

Sources Inside Metropolitan Areas, Section 214.201 Alternative Standards for Sources in Metropolitan Areas and Section 214.202 Dispersion Enhancement Techniques, effective March 28, 1983.

[FR Doc. 92-21182 Filed 9-2-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[TN 89-5544; FRL-4196-7]

Approval of State Implementation Plan for Knox County: Proposed Amendments for Miscellaneous Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving amendments to the Knox County portion of Tennessee's State Implementation Plan (SIP). On January 4, 1991, the State of Tennessee through the Department of Environment and Conservation submitted amendments to miscellaneous regulations on behalf of the Knox County Department of Air Pollution Control. The amendments being approved include several miscellaneous revisions to the Knox County portion of the Tennessee SIP. A brief discussion about each amendment and the correction is contained in the "Supplementary Information" section of this action.

EFFECTIVE DATE: This action will be effective November 2, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street SW., Washington, DC 20460
Region IV Air Programs Branch,
Environmental Protection Agency, 345
Courtland Street, Atlanta, Georgia
30365

Tennessee Department of Environment
and Conservation, Division of Air
Pollution Control, Customs House, 4th
Floor, 701 Broadway, Nashville,
Tennessee 37243-1531

Knox County Department of Air
Pollution Control, City/County
Building, Suite 459, 400 Main Avenue,
Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT:
Andrew Fischer of the EPA Region IV

Air Programs Branch at (404) 347-2864
and at the above address.

SUPPLEMENTARY INFORMATION: On January 4, 1991, the Knox County Department of Air Pollution Control, through the Tennessee Department of Conservation, submitted amendments to Knox County's regulations 25.2B, 29.1B, 17.4E, 18.1, 19.1 and 47.3C. These amendments were adopted by the Air Pollution Control Board on December 13, 1990. These amendments were submitted with the Volatile Organic Compound (VOC) deficiency corrections, which will be acted upon in a separate notice once supplemental information addressing all deficiencies is received by the Regional Office. The amendments addressed in this notice are as follows.

(1) Section 25.2B, "Applications Permit," is deleted. This section provided that in the event the requirement for a construction permit prior to the construction of a new source or the modification of an existing source created an undue hardship on the applicant, the applicant was able to request of the Director a waiver to proceed with the construction or modification prior to the issuance of the Construction Permit.

(2) Section 29.1B, "Appeals," is amended to include a provision allowing any other citizen of Knox County besides the applicant to appeal a ruling which may confirm, modify or reverse the Director's decision.

(3) Sections 17.4E, "Regulation of Visible Emissions," 18.1B, "Non-Process Emission Standards," 19.1B, "Process Emissions," and 47.3C, "Good Engineering Practice Stack Height Regulations Standards," are amended to include a provision allowing any air contaminant source and the Director, upon mutual agreement, to approve more restrictive emission limits, operating hours, process flow rates, or any other operating parameter. This agreement will be established as a binding limit which shall be stated as a special condition for any permit or order concerning the source and violation of which shall result in revocation of the issued permit.

(4) Sections 18.1, "Non-Process Emission Standards" and 19.1, "Process Emissions," are amended to include a provision which states that no person shall cause, suffer, allow, or permit non-process emissions in excess of the standard set forth in this section.

Final Action

The Agency has determined that the aforementioned changes are consistent with Agency policies. Therefore, EPA is today approving these amendments to

the Knox County Portion of the Tennessee SIP. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

If no adverse or critical comments are received by EPA under section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule of action. This action may not be challenged later in proceedings to enforce its requirements [See section 307(b)(2) of the Clean Air Act 42 U.S.C. 7607(b)(2)].

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 5, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(106) to read as follows:

§ 52.2220 Identification of plan.

- (c) * * *
- (106) Amendments to the Knox County portion of Tennessee's SIP, submitted on January 4, 1991.
- (i) Incorporation by reference.
- (A) Amendments to Regulations 25.2B, 29.1B, 17.4E, 18.1, 19.1, 47.3C, effective December 13, 1990.
- (ii) Other material.
- (A) Letter of January 4, 1991, from the Tennessee Department of Health and Environment.

[FR Doc. 92-21183 Filed 9-2-92; 8:45 am]

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NATIONAL SCIENCE FOUNDATION**45 CFR Part 641****Environmental Assessment Procedures for Proposed National Science Foundation Actions in Antarctica**

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: This final rule institutes procedures for the National Science Foundation's implementation of Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957, as it applies to NSF's activities in Antarctica, and the environmental assessment requirements of the Protocol on Environmental Protection to the Antarctic Treaty and its related annexes (the "Protocol"), adopted by the fourth session of the Eleventh Special Antarctic Treaty Consultative Meeting (SCM XI) on

October 4, 1991, and signed by the United States on that date. The procedures require environmental assessment of proposed U.S. Antarctic Program (USAP) actions so that responsible agency officials may consider the potential environmental effects of those proposed actions.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Miriam Leder, Assistant General Counsel, National Science Foundation, 1800 G Street, NW., room 501, Washington, DC 20550; (202) 357-9435.

SUPPLEMENTARY INFORMATION: On March 2, 1992, the National Science Foundation (NSF) published proposed procedures for environmental assessment of USAP activities, and invited public comment on those procedures. 57 FR 7355 (March 2, 1992). NSF received written comments from six persons and organizations, including the U.S. Environmental Protection Agency (EPA), the President's Council on Environmental Quality (CEQ), and the Environmental Defense Fund (EDF). The commenters each addressed a variety of issues, and those comments, together with NSF's responses, are discussed below. For ease of reference, general comments are discussed first, and comments on specific regulatory provisions are discussed in the order in which those provisions appear in the rule.

General Comments**Consistency With Protocol**

A few of the comments NSF received noted minor inconsistencies between the proposed regulations and the Protocol's environmental assessment provisions. The regulations have been revised to resolve those inconsistencies.

Some other comments proposed revisions to language and phrases that were taken verbatim from the Protocol. Those proposed revisions were not included in the final regulations.

Authority To Issue Regulations

EPA suggested that the regulations themselves include a provision describing NSF's legal authority for promulgating this Rule. The authority citation already states that NSF derives its authority from Executive Order 12114. Moreover, NSF does not believe it necessary to include an additional legal analysis in the regulations.

Applicability of NEPA

Throughout its comments, EDF points out inconsistencies between the proposed regulations, and the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321-4347, and CEQ's

implementing regulations thereunder, 40 CFR § 1500 et seq. (the "CEQ regulations"). EDF believes that NEPA and the CEQ regulations apply to NSF's proposed Antarctic activities.

NSF disagrees with EDF's assertion that NEPA applies in Antarctica. In fact, the Federal District Court for the District of Columbia recently decided this issue, holding that NEPA does not apply in Antarctica. See *EDF v. Massey*, 772 F.Supp.1296 (D.D.C. 1991). As a result, while NSF's regulations basically adopt NEPA's approach to environmental assessment, they do not incorporate all of NEPA's requirements. Such incorporation is neither mandated by law, nor appropriate or desirable in all instances.

Where EDF's comments include substantive arguments for adopting the NEPA/CEQ regulations approach, NSF discusses those comments below. NSF does not, in every instance, address EDF's comments where EDF simply notes an inconsistency between NEPA and the proposed regulations.

Comments on Specific Regulatory Provisions**Section 641.10 Purpose**

EDF commented that one purpose of NSF's regulations should be to fully involve the public in NSF's environmental decisionmaking. NSF's regulations do involve the public in environmental decisionmaking when a proposed action may have more than a minor or transitory impact on the Antarctic environment. They also apply, however, to proposed actions that will have less than minor or transitory impacts. NSF will involve the public in those cases if it deems such involvement appropriate on a case-by-case basis, but it will not necessarily involve the public in every instance. As a result, Section 641.10 was not revised to include EDF's suggested change.

Section 641.11 Policy

EDF commented that NSF should use all means (not just practicable means) to comply with the assessment requirements of the regulations, without regard to the availability of resources. NSF agrees that its general policy of conducting environmental assessments should not be limited by the availability of resources, and NSF has deleted that language from the final regulations.

Section 641.12 Applicability

EPA suggested promoting wider applicability of the regulations by including actions "subject to the control and responsibility" of NSF within the scope of the regulations. NSF agrees,

and has made this change to Section 641.12 and to Section 641.14(a).

Section 641.13 Right of Action

EDF believes that NSF's decisions should be subject to judicial review. However, E.O. 12114, which gives NSF the requisite authority to promulgate these regulations, expressly provides that the Executive Order does not create a private right of action. E.O. 12114, Section 3-1. NSF regulations are consistent with this provision.

Section 641.14 Definitions

Action—EDF commented on the differences between NSF's definition of the term *action* and the definition set forth in CEQ regulations. NSF has broadened its definition in response to EPA's comments on Section 641.12 to include all actions subject to NSF's control and responsibility, but does not feel that there is any substantive reason for using a definition that is identical to the one used in the CEQ regulations.

Comprehensive Environmental Evaluation—EPA and CEQ both suggested that comments received on draft CEEs be included as components of the final CEEs. NSF agrees, and has revised its regulations accordingly.

Environmental Action Memorandum—EPA recommended clarifying this definition by stating that an EAM is prepared when the responsible official determines that a proposed action will have less than a minor or transitory impact. NSF has done so in the final regulations.

Environmental Review—EPA suggested expanding this definition to include public and other external review and comment. NSF has made this change to the final regulations.

Section 641.15 Preliminary Environmental Review

EDF believes that Section 641.15 essentially authorizes the responsible official to categorically exclude particular actions from required assessment procedures, without any public review or oversight. It is not clear how EDF reaches this conclusion. Categorical exclusions dispense with assessment requirements for particular categories of actions, while Section 641.15 requires the responsible official to look at each proposed agency action individually to determine whether it requires the preparation of an environmental document. Neither NEPA nor CEQ regulations requires an agency to prepare an assessment for every possible action undertaken by the agency. Such a requirement would make no sense. The responsible official must give initial consideration to the scope of

the activity and to the probability of environmental impacts in determining whether or not to prepare an environmental document.

Section 641.16(a)

CEQ and EPA both found the criteria for determining when to prepare an environmental document to be confusing and, in some cases, inappropriate. EPA suggested the provisions of Article 3(2) of the Protocol might provide useful criteria for making this determination. NSF agrees, and has included these criteria in the final regulations.

Section 641.16(b) Prior Assessments

CEQ and EPA both recommended adopting standards for determining when an environmental document prepared for one action will allow NSF to forego the preparation of a new environmental document for a different, similar proposed action. NSF agrees, and has included standards suggested by EPA in the final regulations (i.e., that there be no site-specific or other impacts which would require further evaluation).

Section 641.16(c) Exclusions

CEQ, EPA and EDF are all concerned that some of the activities excluded from the assessment requirements were too broadly stated in the proposed regulations. For example, all three commenters raised questions about the scope of the "small scale detonations of explosives" exclusion. EPA also stated that the exclusion for the use of radioisotopes was too vague, and an individual commenter suggested clarifications to Section 641.16(c)(1)(i). EPA further stated that NSF should provide some documentation to support the exclusions.

NSF agrees that qualifications to some of the proposed rule's exclusions are appropriate, and has included qualifications in the final regulations. NSF does not believe, however, that specific documentation supporting these general exclusionary categories is necessary.

Section 641.16(d) Coordination With Other Committees, Offices and Agencies

Both CEQ and EPA suggested that NSF consult with other agencies as soon as feasible when it intends to prepare an environmental document. NSF agrees with this suggestion, and has revised its regulations accordingly.

EPA also suggested that the responsible official routinely consult with the inter-agency Antarctic Policy Working Group (APWG) to identify and, as appropriate, solicit the participation of other sources of relevant knowledge

and expertise. NSF's practice has been to inform the APWG when it is preparing CEEs, and it intends to continue to do so in the future. However, NSF does not believe it necessary to mandate such consultation in its regulations.

Section 641.16(f) Obligation of Funds

EDF pointed out the inconsistency between the obligation of funds provision in NSF's regulations, and the CEQ regulation requirement that agencies not commit resources prejudicing selection of alternatives before making final decisions. EDF believes that NSF's provision "flies in the face of NEPA's most fundamental requirement—that an agency 'evaluate the environmental effects of its action at the point of commitment * * * prior to a decision * * *'. These comments are inapposite.

As described in the regulation, logistic constraints can make it impossible to complete an environmental review before funds must be committed. Generally, antarctic activities must be planned at least eighteen months in advance, particularly in light of the fact that a supply ship arrives at McMurdo only once each year. It is sometimes necessary to purchase supplies before an environmental review can be completed, or forego the option of using those supplies for an entire year. Given this practical reality, and the regulations' requirement that implementation of the proposed action in Antarctica be modified or canceled if the completed environmental review indicates that modifications or cancellation is warranted, NSF does not believe that this provision circumvents the purpose of these regulations.

CEQ commented that the term *logistic constraints*, as used in the proposed regulations, is too vague. The final regulations have clarified what is meant by the use of that term.

Section 641.17 Initial Environmental Evaluation

EDF argued that NSF's regulations do not require either a discussion of impacts of alternatives to a proposed action, or the preparation of a "Finding of No Significant Impact" for any action which NSF concludes will not require an environmental impact statement (EIS), as required by the CEQ regulations. EDF also stated that the regulations do not provide for a 30-day review period for decisions not to prepare an EIS. EDF fails to recognize, however, that these regulations are designed to implement the provision of Executive Order 12114 and the assessment requirements of the

Protocol on Environmental Protection to the Antarctic Treaty, not NEPA. They fully accomplish this purpose.

CEQ suggested that NSF designate a point of contact from whom the public can request the information described in § 641.17(c). The final regulations designate the Environmental Officer, Division of Polar Programs, as the point of contact.

Section 641.18(a) Scoping

EDF believes that NSF should publish notice of its intent to prepare a CEE in the Federal Register, and should invite "interested persons" to participate in the scoping process. NSF agrees, and has revised the final regulations accordingly.

Section 641.18(c) Circulation of Draft CEE

This provision requires NSF to provide the State Department with draft CEEs for circulation to the Parties to the Protocol and to organizations or committees established pursuant to the Protocol or the Treaty. EPA suggested that it might be advisable for the APWG to review the draft CEE before it is circulated. While NSF agrees that this might be appropriate in some cases, NSF believes that decision should be made by the State Department on a case-by-case basis.

Section 641.18(d) Final CEE

EPA suggested that notice be given of the availability of final CEEs, and CEQ and EDF suggested that persons who commented on the draft CEE should receive copies of the final CEE, without having to request them. NSF has modified the regulations to require notice of the availability of final CEEs. NSF intends to continue its practice of providing persons who commented on the draft CEE with copies of the final CEE. However, NSF does not believe it necessary to include this requirement in the regulations.

EDF also believes that NSF should include in the final CEE, the full text of comments received on the draft (rather than summaries), unless the comments are exceptionally voluminous. EDF is concerned that summaries may lead to a distorted representation of public comments.

The Protocol expressly provides that final CEEs shall include or summarize comments received on the drafts, and NSF's regulations mirror this requirement. If summaries of comments are included in a final CEE, NSF will not distort the meaning or intent of those comments. Moreover, the full text of those comments will be available to the public under the Freedom of Information Act.

Section 641.18(e) Implementation of Proposed Actions

EDF pointed out that the CEQ regulations require the preparation of a record of decision while NSF's regulations do not. Again, EDF fails to recognize that NSF's regulations are not designed to duplicate NEPA's implementing regulations, which do not apply to Antarctic activities. Rather they implement the provisions of the Executive Order and the Protocol, and are fully consistent with those authorities.

Section 641.20 Notification of Availability of Environmental Documents and Other Information

In its comments, EDF described the CEQ regulations requirements on notice and availability of documents and on the release of monitoring data, and notes where they differ from those set forth in NSF's regulations. In response to comments received on previous sections (e.g., 641.18 (a) and (d)), NSF revised its regulations to require notice of its intent to prepare a CEE and of the availability of draft and final CEEs. Since NSF wishes to encourage public involvement in the preparation of all CEEs, it is important to provide public notice in these instances. However, where public involvement is not required (i.e., in the preparation of EAMs and IEEs), NSF does not believe that public notice is always necessary.

EDF also commented that the regulations' provision on availability of monitoring data is inconsistent with the Freedom of Information Act ("FOIA"). NSF does not agree. The regulations include the Protocol's requirement on public availability of monitoring data. To the extent FOIA requires additional disclosure, NSF will, of course, comply.

Section 641.21 Monitoring

An individual commenter suggested that sites with comparable environmental characteristics should be identified to serve as control areas for assessing minor or transitory impacts. NSF is likely to consider establishing controls in some cases, but does not believe it appropriate to include a requirement to that effect in the regulations.

Section 641.22 Cases of Emergency

EDF commented on the difference between requirements set forth in the CEQ regulations, and the ones set forth in NSF's regulations. However, NSF's regulations are fully consistent with the Executive Order and the assessment provisions of the Protocol, and the CEQ

regulations do not apply to activities conducted in Antarctica.

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation, and that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 641

Antarctica, Environmental protection.

Pursuant to the authority granted by the Executive Order, NSF is adding a new part 641 to title 45 of the Code of Federal Regulations, as set forth below:

Dated: August 26, 1992.

Charles H. Herz,
General Counsel.

PART 641—ENVIRONMENTAL ASSESSMENT PROCEDURES FOR PROPOSED NATIONAL SCIENCE FOUNDATION ACTIONS IN ANTARCTICA

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Authority: E.O. 12114, 44 FR 1957, 3 CFR 1979 Comp., p. 356.

§ 641.10 Purpose.

These procedures are designed to elicit and evaluate information that will inform the National Science Foundation (NSF) of the potential environmental consequences of proposed U.S. Antarctic Program (USAP) actions, so that relevant environmental considerations are taken into account by decisionmakers before reaching final decisions on whether or how to proceed with proposed actions. These procedures are consistent with and implement the requirements of:

(a) Executive Order 12114 as it relates to NSF's Antarctic activities, and

(b) the environmental assessment provisions of the Protocol on Environmental Protection to the Antarctic Treaty.

§ 641.11 Policy.

It is the policy of NSF to use all practicable means, consistent with its authority, to ensure that potential environmental effects of actions undertaken by NSF in Antarctica, either independently or in cooperation with another country, are appropriately identified and considered during the decisionmaking process, and that appropriate environmental safeguards which would limit, mitigate or prevent adverse impacts on the Antarctic environment are identified.

§ 641.12 Applicability.

The requirements set forth in this part apply to all proposed projects, programs and actions authorized or approved by, or subject to the control and responsibility of NSF that may have an impact on the Antarctic environment.

§ 641.13 Right of action

The procedures set forth in this part establish internal procedures to be followed by NSF in considering the potential environmental effects of actions taken in Antarctica. Nothing in this part shall be construed to create a cause of action.

§ 641.14 Definitions.

As used in these procedures, the term:

(a) *Action* means a project, program or other activity, including the adoption of an official policy or formal plan, that is undertaken, authorized, adopted or approved by, or subject to the control or responsibility of NSF, the decommissioning of a physical plant or facility, and any change in the scope or intensity of a project, program or action.

(b) *Antarctica* means the area south of 60 degrees south latitude.

(c) *Antarctic environment* means the natural and physical environment of Antarctica and its dependent and associated ecosystems, but excludes social, economic and other environments.

(d) *Antarctic Treaty Consultative Meeting* means a meeting of the Parties to the Antarctic Treaty, held pursuant to Article IX(1) of the Treaty.

(e) *Comprehensive Environmental Evaluation* or *CEE* means a study of the reasonably foreseeable potential effects of a proposed action on the antarctic environment, prepared in accordance with the provisions of § 641.18, and includes all comments thereon received during the comment period described in § 641.18(c). A Comprehensive Environmental Evaluation shall constitute an environmental impact statement for purposes of the Executive Order.

(f) *Environmental Action Memorandum* means a document briefly describing a proposed action and its potential impacts, if any, on the antarctic environment prepared by the responsible official when he or she determines that a proposed action will have less than a minor or transitory impact on the Antarctic environment.

(g) *Environmental document* means an initial environmental evaluation or a comprehensive environmental evaluation.

(h) *Environmental review* means the environmental review required by the provisions of this part, and includes preliminary environmental review and preparation of an environmental document, and review by the parties to the Protocol, and committees established under the Protocol for that purpose, and the public, as applicable.

(i) *Executive Order* means Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957.

(j) *Initial Environmental Evaluation* or *IEE* means a study of the reasonably foreseeable potential effects of a proposed action on the antarctic environment, prepared in accordance with the provisions of § 641.17.

(k) *Preliminary environmental review* means the environmental review described in § 641.15(a).

(l) *Protocol* means the Protocol on Environmental Protection to the Antarctic Treaty, adopted on October 4, 1991, in Madrid, at the fourth session of the Eleventh Special Antarctic Treaty Consultative Meeting and signed by the United States on that date, and all annexes thereto.

(m) *Responsible official* means the Assistant Director for Geosciences of NSF, or any NSF employee(s) designated by the Assistant Director to be principally responsible for the preparation of environmental action memoranda or environmental documents under this part.

(n) *Treaty* means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959, T.I.A.S No. 4780.

§ 641.15 Preliminary environmental review.

(a) The responsible official shall be notified early in the general planning process of actions proposed by USAP components that may have impacts on the Antarctic environment, so that environmental review may be integrated into the planning and decisionmaking processes. The responsible official shall conduct a preliminary environmental review of each action, including consideration of the potential direct and reasonably foreseeable indirect effects

of a proposed action on the Antarctic environment.

(b) If, on the basis of the preliminary environmental review, the responsible official determines that an action will have less than a minor or transitory impact on the Antarctic environment, he will prepare an Environmental Action Memorandum briefly summarizing the environmental issues considered and conclusions drawn from the review. No further environmental review shall be necessary.

§ 641.16 Preparation of environmental documents, generally.

(a) *Preparation of an environmental document.* If the responsible official determines, either initially or on the basis of a preliminary environmental review, that a proposed action may have at least a minor or transitory impact on the Antarctic environment, he will prepare an environmental document in accordance with the provisions of this part. In making this determination, the responsible official should consider whether and to what degree the proposed action:

- (1) Has the potential to adversely affect the Antarctic environment;
- (2) May adversely affect climate and weather patterns;
- (3) May adversely affect air or water quality;
- (4) May affect atmospheric, terrestrial (including aquatic), glacial or marine environments;
- (5) May detrimentally affect the distribution, abundance or productivity or species, or populations of species of fauna and flora;
- (6) May further jeopardize endangered or threatened species or populations of such species;
- (7) May degrade, or pose substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance;
- (8) Has highly uncertain environmental effects, or involves unique or unknown environmental risks; or
- (9) Together with other actions, the effects of any one of which is individually insignificant, may have at least minor or transitory cumulative environmental effects.

(b) *Prior assessments.* Notwithstanding the provisions of § 641.16(a), if (1) An environmental document (including a generic or programmatic CEE) or its equivalent has been prepared for a particular type of action; (2) That document includes an analysis of potential environmental effects that are directly relevant to the potential effects of the proposed action,

taking in account factors such as the similarity of the actions and of the locations within which they take place; and (3) There are no potential site specific or other impacts that would require further evaluation, then a new environmental document need not be prepared. Instead, the responsible official shall prepare an Environmental Action Memorandum for the proposed action, cross-referencing the previously prepared environmental document.

(c) *Exclusions.* NSF has determined that the following actions will have less than a minor or transitory impact on the Antarctic environment, and are not subject to the procedures set forth in this part, except to the extent provided herein:

(1) Scientific research activities involving:

(i) Low volume collection of biological or geologic specimens, provided no more mammals or birds are taken than can normally be replaced by natural reproduction in the following season;

(ii) Small-scale detonation of explosives in connection with seismic research conducted in the continental interior or Antarctica where there will be no potential for impact on native flora and fauna;

(iii) Use of weather/research balloons, research rockets, and automatic weather stations that are to be retrieved; and

(iv) Use of radioisotopes, provided such use complies with applicable laws and regulations, and with NSF procedures for handling and disposing of radioisotopes.

(2) Interior remodeling and renovation of existing facilities.

Notwithstanding the foregoing, if information developed during the planning of any of the actions described in this paragraph (c) indicates the possibility that the action may have at least a minor or transitory impact on the Antarctic environment, the environmental effects of the action shall be reviewed to determine the need for the preparation of an environmental document.

(d) *Coordination with other committees, offices and federal agencies.* The responsible official shall notify NSF's Committee of Environmental Matters and the Office of the General Counsel when he intends to prepare an environmental document, and will coordinate preparation of the document with those entities. Responsibility for preparation of the environmental document rests primarily with the responsible official, but, as soon as is feasible, he should consult with and encourage the participation of other knowledgeable individuals within NSF, and, where appropriate, with other

individuals, government agencies and entities with relevant knowledge and expertise.

(e) *Type of environmental document.* The type of environmental document required under this part depends on the nature of the proposed action under consideration. An IEE must be prepared for proposed actions which the responsible official concludes may have at least a minor or transitory impact on the Antarctic environment and for which a CEE is not prepared. A CEE must be prepared if an IEE indicates, or if it is otherwise determined, that a proposed action is likely to have more than a minor or transitory impact on the Antarctic environment.

(f) *Obligation of funds.* Because of logistic constraints (i.e., constraints due to transportation difficulties, inaccessibility of Antarctic bases for much of the year, and the need to obtain items or materials requiring long lead times), it may not be possible to complete the environmental review of a proposed action before funds must be committed and/or disbursed. In such cases, funds for the proposed action may be committed and/or disbursed, provided:

(1) The appropriate environmental review is completed before implementation of the proposed action in Antarctica, and

(2) Implementation plans for the proposed action will be modified or canceled, if appropriate, in light of the completed environmental review (including public comments, if applicable).

§ 641.17 Initial environmental evaluation.

(a) *Contents.* An IEE shall contain sufficient detail to assess whether a proposed action may have more than a minor or transitory impact on the Antarctic environment, and shall include the following information:

(1) A description of the proposed action, including its purpose, location, duration and intensity; and

(2) Consideration of alternatives to the proposed action and any impacts that the proposed action may have on the Antarctic environment, including cumulative impacts in light of existing and known planned actions and existing information on such actions.

(b) *Further environmental review.* If an IEE indicates that a proposed action is likely to have no more than a minor or transitory impact on the Antarctic environment, no further environmental review of the action is necessary provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the action.

(c) *Availability to public.* An annual list of IEEs and a description of any decisions taken in consequence thereof shall be provided to the Department of State for circulation to all Parties to the Protocol and to organizations or committees established pursuant to the Protocol or the Treaty, as required. The Environmental Officer, Division of Polar Programs, shall also make the list and copies of final IEEs available to the public upon request.

§ 641.18 Comprehensive environmental evaluation.

(a) *Scoping.* If it is determined that a CEE will be prepared, the responsible official shall publish a notice of intent to prepare a CEE in the *Federal Register*, inviting interested persons and government agencies to participate in the process of identifying significant issues relating to the proposed action and determining the scope of the issues to be addressed in the CEE.

(b) *Contents of CEE.* A CEE shall be a concise and analytical document, prepared in accordance with the range of relevant issues identified in the scoping process. It shall contain sufficient information to permit informed consideration of the reasonably foreseeable potential environmental effects of a proposed action and possible alternatives to that proposed action. Such information shall include the following:

(1) A description of the proposed action including its purpose, location, duration and intensity;

(2) A description of the initial baseline environmental state with which predicted changes are to be compared, and a prediction of the future environmental state in the absence of the proposed action;

(3) A description of the methods and data used to forecast the potential impacts of the proposed action;

(4) An estimate of the nature, extent, duration and intensity of the likely direct potential impacts of the proposed action;

(5) A consideration of the potential indirect or second order impacts from the proposed action;

(6) A consideration of potential cumulative impacts of the proposed action in light of existing activities and other known planned actions and available information on those actions;

(7) A description of possible alternatives to the proposed action, including the alternative of not proceeding, and the potential consequences of those alternatives, in sufficient detail to allow a clear basis

for choice among the alternatives and the proposed action;

(8) Identification of measures, including monitoring, that could be employed to minimize, mitigate or prevent potential impacts of the proposed action, detect unforeseen impacts, provide early warning of any adverse effects, and carry out prompt and effective response to accidents;

(9) Identification of unavoidable potential impacts of the proposed action;

(10) Consideration of the potential effects of the proposed action on the conduct of scientific research and on other existing uses and values;

(11) Identification of gaps in knowledge and uncertainties encountered in compiling the information required by this paragraph (b);

(12) A non-technical summary of the information included in the CEE; and

(13) The name and address of the person and/or organization which prepared the CEE, and the address to which comments thereon should be directed.

(c) *Circulation of draft CEE.* A draft of each CEE shall be provided to the Department of State for circulation to all Parties to the Protocol and to organizations or committees established pursuant to the Protocol or Treaty, as required by the Protocol, and shall be made publicly available. Notice of such public availability shall be published in the *Federal Register*. All such parties shall have a period of not less than ninety (90) days within which to review and comment upon the draft CEE.

(d) *Final CEE.* A final CEE shall address, and shall include or summarize, comments received on the draft CEE. The final CEE, notice of any decisions related thereto, and any evaluation of the significance of the predicted impacts in relation to the advantages of the proposed action shall be provided to the Department of State for circulation to all Parties to the Protocol, and shall be available to the public upon request, at least sixty (60) days prior to the commencement of the proposed activity in Antarctica. Notice of such public availability shall be published in the *Federal Register*.

(e) *Implementation of proposed action.* No final decision shall be taken to proceed in Antarctica with an action for which a final CEE is required until after the earlier of:

(1) The first Antarctic Treaty Consultative Meeting taking place at least one hundred and twenty days after circulation of the draft CEE, or

(2) Fifteen months following the circulation of the draft CEE.

§ 641.19 Modification of environmental documents.

The responsible official should revise or supplement an environmental document if there is a change in a proposed action that may have more than a minor or transitory effect on the antarctic environment, or if there are new circumstances or information that indicate the action may have impacts not anticipated in the original environmental document.

§ 641.20 Notification of the availability of environmental documents and other information.

The Environmental Officer, Division of Polar Programs, shall make Environmental Action Memoranda, environmental documents and final data obtained under § 641.21, available to the public upon request. However, notice of such availability need not be given, except as specifically provided in this part.

§ 641.21 Monitoring.

Scientific, analytic and/or reporting procedures shall be put in place, including appropriate monitoring of key environmental indicators, to assess and verify the potential environmental impacts of actions which are the subject of a CEE. All proposed actions for which an environmental document has been prepared shall include procedures designed to provide a regular and verifiable record of the actual impacts of those actions, in order, *inter alia*, to

(a) Enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and

(b) Provide information useful for minimizing or mitigating those impacts, and, where appropriate, information on the need for suspension, cancellation or modification of the action.

§ 641.22 Cases of emergency.

This part shall not apply to actions taken in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value, or the protection of the environment which require an action to be taken without completion of the environmental review required by this part. Notice of any such actions which would otherwise have required the preparation of a CEE shall be provided immediately to the Department of State for circulation to all Parties to the Protocol and to committees and organizations established pursuant to the Treaty or Protocol, as required. A description of the emergency action undertaken shall also be provided to the Department of State for appropriate

circulation within ninety days of the action.

Vicki L. De Hullu,

Legal Office Administrator.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-580; RM-6977, RM-7177, and RM-7446]

FM Radio Broadcasting Services; Elkins, West Virginia, Mountain Lake Park and Westernport, Maryland

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On reconsideration, the Commission grants the request of Southern Highlands, Inc., licensee of Station WKHJ, Channel 255A, Mountain Lake Park, Maryland, to substitute Channel 283A rather than Channel 239A, allotted in that community in the Report and Order, 56 FR 52478, published October 21, 1991, and to modify the license of Station WKHJ accordingly. The Commission also substitutes Channel 266A, rather than Channel 283A, at Westernport, Maryland for Station WVPN (FM), and modifies Station WVPN (FM)'s license accordingly. The Commission also denies Southern Highlands' alternative request on reconsideration to substitute Channel 255B1 to Mountain Lake Park in lieu of Channel 255A. With this action, the proceeding is terminated. See **SUPPLEMENTARY INFORMATION, supra.**

EFFECTIVE DATES: October 13, 1992.

FOR FURTHER INFORMATION CONTACT:

J. Bertron Withers, Jr., Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 89-580, adopted July 29, 1992 and released August 27, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington DC, 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, N.W., Suite 640, Washington DC 20036.

Channel 283A can be allotted to Mountain Lake Park in compliance with the Commission's minimum distance