

to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 2410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1994. 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 or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation

by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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

Dated: September 19, 1994.

Valdas V. Adamkus,
Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart KK—Ohio

2. Section 52.1888 is added to subpart KK to read as follows:

§ 52.1888 Operating permits.

Emission limitations and related provisions which are established in Ohio operating permits as federally enforceable conditions in accordance with Rule 3745-35-07 shall be enforceable by USEPA. USEPA reserves the right to deem permit conditions not federally enforceable. Such a determination will be made according to appropriate procedures, and be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements or the requirements of USEPA's underlying regulations.

3. Section 52.1919 is amended by adding paragraph (a)(2) to read as follows:

§ 52.1919 Identification of plan-conditional approval.

(a) * * *

(2) On April 20, 1994, Ohio submitted Rule 3745-35-07, entitled "federally Enforceable Limitations on Potential to Emit," and requested authority to issue such limitations as conditions in State operating permits. On June 16, 1994, Ohio submitted a commitment to revise Rule 3745-35-07 to clarify that the rule provides for USEPA objection to permits after issuance. The revisions are approved provided Ohio fulfills this commitment by October 25, 1995.

(i) Incorporation by reference.

(A) Rule 3745-35-07, adopted April 4, 1994, effective April 20, 1994.

* * * * *

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BILLING CODE 6560-50-F

40 CFR Part 52

[SD4-1-5671a; FRL-5077-6]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of South Dakota for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this notice; additional information is available at the address indicated below.

DATES: This final rule will become effective on December 27, 1994 unless adverse or critical comments are received by November 25, 1994. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Comments should be addressed to Laura Farris, 8ART-AP, at the EPA Regional Office listed.

Copies of the State's submittal and other supporting information used in developing this final rule are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, (303) 294-7539.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many

small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

The State of South Dakota has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this *Federal Register* publication, the EPA is proposing approval of the South Dakota PROGRAM should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 *Federal Register*, this action will be effective on December 27, 1994, unless by November 25, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will

withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 27, 1994.

II. Analysis

The State of South Dakota has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. The South Dakota Codified Laws (SDCL) was amended effective July 1, 1992 to include provisions (34A-1-57 through 34A-1-60, inclusive) which provide the authority to establish and fund the PROGRAM. The authority to establish and fund the Compliance Advisory Panel is found in SDCL 1-32-4.1 through 1-32-4.4, inclusive. The South Dakota Department of Environment and Natural Resources held a public hearing on November 6, 1992 to consider amending the South Dakota SIP to include a plan which commits to the development and implementation of the South Dakota PROGRAM. On November 10, 1992, the Governor of South Dakota's designee, Robert E. Roberts, Secretary of the Department of Natural Resources, submitted the South Dakota PROGRAM to the EPA. Additional information was sent by request on January 20 and March 23, 1993. The PROGRAM was initially reviewed for administrative and technical completeness and was deemed complete on April 5, 1993. The submittal was then reviewed for approveability by EPA Region VIII and EPA headquarters. One of the EPA headquarters reviewers, the Office of the Small Business and Asbestos Ombudsman, did not concur on the South Dakota PROGRAM for the following reasons: (1) The State failed to correct deficiencies noted by EPA in their review of the proposed South Dakota PROGRAM; (2) Further clarification and assurances are necessary to insure that the State will implement all the statutory requirements under section 507. The State subsequently made the necessary changes to their PROGRAM, went back through public hearing on January 12, 1994, and resubmitted the PROGRAM on April 11, 1994. The South Dakota PROGRAM then received a concurrence from all reviewers.

1. Small Business Assistance Program

Section 507(a) sets forth six requirements¹ that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met these requirements by committing in its SIP to "Develop, collect, and coordinate information concerning compliance methods and technologies for small businesses ..." and to "Assist small businesses with pollution prevention and accidental release detection and prevention." The mechanisms the State has committed to use to accomplish these commitments include: "... workshops, electronic bulletin boards, interaction with other states, ... public service announcements, mailings, workshops in the field and through the Rural Development Telecommunications Network (RDTN), one-on-one with the small businesses, and any other methods that are determined during the development and implementation of the Program."

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by committing in its SIP to "Provide compliance assistance to small businesses to help them determine applicable requirements and in receiving permits in a timely and efficient manner."

The fourth and fifth requirements are to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights and obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the

¹ A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

operations of such sources to determine compliance with the Act. This must be done in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met these requirements by committing in its SIP to "Notify small businesses of their rights under the Federal Clean Air Act and assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under the Federal Clean Air Act;" and "Inform small businesses of their obligations under the Federal Clean Air Act. If the state does not provide audits of the operations of such sources to determine compliance with state and Federal air pollution regulations, then the state will refer such sources to qualified auditors." The mechanisms the State has committed to use to accomplish these commitments include: "... workshops, electronic bulletin boards, interaction with other states, ... public service announcements, mailings, workshops in the field and through the Rural Development Telecommunications Network (RDTN), one-on-one with the small businesses, and any other methods that are determined during the development and implementation of the Program."

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by committing in its SIP to "Provide procedures for considering requests from small businesses for modifications of any work practice or technological methods of compliance or the schedule of milestones for implementing these modifications. No such modification may be granted unless it is in compliance with the applicable state and Federal requirements."

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by stating in its SIP that the Office of the Small Business Ombudsman will be located in the

Department of Environment and Natural Resources.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by committing in its SIP to appoint the members of the CAP as stated above.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act²; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met this requirements by listing the duties of the CAP in its SIP, which are consistent with those stated above.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

- (A) Is owned or operated by a person who employs 100 or fewer individuals;
- (B) Is a small business concern as defined in the Small Business Act;
- (C) Is not a major stationary source;
- (D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and
- (E) Emits less than 75 tpy of all regulated pollutants.

The State of South Dakota has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. This mechanism is contained in the State's SIP.

² Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

The State of South Dakota has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants. This provision is contained in the State's SIP.

The State of South Dakota has provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA. This provision is contained in the State's SIP.

III. This Action

In today's action, EPA is approving the SIP revision submitted by the State of South Dakota.

The State of South Dakota has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. The members of the South Dakota CAP have been appointed, and the Ombudsman for the South Dakota PROGRAM has been hired. EPA is therefore approving this submittal.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small

businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By today's action, EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Small business assistance program.

Dated: September 14, 1994.

Jack W. McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the 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 QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(15) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(15) On November 10, 1992, the Governor of South Dakota's designee submitted a plan for the establishment and implementation of a Small Business Assistance Program to be incorporated into the South Dakota State Implementation Plan as required by section 507 of the Clean Air Act. An amendment to the plan was submitted by the Governor's designee on April 1, 1994.

(i) Incorporation by reference.

(A) November 10, 1992 letter from the Governor of South Dakota's designee submitting a Small Business Assistance Program plan to EPA.

(B) April 1, 1994 letter from the Governor of South Dakota's designee submitting an amendment to the South Dakota Small Business Assistance Program plan to EPA.

(C) The State of South Dakota amended plan for the establishment and implementation of a Small Business Assistance Program, adopted January 12, 1994 by the South Dakota Department of Environment and Natural Resources.

(D) South Dakota Codified Laws 34A-1-57, effective July 1, 1992 and 34A-1-58 through 60, effective July 1, 1993, which gives the State of South Dakota the authority to establish and fund the South Dakota Small Business Assistance Program.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 64, 65, 70, and 75
RIN 3067-AC17

National Flood Insurance Program; Insurance Coverage and Rates, Criteria for Land Management, Use, Identification, and Mapping of Flood Control Restoration Zones

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes a new flood insurance rate zone for areas designated as flood control restoration zones on National Flood Insurance Program maps. It also establishes minimum floodplain management requirements and provides regulatory guidance for implementing statutory requirements, including procedures to identify and map areas as flood control restoration zones.

The intent of the interim final rule is to permit communities to regulate development through minimum floodplain management requirements and to use flood insurance rates appropriate to the temporary nature of flood hazards during the period when a flood protection system no longer provides 100-year flood protection until it is restored.

DATES: This interim final rule is effective October 25, 1994. We invite your comments on this interim final rule. Comments must be submitted in writing on or before December 9, 1994.

ADDRESSES: Please submit any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472 (facsimile) 202-646-4536.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Division Director,

Hazard Identification and Risk Assessment Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: On April 1, 1994, FEMA published for comment in the Federal Register, 59 FR 15351, a proposed rule. The proposed rule contained provisions that would establish a new flood insurance rate zone, Zone AR, for areas designated as flood control restoration zones on National Flood Insurance Program (NFIP) maps. It would also establish minimum floodplain management requirements and would provide regulatory guidance for implementing statutory requirements of § 928 of Public Law 102-550, 42 USC 4014(f), including procedures to identify and map areas as flood control restoration zones. Public Law 102-550 also requires FEMA to promulgate regulations no later than October 28, 1994.

Following publication of the proposed rule in the Federal Register, copies were mailed to approximately 60 individuals and organizations that had previously expressed an interest in the issues that the rule addresses. In addition, copies of the proposed rule were sent to communities in the Los Angeles and Sacramento areas of California that had applied for designation as having flood control restoration zones and were sent to the Congressional delegations representing those areas.

During the 45-day public comment period provided for the proposed rule, FEMA received a total of twelve letters. All but one of the letters contained multiple comments about different issues addressed in the proposed rule. Two letters were submitted by members of the U. S. House of Representatives who represent areas of Sacramento and Los Angeles, California. One of the letters, submitted by three sponsors of the legislation, was received after the close of the formal comment period, but the issues raised are addressed in the supplementary language to these final regulations. Other letters were submitted by representatives of seven local government agencies, legal representatives of two local property owners associations, and one private citizen. In addition, comments received from the U. S. Army Corps of Engineers immediately after the close of the formal comment period have been considered as well.

With one exception, the letters received were from those who support the concept of the flood control restoration zone. One letter urged FEMA to include a requirement in the

regulations that prohibits the restoration from causing an increase in flood hazards elsewhere. All letters were submitted from the Los Angeles and Sacramento, California areas, including three Congressional representatives of those areas.

Major issues raised in the public comments included the maximum five year restoration period, the provision requiring new construction in developed areas to be elevated to three feet above the highest adjacent grade, the absence of a "hold harmless" provision for delays in meeting the restoration schedule, and the definition of "developed" areas. Several comments suggested that the proposed regulations pertaining to these provisions be rewritten based on concern that the regulations do not comply with Congressional intent as reflected in the legislative history.

Changes have been made since the proposed rules were published in April 1994. We decided that because of the changes, and because of the technical nature of the issues that these regulations address, the public and all affected parties should have another opportunity to review and comment on the rule before FEMA publishes a final rule. This interim final rule will permit FEMA to meet the statutorily mandated date of October 28, 1994 for promulgation of regulations, and it will give the public and all affected parties 45 days in which to review and comment on the interim final rule. When the 45-day comment period ends, FEMA will review and evaluate all written comments received during that period, and will publish a final rule in the *Federal Register*.

Definition of Developed Area

Several comments were received on the definition of "developed area". One comment requested clarification on whether open space is to be included within the definition of "developed area". A related comment requested that the definition be expanded to include existing publicly-owned property that is critical to the well-being of the community. FEMA recognizes that there may be some confusion over whether publicly-owned open space is included within the definition of "developed area". These areas are meant to be included in the definition of "developed area" since they generally support the residential, commercial, and industrial well-being of the community. The term "public facilities" in paragraph (a) encompasses publicly-owned open space, buildings, and facilities, such as schools, hospitals, public parks and open space, and historic sites. FEMA

believes that it is unnecessary to alter the regulations to clarify this point.

One comment expressed concern that the 75% figure in the definition in which an area must be improved with residential, industrial, and commercial structures is an arbitrary threshold. FEMA believes that the 75% figure in paragraph (a)(1) is a reasonable threshold for determining a "developed area" which is considered or is generally recognized as a city, town, or suburban area that consists of residential, commercial, and industrial buildings, structures, and streetscape and public areas that form a distinct neighborhood or section of a city or urban place with the basic urban infrastructure in place.

A related comment concerned areas within a city in which there are vacant lots and parcels. Vacant land that contains no structures or buildings may be included within a "developed area" if the land had been previously developed and redevelopment of the site can be generally supported by the infrastructure in place. This vacant land is considered "infill". Land that is in a natural or undisturbed state or in agricultural production at the time the designation is adopted is not considered "vacant" land or an "infill site" within a "developed area".

One comment requested that non-residential subdivisions be given the same consideration as residential subdivisions at 44 CFR 59.1(c) of the definition which addresses "vested rights". The intent of this paragraph is to recognize areas as "developed areas" where the investment in the land and infrastructure is substantial and development is underway and infrastructure and structures are being built on an ongoing basis. FEMA agrees that the interim final rule should recognize and include nonresidential structures and has made changes to paragraph (c) to include nonresidential subdivisions. In addition, FEMA includes single lot-type developments, such as planned unit developments, that are a minimum of 20 contiguous acres.

Concerns were raised that the proposed rule precludes all development in areas outside of the "developed area". The suggestion was made that the regulations allow nonresidential construction in these areas because of the importance of economic development to the community and because many local communities currently impose adopted floodproofing criteria in order to minimize flood damage. The suggestion was also made that the regulations should restrict residential construction

in areas outside of the "developed area".

The interim final rule does not preclude development in areas outside of the "developed area". The term, "developed area" is a means to determine which elevation or floodproofing requirement must be applied for new construction within Zone AR. The definition also does not classify or establish the location of residential and non-residential construction or other land uses. The establishment of regulations governing the use of land is a decision that resides within the state and local land use authority. Nonresidential and residential construction can be built in areas outside of the "developed area" as long as they are built in accordance with the minimum NFIP floodplain management criteria and at the elevation established at the site. While the NFIP floodplain management criteria require the elevation of residential structures, nonresidential construction has the option of elevating or floodproofing. Criteria for floodproofing are established in the NFIP Regulations that the NFIP community must apply, at a minimum, if this option is chosen.

Another comment asked FEMA how the boundaries of an area will be determined to classify it as a "developed area". The responsibility for designating and adopting an official map or legal description of those areas within Zones AR, AR/A1-30, AR/AE, AR/AH, AR/A, or AR/AO that are designated "developed areas" is established in the floodplain management criteria for flood-prone areas at § 60.3(f)(2) and the eligibility procedures at § 65.14. In accordance with these sections, it is the community's responsibility to submit, as part of the community's application for designation of flood control restoration zones, its proposed designation of "developed areas" in accordance with the definition at § 59.1 to FEMA for approval. FEMA must determine that the community designations are consistent with the definition of "developed area" at § 59.1. The community may use whatever method it deems appropriate to determine whether a particular parcel, tract, or lot, or subdivision is within a "developed area" as defined in § 59.1 or outside of a "developed area". However, FEMA encourages communities to coordinate with the FEMA Regional Offices on designation of "developed areas" before the community adopts an official map or legal description of "developed areas" within the

designated flood control restoration zone.

Five Year Maximum Restoration Period

The majority of the letters received objected to the maximum five year restoration period contained in the proposed rule as being inadequate. The proposed rule limits the duration of a flood control restoration zone designation to a maximum five year period by providing that for a community to be eligible for and to maintain such a designation, the flood protection system must be fully restored or must have achieved "adequate progress" as defined in NFIP regulations at Section 61.12 within a period not to exceed five years. Comments specifically cited experience with the ongoing restoration of flood protection systems for both Los Angeles and Sacramento, California, which have already been in progress for more than five years without achieving "adequate progress". Most comments favored a ten-year restoration period for AR Zone designation as being a more reasonable time frame for restoring a flood protection system, particularly because the restoration involves Federal funding. Comments also cited that the statute's legislative history supported a ten year period for restoration.

When establishing a time limit for the restoration of 100-year protection, FEMA recognizes the need to assess what would be necessary to provide a reasonable time frame for restoring a flood protection system involving Federal funds or for achieving "adequate progress" to satisfy the criteria in § 61.12. The U.S. Army Corps of Engineers submitted comments on the proposed rule that stated that a five-year time frame may not be adequate to ensure that satisfactory progress is made on the project restoration to meet the adequate progress requirements of § 61.12 of existing NFIP regulations. Those comments went on to indicate that ten years may be a more realistic expectation for projects that require Congressional authorization and appropriation of funds.

The regulations apply specifically to communities where the existing flood protection system is a Federal project and the restoration involves Federal funds. Because the U.S. Army Corps of Engineers is the Federal agency most frequently involved in design and construction of Federal flood protection systems, FEMA believes that it is appropriate to give considerable weight to the guidance they have provided with respect to establishing a limit on the restoration period. Therefore, the interim final rule provides a maximum

ten-year restoration period, rather than the five years contained in the proposed regulations. This revision is cited at the appropriate locations in § 65.14 of the interim final rule.

Comments were received that expressed the opinion that Congress intended that the restoration period be negotiated on a community-by-community basis and implied that Congress did not intend for a specific cap or limit to be applied to the length of the restoration period.

We respond to this latter comment by stating that, according to the statute, a community is to be considered to be in the process of restoration as long as the restoration of the flood protection system " * * * is scheduled to occur within a designated time period * * *". The term, "designated time period" indicates the establishment of a specific, or definite period of time for restoration in order to confer AR Zone eligibility upon a community. Therefore, we believe that the proposed rule is consistent with the statute by specifying a maximum time frame for restoring the flood protection system that can be uniformly applied to eligible communities.

Within that maximum time frame, the regulations anticipate that the community and FEMA will negotiate a specific restoration plan for a given flood protection system that will be based on the individual requirements for restoring that system. The plan must identify when the project will be completed or when the community will submit a request for a finding of adequate progress that satisfies the requirements of § 61.12. These dates will be dependent upon the project which may not require the full ten-year maximum restoration period provided by these regulations.

"Hold Harmless" Provision for Delays in Complying With Restoration Schedule

Several comments objected to the absence of a "hold harmless" provision in the regulations to address delays in meeting the restoration schedule for any reason. It was felt that the lack of such a provision essentially holds the community responsible for actions that may be beyond its control. For example, the community may not be the local project sponsor of the restoration project and, as a result, may have limited influence as to whether the project's local and federal sponsors meet the restoration schedule agreed upon by the community and FEMA as part of the community's application for AR Zone designations. In addition, several comments cited that potential delays in

Congressional authorization and appropriation of funds could affect a community's ability to comply with the restoration schedule, as could disasters and acts of nature, such as earthquakes or other natural hazards. These comments cite the legislative history as supporting the position that the regulations provide maximum flexibility for the community to meet the restoration schedule.

In addition, one comment suggested that § 65.14(g) of the proposed regulations recognized the potential for such delays in that it requires the community and the Federal sponsor to update the restoration plan and identify any " * * * problems that will delay the project completion from the restoration plan previously submitted * * *". The provisions in § 64.14(g) provide for relatively minor modifications to the scheduled restoration plan, including modifying the time frames negotiated under an existing restoration plan. However, it does not imply that the maximum restoration period provided for in the regulations can be exceeded as a result of any modification.

It is our position that the regulations should not include "hold harmless" provisions or provisions to extend, for any reason, the AR Zone designation beyond the maximum ten-year restoration period specified in the regulations. Central to this position is FEMA's belief that the flood control restoration zone is not a long-term or permanent flood insurance zone designation. A provision to extend the AR Zone designation or the inclusion of a "hold harmless" provision would, in FEMA's opinion, be contrary to the statute.

Delineation of "Dual" Zones

Two comments expressed the concern that the "dual" zone provision contained in the proposed regulations is confusing and should be eliminated if it does not benefit property owners. This provision is specifically intended to benefit current and future owners of structures located in areas that, because of flooding from other sources that the flood protection system does not contain, will continue to be subject to flooding after the flood protection system is completely restored. The provision is retained in these regulations.

Limitations on AR Zone Designation

Comments were raised concerning the requirement in § 64.14(b) of the proposed rule, which states that "a community may have a flood control restoration zone designation only once for the purposes of restoring a given

flood protection system". The requirement does not limit a community's future eligibility for the AR Zone designation in the event that a fully restored, certified and accredited flood protection system were to be decertified again. The provision prevents a community from seeking a second flood control restoration zone designation if the initial designation has been removed due to noncompliance with the restoration schedule or due to a finding that satisfactory progress is not being made to complete the restoration. FEMA believes that it is unnecessary to alter the regulations to clarify this point.

Application and Submittal Requirements

Several comments were made pertaining to the application and submittal requirements contained in § 65.14(e) of the proposed regulations.

One comment suggested that the regulations be revised to state that the local project sponsor, not the community applicant be responsible for submitting the documentation requirements at § 65.14(e) (1), (3), (5), (6), and (7).

We believe that it is appropriate that the community be responsible for submitting documentation referenced above. In doing so, the community does not assume financial or administrative responsibility for restoration of the flood protection system. For certain submittal requirements, such as the restoration plan referenced at § 65.14(e)(7), the community would be expected to work with the local and federal project sponsors to complete this requirement. Other requirements, such as a statement required of the community to accompany the Federal agency certification required at § 65.14(e)(3), would be to assure FEMA that the community is aware of the certification being made by the Federal agency, but it does not imply any specific technical input or expertise on the part of the community.

One comment suggested that the documentation required in § 65.14(e) include a statement that the flood protection system under restoration will not increase flood hazards in surrounding areas. Such a provision relates directly to the design requirements for constructing a restoration project that is not within the scope of the statute or these regulations. It is appropriate that concerns about induced flooding be addressed by the local and Federal sponsors of the restoration project. Therefore, such a provision has not been included in these regulations.

One comment objected to the requirement in § 65.14(e)(1) that the community submit, as part of its application for designation of AR Zones, a statement whether the flood protection system is the subject of pending litigation or administrative actions. FEMA believes that the information is pertinent to FEMA's determination whether the restoration project is viable and likely to be completed in accordance with the restoration plan required in § 65.14(e)(7). An affirmative response would not necessarily result in FEMA's denial of the community's application. It is imperative that FEMA be aware of any and all existing and potential obstacles to the timely restoration of a flood protection system so that the Director can accurately evaluate a community's application for designation of AR Zones.

Comments were raised regarding the application requirement in § 65.14(e)(5) that the community applicant submit a feasibility study performed by a Federal agency that deems that the flood protection system is restorable. Several comments observed that the term "feasibility study" as used by the U.S. Army Corps of Engineers is a specific document within the framework of the project planning process, and depending on the type of restoration project, a feasibility study may not always be performed. Other comments were concerned about the length of time that may be required to prepare a U.S. Army Corps of Engineers feasibility study and the associated delay in the community's eligibility for AR Zone designation. At least one comment suggested that for projects sponsored by the U.S. Army Corps of Engineers, a "reconnaissance" level study would provide the assurances that FEMA requires by demonstrating a Federal interest in the project that would restore a minimum 100-year level protection and which would identify a local sponsor for the restoration project.

The interim final rule has been revised to delete the reference to "feasibility study" at § 65.14(e)(5) and instead to refer to a study performed by a federal agency that would demonstrate that there is a federal interest in the restoration of the system and that it is deemed to be feasible to restore the system to provide at least 100-year protection.

One comment suggested that the application requirement to submit a feasibility study would delay the community's eligibility for AR Zone designation which would be contrary to legislative intent. This comment implies that community eligibility for an AR Zone designation should follow

immediately after the decertification of the existing flood protection system.

The eligibility requirements contained in the statute refer to a level of activity that would not likely be in place as soon as the system was decertified. Therefore, FEMA anticipates that communities would be mapped as special flood hazard areas with flood elevations (AE Zones), until such time as the progress on the restoration of the flood protection system reached a point that would meet the eligibility requirements for AR Zone designation. This process is similar to the process used to designate A99 Zones under provisions in the NFIP regulations at 44 CFR 61.12.

Several comments objected to the certification requirement in § 65.14(e)(6) that the design and construction of the restoration project involve Federal funds in order for the community to be eligible for AR Zone designation. One specific comment noted that the statute does not specify a Federal flood protection system. As stated in the supplementary information of the proposed rule, the existing FEMA regulations, 44 CFR 61.12, limit A99 Zone designation to communities that have made adequate progress on the construction of a flood protection system involving Federal funds. Requiring that the restoration project involve Federal funds is consistent with the existing regulatory provisions of § 61.12.

Furthermore, the statute provided for floodplain management provisions that permit development in flood control restoration zones to take place at elevations below the base flood elevation (BFE) that would apply in the absence of a flood protection system. Not only will new structures be exposed to increased flood risk until the flood protection system is fully restored, but those same new structures can be insured at less than actuarial rates. The insurance subsidy established in the National Flood Insurance Program (NFIP) was originally intended for the benefit of those who built without knowledge of the risk. In contrast, the subsidy for AR Zone designations is extended to those who are aware, or ought to be aware, of the increased risk. This special consideration is granted on the specific assumption that the increased risk is temporary and will be mitigated in the near term. Therefore, in extending the subsidy in the AR Zones, there has to be a high degree of assurance that the restoration project will be completed.

FEMA recognizes that there are local jurisdictions that may have the resources to build and to restore flood protection systems without Federal

financial support. On the other hand, the subsidy and the less restrictive flood plain management criteria could reduce a community's incentive to press for timely completion of its restoration project. FEMA cannot compel the completion of a restoration project. Without Federal participation in a restoration project, the Federal government cannot insure that the anticipated flood protection will be achieved within the time allowed by the rule. FEMA concludes that a lack of Federal involvement in the restoration process would introduce too great an uncertainty that the restoration projects would be completed in a timely manner.

The public policy concern is that, if restoration of the flood protection system is never completed, or is completed only after a lengthy delay, the owners and occupants of structures built during the restoration period at elevations below the actual 100-year flood level will permanently be at a greater risk of flooding than they would otherwise have been, and this regulation would have contributed directly to that greater risk. This is contrary to the basic purpose of the NFIP. (See 42 USC § 4001(c)). Therefore, the interim final rule retains the requirement that a Federal agency be involved in the funding of the restoration in order to establish an essential assurance that the restoration will be completed.

One comment requested that the regulations at § 65.14(e)(8) allow changes to the community's adopted map or legal description that designates the "developed areas" to accommodate minor errors and omissions. FEMA recognizes that errors or omissions may occur in the drafting of a map or legal description of the designated "developed areas" that the community then officially adopts. In such cases, FEMA would allow the community to submit a revised map or legal description that identifies the error or omission. Communities would be required to submit evidence to FEMA that the specific land areas to be designated as "developed areas" satisfy the requirements of the definition of "developed areas" at the time the initial designation was adopted. Communities would not be allowed to modify the map or legal description to redesignate "developed areas" at their discretion while the flood control restoration zone designation remains in effect.

One comment suggested that the regulations provide for reconsideration when the Director determines that a community is ineligible for a flood control restoration zone designation under the provisions contained in the proposed rule at § 65.14(f). The interim

final rule provides for processing a community's application according to procedures specified in existing NFIP regulations at 44 CFR 65.9. FEMA believes that these procedures are adequate. Furthermore, there is no prohibition against resubmitting an application for AR Zone designation.

Another comment suggested that the procedures cited in the proposed regulations at § 65.14(i) for removing the flood control restoration zone designation provide for a prior written notice to the community and an opportunity to remedy the situation.

FEMA agrees that the community should be given prior written notice of the Director's determination and an opportunity to submit information to support retaining the AR designation. The interim final rule at § 65.14(i) was revised accordingly. However, the time frame specified in the restoration plan shall not exceed the ten year maximum restoration period. In addition, the interim final rule states that the revision of the Flood Insurance Rate Map to remove the flood control restoration zone designation will be accomplished in accordance with the existing regulations at 44 CFR Part 67. Finally, the term "procedures" has been substituted for the term "criteria" in the description of § 65.14 (h) and (i) since this term better describes the content of these sections.

Floodplain Management and Land Use Requirements in a Flood Control Restoration Zone

There were several comments concerning the elevation requirements in the proposed rule. One comment suggested that the local community should be the responsible entity for determining which structures should be elevated and also for determining the level at which these structures should be elevated. There were several comments requesting that FEMA apply the two-foot elevation that was supported in the legislative history instead of the three-foot requirement as established in the proposed rule for "developed areas". Two comments requested that structures be allowed to be constructed at grade in deep flood areas because elevating to three feet will not significantly reduce flood damages. Concern was also expressed that the elevation requirement was unreasonable because of the costs associated with the three foot elevation requirement and that this elevation would not aesthetically fit in with existing structures not built at this elevation.

Congress, under Section 928 of Public Law 102-550, 42 U.S.C. 4014(f), directed FEMA to "develop and

promulgate regulations to implement this subsection, including minimum floodplain management criteria, within 24 months after the date of enactment of this subsection". The law is specific in stipulating that the NFIP minimum elevation requirements for new construction in impacted areas subject to flood depths less than five feet and for infill, redevelopment and rehabilitation, regardless of flood depth, could not exceed three feet.

FEMA believes the law is clear in establishing the floodplain management criteria in a flood control restoration zone. FEMA also believes that it is in the best interest of the NFIP to require structures to be elevated to the lower of either the AR BFE or the three-foot elevation permitted by the statute because of the increased flood risk to which properties will be exposed during the restoration period. Furthermore, the three-foot elevation of structures would afford additional protection from flood events that may exceed the capacity of the decertified flood protection system, which at a minimum must provide at least a 35-year level of protection in order to be eligible for a flood control restoration zone. The floodplain management criteria established for a flood control restoration zone also recognize that there is a chance that the project will not be restored. Consequently, the elevation requirement of three feet limits the exposure to the National Flood Insurance Fund if the project is not restored.

The floodplain management criteria established are the minimum standards for the adoption of floodplain management regulations within those areas designated as a flood control restoration zone (Zone AR, AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A). Any community may exceed the minimum standards by adopting more restrictive requirements.

Those seeking variances would use procedures that communities have established to deal with hardship and other unusual conditions. Communities administer the variances according to 44 CFR 60.6(a). We emphasize that while variances may reduce floodplain management requirements, they do not reduce flood insurance rates. By law, flood insurance rates must be charged commensurate with the risk to which a building is exposed. Any person seeking a variance to reduce floodplain management requirements should investigate the impact of the variance on the cost of flood insurance.

Furthermore, the widely accepted protection techniques available for new construction of residential structures and non-residential structures provide

practical and affordable alternatives that can be designed to be compatible with existing construction in a flood control restoration zone. For non-residential construction, the NFIP provides the option of elevation or floodproofing to resist the effects of flooding. Rather than specify an elevation or floodproofing method, the regulations give the property owner or builder the flexibility to choose the most appropriate technique. Similarly, there are several common, affordable methods of elevating residential structures, including elevation on earth fill, foundation walls, posts, piles, and piers. In some cases, it may be advantageous to use a combination of elevation methods.

One comment requested that the regulations clarify the use of the term "highest adjacent grade" compared to the term "existing grade" that is used in the statute. The term "highest adjacent grade" is used in the interim final rule at paragraph 60.3(f)(3)(i). This paragraph establishes the elevation that must be used for applying the floodplain management requirements in areas within Zone AR designated as a "developed area" for new construction and in other areas in Zone AR where the AR flood depth is five feet or less. In these areas, the requirement is to apply the lower of either the AR base flood elevation or the elevation that is three feet above highest adjacent grade. FEMA used the term "highest adjacent grade" since it is already defined in the regulations. "Highest adjacent grade" in the NFIP regulations is defined as "the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure". The definition in the regulations provides guidance on the reference point from which to measure the elevation of three feet when a proposed site is sloped. Also, by applying a single reference point, communities can consistently apply the elevation requirements to structures. Therefore, FEMA does not believe the term "highest adjacent grade" is inconsistent with the Act.

National Environmental Policy Act

FEMA has determined, based upon an environmental assessment, that this interim final rule will not have a significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of the General Counsel, Federal Emergency

Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

The Director certifies that this interim final rule is exempt from the requirements of the Regulatory Flexibility Act because the proposed flood control restoration zone is required by statute, 42 U.S.C. 4014(f), and is required to enhance and maintain community eligibility in the National Flood Insurance Program during the period needed to restore flood protection systems to provide a minimum 100-year level of protection required for accreditation on National Flood Insurance Program maps. A regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

This interim final rule contains collections of information as described in the Paperwork Reduction Act that are covered by the following OMB Control Numbers: 3067-0020; 3067-0022; 3067-0127; and 3067-0147.

Executive Order 12612, Federalism

This interim final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This interim final rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this interim final rule is required by statute, 42 U.S.C. 4014(f), which also specifies the regulatory approach taken in the proposed rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this proposed rule adheres to the principles of regulation as set forth in Executive Order 12866.

List of Subjects in 44 CFR Parts 59, 60, 64, 65, 70, and 75

Administrative practice and procedure, Flood insurance, Flood plains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Parts 59, 60, 64, 65, 70, and 75 are amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329, 43 FR 41943; E.O. 12127, 3 CFR, 1979 Comp., p. 376.

§ 59.1 [Amended]

2. Section 59.1 is amended to read as follows:

A. The definition of *Area of shallow flooding* is revised to read as follows:

§ 59.1 Definitions.

* * * * *

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

* * * * *

B. The definition of "Area of special flood hazard" is revised to read as follows:

§ 59.1 Definitions.

* * * * *

Area of special flood hazard is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FIRM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard".

* * * * *

C. The definition of "Special hazard area" is revised to read as follows:

§ 59.1 Definitions.

* * * * *

Special hazard area means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

* * * * *

D. A new definition, "developed area," is added after "Deductible" and before "Development" to read as follows:

§ 59.1 Definitions.

* * * * *

Developed area means an area of a community that is:

(A) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and

(1) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

(2) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

(3) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(b) An undeveloped single parcel, tract, or lot of less than 20 acres that is contiguous on at least three sides to areas meeting the criteria of paragraph (a) at the time the designation is adopted.

(c) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual "start of construction" of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (a)(3).

3. Section 59.24(a) is revised to read as follows:

§ 59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate floodplain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), (e) or (f) of § 60.3 or paragraph (b) of § 60.4 or § 60.5, within six months from the date the Director provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Director shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Director shall notify the community of the

specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Director, he shall, no later than 30 days before the expiration of the original six month period, provide written notice to the community and to the state and assure publication in the *Federal Register* under part 64 of this subchapter, of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Director receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Director. If the Director receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Director. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Director.

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

4. The authority citation for Part 60 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 3 CFR, 1979 Comp., p. 376.

5. Section 60.2(a) is revised to read as follows:

§ 60.2 Minimum compliance with flood plain management criteria.

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of § 60.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Director provides the data set forth in § 60.3(b), (c), (d), (e) or (f), in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in § 60.3(b). Thereafter, the community will be given a period of six months from the date the Director provides the data set forth in

§ 60.3 (c), (d), (e) or (f) in which to meet the requirements of the applicable paragraph.

6. Section 60.3(f) is added to read as follows:

§ 60.3 Flood plain management criteria for flood-prone areas.

(f) When the Director has provided a notice of final base flood elevations within Zones A1-30 or AE on the community's Flood Insurance Rate Map, and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's Flood Insurance Rate Map, and has identified flood protection restoration areas by designating Zones AR, AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A, the community shall:

(1) Meet the requirements of paragraphs (c) (1) through (14) and (d) (1) through (4) of this section.

(2) Adopt the official map or legal description of those areas within Zones AR, AR/A1-30, AR/AE, AR/AH, AR/A, or AR/AO that are designated developed areas as defined in § 59.1 in accordance with the eligibility procedures under § 65.14.

(3) For all new construction of structures in areas within Zone AR that are designated as developed areas and in other areas within Zone AR where the AR flood depth is five feet or less:

(i) Determine the lower of either the AR base flood elevation or the elevation that is 3 feet above highest adjacent grade; and

(ii) Using this elevation, require the standards of paragraphs (c) (1) through (14).

(4) For all new construction of structures in those areas within Zone AR that are not designated as developed areas where the AR flood depth is greater than 5 feet:

(i) Determine the AR base flood elevation; and

(ii) Using that elevation require the standards of paragraphs (c) (1) through (14).

(5) For all new construction of structures in areas within Zone AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the applicable elevation for Zone AR from paragraphs (3) and (4);

(ii) Determine the base flood elevation or flood depth for the underlying A1-30, AE, AH, AO and A Zone; and

(iii) Using the higher elevation from (i) and (ii) require the standards of paragraphs (c) (1) through (14).

(6) For all substantial improvements to existing construction within Zones AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the A1-30 or AE, AH, AO, or A Zone base flood elevation; and

(ii) Using this elevation apply the requirements of paragraphs (c)(1) through (c)(14).

(7) Notify the permit applicant that the area has been designated as an AR, AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A Zone and whether the structure

will be elevated or protected to or above the AR base flood elevation.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

7. The authority citation for Part 64 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 3 CFR, 1979 Comp., p. 376.

8. Section 64.3 is amended by adding an "AR" entry in the chart in paragraph (a)(1) after the "AH" entry and revising paragraph (b) to read as follows:

§ 64.3 Flood Insurance Maps.

- (a) * * *
- (1) * * *

Zone symbol

AR Area of special flood hazard that results from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide a 100-year or greater level of flood protection.

(b) Notice of the issuance of new or revised FHBMs or Flood Insurance Rate Maps is given in part 65 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1-30, AE, A99, AO, AH, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, V1-30, VE, V, VO, M, and E.

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

9. The authority citation for Part 65 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 3 CFR, 1979 Comp., p. 376.

§ 65.14 [Redesignated as § 65.15]

10. Part 65 is amended by redesignating § 65.14 as § 65.15.

11. Part 65 is amended by adding a new § 65.14 to read as follows:

§ 65.14 Remapping of areas for which local flood protection systems no longer provide 100-year flood protection.

(a) *General.* (1) This section describes the procedures to follow and the types of information FEMA requires to designate flood control restoration zones. A community may be eligible to apply for this zone designation if the Director determines that it is engaged in the process of restoring a flood protection system that was:

- (i) Constructed using Federal funds;
- (ii) Recognized as providing 100-year flood protection on the community's effective Flood Insurance Rate Map; and
- (iii) Decertified by a Federal agency responsible for flood protection design or construction.

(2) Where the Director determines that a community is in the process of

restoring its flood protection system to provide 100-year minimum flood protection, a Flood Insurance Rate Map will be prepared that designates the temporary flood hazard areas as a flood control restoration zone (Zone AR). Existing Special Flood Hazard Areas shown on the community's effective Flood Insurance Rate Map that are further inundated by Zone AR flooding shall be designated as a "dual" flood insurance rate zone, Zone AR/AE or AR/AH with Zone AR base flood elevations, and AE or AH with base flood elevations and Zone AR/AO with Zone AR base flood elevations and Zone AO with flood depths, or Zone AR/A with Zone AR base flood elevations and Zone A without base flood elevations.

(b) *Limitations.* A community may have a flood control restoration zone designation only once for the purposes of restoring a given flood protection system and must complete restoration of the system or meet the requirements of 44 CFR 61.12 within a specified period, not to exceed ten (10) years from the date of submittal of the community's application for designation of a flood control restoration zone. The community may not extend this period. The information specified in this section must be supplied to FEMA by the community as part of its request for designation of a flood control restoration zone.

(c) *Exclusions.* The provisions of these regulations do not apply in a coastal high hazard area as defined in 44 CFR 59.1, including areas that would be subject to coastal high hazards as a result of the decertification of a flood protection system shown on the community's effective Flood Insurance Rate Map (FIRM) as providing 100-year protection.

(d) *Effective date for risk premium rates.* The effective date for any risk

premium rates established for Zone AR shall be the effective date of the revised Flood Insurance Rate Map showing AR Zone designations.

(e) *Application and submittal requirements for designation of a flood control restoration zone.* A community must submit a written request to the Director, signed by the community's Chief Executive Officer, for a flood plain designation as a flood control restoration zone. The request must include a legislative action by the community requesting the designation. The Director will not initiate any action to designate flood control restoration zones without receipt of the formal request from the community that complies with all requirements of this section. The Director reserves the right to request additional information from the community to support or further document the community's formal request for designation of a flood control restoration zone, if deemed necessary. At a minimum, each request must include the following:

(1) A statement whether, to the best of the knowledge of the community's Chief Executive Officer, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and if so, the purpose of that litigation;

(2) A statement whether the community has previously requested a determination with respect to the same subject matter from the Director, and if so, a statement that details the disposition of such previous request;

(3) A statement from the community and certification by a Federal agency responsible for flood protection design or construction that the existing flood control system shown on the effective Flood Insurance Rate Map was built using Federal funds, that it no longer provides 100-year flood protection, but

that it continues to provide at least a 35-year level of protection;

(4) A statement identifying the local project sponsor responsible for restoration of the flood protection system to the 100-year or greater level of flood protection;

(5) A copy of a study, performed by a Federal agency responsible for flood protection design or construction in consultation with the local project sponsor, which demonstrates a Federal interest in restoration of the system and which deems that the flood protection system is restorable to a 100-year or greater level of flood protection.

(6) A joint statement from the Federal agency responsible for flood protection design or construction involved in restoration of the flood protection system and the local project sponsor certifying that the design and construction of the flood control system involves Federal funds, and that the restoration of the flood protection system will provide 100-year or greater flood protection;

(7) A restoration plan to return the system to a 100-year or greater level of protection. At a minimum, this plan must:

(i) List all important project elements, such as acquisition of permits, approvals, and contracts and construction schedules of planned features;

(ii) Identify anticipated start and completion dates for each element, as well as significant milestones and dates;

(iii) Identify the date on which "as built" drawings and certification for the completed restoration project will be submitted. This date must provide for a restoration period not to exceed ten (10) years from the date of submittal of the community's application for designation as a flood control restoration zone, or;

(iv) Identify the date on which the community will submit a request for a finding of adequate progress that meets all requirements of § 61.12. This date may not exceed ten (10) years from the date of submittal of the community's application for designation as a flood control restoration zone;

(8) An official map of the community or legal description, with supporting documentation, that the community will adopt as part of its floodplain management measures, which designates developed areas as defined in § 59.1 and as further defined in § 60.3(f).

(f) *Review and response by the Director.* The review and response by the Director shall be in accordance with procedures specified in § 65.9.

(g) *Requirements for maintaining designation of a flood control restoration zone.* During the restoration

period, the community and the cost-sharing Federal agency must certify annually to the FEMA Regional Office having jurisdiction that the restoration will be completed in accordance with the restoration plan within the time period specified by the plan. In addition, the community and the Federal agency will update the restoration plan and will identify any permitting or construction problems that will delay the project completion from the restoration plan previously submitted to the Director. The FEMA Regional Office having jurisdiction will make an annual assessment and recommendation to the Director as to the viability of the restoration plan and will conduct periodic on-site inspections of the flood protection system under restoration.

(h) *Procedures for removing flood control restoration zone designation due to adequate progress or complete restoration of the flood protection system.* At any time during the restoration period, the community may provide written evidence of certification from a Federal agency having flood protection design or construction responsibility that the necessary improvements have been completed and that the system has been restored to provide a minimum 100-year level of protection, or may submit a request for a finding of adequate progress that meets all requirements of section 61.12. If the Director determines that adequate progress has been made, FEMA will revise the zone designation from a flood control restoration zone designation to Zone A99. After the improvements have been completed and certified by a Federal agency as providing a minimum 100-year level of protection, FEMA will revise the Flood Insurance Rate Map to reflect the completed flood control system.

(i) *Procedures for removing flood control restoration zone designation due to non-compliance with the restoration schedule or as a result of a finding that satisfactory progress is not being made to complete the restoration.* At any time during the restoration period, should the Director determine that the restoration will not be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is not being made to restore the flood protection system to provide complete flood protection in accordance with the restoration plan, the Director shall notify the community and the responsible Federal agency, in writing, of the determination, the reasons for that determination, and that the Flood Insurance Rate Map will be revised to remove the flood control

restoration zone designation. Within thirty (30) days of such notice, the community may submit written information that provides assurance that the restoration will be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is being made to restore complete protection in accordance with the restoration plan, or that, with reasonable certainty, the restoration will be completed within the maximum restoration period, which may not exceed ten (10) years from the date of submittal of the community's application for designation of a flood control restoration zone. On the basis of this information the Director may suspend the decision to revise the Flood Insurance Rate Map to remove the flood control restoration zone designation. If the community does not submit any information, or if, based on a review of the information submitted, there is sufficient cause to find that the restoration will not be completed as provided for in the restoration plan, the Director shall revise the Flood Insurance Rate Map, in accordance with 44 CFR Part 67, and shall remove the flood control restoration zone designations and shall redesignate those areas as Zone A1-30, AE, AH, AO, or A.

PART 70—PROCEDURE FOR MAP CORRECTION

12. The authority citation for Part 70 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 3 CFR, 1979 Comp., p. 376.

13. Section 70.1 is revised to read as follows:

§ 70.1 Purpose of part.

The purpose of this part is to provide an administrative procedure whereby the Director will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V Zones, as a result of the transposition of the curvilinear line to either street or to other readily identifiable features. The necessity for this part is due in part to the technical difficulty of accurately delineating the curvilinear line on either a Flood Hazard Boundary Map or Flood Insurance Rate Map. These procedures shall not apply when there has been any alteration of topography since the effective date of the first National Flood Insurance Program map (i.e., Flood

Hazard Boundary Map or Flood Insurance Rate Map) showing the property within an area of special flood hazard. Appeals in such circumstances are subject to the provisions of part 65 of this subchapter.

14. Section 70.3(a) is revised to read as follows:

§ 70.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V Zones on a Flood Hazard Boundary Map or a Flood Insurance Rate Map, may submit scientific or technical information to the Director for the Director's review.

15. The heading and paragraphs (a) and (b) of § 70.4 are revised to read as follows:

§ 70.4 Review by the Director.

(a) The property is within a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V Zone, and shall set forth the basis of such determination; or

(b) The property should not be included within a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V Zone and that the Flood Hazard Boundary Map or Flood Insurance Rate Map will be modified accordingly; or

16. Paragraph (c) of section 70.5 is revised to read as follows:

§ 70.5 Letter of Map Amendment.

(c) The identification of the property to be excluded from a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V Zone.

PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

17. The authority citation for Part 75 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 3 CFR, 1979 Comp., p. 376.

18. Section 75.1 is revised to read as follows:

§ 75.1 Purpose of part.

The purpose of this part is to establish standards with respect to the Director's

determinations that a State's plan of self-insurance is adequate and satisfactory for the purposes of exempting such State, under the provisions of section 102(c) of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Director as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under section 102(c).

19. Section 75.10 is revised to read as follows:

§ 75.10 Applicability.

A State shall be exempt from the requirement to purchase flood insurance in respect to State-owned structures and, where applicable, their contents located or to be located in areas identified by the Director as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided that the State has established a plan of self-insurance determined by the Director to equal or exceed the standards set forth in this subpart.

20. Paragraphs (a)(4), (a)(5), and (a)(7) of section 75.11 are revised to read as follows:

§ 75.11 Standards.

(a) * * *

(4) Consist of a self-insurance fund, or a commercial policy of insurance or reinsurance, for which provision is made in statute or regulation and that is funded by periodic premiums or charges allocated for state-owned structures and their contents in areas identified by the Director as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones. The person or persons responsible for such self-insurance fund shall report on its status to the chief executive authority of the State, or to the legislature, or both, not less frequently than annually. The loss experience shall be shown for each calendar or fiscal year from inception to current date based upon loss and loss adjustment expense incurred during each separate calendar or fiscal year compared to the premiums or charges for each of the respective calendar or fiscal years. Such incurred losses shall be reported in aggregate by cause of loss under a loss coding system adequate, as a minimum, to identify and isolate loss

caused by flood, mudslide (i.e., mudflow) or flood-related erosion. The Director may, subject to the requirements of paragraph (a)(5) of this section, accept and approve in lieu of, and as the reasonable equivalent of the self-insurance fund, an enforceable commitment of funds by the State, the enforceability of which shall be certified to by the State's Attorney General, or other principal legal officer. Such funds, or enforceable commitment of funds in amounts not less than the limits of coverage that would be applicable under Standard Flood Insurance Policies, shall be used by the State for the repair or restoration of State-owned structures and their contents damaged as a result of flood-related losses occurring in areas identified by the Director as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones.

(5) Provide for the maintaining and updating by a designated State official or agency not less frequently than annually of an inventory of all State-owned structures and their contents within A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E zones. The inventory shall:

- (i) Include the location of individual structures;
- (ii) Include an estimate of the current replacement costs of such structures and their contents, or of their current economic value; and
- (iii) Include an estimate of the anticipated annual loss due to flood damage.

(7) Include, pursuant to § 60.12 of this subchapter, a certified copy of the flood plain management regulations setting forth standards for State-owned properties within A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones.

21. The heading and paragraph (c) of section 75.13 are revised to read as follows:

§ 75.13 Review by the Director.

(c) Upon determining that the State's plan of self-insurance equals or exceeds the standards set forth in § 75.11 of this subpart, the Director shall certify that the State is exempt from the requirement for the purchase of flood insurance for State-owned structures and their contents located or to be located in areas identified by the Director as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH,

AR/A, A99, M, V, VO, V1-30, VE, and E Zones. Such exemption, however, is in all cases provisional. The Director shall review the plan for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the plan is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Director may revoke his certification.

Dated: October 17, 1994.

Harvey G. Ryland,

Deputy Director.

[FR Doc. 94-26159 Filed 10-24-94; 8:45 am]

BILLING CODE 6718-03-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-257; RM-8327]

Radio Broadcasting Services; Glasgow, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Henry Royse, allots Channel 231A at Glasgow, Kentucky, as that community's third local FM transmission service. See 58 FR 52733, October 12, 1993. Channel 231A can be allotted to Glasgow in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) southwest to avoid a short-spacing to the construction permit for Station WHIC(FM), Channel 232C2, Hardinsburg, Kentucky. The coordinates for Channel 231A at Glasgow are North Latitude 36-57-41 and West Longitude 85-54-19. With this action, this proceeding is terminated.

DATES: Effective December 5, 1994. The window period for filing applications for Channel 231A at Glasgow, Kentucky, will open on December 5, 1994, and close on January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-257, adopted October 11, 1994, and released October 20, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of

this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Channel 231A at Glasgow.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-26392 Filed 10-24-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 94-21; RM-8427]

Radio Broadcasting Services; Garapan, Saipan, Northern Mariana Islands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Inter-Island Communications, Inc., allots Channel 266C at Garapan, Saipan, Northern Mariana Islands, as that community's fifth local FM transmission service. See 59 FR 13918, March 24, 1994. Channel 266C can be allotted at Garapan in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 266C at Garapan, Saipan, are North Latitude 15-12-26 and East Longitude 145-42-57. With this action, this proceeding is terminated.

DATES: Effective Dec. 5, 1994. The Window period for filing application for Channel 266C at Garapan, Saipan, will open on Dec. 5, 1994 and close on Jan. 5, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 94-21, adopted October 12, 1994, and released October 20, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Garapan, is amended by adding Channel 266C at Saipan.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-26389 Filed 10-24-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 94-36; RM-8447]

Radio Broadcasting Services; Flandreau, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Carmen C. Christensen, allots Channel 300C3 at Flandreau, South Dakota, as that community's first local aural transmission service. See 59 FR 27525, May 27, 1994. Channel 300C3 can be allotted to Flandreau in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 300C3 at Flandreau are North Latitude 44-02-54 and West Longitude 96-35-30. With this action, this proceeding is terminated.

DATES: Effective December 5, 1994. The window period for filing applications for Channel 300C3 at Flandreau, South Dakota, will open on December 5, 1994, and close on January 5, 1995.