xii).

[3] A criteria pollutant is one for which EPA has established a NAAQS.

equipment is independently viewed as a source and the change at the first piece of equipment would have to undergo preconstruction review, because the piece of equipment is *itself* a major source and there is a significant net increase in emissions at that source. Compensating reductions obtained elsewhere at the plant could not be used to escape review, because these reductions did not occur at the same "source."

There would be a similar potential for differing results if the plant added a new piece of equipment with a potential to emit 300 tons per year. For PSD purposes, the relevant "source" is the plant, so that if the plant reduced emissions by 300 tons per year at the existing equipment, there would be no net increase at the source. But for nonattainment purposes, the new piece of equipment is itself a major source and so would be subject to review (or the construction moratorium) even if there had been no significant increase in emissions from the plant as a whole.

These different definitions of source mean that more new construction projects are subject to review in nonattainment areas (or, if there is no EPA-approved Part D SIP, more new construction projects are subject to the construction moratorium) than in areas subject to PSD requirements.

EPA also requires new source review in nonattainment areas based on a capital investment test of "reconstruction". Specifically, whenever a company rebuilds a "source" so that more than 50% of the capital in it represents new investment, EPA will require new source review no matter how emissions are affected.

The Proposed Amendment

EPA today is proposing to change the definition of "source" contained in the rules governing nonattainment area new source review and the construction moratorium so as to make that definition conform to that contained in the PSD rules. The result will be to eliminate the differences in coverage between the PSD and nonattainment programs that were described above. The change is being carried out by amending the definition of the terms "building", "structure", "facility" and "installation", which are the components of the term "source." EPA is also proposing to delete the definition of "reconstruction."

Discussion

The decision to reconsider the scope of nonattainment area new source review has been made in the context of a Government-wide reexamination of regulatory burdens and complexities that is now in progress. EPA has also reevaluated all of the arguments on all sides of these definitional issues. The Agency has concluded that the amendments to the August 7 rules being proposed today will substantially reduce the burdens imposed on the regulated community without significantly interfering with timely achievement of the goals of the Clean Air Act.

The issue of the proper scope of the nonattainment area definition of "source" is not a clear-cut legal question. The statute does not provide an explicit answer, nor is the issue squarely addressed in the legislative history. The D.C. Circuit (in *Alabama Power Co.* v. *Costle*) has stated by implication that EPA has substantial discretion to define the constituent elements of this term.

The question thus involves a judgment as to how to best carry out the Act. Two issues have been reexamined here. The first is whether the definition of "source" in nonattainment areas should be modified to conform to the one in PSD areas. The second is whether new source review based on "reconstruction" should be required at all.[4]

EPA believes for the following reasons that the proposed change in the definition of "source" is appropriate.

1. The August 7 definition forbids *any* construction or modification of major pieces of process equipment in areas where the construction moratorium is in effect, even where no increase in emissions at a plant would result. There are a substantial number of such nonattainment areas nationwide at present.

2. Even outside of these "construction moratorium" areas under the present regulatory scheme the August 7 definition can act as a disincentive to new investment and modernization by discouraging modifications to existing facilities.

3. For both these reasons, under the current overall regulatory system, the August 7 definition can actually retard progress in air pollution control by discouraging replacement of older, dirtier processes or pieces of equipment with new, cleaner ones.

4. The proposed definition would simplify EPA's rules by using the same definition of "source" for PSD, nonattainment new source review and the construction moratorium. This reduces confusion and inconsistency.

5. States will remain subject to the requirement that for all nonattainment areas they demonstrate attainment of NAAQS as expeditiously as practicable and show reasonable further progress toward such attainment. Thus, the proposed change in the mandatory scope of nonattainment new source review should not interfere with the fundamental purpose of Part D of the Act.

6. New Source Performance Standards (NSPS) will continue to apply to many new or modified facilities and will assure use of the most up-to-date pollution control techniques regardless of the applicability of nonattainment area new source review.

7. In order to avoid nonattainment area new source review, a major plant undergoing modification must show that it will not experience a significant net increase in emissions. Where overall emissions increase significantly, review will continue to be required.

For these reasons EPA has reconsidered the concerns it expressed in the August 7 preamble (See 45 FR 52697–8) and has decided that the "dual definition" is excessively and unnecessarily burdensome.

In light of the change to the nonattainment area definition of source, there is good reason to abandon the "reconstruction" test for nonattainment area new source review. That test by itself only requires review in cases where there is reconstruction, but a "significant" increase in emissions is absent. With a plant-wide definition of source, the reconstruction provision would only trigger review in cases of plant-wide reconstruction. Few instances of plant-wide reconstruction are expected. Thus, there is little justification for the added complexity this provision entails. Moreover, this change will further reduce inconsistency with the PSD rules which do not have a reconstruction provision.

The Clean Air Act, in Section 111, recognizes an independent, long-term interest in making sure that new facilities install state-of-the-art pollution controls when they are built. This results in the most cost-effective long-term air quality improvement by controlling pollution at the design stage, rather than requiring costly retrofits. Of course, this approach, unlike the nonattainment area requirements of Part D, is not based on the location of particular sources.

For these reasons, EPA believes that a "reconstruction" definition is appropriate for the new source performance standards under Section 111. However, the arguments for it are

[4] Of course, States always retain the right to choose to impose more stringent new source requirements than Federal rules mandate.

considerably weaker where a program of review basically designed to meet air quality standards in particular places is at issue, and EPA proposes to drop it there.

EPA solicits comments on the proposed rule. All such comments will be carefully considered prior to any final action.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposal will reduce regulatory burdens since fewer sources will be subject to new source review and the construction moratorium.

The Director of the Office of Management and Budget, acting under Section 8(b) of Executive Order 12291, has granted this proposal an exemption from the provisions of that order because of its burden-relieving and deregulatory nature.

This Notice of Proposed Rulemaking is issued under Section 301 of the Clean Air Act, 42 U.S.C. Sec. 7601.

Dated: March 6, 1981.

Walter C. Barber, Jr.,

Acting Administrator.

1. Section II, Subsection A of the Emissions Offset Interpretative Ruling, 40 CFR Part 51 Appendix S, as revised 44 FR 3274 (January 16, 1979), 45 FR 31307 (May 13, 1980), and 45 FR 52741 (August 7, 1980) is proposed to be amended as follows:

a. By changing the words "Building, structure or facility" at the beginning of parágraph 2 to read "Building, structure, facility or installation";

b. By removing paragraph 3 and renumbering the succeeding paragraphs accordingly, and

c. By removing paragraph 9 and renumbering the succeeding paragraphs accordingly.

§ 51.18 [Amended]

2. Section 40 CFR 51.18(j)(1) is proposed to be amended as follows:

a. By changing the words "Building, structure or facility" at the beginning of subparagraph (ii) to read "Building, structure, facility or installation";

b. By removing subparagraph (iii) and renumbering the succeeding subparagraphs accordingly, and

c. By removing subparagraph (ix) and renumbering the succeeding subparagraphs accordingly.

§ 52.24 [Amended]

3. Section 40 CFR 52.24(f) is proposed to be amended as follows:

a. By changing the words "Building, structure or facility" at the beginning of subparagraph (2) to read "Building, structure, facility or installation";

b. By removing subparagraph (3) and renumbering the succeeding subparagraphs accordingly, and

c. By removing subparagraph (9) and renumbering the succeeding subparagraphs accordingly.

[FR Doc. 81-7704 Filed 3-11-81; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5978]

National Flood Insurance Program; Proposed Flood Elevation Determinations

Correction

In FR Doc. 81-4035, published at page 10754, on Wednesday, February 4, 1981, make the following corrections:

(1) On page 10759, in the table under "Ohio", in the seventh line under "Gregory Creek", in the last column "*298" should be corrected to read "*698".

(2) On page 10760, in the table under "Indian Creek", in the last line, in the last column should appear "*754".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Participation by Minority Business Enterprise in Department of Transportation Programs

49 CFR Part 23

[Docket 64a]

AGENCY: Office of the Secretary of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation intends to propose a comprehensive revision of its minority business enterprise rule, as part of the Administration's program of reducing regulatory burdens. The Department expects to publish a notice of proposed rulemaking in the near future to effect this comprehensive revision. At this time, the Department is proposing to amend certain provisions of the existing rule on an interim basis. Comments are invited on the interim amendment.

DATE: Comment closing date: Comments are requested on or before March 26, 1981.

ADDRESS: Comments should be sent to the following address: Docket Clerk (Docket 64a), 400 7th Street, S.W., Room 10421, Washington, D.C., 20590. Comments are available for public inspection between 9:00 a.m. and 5:30 p.m. Monday through Friday at this address. Persons wishing to have their comments acknowledged should send a stamped, self-addressed card along with their comments. The docket clerk will return these cards when the comments are docketed.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement, Room 10421, 400 7th Street, S.W., Washington D.C., 20590. 202-426-4723.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation (DOT) published a final minority business enterprise (MBE) regulation on March 31, 1980 (49 CFR Part 23; 45 FR 21172). The regulation requires recipients of DOT financial assistance to prepare and submit for DOT approval MBE affirmative action programs. The rule requires that these programs contain several elements. Among these are provisions requiring prospective contractors to submit the names of and other information about their MBE subcontractors (§ 23.45(h)) and requiring recipients to ensure that contracts are awarded to bidders that meet MBE goals or make sufficient reasonable efforts to do so (§ 23.45(i)). The latter provision establishes a conclusive presumption that, if one bidder meets the goal and offers a reasonable price, bidders that did not meet the goal did not exert sufficient reasonable efforts, and hence are ineligible to receive the contract.

Sections 23.45 (h) and (i) have been criticized as establishing an illegal quota system, conflicting with the principle of awarding contracts to the lowest bidder, and unnecessarily raising costs. A significant number of state transportation agencies and other recipients have requested exemptions from these provisions. Seventeen lawsuits have been filed in various federal district courts challenging the regulations.

In Executive Order 12291 and other directives, President Reagan has told Federal agencies to review their existing regulations to determine which among them can be modified or rescinded to reduce regulatory burdens. The Department of Transportation has identified the MBE rule as one of the costly or controversial rules deserving priority review. After reviewing the rule